

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 112 of 2020

In the matter of:

**Goldstar Enclave Pvt. Ltd.
8, Old China Bazar Street, Room No. 101, First Floor,
Kolkata-700001.**

....Appellant

Vs.

- 1. Jasjit Pal
Flat No. 52, Doveland Court, 29/13, Ballygunge Park,
Ballygunge, Kolkata- 700019.**
- 2. Neelu Singh,
Chowdhury Park, 6 Suburban Hospital Road,
Bhowanipore, Kolkata- 700020.**
- 3. Deepak Kumar Daga,
Flat No. 5B, 12D, Chakraberia Road North,
Kolkata- 700020.**
- 4. Kanak Mall Banthia,
637, Dakshindari Road, Sreebhumi, Building No.
16C, Fifth Floor, Flat No. 5A & 5B, Kolkata- 700048.**
- 5. Dipak Kumar Rathi,
47A, Kali Krishna Tagore Street, Kolkata- 700007.**
- 6. Champalal Jaichandlal Pvt. Ltd.,
63, Radha Bazar Street, Room No. 42, Third Floor,
Kolkata- 700001.**
- 7. Sunraj Comtrade Pvt. Ltd.,
8, Old China Bazar Street, Room No. 101, First
Floor, Kolkata- 700001.**
- 8. Manav Sales Pvt. Ltd.
8, Old China Bazar Street, Balaji Market, Shop
No. 10, Ground Floor, Kolkata- 700001.**
- 9. Subham Cements Pvt. Ltd.,
Balaji Market, Shop No. 10, Ground Floor, 8, Old
China Bazar Street, Kolkata- 700001.**

**10.Seabird Abasan Pvt. Ltd.,
18, Netaji Subhas Road, Backgate, First Floor,
Kolkata- 700001.**

**11.Subhdhan Merchants Pvt. Ltd.,
18, Netaji Subhas Road, Backgate, First Floor,
Kolkata- 700001.**

...Respondents

Present

For Appellant: Mr. Jayant Mehta, Mr. Vikrant Pachnanda & Ms. Smiti Verma, Advocates.

For Respondents: Ms. Neelu Singh, Mr. Shaunak Mitra & Mr. Soumya Dutta, Advocates for R-1 & R-2.

ORDER

(Through Virtual Mode)

24.09.2020: This Appeal has been filed by the Appellant Company against Impugned Order dated 4th March, 2020 passed in Misc. Application No. 21/KB/2020 in CP No. 49/2016, by NCLT, Kolkata Bench, Kolkata.

It is a short Order which may be reproduced: -

“..Ld. Sr. Counsel for the petitioners appears. Ld. Counsel for R-1 Company appears. Mr. Deepak Kumar Daga, R-2, in person appears and signed the attendance sheet.

Affidavit of service of notice to R-2 to R-10 proving service of notice is filed. Other than R-1 and R-2 nobody appears. R-2 to R-10 are called, absent and declared ex parte.

Ld. Counsel for R-1 seeks leave to late filing of reply affidavit. Leave is granted. Reply affidavit filed is received. Copy is given to the other side. Petitioners are directed to file rejoinder within 3 weeks by serving copy to R-1 Company. She submits that she is to be heard at length. At her request we adjourned the hearing.

Ld. Sr. Counsel for the petitioners pressed for passing an order directing R-1 Company not to part with the property till hearing of this application. Ld. Counsel for R-1 objected the prayer of the petitioners. The application under consideration is an execution application and respondent no.1 challenges its maintainability. Though we heard the Ld.counsel, she requested further time. So in order to maintain status quo of the assets of the R-1 company, it is fair and just to restrain the R1 from alienating and encumbering its property till the disposal of the application. Otherwise there is every likely hood of defeating the interest of the petitioners from realising the amount agreed to be paid by the respondents as per the consent decree. Accordingly, we hereby restrained the R1 from creating third party interest in respect of the assets of the R-1 until the disposal of the application. Ld. Counsel for the R-1 Company seeks direction for return of the cheques tendered to the Special Officer, being the part of settlement. Subject to decision of the maintainability, it is to be kept with him for the time being. Respondents are directed to pay the fee payable to the Special Officer within two weeks by way of demand draft.

R-2 seeks time to file reply affidavit. 2 weeks' time is granted from today to file reply affidavit by serving copy to the other side. Rejoinder may be filed within 2 weeks of receipt of the reply affidavit by serving copy to R-2.

Matter stands adjourned to 24/04/2020 for hearing as to the maintainability of the application..."

2. It is Interim Order which is to operate till application is decided. The Learned Counsel for the Appellant submits that this Company is in the business of Real Estate and the properties of the Company are actually its 'Stock in Trade' and because of the Impugned Order the functioning of the Company is affected and there is grave urgency that the matter should have been taken up by the Learned NCLT and decided one way or the other.

According to the Counsel the Bench of NCLT at Kolkata is not having regular sittings and thus the Parties are in difficulty.

3. The Learned Counsel for Appellant submits that during pendency of the Company Petition before the NCLT the Parties had entered into amicable Terms Of Settlement (T.O.S) on 17th June, 2019 on which basis the Petition was disposed of. The terms had reciprocal obligations to be performed by the Parties and also there was agreed sequences and time schedule. The Appellant claims that the Respondent No. 1 & 2 without fulfilling their reciprocal obligation under the settlement filed M.A. 21/KB/2020 in CP No. 49/2016 sought execution of T.O.S seeking directions against the Company and have procured the Impugned Order. The Appellant claims that there is an urgency that the matter should be taken up to inter-alia consider if the Respondent No. 1 & 2 who have procured the Impugned Order performed their obligations or not.

4. The Learned Counsel for the Contesting Respondent No. 1 & 2 is disputing the claims being made by the Appellant. Counsel for Respondent No. 1 & 2 is submitting that the Kolkata Bench is regularly holding sittings and daily about fifteen matters are being taken up. The Counsel states that he does not dispute that there is urgency and will cooperate with the Appellant for the early decision of the M.A. pending before the Learned NCLT. The Learned Counsel for the Appellant also agrees that the NCLT may be directed to urgently decide the M.A. one way or the other.

6. It appears to us that there is urgency in the matter and in order to protect the interest of the Company it would be appropriate that the Learned NCLT urgently deals with the M.A 21/KB/2020. The Parties had fairly entered into a settlement and timely action by the Learned NCLT can help save the settlement.

5. For the above reasons, we dispose the Appeal with a direction to the Learned NCLT Kolkata Bench (Kolkata) to urgently decide Misc. App. No. 21/KB/2020 in CP No. 49/2016 preferably within a month. The Parties will cooperate with the Learned NCLT. The Parties will appear before the Adjudicating Authority in 'Virtual Mode' on **1st October, 2020** and the Learned NCLT is requested to try and dispose the M.A. within a month.

6. We record that we have not expressed opinion on merits of the matter.

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

[Kanthi Narahari]
Member (Technical)

Sim/md