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**NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
BENGALURU BENCH, BENGALURU, HELD ON 08.04.2021

**CAUSE LIST**

PRESENT: 1. Hon'ble Member (J), Shri Rajeswara Rao Vittanala  
2. Hon'ble Member (T), Shri Ashutosh Chandra

CP/CA No.	Purpose	Sec	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CA 13/16, in TP 84/16	For pronouncement of order in IA 470/2020 IA 471/2020  IA 104/2021 For directions	Sec 397/ 398 of CA 1956	R P Trivikram & 6 others	Naganand & others	Mysore Stoneware Pipes & Potteries Ltd. & 8 Others.	Lawyers Inc & Others Ms. Anand Muttalli for IA 104/2021

ADVOCATE FOR PETITIONER/s:

For Petitioner 1  
M/s. Nitya Kalyani (KAR/2195/10)  
9886548290  
For Petitioner 3  
Mr. Deepak

ADVOCATE FOR RESPONDENT/s:

**In the National Company Law Tribunal,  
Bengaluru, Special Bench**

**TP/84(BEN)2016**

**Court No. 1**

**Item No. 102**

**Rule 11 of NCLT**

**In the matter of:**

MR R P TRIVIKRAM AND 6 OTHER

.....Petitioner

V/s

M/S MYSORE STONEWARE PIPES AND  
POTTERIES LTD AND OTHERS

.....Respondent

**Order delivered on ..08/04/2021**

**Coram:**

**ShriRAJESWARA RAO VITTANALA, Honble Member(J)**

**Shri ASHUTOSH CHANDRA, Honble Member(T)**

**For Petitioner(s):**

MS. NITHYA KALYANI FOR PETITIONER NO.1

MR. DEEPAK FOR PETITIONER NO.3

**For Respondent(s):**

**Order**

I.A No. 470/2020 and I.A No. 104/2021 are rejected by common order.

I.A No.471/2020 is dismissed as withdrawn by separate order.

  
**Member(T)**

  
**Member(J)**

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

M.A.No.471 of 2020 in  
C.P.No.13/2016 (T.P.No.84/2016)  
U/S.425 of the Companies Act, 2013  
R/w. Rules 11, 32 & 34 of the NCLT Rules, 2016

**Between:**

Mr. R.P.Trivikram  
S/o. Late Prabhakar Rao  
R/a.No.8, 6<sup>th</sup> Cross,  
Amarjyothi Nagar,  
Vijayanagar,  
Bengaluru – 560 040 & 7 Ors.

- Applicants/Petitioners

**And**

The Mysore Stoneware Pipes &  
Potteries Limited  
R/o. at No.452, 11<sup>th</sup> Cross,  
6<sup>th</sup> Main, Sadashivnagar,  
Bengaluru – 560 080 & 8 Ors.

- Respondents

**Order Pronounced on: 8<sup>th</sup> April, 2021**

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

**Parties/Counsels Present**

For the Petitioner No.1	:	Ms. Nitya Kalyani
For the Petitioner No.3	:	Shri Deepak.B with Shri Raghavendra
For the Respondent No.1	:	Shri Anand Muttalli
For the Respondent No.5	:	Ms. Priya.V

**ORDER**

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

1. M.A.No.471 of 2020 in C.P.No.13/2016 (T.P.No.84/2016) is filed by Mr. R.P.Trivikram & 7 Ors (hereinafter referred to as Applicants/



