

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 374 of 2018

IN THE MATTER OF:

M/s. Sambhav Energy Ltd.

...Appellant

Versus

Union of India

...Respondent

Present :

For Appellants : **Mr. Yatin Oza, Senior Advocate assisted by
Mr. Anup Jain, Advocate**

For Respondent: **Mr. Ashim Sood, CGSC,
Ms. Payal Chandra, Advocate
Mr. Saud Ahmad, Joint Director, 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 alleging the acts of serious fraud against ‘*M/s. Sambhav Energy Limited & 13 others*’ (appellants herein). In the said petition (C.P. No. 31/IB/2018), the National Company Law Tribunal, Chennai Bench, (for short, ‘the **Tribunal**’) passed the impugned interim order on 8th August, 2018 with the following directions:

*“After hearing the Learned ASG and the counsel for
1st Respondent Company at length, and perusal of record
including the Memo filed on behalf of 1st Respondent
Company, the order given is as follows :*

- i) *The 1st Respondent Company viz. M/s.
Sambhav Energy Limited, is hereby*

restrained from transferring its immovable properties in any manner or encumbering the same until further orders

- ii) The 1st Respondent Company is restrained from transferring/ withdrawing any money from its accounts except to meet the legitimate monthly expenses, which shall not be more than average monthly expenses as have been incurred during three months preceding 31st of July 2018.*
- iii) If any expenditure/ expenses is required to be incurred over and above the average monthly expenses as was done during three preceding months, then, 1st Respondent Company shall obtain prior approval from this Bench.*
- iv) No Board Meetings or the other General Meetings including Annual General Meetings will be conducted without seeking prior permission of this Bench till further orders. ”*

2. Similar matters fell for consideration before this Appellate Tribunal in ‘*Company Appeal (AT) No. 266 of 2018 – Kuldeep Kumar Dangi*’ and other

connected appeals, in which one Mr. Shyam Murari Nigam was appointed as Executive Officer by the Union of India. In the said appeal, the court passed the following order on 4th October, 2018 :

“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. Today, it is informed that 'Union of India' has not replaced the management of the Company.

4. Having heard the parties, while we are not inclined to interfere with the order dated 8th August, 2018, as suggested by the learned counsel for the Union of India, appoint 'Mr. Shyam Murari Nigam' as 'Executive Officer' to look into the affairs of the present company.

5. The Executive Officer will ensure that the company remains on going and salary and wages of employees and workmen, payment towards electricity and water charges, taxes, if required to be made, the management of the company may bring the matter to the notice of the Executive Officer and in his absence before the Investigation Officer, SFIO, who after verification will allow withdrawal of such amount to ensure payment of salary and wages of employees and workmen etc.

6. In '*Company Appeal (AT) No. 266 of 2018*' we have fixed the salary of Mr. Shyam Murari Nigam. However, as he will also function as 'Executive Officer' of the present company in addition to the company in which he has engaged by the Union of India, he will be entitled for admissible allowances and actual expenses as may be incurred by him for performing the duties of the present company, in

addition to what he is entitled pursuant to the order passed in respect of the other companies.

7. So far as the construction of flats and commercial premises by the company is concerned, Mr. Shyam Murari Nigam, EO will verify and if found that the construction has already been started, in such case, they will allow construction to continue in terms of the order passed on 4th October and modified on 31st October, 2018 in '*Company Appeal (AT) No. 266 of 2018*'.

The appeal stands disposed of with aforesaid observations and directions.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk /