

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A No. 104 of 2021 in  
CP No. 13/2016 (T.P. No. 84/2016)  
Under Order 23 Rule 3 of the CPC, 1908  
R/w Rule 11 of the NCLT Rules, 2016

**Between:**

Mr. R. P. Trivikram  
No.8, 6th Cross, Amarjyothi Nagar,  
Vijayanagar,  
Bangalore 560040  
And 7 others

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Applicants/Petitioners

**And**

The Mysore Stoneware Pipes and Potteries  
registered office at  
No.452, 11th Cross, 6th Main,  
Sadashivnagar,  
Bangalore 560080  
And 6 others

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Respondents

**Date of Order: 31<sup>st</sup> May 2021**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present (Through Video Conference):**

For the Petitioners : Shri Deepak.Basavaraj  
Ms. Nitya Kalyani

For the Respondents : None

**ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A No. 104 of 2021 in C.P. No. 13 of 2016 (T.P No. 84 of 2016) is filed by the Respondents under Order 23 Rule 3 of CPC 1908, r/w Rule 11

of the NCLT Rules, 2016 by inter-alia seeking to record the terms of the Supplementary Joint Compromise Petition to the Joint Compromise Petition dated 14.06.2017 etc.

2. The Tribunal, earlier disposed of IA No. 470 of 2020 and 104 of 2021 filed by the Applicants , by common order dated 8<sup>th</sup> April, 2021 by interalia passing the orders dismissing both the IAs , appointing Dushyantha Kumar K. CS, as Executor by accepting the resignation of existing Executor B.N.Harish, who was earlier appointed by the Tribunal etc. Aggrieved by the said order, the Respondents have approached the Honble High court of Karnataka by filing WP No. 8685 of 2021(GM-RES). Both the Parties have filed Joint Memo dated 12.05.2021 in the WP by praying the High court to set aside the said order dated 08.04.21, and to remand the matter to the Tribunal to reconsider the matter afresh. Accordingly, the said WP was disposed of by an order dated 19<sup>th</sup> May, 2019 by setting aside the impugned order. Therefore, the present order is passed afresh.
3. Brief facts of the case, which are relevant to the issue in question, are as follows:
  - 1) Originally, the Petitioners have filed the company petition by alleging the oppression and mismanagement against the Respondents, and the same was disposed of by this Tribunal vide order dated 20.06.2017 upholding the terms of the Joint Compromise Petition (JCP) dated 14.06.2017, which was filed by all the Parties to the petition. In order to end the disputes amongst the Parties to the JCP, the Tribunal itself had appointed B.N.Harish ,Regional Director, MCA (retd) as an Executor/ Observer, to implement the terms of the JCP, vide final order dated 07.08.2018.



- 2) The Executor held various proceedings since August 2018 and various disputes arose between the Petitioners and Respondents relating to sale of assets, expenses being incurred by the Respondents No.1 Company, distribution of sale proceeds and other related matters. The parties in the presence of well wishers arrived at mutually agreeable terms under which the properties sold jointly as per Clause 5 (c) of JCP, expenses will be capped, sale proceeds will be distributed and disputes will be resolved, thereby enabling maximum distribution of sale proceeds to the shareholders of the Respondent No.1 Company in accordance with Clause 5 (d) of the JCP. The Petitioners and Respondents have reached a settlement in respect of the certain issue, which they intend to record in the form of Supplementary Joint Compromise Petition and conditions to the Joint Compromise Petition dated 14.06.2017.
- 3) The Company under the supervision of the Executor sold 16 sites forming party of Achitnagar Layout. The R1 Company realised a sum of Rs.6,51,98,001/- from the sale of 16 number of sites which is deposited and maintained in the separate designated current account. The R1 Company based on the instructions issued by the Executor to take opinion of independent Chartered Accountant to decide the quantum of funds available for distribution as divided, had appointed J.M Nagaraj and Associates, Chartered Accountants, Bengaluru and based on the report dated 11.11.2020 submitted by J.M Nagar and Associates, Chartered Accountant had recommended distribution of RS. 4,58, 64, 902/- as divided for the year 2019-2020.
- 4) The R1 Company sold 103 sites forming part of Sy. No. 75/1, 75/2 and 80 of Soladevanahalli village, Hesaraghatta Hobli,



