

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 268 of 2017**

**IN THE MATTER OF:**

1. **Shri Ashok Mittal**  
107, Doctor Center,  
135, August Kranti Marg,  
Kemp's Corner,  
Mumbai – 400036.  
(Through : his Power of Attorney Holder)
  
2. **Smt. Neeru Ashok Mittal,**  
107, Doctor Center,  
135, August Kranti Marg,  
Kemp's Corner,  
Mumbai – 400036.  
(Through : his Power of Attorney Holder)

**... Appellants**

**- Versus -**

1. **Uniworth Resorts Ltd.,**  
11, Pollock Street,  
Kolkata – 700001.  
  
Also at : 70/a, Shakespeare Sarani,  
Kolkata – 700017.
  
2. **Shri Shyam Sunder Gindoria,**  
11, Pollock Street,  
Kolkata – 700001.
  
3. **Shri Nimish Mahindra Kumbhani,**  
R/o 5, Camac Street,  
Kolkata – 700016.
  
4. **Shri Sujit Sarkar,**  
R/o Subhash Nagar,  
Talpukur Road, Sarsuna,  
Kolkata – 700061.
  
5. **Touchstone Housing Projects Private Ltd.,**  
11, Pollock Street,  
Kolkata – 700001.

Also at : 70/a, Shakespeare Sarani,  
Kolkata – 700017.

6. **Uniworth Securities Limited,  
B-4, Station Road, Bajaj Wadi,  
Santacruz (West)  
Mumbai – 400054.  
Also at : 70/a, Shakespeare Sarani,  
Kolkata – 700017.**
7. **Shri Ajay Prakash Lohia,  
R/o Lohia Bhawan,  
14a, Loudon Street,  
Kolkata – 700017.**
8. **Shoreline Infrastructure Developers Limited,  
20, Om Chambers,  
123, August Kranti Marg,  
Mumbai – 400036.**
9. **Mr. Prashant Cehinappa Suvarna,  
Residing at Vasant Vihar,  
Flat No. 2, A-Wing,  
Bibvewadi, Kondwa Road,  
Opposite to Kumar Park,  
Pune – 411037.**

**... Respondents**

**Present: Shri Jayant Mehta, Shri Sourabh Kalia, Ms. Shuchi Sejwar  
and Shri Sajal Jain, Advocates for the Appellants.**

**Shri Narendra M. Sharma and Shri Abhishek Sharma,  
Advocates for Respondent No. 7.**

### **ORDER**

**23.11.2017** Heard learned counsel for the appellants and learned counsel for Respondent No. 7. None is present on behalf of other respondents.

2. Perused the impugned order dated 5<sup>th</sup> May, 2017. It appears from the record that Company Petition No. 46 of 2006 is pending before the National Company Law Tribunal, Bench at Kolkata (hereinafter referred to as 'NCLT'). In the company petition, when it was earlier pending

before the erstwhile Company Law Board ('CLB' for brief), C.A. No. 122 of 2007 was filed by the Appellants/Petitioners for amendment so as to implead parties mentioned in Paragraph '3-G' of the application. It appears that the petitioners had also filed another C.A. No. 131 of 2007 (Page 190) for amendment to bring on record what were referred to as subsequent events and developments. The CLB passed orders dated 17<sup>th</sup> April, 2008 and referred to the claims made by the appellants seeking amendment so as to bring on record subsequent facts and directed that the petitioners should file amended petition only referring to the events which took place subsequent to the company petition in terms of the order dated 9<sup>th</sup> May, 2008.

3. Learned Counsel for Appellant submits that earlier on 27<sup>th</sup> July, 2007, CLB allowed the application and on challenge to the High Court of Calcutta, the matter was remanded back by an order dated 5<sup>th</sup> September, 2007. By an order dated 17<sup>th</sup> April, 2008 as above, the application was partly allowed. There was again challenge to this order before the High Court of Calcutta on 12<sup>th</sup> April, 2012 (Page 214). The High Court allowed the amendments, in full.

4. It appears from the record that when the C.A. No. 122 of 2007 was taken up with the learned NCLT, it passed the following order :

*“O R D E R*

*The Ld. Lawyer on behalf of the petitioner is present  
who filed the track report with regard to service of*

*notice upon the respondent(s) as well as the public notification in the newspaper publication.*

*One CA Application 122/2007 is pending since long with a prayer to allow the instant application and direct impleadment of the following person as*

*Respondents :*

- i) Mr. Mahesh Sharma,  
3/O. Late Dhan Raj Sharma,  
Azad Hind Arya Kr. Road,  
Patna - 800 004 ;*
- ii) Mr.Piyush Lavjibhai Patel,  
S/o. Lavji Bhai Mitha Bhai Patel,  
1, Adarsh Building,  
94. Walkeshwar Road,  
Mumbai - 400 006;*
- iii ) Mr. Rajesh Patel,  
S/o. Lavji Bhai Mitha Bhai Patel,  
Surya Kiran Apptt.  
Ghoddod Road,  
Opp. St. Xavier School,  
Surat. Gujarat :*
- iv) M/S. Indoworth India Ltd.,  
B-130, MIDC, Butibori,  
Nagpur,  
Maharashtra*

*Heard the petitioner at length; who submitted that he came to know through internet that at the instructions of Respondent No.7 and of Mr. Piyush Lavjibhai Patel,*

*certain changes were made in the constitution of the Board of Respondent No. 1, Company.*

*I have gone through the application filed by the applicant/petitioner.*

*The subsequent event is of 2006 and thereafter in the year 2007, on 26-03-2007, the instant Company Application No. 122/2007 is filed for impleading the name of the aforesaid persons.*

*Also perused the order sheet from 2007. It reflects that although the CA was filed by the applicant/petitioner in 2007, but only on 16-05-2013 the application was first taken up and it continued on different dates up to 10<sup>th</sup> March. 2014.*

*It also transpires from the record that since 30-04-2014, the applicant/petitioner has not made any endeavor to get the instant application disposed of by way of impleading the above named person. Rather, the petitioner preferred to file another Company applications being CA No-272/2014, which was disposed of subsequently. But the petitioner did not press to dispose of the instant application, which was filed in 2007, which show that the petitioner(s)*

*himself/themselves is/are not interested to pursue the instant application so as to implead the above named person and to expedite the Company Petition.*

*Under such circumstances and at such belated stage, I found no reason that their names are required to be impleaded.*

*Had the party taken the step appropriately, the main Company Petition Could have been disposed of long back. It shows lack lustre on the part of the applicant which is grave abuse of process of law.*

*Hence the instant Company Application CA 122/2007 is rejected.*

*Fix the matter on 10-07-201 7.”*

5. Learned Counsel for the Appellants referring to various disputes which have arisen between the parties and what is referred as subsequent developments, it is claimed that there were certain facts, which came to the knowledge subsequently and thus the amendments were required to be made. It is argued that the appellants twice argued the company petition but for some reason or the other, the main matter remained pending.

6. Learned Counsel for Respondent No. 7 is vehemently opposing the appeal stating what was allowed earlier was with reference to the only subsequent events and what was being claimed in the amendment application in C.A. No. 122 of 2007 were only events which were prior to the filing of the company petition. Learned counsel for the appellants is disputing the claim made by the learned counsel for Respondent No. 7, claiming that High Court had allowed the amendments in full.

7. Learned Counsel for Respondent No. 7 is further submitting that the appellants are unaware that in further subsequent events, which are 5-6 years old from now M/s. Indoworth (India) Ltd., they seek to be impleaded as party, is no more a shareholder.

8. Having gone through the matter, we are distressed that a petition of 2006 is pending even after a decade. It appears that there were some other applications of these appellants which had come up on an earlier date for amendments which have been rejected by this Tribunal. Learned Counsel for the Appellants states that those applications were rejected primarily because the applications for amendment involved in those Appeals were moved in 2017.

9. In the present matter, it is apparent that when C.A. No. 131 of 2007 was filed seeking amendment to bring on record certain events and

C.A. No. 122 of 2007 was also filed, the CLB and its successor, NCLT, did not take up the applications which were pending and then a blame has been put on the appellants that you did not take up the applications earlier and so you were not interested. The Impugned Order shows referring to Order Sheets that Petitioners had indeed taken up the application and it was under consideration between 16<sup>th</sup> May, 2013 and 10<sup>th</sup> March, 2014. The Order then says Petitioner did not make endeavour since 30<sup>th</sup> April, 2014 to take up the application. Putting blame on Petitioner, the application is rejected. According to us, when the application or petition is filed, it is the responsibility of the Tribunal also to take up whatever application(s) are pending in the matter for adjudication. In fact, the older applications should be first taken up for decision. Here the impugned order itself shows that subsequent C.A. No. 272 of 2014 came to be disposed of while the earlier C.A. No. 122 of 2007 lay pending.

10. Whatever applications are pending need to be taken up seriatim and disposed. If parties do not co-operate, the defaulting party may suffer, but Tribunal cannot afford to simply keep the applications pending expecting parties or leaving it to them as to in which order they would like to take up the applications. Of course, it is also for the parties to move the Tribunal for disposal of their applications but the Tribunal cannot squarely put blame on the parties that you did not



move the Tribunal after filing the applications and so I will not look into it.

11. The impugned order does not appear to have gone into the merits of the C.As. and thus we are not sitting down to settle those aspects. We would have looked into the merits to save time but for the subsequent event pointed out by the learned counsel for Respondent No.7 stating M/s. Indoworth (India) Ltd. is by now no more a shareholder also. It would be appropriate that NCLT decides the C.A. No. 122 of 2007 on its own merits. We are not expressing any opinion on the merits of the dispute between the parties.

12. For the above reasons, the appeal is allowed. The impugned order dated 5<sup>th</sup> May, 2017 passed in C.P. No. 46/2006 – C.A. No. 122/2007 is quashed and set aside and the matter is remanded back to the learned NCLT, Kolkata Bench, for deciding C.A. No. 122/2007 on its own merits at the earliest.

13. It would be appropriate for the appellant to recheck the present status of the parties sought to be joined before the NCLT before C.A. No. 122/2007 is taken up. Further the parties are reminded of Section 422 of the Companies Act, 2013 which has now been introduced in the law for time-bound disposals. Such petition should not have remained pending for long.

14. It is stated that next date in the Company Petition before the NCLT, Kolkata Bench, is 8<sup>th</sup> December, 2017. The parties present before us to appear on that date before the Tribunal for early disposal of the C.A. and Company Petition. No orders as to costs.

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

[Balvinder Singh]  
Member (Technical)

*/ng/nn*