NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 111 of 2019

[Arising out of Order dated 14th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench in C.P. No.02 of 2014 (T.P. No.300 of 2017)]

IN THE MATTER OF:

1. Shri C.P. Yogshwara
No.367, 1st E Cross,
2nd Phase, BSK III Stage,
Bangalore-560085.

2. Shri P. Mahadevaiah
143, 5th Main,
BSK 3rd Stage,
Bangalore-560085.

3. Shri C.P. Gangadhreshwara
No.367, 1st E Cross,
2nd Phase, BSK 3rd Stage,
Bangalore-560085.

4. Shri Ramesh H.P.
435, I G Cross, 6th Block,
BSK 3rd Stage.
Bangalore-560085. .... Appellants

Vs

1. Union of India through Assistant Director
Serious Fraud Investigation Office,
Ministry of Corporate Affairs
Government of India,
2nd Floor, Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110003.

2. Registrar of Companies Karnataka
KendriyaSadan, Koramangla,
Bangalore-560034.

3. M/s Megacity Bangalore Developers
and Builders Limited
Through its Managing Director,
Regd. Off. Mega Tower,
120, Hanumanthaiah Road,
Bangalore-560027. ....Respondents

Present:

For Appellants: **Mr. Joseph Pookkatt, Mr. Navodaya Singh Rajpurohit, Mr. Prakhar Sahay and Mr. Dhawesh Pahuja, Advocates.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Union of India moved a Petition under Section 401/397/398 r/w Section 408 of the Companies Act, 1956 (now Section 241(2) r/w Section 242 of the Companies Act, 2013). It also sought relief under Section 388B of the Companies Act, 1956 for appointment of the Government Nominated Directors and the control of the affairs and management of the Company Megacity Bangalore Developers & Builders Limited (MBDBL).

2. The National Company Law Tribunal (hereinafter referred to as the 'Tribunal') by impugned order dated 14th March, 2019 came to a considered opinion that Union of India made out a case so as to interfere in the affairs of the Company with suitable orders so as to protect the property of the Company; to protect the interest of stakeholders of the Company and to ensure that the Company follow statutory compliances etc. The Tribunal also formed opinion that the existing management should not be continued and should be replaced by the New Directors to be nominated by the Union of India as per law. In the result, the following directions was issued: -

> *"18 In the result, C.P. No.02 of 2014 (T.P. No.300 of 2017) is disposed of with following directions:*
>
> *a. We hereby declared that the Respondent Nos.2 to 5 are hereby ceased to be the Directors of the R-1*

Company and they are debarred from taking/ involving any action with regard to the affairs of Company with immediate effect. Consequently, Union of India is permitted to appoint Directors to R-1 Company M/s. Megacity Bangalore Developers & Builders Limited as expeditiously as possible.

b. No order as to costs"

3. Appellants, Shareholders of the Company have challenged the decision aforesaid on the ground that the Tribunal misdirected itself by granting the relief under Section 388B of the Companies Act, 1956.

4. The learned Counsel for the Appellants submitted that in absence of corresponding provision to Section 388B in the new Companies Act, 2013, no such relief can be granted, since it was clearly not the intention of the statute to vest powers on the Government to replace the Board of Directors.

5. According to the Appellants, the effect of the savings clause contained in Section 465 of the Companies Act, 2013 r/w Section 6 of the General Clauses Act, 1897, is that once the Companies Act, 1956 stood repealed, the Tribunal cannot grant relief under a provision, which stood repealed.

6. It was further submitted that the Tribunal failed to give any reason or finding with respect to specific roles attributed to the Appellant Nos.1-4 to hold that they are not fit to hold office of Director or any other office.

7. Further, according to the Appellants, in absence of shareholders' complaint, the Tribunal cannot accept the Respondent No.1's report overlooking the fact that the Company Petition was filed on the basis of conjecture and suspicion. It was further submitted that the decision of the

Hon'ble High Court of Karnataka at Bengaluru in criminal proceedings and other matters, which was pending before the Company Law Board, Chennai Bench has been ignored.