Bengaluru North Taluk on 12.08.2020. The R1 Company realised a sum of Rs. 25,81,33,831/- from the sale of 103 sites and the same amount is deposited in the designed current account of the Company. Further the Petitioners and R1 a/w R3 & 7 entered into the Agreement of Compromise with Mr. Radhakrishna.N as per the Directions of the Executor to the R1, under the Agreement of Compromise dated 11.08.2020. The Respondent No.1 Company agreed to pay a sum of 3.95 crores immediately as part of the consideration due and payable to Mr. Radhakrishna and the R1 Company undertakes to pay the remaining balance amount of Rs. 4.00 crores to Mr. Radhakrishna against the Company. By virtue of the agreement of Compromise Mr. Radhakrishna has no right, claim or interest against the R1 or its assets, except to the tune of Rs. 4.00 crores due and payable by the R1 Company on withdrawal of all courts cases initiated against the Company by Mr. Radhakrishna.N.

- 5) The Petitioner No.1 representing the Petitioners, vide Deed of Confirmation confirmed and ratified the sale of 103 sites forming part of Sy. No. 75/1, 75/2 and 80 of Soladevanahalli village, Hesaraghatta Hobli, Bengaluru North by signing and executing the deed of confirmation in compliance with Clause 5 (c) of the JCP. Further, the R1 Company will register Sale of land to the extent of 2 acres 04.25 guntas in Survey No. 76, 79 and 80 situated in Soladevanahalli village with the confirmation of the Petitioners to Emlak Ventures Private Limited/ Nominees of Emlak Ventures Private Limited at the rate of 3.25 crores per acre in accordance with the terms of the MOU dated 27.01.2018 after determining the extent of land through joint survey to be undertaken by an independent surveyor. Any excess land



available after sale of 2 acres of 4.25 guntas of Land to M/s. Emlak Ventures Private Limited as per MOU dated 27.01.2018 shall be sold by the parties.

- 6) The R1 Company agreed to pay compensation of Rs. 50 lakhs to M/s. Supra Exports, as per the terms of Deed of Compromise, for vacating the land in their possession without any further claim on Respondent No.1 Company and peacefully handover possession of land measuring approximately 58,230 square feet to the R1 Company. As this payment of compensation for out of court settlement is made strictly in compliance with the provisions of Clause 5 (c) and 5 (d) of the JCP dated 14.06.2017 with the express prior approval of the Petitioner No.1 and R1, no further approvals are required/obtained. The Petitioner No.1, M/s. Supra Exports and associates have agreed to withdraw all pending cases filed against the company and Directors in various legal forums.
- 7) Further, in respect of the land measuring approximately 1 acre 13.471 guntas in Sy. No. 79, currently in occupation of M/s. Supra Exports, the company agreed to sell the land to M/s. Shri Raghavendra Enterprises having registered office at 91/2, 4<sup>th</sup> Main, 13<sup>th</sup> Cross, Near Govt. Girls School, Malleshwaram, Bengaluru 560 003 represented by its partner Mr. Prabhakar L.S after receiving the sale consideration at the rate of Rs. 3.25 crores per acre, totalling to Rs. 3,93, 82,700/- wherein Emlak Ventures Private Limited shall be consenting/confirming witness/party. As this sale of property is made strictly in compliance with the provisions of Clause 5 (c) and 5 (d) of JCP dated 14.06.2017 with express prior approval of Petitioner No.1 and R1 and no further approvals are required obtained.



