

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 328-331 of 2017

IN THE MATTER OF:

1. **Shri Ashok Mittal,**
107, Director Center,
135, August Kranti Marg,
Kemp's corner
Mumbai-400 036
(Through his Power of Attorney Holder)

2. **Smt. Neeru Ashok Mittal,**
107, Director Center,
135, August Kranti Marg,
Kemp's corner
Mumbai-400 036
(Through her Power of Attorney Holder)

...Appellants

Versus

1. **Uniworth Resorts Ltd.**
Registered Office:
11, Pollock Street,
Kolkata- 700 001.

Also at:
70/a, Shakespeare Sarani,
Kolkata- 700 017

2. **Shri Shyam Sunder Gindoria,**
11, Pollock Street,
Kolkata – 700 001.

3. **Shri Nimish Mahindra Kumbhani,**
R/o 5, Camac Street,
Kolkata- 700 016

4. **Shri Sujit Sarkar,**
R/o Subhash Nagar,
Talpukur Road, Sarsuna,
Kolkata – 700 061.

5. **Touchstone Housing Projects Private Ltd.**

Registered Office:
Rawdon Chambers,
11A, Sarojini Naidu Sarani,
4th Floor, Unit 4B,
Kolkata, WB- 700 017

6. **Uniworth Securities Limited**

Registered Office:
B-4, Station Road, Bajaj Wadi,
Santacruz (West), Mumbai- 400 054

Also at:
70/A, Shakespeare Sarani,
Kolkata- 700 017

7. **Shri Ajay Prakash Lohia,**

B-20, Vasant Marg
Vasant Vihar
New Delhi- 110 057

Also at:
268/2/A-1 G.T. Road
Liluah, Howrah
West Bengal- 711 204

Also at:
R/o Lohia Bhawan,
14a, Loudon Street,
Kolkata- 700 017

8. **Shoreline Infrastructure Developers Limited,**

Registered Office:
209, Om Chambers,
123, August Kranti Marg,
Kemps Corner,
Mumbai- 400 036

9. **Mr. Prashan Chinappa Suvarna,**

Residing at Vasant Vihar,
Flat No. 2, A-Wing,
Bibvewadi, Kondwa Road,
Opposite to Kumar Park,
Pune- 411 037.

...Respondents

Present:

For Appellants: Shri Jayant Mehta, Shri Saurabh Kalia, Shri Rahul Ahuja, and Shri Rahul Kukreja, Advocates.

For Respondents: None.

ORDER

26.10.2017 Heard learned Counsel for the Appellants. In this matter the Company Petition No. 46/2006 is pending before the learned National Company Law Tribunal at Kolkata (hereinafter referred to as “**NCLT**”) since 2006. Learned Counsel for the Appellants is submitting that the Appellants had filed I.A. No. 189/2017, I.A. No. 190/2017, I.A. No. 276/2017 and I.A. No. 277/2017 seeking certain impleadments and amendments but the applications were rejected by the learned NCLT.

2. The Counsel for the Appellants stated that the NCLT is under wrong impression that the Appellants are prolonging the matter. It is stated that the Company had only one immovable property at Goa and the Appellants were 50% shareholders in the Company as well as they were Directors and were wrongly removed and because of this the petition of oppression and mismanagement was filed. It is stated that the Company Law Board at Delhi had passed order for status quo regarding immovable property but the Respondents went ahead and the title of the property was transferred to outsiders and the company increased its shareholding by issuing shares without notice to the Appellants rendering them to minority. The Appellants raised this dispute as oppression and mismanagement in the petition which was filed. The learned Counsel submits

that earlier the Appellants had filed C.A. No. 131/2007 for certain amendments to incorporate developments which took place after filing of the Company Petition. The application was earlier fully allowed but later on, the order was set aside on 05.09.2007 by the High Court at Kolkata and the matter was remanded. Thereafter in 2008, the application was partly allowed which order was set aside by the High Court at Kolkata on 12.04.2012 and the application for amendment was fully allowed. According to the learned Counsel from the years 2006 to 2012, the Appellants were pursuing the matter to get the remedy as above and thus in the impugned order the NCLT committed wrong in putting blame on the Appellants that they are responsible for the delay and rejecting the present applications. According to him as the property changed hands, Appellants were forced to bring new facts on record and so these applications should have been allowed as they relate to subsequent events which have occurred.

