

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 266 of 2018

IN THE MATTER OF:

Kuldeep Kumar Dangi

...Appellant

Versus

Union of India

...Respondent

Present:

For Appellant :

**Mr. Yatin Oza, Senior Advocate assisted by
Mr. Nakul Mohta and Mr. Johnson Subba, Advocates**

For Respondent:

**Mr. Ashim Sood, CGSC,
Ms. Payal Chandra, Advocate
Mr. Saud Ahmad, Joint Director, SFIO**

WITH

Company Appeal (AT) No. 267 & 278 to 308 of 2018

IN THE MATTER OF:

Adarsh Buildestate Ltd. & Ors.

...Appellants

Versus

Union of India

...Respondent

Present:

For Appellants:

**Mr. Mihir Thakore and Mr. Yatin Oza, Senior
Advocates assisted by
Mr. Divang C, Advocate**

For Respondent:

**Mr. Ashim Sood, CGSC,
Ms. Payal Chandra, Advocate
Mr. Saud Ahmad, Joint Director, SFIO**

WITH

Company Appeal (AT) No. 353 of 2018

IN THE MATTER OF:

Rohit Modi & Ors.

...Appellants

Versus

Union of India

...Respondent

Present:

**For Appellants: Mr. Yatin Oza, Senior Advocates assisted by
Mr. B.V.N. Niren, Advocate**

**For Respondent: Mr. Ashim Sood, CGSC,
Ms. Payal Chandra, Ms. Natasha Sarkar and
Mr. D.K. Sabat, Advocates for SFIO**

O R D E R

07.12.2018 The ‘*Union of India*’ moved an application under Section 241 read with Section 242 of the Companies Act, 2013 in public interest before the Tribunal alleging the acts of serious fraud against ‘*M/s. Adarsh Buildestate Limited*’ and other companies and their respective Directors, officers and relations. In the said petition (C.P. No. 146/Chd/Hry/2018), the National Company Law Tribunal, Chandigarh Bench, Chandigarh (for short, ‘the **Tribunal**’) passed the impugned interim order with the following directions:

“In the meanwhile, the respondent-companies from Sr. No. 1 to 32 are restrained from transferring the assets of the companies. The individual respondents are also restrained from alienating, transferring, encumbering any of the their immovable property and

the property comprising of shares, mutual funds etc. and that of the companies No. 1 to 32 till further orders. The respondents are further directed not to withdraw or transfer any amount from their respective banks except for an amount not more than ₹ 1 lac per month by the Directors and Key Managerial Personnel from their individual bank accounts for monthly subsistence for their families but not from the accounts of the companies

The respondents are further directed to fully cooperate in the investigations being carried out by the Serious Fraud Investigation Office in the disclosures of their movable and immovable properties.”

The aforesaid interim order has been challenged by the appellants on different grounds.

2. On 4th October, 2018, this Appellate Tribunal taking into consideration the stand taken by the Union of India and the learned counsel for the appellants, passed the following order :-

“O R D E R

“The Respondent- ‘Union of India’ in their counter affidavit stated that investigation carried out by the Serious Fraud Investigation Office

(SFIO) revealed a large scale fraud perpetrated by the 'Adarsh Group of Companies', has also taken the following plea:

“9. It is submitted that no amounts may be permitted to be released in respect of the Appellant Companies for undertaking new projects or repayment of loans to its promoter society or related entities/ Group Companies as the same would again become a front for siphoning off money and defeat the very purpose of freezing the accounts of the Appellant Companies, pending investigation. Any payment made by the Appellant Companies should be strictly only to service legitimate vendors for verifiable expenses for ongoing, existing projects.

10. It is further submitted that the Appellants have come on record to stated that they have no objection if any officer from the Ministry of Corporate Affairs is appointed to verify and approve the expenses of the Companies.

11. *Without prejudice to the above and in the event this Hon'ble Tribunal accedes to the Appellant's request for permitting payments and for appointing a person to oversee the payments made by the Appellant Companies, this Hon'ble Tribunal may be pleased to appoint a retired officer of the Central Government having experience in finance as a Nominee Director/ Administrative Officer for the Appellant Companies. The appointment of the Nominee Director/ Administrative Officer should be at the expenses of the Appellant Companies themselves, who would verify and approve the legitimate expenses of the Appellant Companies and also meticulously scrutinizing/verifying the end use/ utilization of the s aid amounts, which would strictly be to service legitimate vendors for verifiable expenses for ongoing existing projects. The Respondent respectfully submits that in view of the Respondent's involvement in investigation and litigation before various judicial/ quasi-judicial forums, it may not be*

appropriate to have a serving officer appointed for this purpose.

12. That in view of the facts, reasons and averments stated in the foregoing paragraphs, it is most humbly prayed that this Hon'ble Tribunal may take a view accordingly in the interest of justice."