- 8) The Board of Directors of the R1 review and approved the sale deed to be executed infavour of Shri Mukhtar M.D, Shri Abdul Nazir and Shri Syed Sajid Raza, in accordance with the Agreement of sale dated 08.02.2018. The Board of Directors of R1 Company authorised Mr. H.N Shivananjiah, Executive Director and Mr. Rajiv Ramahalli, Executive Director to execute the sale deed in favour of Shri Mukhtar M.D, Shri Abdul Nazir and Shri Syed Saji Raza on receipt of balance sale consideration of Rs. 6,75,00,00/- . The R1 Company also signed all the applications, authorisation, and documents required for perfecting the title in respect of Sy. No.90 measuring 2acres 15 guntas including 4 guntas of kharab land in Chikkabanavara village. This land sale will be registered by R1 Company as soon as the rectifications required in the revenue records/ title records are completed and on receipt of balance sale consideration of Rs. 6,75,00,000/- from the Purchasers'. The said land is made with the prior approval of the Petitioner No.1 and R1 Company. As this sale of property is made with prior approval of Petitioner No.1 and R1 Company. As the sale of property is made strictly in compliance with the provisions of Clause 5 (c) and 5 (d) of JCP dated 14.06.2017 with the express prior approval of Petitioner No. 1 and R1 no further approval are required/obtained.
- 9) R1 agreed that sale consideration realised during the period from 01.04.2020 to 30.09.2020 (after taking into account the sale proceed realised from sale of 103 sites formed by Emlak Ventures Pvt. Ltd.) shall be distributed as dividend after deducting applicable taxes thereon and deducting the expenses mentioned in Clause 5 and 11 above and this dividend shall be distributed as interim dividend before 25.03.2021. The main objective of the



Supplementary terms and conditions to the JCP is to ensure distribution of sale proceeds by the R1 Company to its shareholders in accordance with Clause 5 (d) of the JCP. The R1 Company and its Directors have undertaken to strictly abide by Clause 5 (d) of the JCP.

- 10) The Petitioners and Respondents, instead of pursuing the litigations in the court, have now agreed to settle their disputes and difference amicably between themselves, without recourse to further litigation, with respect to each and every one of the disputes, complaints, proceedings, cases and claims raised by them against each other, till the date of signing this application.
  - 11) The Petitioner No.1 undertakes to withdraw all disputes, complaints, claims, applications, proceedings and cases filed by him against the R1 Company and its Directors, Professionals and Advocates engaged by the Company on behalf of the Company in various legal forums and further undertakes that he will not file any further cases/applications/complaints against the Respondent No.1 Company in respect of the matters under JCP, arising till the date of this application, as all the disputes and difference stands settled in view of the negotiated settlement arrived at under this supplementary joint compromise petition.
4. Heard Shri Deepak Basavaraj a/w Ms. Nitya Kalyani, Learned Counsel for the Petitioners, None appeared for the Respondents **through Video Conference**. We have carefully perused the pleadings of both the Parties and the extant provisions of the Companies Act, 2013, and the Rules made there under and the Law on the issue.
  5. Shri Deepak Basavaraj, the learned Counsel for the Petitioners, while reiterating various averments made in the Application, has further submitted, that he has also filed Memo dated 29<sup>th</sup> March, 2021 by



enclosing 7 Additional documents in support of the case and those documents may be taken on record, and consequently direct the Parties strictly adhere to the terms of the Supplementary Joint Compromise Petition to the Joint Compromise Petition dated 14.06.2017, and to appoint new Executor in the place of Harish and K.Dushant Kumar, to supervise the implementation of said JCP. He further submits that he is not pressing IA No. 470 of 2020.

6. As stated supra, the main objective of the Supplementary terms and conditions to the JCP in question is to ensure distribution of sale proceeds by the R1 Company to its shareholders. Since the Parties are contemplating to resolve all their disputes through the instant Supplementary Joint Compromise Petition in question, without again taking recourse to courts, it would be just and proper to permit the Parties to resolve the disputes between themselves, under the supervisions of new Executor, who is appointed now.
7. As Shri B.N.Harish, appointed by the Tribunal, has resigned and he was not keeping well, and the subsequent appointment of K.Dushant Kumar was set aside by the Hon'ble High court in the said Writ petition, we are inclined to appoint Shri Pradeep B.Kulkarni, PCS 7260;CP No. 7835 as Executor/Observer in his place.
8. In the result, I.A No. 104 of 2021 in CP No. 13/2016 (T.P. No. 84/2016) is hereby disposed with the following directions:
  - 1) Supplementary Joint Compromise Petition to the Joint Compromise Petition dated 14.06.2017 is hereby taken on record, and declares that it is binding on the Parties to execute its terms and conditions;
  - 2) Since it is to be supervised by new Executor/Observer, we are hereby appoints Shri Pradeep B.Kulkarni, PCS 7260;CP No. 7835 office at No. 291, Ist Floor, 10<sup>th</sup> Main , 3<sup>rd</sup> Block Jayanagar,



Bengaluru-560011, Mobile No. 998677214 : Land Line No. 080-4994533, as Executor/Observer on the same terms and conditions attached to the previous Executor/Observer(Since BN Harish <sup>has</sup> since resigned)

3) Shri Pradeep B.Kulkarni, PCS is hereby directed to execute the terms and conditions of supplementary Agreement in question by taking into considerations of views of all Parties to the main Company Petition and other stake holders and to resolve all the issues in question.

4) No order as to costs.

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

I.A No. 32 of 2021  
Under Rule 11 of NCLT, Rules 2016  
I.A No. 470 of 2020  
U/s 425 of the Companies Act, 2013  
r/w Rule 11, 32 and 34 of the NCLT Rules 2016  
in  
CP No. 13/2016 (T.P. No. 84/2016)

**Between :**

Mr. R. P. Trivikram  
No.8, 6th Cross, Amarjyothi Nagar,  
Vijaynagar, Bangalore 560040  
And 7 others

---

Applicants/Petitioners

**And**

The Mysore Stoneware Pipes and Potteries  
registered office at  
No.452, 11th Cross, 6th Main,  
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And 6 others

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Respondents

**Date of Order: 31<sup>st</sup> May 2021**

- Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)  
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present, through Video Conference:**

For the Petitioners : Shri Deepak.Basavaraj  
Ms. Nitya Kalyani

**COMMON ORDER**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. I.A No. 32 of 2021 in C.P. No. 13 of 2016 (T.P No. 84 of 2016) is filed by the Petitioners under Rule 11 of the NCLT, Rules 2016 by inter-alia

seeking to recall the appointment of Mr. K.Dushyanth Kumar, PCS as the Executor/Observer and to re-appoint Mr. B.N. Harish as the Executor / Observer to implement the terms of the Joint Compromise Petition.

2. I.A.No.470 of 2020 is filed by the Applicant No.1/Petitioner No.1, u/s 425 of the Companies Act, 2013 r/w Rule 11, 32 and 34 of the NCLT Rules 2016 by inter alia seeking to summon and suitably punish the Respondents No.2 to 4 and 6 to 8 above-named for their wilful breach and wilful disobedience of the JCP and orders dated 07.08.2018 and 08.08.2019 etc.
3. Heard Shri Deepak Basavaraj Learned Counsel a/w Ms. Nitya Kalyani, Learned Counsel for the Petitioners **through Video Conference**. We have carefully perused the pleadings of both the parties and the extant provisions of the Companies Act, 2013, and the Rules made there under and the Law on the issue.
4. Shri Deepak Basavaraj, Learned Counsel for the Petitioners wanted to withdraw above IA, as they have filed another I.A No. 104 of 2021.
5. Since the Learned Counsel wanted to withdraw the Applications, we are inclined to permit him to withdraw the instant Applications.
6. In the result, both **I.A No. 32 of 2021 and I.A No. 470 of 2020** are hereby dismissed as withdrawn. No order as to costs.

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

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