8. It appears that Central Government through Ministry of Corporate Affairs on the basis of the report of the Registrar of Companies, Karnataka referred to non-filing of the statutory returns for the year 2006-07 and consequently depriving legitimate rights of the Members. It is not in dispute that the matter was investigated by the Serious Fraud Investigation Office (SFIO), which filed report. In the report different allegations were highlighted:-

(i) The Company was promoted by Shri C.P. Yogeshwara, Managing Director and his wife Manju Kumari and Shri Charantimath and his wife Sujatha Charantimath in the year 1994. Shri Charantimath and Sujatha Charantimath submitted resignation.

(ii) The Company launched Vajragiri Township Project on Bangalore Mysore Hoghway during 1994-95. Two schemes were opened for public to become members of any one scheme after paying 60 and 66 installments respectively. The successful members were assured to get a site as per terms and conditions signed by the members with the Company, starting from 1994-95 to 2001-02. Total 9600 members applied for sites launched by the Company.

(iii) The Company through its Directors and relatives purchased land from the farmers of nine villages. For the purpose of purchasing of lands, the Directors were given loans and advances of Rs.10 crores. The paid-up capital of the Company was Rs.6,00,000/- and were only seven shareholders mainly Shri C.P. Yogeshwara, MD and his family members. Total

approx.. 9300 persons enrolled themselves as member, but out of these approx. 9300 members, only 3100 members paid full amount for the plot in the said township and the remaining 6200 members paid only 2-40 installments. The complaints were received against the Company alleging serious financial frauds committed by it, which was found to be correct in the inspection of the Company when made.

(iv) After making investigation of the account and mismanagement, violations, illegalities, frauds, inconsistencies and the affairs are conducted adverse to the interests of its creditors, investors consumers and against the public, it was found that MD Shri C.P. Yogeshwara has forged the false document to get the DIN three times under the name with partial modification.

(v) The Company had adopted the illegal trade practices and misrepresented to the general public by brochures/ pamphlets and the Project Vajragiri was displayed as Government sponsored project and as a residentially converted layout approved by the statutory authority, which will enable the members benefit of loan from all financial institutions. Whereas, on enquiry with BMRDA it was revealed that it has not accorded any kind of approval for such project to launch.

(vi) The Company purchased land for a consideration of Rs.46,72,500/- in the name of MDBL in the year 2005-06, but it falsified its Balance Sheet as on 31st March, 2006 by not including land registered in the name of the Company during the year 2005-06. There are other allegations, which were found to be correct by the investigation team of the SFIO, e.g., non-filing of the statutory returns for different years including 2006-07 found to be correct, consequently depriving the alleged legitimate rights of the members about the state of affairs of the Company and was keeping shareholders in dark.

9. The investigation by the SFIO clearly shows that the aforesaid Company was conducting its business in the manner, which was prejudicial to the public interest. It was also against the interest of the stakeholders of the Company and the Company was not filing its statutory returns under the existing management.

10. Section 465 of the Companies Act, 2013 relates to '*Repeal of certain enactments and savings*' including the Companies Act, 1956. The Central Government is also empowered in sub-Section (1) of Section 434 for transfer of matters, proceedings including proceedings before the Company Law Board were transferred to the Tribunal.

11. The Central Government is empowered under Section 241(2) of the Companies Act, 2013 to file application in cases, if it is of the opinion that the affairs of the Company are being conducted in a manner prejudicial to public interest. The Tribunal in terms of Section 242 of the Companies Act, 2013, if of the opinion, that the Company's affairs or/ are being conducted in a manner prejudicial to the public interest and to wind up the Company would unfairly prejudice member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the Company should be wound up, it (Tribunal) with a view to bring to an end the matters complained of, make such order as it thinks fit.

12. In view of the aforesaid provisions of law, we hold that even in absence of Section 388B of the Companies Act, 1956, with a view to bring an end of the matters complained of, the Tribunal is empowered to pass similar order

relying on Sections 241 & 242 of the Companies Act, 2013 as was empowered under Section 388B of the old Act.

13. The investigation against the Appellants reveals that the irregularities were committed by the Directors/ Management of the company and for the said reason, criminal action was also taken against the Directors.

14. In view of the fact that the affairs of the Company are being conducted in the manner prejudicial to the public interest as noticed from the report of the SFIO, we hold that the Tribunal is empowered to replace the present Management and to replace it with Directors nominated under the control and management by the Central Government.

15. In view of the abovesaid finding, no interference is called for. The Appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

NEW DELHI

13th March, 2020

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