

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 26 of 2018

IN THE MATTER OF:

Pratik Jayesh Vira & Ors.

...Appellants

Vs.

**Sunshine Housing & Infrastructure
Pvt. Ltd. & Ors.**

...Respondents

**Present: For Appellants: - Mr. Amit Dhingra 2and Mr. Suryaveer Berry
Advocates.**

**For Respondents:- Mr. Vikash Kumar Jha and Mr. Karan
Khanna, Advocates for 11th Respondent.**

**Mr. Sai Kumar, Ms. Sowmya Saikumar, Ms Saumya Sharma and
Mr. Farman Ali for Respondents No. 1,2 & 3.**

With

Company Appeal (AT) No. 27 of 2018

IN THE MATTER OF:

IVEM Advisory Services Pvt. Ltd.

...Appellant

Vs.

Mayurpankh Properties Pvt. Ltd. & Ors.

...Respondents

**Present: For Appellant: - Mr. Amit Dhingra and Mr. Suryaveer Berry
Advocates.**

**For Respondents:- Mr. Vikash Kumar Jha and Mr. Karan
Khanna, Advocates for 13th Respondent.**

**Mr. Sai Kumar, Ms. Sowmya Saikumar, Ms Saumya Sharma and
Mr. Farman Ali for Respondents No. 1,10 & 11.**

With

Company Appeal (AT) No. 28 of 2018

IN THE MATTER OF:

Pratik Jayesh Vira & Anr.

...Appellants

Vs.

Mayurpankh Fine Builders Pvt. Ltd. & Ors.

...Respondents

**Present: For Appellant: - Mr. Amit Dhingra and Mr. Suryaveer Berry
Advocates.**

**For Respondents:- Mr. Vikash Kumar Jha and Mr. Karan
Khanna, Advocates for 16th Respondent.**

**Mr. Sai Kumar, Ms. Sowmya Saikumar, Ms Saumya Sharma and
Mr. Farman Ali for Respondents No. 1,2 & 3.**

ORDER

09.02.2018: The appellants have challenged the common order dated 28.11.2017 passed by National Company Law Tribunal, Mumbai Bench, Mumbai (hereafter referred to as 'Tribunal' which reads as follows:

“On hearing the submissions of either side in respect to giving effect to the resolutions passed in the EoGM dated 16.11.2017, this Bench is of the view that since it is a real estate company and ongoing projects being presently regulated by new enactment RERA, unless projects are timely completed, the company will be put into inconvenience on many fronts. Whereby, to complete those ongoing projects, unless debt funds are

released from the banks, it is difficult to complete projects in progress, therefore, for special resolution having already been passed for taking loan from the financial institutions, it is hereby made clear that company can exercise such borrowing right as approved in the resolution dated 16.11.2017.

The Petitioner's main argument is that in R1 Company's Balance Sheet, loans having been shown as given to outsiders without giving any further details of the same, this Bench is sought to look into giving loans to outsiders as unfair on the part of R1 Company management. To which, the Respondents' side answers that since they are ongoing projects, R1 Company is required to provide project advances to various contractors linked to this project, for those contractors and other companies being outsiders to R1 Company, such advances would be shown as given to outsiders only. Since it is not the case of the petitioner that such advances are nothing but diversion of funds of the company for unlawful gain to the Respondents in management, just because the petitioner made an allegation that loans have been given to outsiders without giving any details, such allegation cannot be treated as management siphoning the funds of the company. Had the petitioner made specific allegation naming the persons to whom advances given without reason, then duty would cast upon to explain such allegation by the Respondents, but no such specific allegation against the Respondents.

As to 'Right Issue' allegation, as and when the company goes for Right Issue, if any of the parties have felt aggrieved of it, they are at liberty to approach this Bench.

In pursuance of the Order already passed, as the Respondents' side has been filing financials on fortnightly basis, for the petitioner side has sought for inspection of those financials filed before this Bench, there being

consensus between the parties for providing such inspection to the Petitioner's side, this Bench hereby orders the Registry of NCLT to provide inspection of those financials to the Petitioners. For convenience sake, the order directing to file financials fortnightly is hereby modified to file monthly instead of filing fortnightly.

List this matter on 15.12.2017 as fixed earlier."

The main plea taken by the Appellant(s) that various allegations were made about syphoning of funds of the Company which were pleaded and brought to the notice of the Tribunal, therefore, it was duty of the Tribunal to enquire itself or to direct a Forensic enquiry into the syphoning of the funds.

However, all such allegations have been disputed by the Respondents.

Previously, the case was taken up on 24th January, 2018 when it was submitted on behalf of the Appellant(s) that the parties are negotiating to settle the dispute. But there is nothing on the record to suggest that any negotiation has taken place.

Today when the matter was taken up, a prayer was made to on behalf of the Appellant(s) to adjourn the appeal on the similar grounds but we refused to grant time in view of the objections raised on behalf of the Respondents.

It is not in dispute that a resolution was passed in the EOGM on 26.11.2017 and the said resolution has not been stayed by the Tribunal. Impugned order also shows that no prayer was made by any of the parties to stay resolution aforesaid. In absence of prayer to stay the resolution aforesaid,

we are of the view that decision taken vide resolution passed by EOGM dated 16.11.2017 is to be given effect. For the reason aforesaid, no interference is called for. The appeal is dismissed. However, the impugned order passed by Tribunal or the observations made by this Appellate Tribunal will not come in the way of parties to settle the dispute. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

Akc/Gc.