2. The following statement has been made by the Union of India in their enclosure:

"The following name is proposed by the Serious Fraud Investigation Office, Ministry of Corporate Affairs for appointment as Nominee Director/ Administrative Officer in terms of Paragraph 11 of the counter affidavit:

Sh. Shyam Murari Nigam
(Retd.) Member, Central Board of Direct Taxes
Department of Revenue
Ministry of Finance and
Special Secretary to the Government of India
Contact No: 9013854827
Email ID: smnigam@hotmail.com"

3. *Curriculum Vitae of Mr. Shyam Murari Nigam has been enclosed.*

4. *Learned counsel appearing on behalf of the Respondents submits that they have no objection with regard to the suggestion made at paragraph nos. 10 & 11 of the reply affidavit filed by the Union of India. Learned counsel raised objection with regard to the statement made at Paragraph 9 of the reply affidavit.*

5. *Having heard learned counsel for the parties, we pass following interim order for the present.*

- i. Mr. Shyam Murari Nigam, (Retd.)
Member, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance and Special Secretary to the Government of India, Contact No: 9013854827 Email ID: smnigam@hotmail.com, is appointed as Executive Officer to supervise all the 32 (Appellant) Companies. The main Company will pay the Executive Officer remuneration of Rs. 2,50,000/- (Rupees Two Lakhs Fifty*

Thousand Only) per month. He should be provided with a Car with 200 litres of petrol and other facilities to which a Group-A Officer of the Central Government is entitled to. This will be in addition to actual expenses as may be incurred by the Executive Officer for visiting the 32 Companies or for any other official purposes.

- ii. The Board of Directors of respective Appellant Companies will function and shall take all steps and decision but only with the prior approval of the Executive Officer, who in his turn will ensure that the Appellant Companies continues to be remain going concern(s). If the Board of Director's or any of the officer of any Company make hindrance in the functioning of the Executive Officer, the Officer may bring it to the notice of this Appellate Tribunal.*
- iii. The person(s), who are operating the Bank accounts of respective*

Companies may do so only with the approval of the Executive Officer for the purpose of day to day functioning only. No fund or amount should be diverted in favour of any third party without prior approval of the Executive Officer. The Executive Officer will ensure that the expenses for the day-to-day functioning of the Company are cleared, which may include the expenses towards supply of material(s) for construction of the building(s) and other infrastructures, expenses of workmen, employees and officers, electricity charges, water charges, taxes etc. The Serious Fraud Investigation Office is directed to co-operate with the Companies through the Executive Officer and will allow to the Officers through Executive Officer to deal with the Bank accounts etc. for implementation of direction of this Appellate Tribunal.

- iv. Apart from the salary, wages, payment towards electricity, water charges, taxes if there is any doubt with regard to expenses to be cleared in favour of one or other party, the Executive Officer will ask the concerned Board of Directors/ Officers of the Company to give clarification. On receipt of such clarification and if satisfied, the Executive Officer may clear the bills.*
- v. The Appellant Companies will not undertake any new project(s) and will complete the projects in hand. Only on completion of the present projects, the companies may take steps for new projects, with the approval of the Executive Officer.*
- vi. Loans payable to the 'Financial Creditor' or the 'Operational Creditor' should be cleared to ensure that no insolvency proceeding is triggered against any of the Companies. If there is any 'existing dispute' with regard to*

amount payable to any 'Operational Creditor', who have supplied goods and rendered services, in such case, loan may not be cleared.

vii. Taking into consideration that the main business of the Companies are construction of projects for allotment of flats and commercial premises to the allottees, allotment and conveyance should be made in favour of valid allottees, only after verification by the Executive Officer to ensure that 'Corporate Insolvency Resolution Process' is not initiated by any of the allottee against the Companies.

6. The Central Government will inform of this order to Mr. Shyam Murari Nigam. The Registry of NCLAT is also directed to intimate this order to Mr. Shyam Murari Nigam in the address aforesaid.

Post these appeals 'for admission' on 28th November, 2018.

During the pendency of the appeals, any decision taken by the National Company Law Tribunal, shall be subject to the decision of the appeals. The Serious Fraud Investigation Office will continue with its investigation.

The interim order passed by the Tribunal stands modified to the extent above.”

3. In view of the fact that on 4th October, 2018, we had already superseded the order of the Tribunal, no further order was required to be passed in these appeals. However on 28th November, 2018, learned counsel appearing on behalf of the ‘Union of India’ submitted that many of the appellants have withdrawn the money from M/s. Adarsh Buildestate Limited and other companies, who are appellants before us. We directed the appellant(s) to file reply-affidavit to the allegation made by the Union of India. Pursuant to the said order, the appellants have filed their detailed affidavit, which is on record. However, we are not deliberating on such issue of withdrawal of further amount, as we are of the view that the matter should be first decided by the Tribunal. In that view of the matter while we reiterate the interim order passed on 4th October, 2018, which is to be continued till the final disposal of the Company Petition, allow the ‘Union of India’ to bring the notice of the Tribunal that one or other appellants has withdrawn the amount from M/s. Adarsh Buildstate Ltd. or any other company after the interim order was passed by the Tribunal or the modified order dated 4th October, 2018 passed by this Appellate Tribunal. In case the Tribunal is

satisfied that one or other appellant has withdrawn any amount from company, in such case the Tribunal may pass appropriate order and may also modify the order dated 4th October, 2018 of this Appellate Tribunal to the extent of amount already ordered to be released in favour of such appellant.

4. We make it clear that we have not gone into the merit of the claims and counter-claims, which is required to be looked into by the Tribunal at the time of hearing.

5. We also make it clear that '**Mr. Kuldeep Kumar Dangi**' having already allowed a sum of Rs. One Lakh by the Tribunal, we have not modified the order passed by the Tribunal so far it relates to the said appellant.

6. The appeals stands disposed of with the aforesaid observations and directions.

7. We make it clear that the aforesaid order will not come in the way of 'Union of India' to move appropriate application for initiation of contempt proceedings if any of the appellant(s) violated the order dated 4th October, 2018 as modified on 31st October, 2018 passed by this Appellate Tribunal.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk/