

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

CA-184/2021

In

CP-224(ND)/2017

Under Rule 11 of the National Company Law Tribunal Rules, 2016.

IN THE MATTER OF CP-224(ND)/2017:

M/s. GAV DEVELOPERS PVT. LTD. & Ors.

..... Petitioners

VERSUS

M/s. SHUBH ADVISORS PVT. LTD. & Ors.

..... Respondents

AND IN THE MATTER OF CA-184/2021:

M/s. WORLD INFRACONS PVT. LTD. & Ors.

..... Applicants/Contemners

Order Pronounced On: 20.11.2023

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Manish Kumar, Ms. Aparajita Jha, Advs.

For the Respondent : Mr. Rahul Malhotra, Ms. Shruti Gupta, Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present application has been filed by M/s. World Infracons Pvt. Ltd. & 5 Ors., the Applicants on 07.04.2021, before this Tribunal under Rule 11 of the National Company Law Tribunal Rules, 2016, for seeking the following reliefs:

CA-184/2021 In CP-224(ND)/2017

Date of Order: 20.11.2023

“a. Pass an order for appointment of an Official Receiver to take over possession and secure the subject land as well as stop the continuous flouting of the orders of this Hon'ble Court; and
b. Pass necessary directions to the local police/ SHO to provide all requisite support to the Official Receiver in discharging his duty, as aforementioned; and
c. Pass necessary directions qua Contemnors Nos.2 to 6 for subjecting counsel for the Petitioner No.1, an officer of the Court, to hostility, threat and disparaging, obnoxious, insulting and offensive language, in the course of discharging his legal bounden duty; and
d. Pass any such order /further orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the instant case.”

2. The Applicant No.1 prefers the present Contempt Petition against the Respondents on account of their deliberate and willful breach/violation of the orders dated 15.09.2017 and 15.01.2019 as passed by this Tribunal in Company Petition-224(ND)/2017 titled as M/s. GAV Developers Pvt. Ltd. & Ors. Vs. M/s. Shubh Advisors Pvt. Ltd. & Ors.
3. The Respondents filed a copy of the purported Collaboration and Development Agreement dated 31.07.2020, wherein the Respondents have unambiguously and unequivocally admitted and created third-party rights in favour of Contemnors No.1 to 6, fortifying the fact that all the Respondents have willfully, intentionally and knowingly violated orders passed by this Tribunal.
4. It is the case of the Applicants that the Respondents are habitual contemnors in as much as while this Tribunal had vide its order dated 10.02.2021, expressly directed the said Contemnors to cease and desist from carrying on any construction activity on the subject land i.e., Plot No. 31, Knowledge park-V, situated at Greater Noida (West) till further orders, however, the said Contemnors in willful disobedience of the orders passed by this Tribunal continued to carry out rampant construction activity on the subject land as is

apparent from the photographs taken on 22.03.2021 by the Applicant No.1.

5. The Respondents have filed a reply affidavit denying the allegations made by the Applicants and stated that Respondent No. 1 is the company in which mismanagement and oppression has been alleged by the Petitioners in the captioned petition. The Respondent No. 2 and 4 are the directors and shareholders of the Respondent No. 1 who are managing day to day affairs of the company. The Respondent No.3 is a shareholder in the company and has no role in day to day affairs of the company. The Respondent Nos. 2 and 4 are well conversant with the facts and proceedings of the present case on the basis of their personal knowledge as well as on the basis of the records of the Respondent No. 1.
6. The present application does not survive for the sole reason that the Contempt Application No. 3 of 2021 has been dismissed vide order dated 07.03.2022. Further, the Petitioner No. 1, appealed the said order dated 07.03.2022 before the Hon'ble NCLAT by way of Company Appeal (AT) No. 53 of 2022, in which appeals stood dismissed vide order dated 04.08.2022 as no disobedience of any order of this Tribunal has been found against the answering Respondents. Therefore, nothing survives in the present application and the same is liable to be dismissed having been rendered infructuous.
7. The Petitioner No. 1 has only 10.08% shareholding in the Respondent No. 1. The Petitioner No. 1/Mr. Rajneesh Gupta is merely interested in maligning the reputation and the goodwill of the Respondent No. 1 and its project, which fact is evident from the public notice published in the newspaper on 15.02.2021. The only purpose of Mr. Rajneesh Gupta appears to divert the investors and prospective allottees of the Respondent No. 1 so that the company is rendered defunct.
8. It is the case of the Respondents that if the construction of the project of the Respondent No. 1 is halted, the company shall suffer a

loss of Rs.40,00,000/- per month which will not in any case further the interest of the Petitioner No. 1/Mr. Rajneesh Gupta. Once the construction is halted, it is very difficult to restart the construction activity at the project site and the allottees shall start demanding refunds from the Respondent No.1. If the construction is halted at behest of the Petitioner No. 1, the schedule to handover the possession of the units in the project shall be delayed which will result in the consequence of payment of delay penalty to the allottees of the units which may aggregate to Rs.2.5 crores annually.

9. It is the case of the Respondents that the Respondents have not modified the status of shareholding of the Respondent No.1 in respect of order dated 15.09.2017. The status of shareholding of the Respondent No. 1 as on 15.09.2017 continues to remain the same as on date. Therefore, it cannot be said that there is any violation of the order dated 15.09.2017.
10. It is further submitted that the status of the property i.e. Plot No.31, Knowledge Park, Greater Noida (West) is the same and status quo in terms of the order dated 15.01.2019. The title and interest in the said property vested with the Respondent No. 1 as on 15.01.2019 and the same continues to be the status as on date. Therefore, it cannot be said that there is any violation of the order dated 15.01.2019.
11. The Respondent No. 1 has two sets of shareholders i.e. the Petitioners having 35.08% shareholding in the equity and the Respondents having the balance shareholding in the equity. It is evident that the Petitioners have neither participated nor infused capital in the Respondent No. 1 company for the last half a decade in order to facilitate the development and construction of the project of the Respondent No.1.
12. We have heard the Ld. Counsel for both parties and also perused the documents available on record.
13. This Tribunal vide order dated 15.09.2017 passed the following order:

The Ld. Counsel for the petitioner also represents that presently, the petitioners hold 35.08% of the equity shareholding of the first respondent Company. The above project approved and as developed by the first Respondent company was named as "NCR AURIEL TOWN" which is evident from the approved plan. However, the respondents have tried to hijack this project and are also making efforts to sell the 25% of FAR in the developed Plots without the consent of the petitioners, which is evident from the change of name in the project which is now sought to be changed to 'THE GLEN'. Mr. K. Datta, Advocate appearing on behalf of the respondents takes notice of the petition.

Ld. Counsel for the respondent represents that he has not been served with a copy of the additional affidavit as sought to be relied on by the petitioners and in the circumstances, he is not able to offer any comment in relation to the Annexure as provided in the additional affidavit. However, on instructions it is also represented that status quo in the shareholding structure of the company will be maintained. It is also represented upon instructions that the project titled "THE GLEN" is only a part of the larger project, for which, sanction has been obtained under the name and style of the "AURIEL TOWNE" .

In the circumstances, the apprehension of the petitioner is not well founded. Taking into consideration the representation of the Counsel appearing for the respondents on instructions, the Ld. Counsel for the petitioner submits that the same may be taken note off in relation to the name of the project of 'THE GLEN ' being part of 'AURIEL TOWNE', and the status-quo in respect of the shareholding.

In the circumstances, status quo to be maintained in relation to the shareholding as of date and that "THE GLEN" is a part of the project of "AURIEL TOWNE" is taken note off.

14. The Hon'ble NCLAT vide order dated 04.08.2022 disposed of the Appeal.

The operative portion of the said order is extracted below:
"..... It is also necessary to clarify that in a contempt proceeding new relief may not be sought for. On perusal

of the impugned order, it is evident that entire aspect was examined and thereafter finally contempt petition was disposed without initiating contempt. The present Appeal has been filed only against the order dated 07.03.2022 passed by NCLT which was filed under Section 425 of the Companies Act for initiation of contempt proceeding. In view of the non-availability of any ground for filing of appeal against dropping of contempt by the impugned order we feel difficulty in passing any favourable order. Further the judgement relied upon by the Learned counsel for the Appellant in the case of Hemant Khandelwal (Supra), is not applicable in the facts and circumstances of the present appeal. We find no merit in the Appeal. Accordingly the Appeal is dismissed without costs.”

15. Subsequent to the order passed by the Hon'ble NCLAT on 04.08.2022, we do not find any violation as it is evident from the reply filed as the Respondents have not modified the status of shareholding of the Respondent No. 1 in respect of order dated 15.09.2017 and the title and interest in the property vested with the Respondent No. 1 as on 15.01.2019 and the same continues to be the status as on date.
16. Therefore, this Adjudicating Authority cannot entertain the present Application which is devoid of merits and not sustainable. The Applicant is attempting to derail or delay the affairs and business of the Respondents.
17. Hence, we are of the considered view that the Respondents has not committed any illegality w.r.t. order dated 15.09.2017 and 15.01.2019 as passed by this Tribunal in Company Petition-224(ND)/2017.
18. In view of the above, the CA-184/2021 stands **dismissed**.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)