3. The impugned order in I.A. No. 189/2017 in C.P. No. 46/2006 is a short order which reads as under:

“The instant application is filed by the petitioner with a prayer to implead one Mr. Jitendra Lavjibhai Patel, as a party to the Company Petition apart from other prayer.

On perusal of the record, it reflected from Form 32, that Jitendra Lavbhai Patel was appointed as a Director of the Uniworth Resorts Limited sometime on 05.02.2010, whereas the C.P. is filed sometime in the year 2006. But the petitioner from 2010 till 2017 had made no endeavor to make him party to the main C.P. That apart, had the petitioner made any

endeavor to dispose of the C.P., the C.P. could have been disposed of much earlier than 2010, then this type of situation would have never been arisen. Further petitioner also failed to show any valid reason for filing application in such a belated stage, when all the information are available in M.C.A. portal.

Under such circumstances, I find no reason to entertain such petition filed in such a belated stage. Hence, the same is dismissed.”

(Emphasis supplied)

4. In the other order in I.A. No. 190/2017, the learned NCLT referred to the prayers made by the Appellants and the amendments which they were seeking and the parties they wanted to join and made following observations:

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“Heard the petitioner at length and perused the record and the document annexed therein. The C.P. is filed sometime in 2006. Since then party has made no endeavor to get the C.P. disposed of and instead, time and again, filing the number of Interlocutory Applications. In similar fashion earlier, also Interlocutory Applications were filed and the same were pending since 2017 (should be 2007) and the petitioner has made no endeavor to get it disposed of. Ultimately on the instance of the Bench, those C.A. Applications were disposed of in 2017.

The petitioner has filed this application for impleading the Sanika Assets Management and Investment Private Limited, whose name is appearing in the annual return filed by the Company in the year 2006 as reflected at page no. 104 of the petition. The said documents were also

available in the M.C.A. Portal. Had the petitioner been interested or vigilant in pursuing the matter, he could have obtained the certified copy from the R.O.C. or from the M.C.A. Portal in 2006 itself and could have impleaded the proposed party in C.P. Now after 9 years, that too without any valid reason, petitioner filed the instant petition to add the proposed party in the C.P. by allowing amendment in C.P. Furthermore, in the prayer, petitioner sought for declaratory orders in the petition for amendment. In my view, the Interlocutory Application, no declaratory order could be passed and the prayer itself is bad in eye of law.

Under such circumstances I found no reason to implead Sanika Assets Management and Investment Private Limited as a party to the main C.P. at such belated stage.”

(Emphasis supplied)

5. In the I.A. No. 277/2017, the learned NCLT adopted the reasons record by it while disposing I.A. No. 189/2007 and rejected the application. While dealing with IA No. 276/2017, learned NCLT referred to the prayer which was made by the Appellants in concerned IA. (copy of which is at page 472 in the Paper Book) and observed as under:

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”It is very strange to see that the petitioner is attempting to direct the Bench to pass the order in I.A. 190/2017 as per his own convenient and whims, which is against the judicial norms. This type of application is not only bad in the eye of law, but is also grave abuse of process of law.

Hence, the instant application is dismissed with a cost of Rs. 5,000/-. The party is hereby directed to deposit the amount in the Central Army Welfare Fund, before proceeding with any further hearing of the main C.P.”

6. Thus NCLT expressed its displeasure as Appellants were trying to impress upon the NCLT as to the manner in which the order should be passed in I.A. No. 190/2017.

7. Section 422 of the Companies Act 2014 expects the NCLT to dispose of the petition in three (3) months and here, more than a decade has passed. In such circumstances, we do not find any reason to interfere with the impugned orders which have been passed.

8. The above impugned orders are speaking for themselves and it is apparent that the Appellants were not permitted amendments or impleadments for reasons recorded and no fault can be found with these orders. In such petition of 2006 which is being dragged even after a decade, such lack of promptness as referred above cannot be entertained.

9. Learned Counsel for the Appellants is trying to show that Responders were responsible for the delay in the matter and according to him, the Respondents attending the matter at times causing delay and when the matter reaches crucial stage, suddenly, the Respondents appear and seek time on various counts. It is stated by him that because of this, the Company Petition is being delayed.

10. If the Respondents are resorting to any delaying tactics, it would be for the learned NCLT to take suitable steps so that the matter is not delayed because of delaying tactics adopted by any of the parties. We are not going into the general statements being made. We are concerned with the specific details of the present impugned orders. Going through them, we find that this appeal does not merit admission. On the face of the record, there is no reason to interfere in the impugned order which have been passed.

11. Admission of the appeal is declined.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

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