- Petitioners), U/S.425 of the Companies Act, 2013 R/w. Rules 11, 32 & 34 of the NCLT Rules, 2016 against The Mysore Stoneware Pipes & Potteries Limited & 8 Ors., (hereinafter referred to as Respondents), by inter alia seeking to summon and suitably punish the Respondent Nos.2 to 4 and 6 to 8 for their wilful breach and disobedience of the JCP and orders dated 07.08.2018 and 08.08.2019; and to direct the Respondent Nos.2 to 4 and 6 to 8 to forthwith purge the contempt, by ensuring compliance with the JCP, and Orders dated 07.08.2018 and 08.08.2019, both in letter and spirit.
2. Heard Ms. Nitya Kalyani, learned Counsel for the Applicant/Petitioner No.1 and Shri Deepak.B with Shri Raghavendra, learned Counsel for the Applicant/Petitioner No.3 and Shri Anand Muttalli, learned Counsel for the Respondent No.1 and Ms. Priya.V, learned Counsel for the Respondent No.5. We have carefully perused the pleadings of Parties, and extant provisions of the Companies Act, 1956/2013, Rules made thereunder and Law on the issue.
  3. Ms. Nitya Kalyani, learned Counsel for the Applicant/Petitioner No.1, submits that the Applicants/Petitioners wanted to withdraw the instant Miscellaneous Application. Therefore, she urged the Tribunal to permit the Petitioners/Applicants to withdraw the instant Miscellaneous Application (M.A).
  4. Since the learned Counsel for the Applicants/Petitioners come forward to withdraw the instant M.A., we are inclined to permit the Applicants/Petitioners to withdraw the instant M.A.
  5. In the result, M.A.No.471/2020 in C.P.No.13/2016 (T.P.No.84/2016) is hereby dismissed as withdrawn. No order as to costs.

  
**ASHUTOSH CHANDRA**  
**MEMBER, TECHNICAL**

  
**RAJESWARA RAO VITTANALA**  
**MEMBER, JUDICIAL**

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

**I.A.No.470 of 2020**

U/R.11 of the NCLT Rules, 2016

R/w. Order dated 07.08.2018

**I.A.No.104/2021**

Under Order 23 Rule 3 of the CPC, 1908

R/w. Rule 11 of the NCLT Rules, 2016

**In**

**C.P.No.13/2016 (T.P.No.84/2016)**

**Between:**

**In I.A.Nos.470/2020 & 104/2021**

Mr. R.P.Trivikram  
S/o. Late Prabhakar Rao  
R/a.No.8, 6<sup>th</sup> Cross,  
Amarjyothi Nagar,  
Vijayanagar,  
Bengaluru – 560 040 & 7 Ors.

- Applicants/Petitioners

**And**

The Mysore Stoneware Pipes &  
Potteries Limited  
R/o. at No.452, 11<sup>th</sup> Cross,  
6<sup>th</sup> Main, Sadashivnagar,  
Bengaluru – 560 080 & 7 Ors.

- Respondents

**Order Pronounced on: 8<sup>th</sup> April, 2021**

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

2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present**

**in I.A.Nos.470/2020 & 104/2021:**

For the Applicant No.1 : Ms. Nitya Kalyani

For the Applicant No.3 : Shri Deepak.B with Shri Raghavendra

For the Respondent No.1 : Shri Anand Muttalli  
For the Respondent No.5 : Ms. Priya.V

**COMMON ORDER**

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

1. I.A.No.470 of 2020 in C.P.No.13 of 2016 (T.P.No.84 of 2016) is filed by Mr. R.P.Trivikram & 7 Ors (hereinafter referred to as Applicants/Petitioners), U/R.11 of the NCLT Rules, 2016 R/w. Order dated 07.08.2018 against The Mysore Stoneware Pipes & Potteries Limited & 7 Ors., (hereinafter referred to as Respondents) by inter alia seeking to affirm and confirm the direction dated 13.08.2020 passed by the Hon'ble Executor to SBI Bank, Malagala Branch, Nagarbhavi not to release any funds and not to entertain any cheques issued by Mysore Stoneware Pipes and Potteries Ltd and its Directors including Executive Directors Sri H.N.Shivananjaiah or Sri Rajiv Ramuhalli and not to transfer any FD to the said current account or encash any FD from R-1 Company's Bank Account No.36984343328, unless expressly sanctioned in writing by the Hon'ble Executor.
2. Subsequently, they have filed another I.A.No.104 of 2021, Under Order 23 Rule 3 of the CPC, 1908 R/w. Rule 11 of the NCLT Rules, 2016, by inter alia seeking to record the terms of the Agreement of Compromise dated 11<sup>th</sup> August, 2020 to the Joint Compromise Petition dated 14.06.2017.
3. Brief facts of the case, as mentioned in I.A.No.470 of 2020, which are relevant to the issue in question, are as follows:
  - (1) The Petitioners are the shareholders of the R-1 Company. The Applicant/Petitioner No.1 is constrained to file this Application due to the contemptuous acts committed by the Respondents that has been condemned by the Executor appointed by this

Tribunal. Report dated 13.08.2020 filed by the Executor before the Tribunal is already on record and there is urgent necessity for affirmation and confirmation of the Executor's consequent direction to SBI Bank, Nagarbhavi Branch to not release any funds etc.

- (2) The Petitioners constitute minority shareholders in the R-1 Company. The Company itself has been mismanaged by the majority shareholders, who control the Company's Board. The Petitioners have been steadfast in taking steps to ensure that all acts of oppression and mismanagement by the majority are arrested. The Tribunal has passed orders on 07.08.2018 and 08.08.2019 to ensure the best interest of the Company and its shareholders. The said orders include specific directions as to the manner in which assets of the Company are to be sold, the role of the Tribunal appointed Executor in approving the sale, and the specific involvement of the minority shareholders in all sale related negotiations and transaction in relation to the proposed sale.
- (3) The Petitioners and the Respondents had entered into a Joint Compromise Petition (JCP) dated 14.06.2017, inter alia agreed between the Parties that all the immovable properties of R-1 Company would be sold and the sale proceeds distributed amongst the shareholders within 9 months of such sale. It was agreed that Petitioner No.1 would have to be involved in all sale transactions and represent the interests of all the Petitioners. Thereafter, when there were violations in/disputes pertaining to the execution of the JCP, the Tribunal passed an order dated 07.08.2018, appointing Mr. B.N.Harish, as the Executor in charge of implementation of the terms of the JCP.
- (4) The Executor has vide order dated 24.09.2018, observed *that*

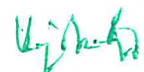


*exercise of powers and functions of Board is subject to the order of NCLT dated 07.08.2018 and terms and conditions of JCP, to the extent these are applicable. To cite an example, the Company cannot make any payment without the Executor submitted to the Company request for release of funds”.*

*Before making payments by the Company, in terms of para ii (c) of the order :- (i) Executor has to assess the requirements of funds for the Company and submit to the company for release of funds and (ii) also assess the funds required for the implementation of terms and conditions of JCP and submit to the Company for release of funds. Before assessing requirements of funds for implementation of terms and conditions of JCP under para 5.d by Executor/Observer, views of the parties shall be considered by the Executors/observer in terms of para 11 (g) of the order”.*

- (5) During the pendency of the proceedings before the Executor, despite specific directions of the Hon'ble Executor to the Respondents in terms of the Orders of the Tribunal dated 07.08.2018, the Respondent Directors continued to plunder the funds in the Bank Accounts of the Company, including the Escrow Account opened under the JCP dated 14.06.2017. In light of the observation, the Tribunal concluded that *“the terms and conditions of the JCP is not being properly implemented and its necessary to direct the Executor to involve the (Petitioner) in all the negotiations and sale transactions etc., for the sale of Schedule Property and the Respondents (sic.) should extend full-cooperation (to) the Executor.”*
- (6) Accordingly, having squarely found against the Respondent on all aspects, this Tribunal was specifically pleased to order that, by inter alia as follows:

- i *“the Executor is now having EVERY POWER AND CONTROL OVER THE ACTIONS OF THE RESPONDENT COMPANY AND ITS DIRECTORS.*
  - ii *The various allegations/contentions as made by the Applicant/Petitioner, the reply filed by the Respondents and the report given by the Executor, as briefly stated supra, it is prima facie established that the respondents are resorting to various acts contrary to the terms and conditions of JCP, as mentioned supra.*
  - iii *Since there are several litigations pending against the properties of the Company, it would naturally take considerably time and in the meanwhile, the Executor is directed to restrain unnecessary expenditure for realization of value of properties of the Company, as there is no business activity in the Company etc.*
- (7) It is stated that, even after the order dated 08.08.2019, the Respondents have continually engaged in siphoning of funds from the Bank Accounts of the R-1 Company without the sanction of the Executor. The Executor during the course of proceedings before him vide order dated 14.12.2019 ordered an independent verification of the escrow Bank Account for the period starting from the day of opening of the account till 31.12.2019. The Advocates acting in the capacity of independent professionals submitted to the Executor that the total unauthorized withdrawals during the period from the day of opening of the account till 31.12.2019 totaled Rs.4.70 Crores from the Escrow Account.
- (8) In view of the Respondents' largely non-cooperative and suspicious conduct, the Executor in exercise of his powers under the order of the Tribunal dated 08.08.2019, the Executor even



wrote to the jurisdictional sub-registrars and the District Registrar directing them that no property covered under the JCP could be sold without the authority of the Executor and without the consent of the Petitioner. However, the Respondents conspired to surreptitiously register as many as 98 sale deeds on 10.08.2020 and 12.08.2020 to alienate properties covered under the JCP, without as much as even informing the Petitioner No.1 or the Executor (The sale deeds are purportedly executed by Executive Directors Sri Rajeev Ramuhalli and Sri H.N.Shivananjiah with one Emlak Ventures Pvt. Ltd. as the confirming party) clearly establishes blatant disregards for process of the law, and willful disobedience of orders of this Tribunal. Upon discovering this gaping illegality, the Applicant/ Petitioner No.1 immediately informed the Executor of the fraud and contempt committed by the Respondents on 12.08.2020 by way of an email.

- (9) The Respondents had engaged in contemptuous conduct and disposed of R-1 Company's immovable assets not only without the sanction of the Executor but brazenly in violation thereof, the Executor was concerned that the sale proceeds collected through such illegal sales would also be misappropriated by the Respondents. Therefore, on 13.08.2020 in exercise of his powers as per the order of the Tribunal dated 08.08.2019, the Executor wrote to the Bank Manager, SBI, Malagala Branch, wherein the Respondent Company maintains escrow Account No.36984343328, directing the Bank to freeze the account till further instructions. Since then the Executor has been issuing specific orders directly to the Bank for release of monies only for administrative/routine expenses of the Company. On the same day (i.e. 13.08.2020), the Executor also filed a report before the



Tribunal informing that the Tribunal of the adverse developments and the consequent direction issued by the Executor to the Banks. The Executor vide his report dated 13.08.2020 has sought permission of this Tribunal to appoint PCS/PCA or an Advocate to investigate into the illegal sale of JCP property that was carried out on 10.08.2020 and 12.08.2020. While such investigation is yet to be carried out, the funds in the Escrow Bank Account of the Company be protected from any further siphoning by the Respondents.

- (10) On 03.09.2020, R-3, Executive Director of the Company and one of the signatories to the Bank Account has sent an email to the Executor accepting the restrain order issued by the Executor in respect of the operation of the Bank Account and has requested the Executor to issue directions to the Bank to transfer all funds in the current account into FD Accounts. The Executor vide his decision dated 11.09.2020 has directed the SBI Bank Manager to transfer the amounts in the Escrow – Current Account into Escrow – Fixed Deposit Accounts.
- (11) On 05.10.2020, the Executor has written to the Petitioner Nos.1 & 6 demanding that an Application ought to have been filed by them before the Tribunal and also proposing that he intends to write to the Banks to allow them to pass cheques issued by the EDs as the Petitioners have not filed any IA before the Tribunal in the matter. It can be inferred that the Executor recognizes that the Petitioners are aggrieved parties requiring an order to protect their interests and further that his own order dated 13.08.2020 to the Bank ought to be solidified by way of affirmation by the Tribunal in order to prevent the Respondents from further frittering away the funds.
- (12) If the Executor's directions to SBI Bank dated 13.08.2020 is not

affirmed by this Tribunal, the Respondents are likely to withdraw huge amounts by submitting fictitious and fabricated invoices and claims. The Applicant reiterates that as of date more than Rs.37 Crores is in the aforementioned accounts and is utmost required to protect the same in order to enable fair distribution as per the consent decree recorded between the parties. It is also stated that 37 Crores is to the knowledge of the Petitioners as per the statement of bank balances as on 08.09.2020, in the said Escrow Bank Account including fixed deposits, submitted by the Respondent Company to the Executor on 09.09.2020. Hence instant Applications are filed for seeking the relief as sought.

4. The Applicants/Petitioners, after filing I.A.No.470/2020 on 17.11.2020, have subsequently filed I.A.No.104/2021 on 22<sup>nd</sup> March, 2021 by totally reversing the prayers as sought in the first I.A.No.470 of 2020. They have also filed Contempt Application bearing M.A.No. 471 of 2020, by seeking to summon and suitably punish the Respondent Nos.2 to 4 and 6 to 8 of M.A., for their willful breach and disobedience of JCP and Tribunal's Orders dated 07.08.2018 and 08.08.2019. However, this M.A. was withdrawn, and thus Tribunal dismissed I.A. No. 471 as withdrawn.
5. Heard Ms. Nitya Kalyani, learned Counsel for the Applicant/Petitioner No.1; Shri Deepak.B with Shri Raghavendra, learned Counsel for the Applicant/Petitioner No.3; Shri Anand Muttalli, learned Counsel for the Respondent No.1 in I.A.No.104/2021 and Ms. Priya.V, learned Counsel for the Respondent No.5. We have carefully perused the pleadings of Parties, and extant provisions of the Companies Act, 1956/2013, Rules made thereunder and Law on the issue.
6. As stated supra, the Applicants/Petitioners are resorting to filing



frivolous Applications contrary to Tribunal's orders dated 07.08.2018 and 08.08.2019 and other subsequent orders and also JCP dated 14.06.2017. After filing I.A.Nos.470 & 471 of 2020, the Applicants have filed I.A.No.104 of 2021 on the pretext that there is subsequent Agreement of Compromise dated 11.08.2020, executed between the R-1 Company represented by its Executive Directors, the Petitioner No.1 and Mr. Radhakrishna.N. In this regard, it is relevant to point out here that the Company Petition was filed by Mr.R.P.Trivikram and 6 Ors., against Mysore Stoneware Pipes & Potteries Limited & 8 Ors. However, the present Petition is filed by 8 persons by adding Mr. H.K.Nanjundaswamy as Applicant No.8. Miscellaneous Application(s) can be filed by same parties, who have filed initial Petition. The Tribunal, after considering various issues raised by the Parties, has finally disposed of C.P.No.13/2016 (T.P.No.84/2016) in pursuant to JCP dated 14.06.2017, vide its Order dated 07.08.2018, by appointing Shri B.N.Harish as Executor/Observer to carry out the terms and conditions of the JCP. Therefore, all the actions to be taken by the Parties should not only be in compliance with JCP but also should be under supervision/concurrence of the Executor. Therefore, the alleged Agreement of Compromise dated 11.08.2020 is not between the same Parties of the main Company Petition, and without involving the Executor and thus the Applicants have no locus standi to file the instant Applications. Therefore, filing all three Applications, as mentioned supra, in succession, are on misconception of law and facts and in clear violations of Tribunal's orders dated 07.08.2018 and 08.08.2019 and subsequent orders and also JCP dated 14.06.2017.

7. It is relevant to point out here the latest two Reports dated 13.08.2020 and 04.09.2020 filed by the Executor.

**(1) In the report dated 13.08.2020, he has inter alia stated as follows:**

W.A.B.

- a) *“First such Consolidated Joint Progress Report on implementation of JCP up to 13.02.2018 signed by the parties including Petitioner No.1 was filed before NCLT for the record of the NCLT. It contained the sales conducted by the parties up to 13.02.2018, which included sale of 21 sites at Achitnagar Layout, sale of 2 Acres 15 Guntas land to Mr. M.D.Mukhtar & Others and sale of 12 Acres land to M/s. Emlakh Ventures P Ltd., as per Joint Compromise Petition. It was filed per direction of the NCLT, signed by the parties and more particularly signed by the Petitioner No.1 who represents all Petitioners, hence is binding on the parties.*
- b) *As per the Consolidated Joint Progress Report dated 13.02.20178 explained above following execution of Joint Compromise Petitions were carried out by the parties:-*
- i. *Sale of 21 sites at Achitnagar layout through execution of sale deeds.*
  - ii. *Sale of 12 Acres land at Soladevanahalli Village to M/s.Emlakh Ventures P Ltd., through Memorandum of Understanding dated 27.01.2018;*
  - iii. *Sale of 2 Acres 15 Guntas land at Sy.No.90 at Chikkabanavara Village to Mr. M.D.Mukhtar & Others through Agreement of Sale dated 08.02.2018.*
- c) *Execution of the Joint Compromise Petition was left to the parties themselves in accordance with the terms of the Joint Compromise Petition and they were the Executor in the execution proceedings executing the Joint Compromise Petition/decree. In this execution proceedings by them they themselves conducted the sale of 30 sits including 21 sits as above, 12 Acres land through MOU entered with Emlak Ventures Private Ltd., and 2 Acres 15 Guntas land through*

AOS entered with Mr. M.D. Mukhtar & Ors. This was the position till the appointment of Executor/Observer. Hence, the Parties themselves were the Executor from 20.06.2017 to 29.08.2018. The term to be complied with for conducting the sale of the immovable properties will be the term 5.b of the Joint Compromise Petition i.e. the Respondents do hereby agree and confirm to involve Petitioner No.1, Mr. R.P.Trivikram, in all sale negotiations and transactions for the sale of the Scheduled Properties. But, the execution of sale deed in the case of MOU & AOS was not completed to complete the sales as per term 5.c of Joint Compromise Petition.

- d) All remaining sites except few unsalable sites were sold by following court conducted sale procedure in full transparent manner involving not only Petitioner No.1 but all parties. Sites were valued through a registered valuer and reserve price was fixed along with EMD. Terms and conditions of sales were finalized with the approval of all parties. Bids in sealed envelopes were invited through newspaper publication in leading newspapers. External professional was engaged in receiving sealed envelopes and to keep in sale custody. Bids were opened in the presence of all parties and interse biddings were held. Entire proceedings in conducting the sales were recorded and circulated to all parties. Written consent of the Company and the Petitioner No.1 were obtained before registration of sale deeds.
- e) Sri Radhakrishna has obtained injunction Order on 31.01.2019 from a Session Court in Bangalore in an Arbitration Proceedings on 37 Acres and 37 Guntasland contained in the Joint Compromise Petition and the said order could not be vacated by parties despite filing an Appeal. There



was a temporary stay on 21.03.2019 by the High Court till the next hearing, but till date stay could not be vacated. All the parties in the proceedings held on 31.05.2019 took decision that lands covered in the injunction order cannot be sold despite temporary stay, which was also reported before Hon'ble NCLT by the Executor/Observer in the Report dated 12.06.2019 in I.A.No.227/2019. The Executor/Observer after consulting the parties and judicial pronouncement in such situation took a stand that the said property cannot be sold unless until the injunction order has been vacated even though there was a temporary stay till next date of hearing. Because if the property was sold but in the final disposal if the Hon'ble High Court confirms the injunction order sold out properties cannot be taken back from the purchasers. In the event of sale with the permission of Executor/Observer it may tantamount to contempt to Court Order as Sri Radhakrishna could file contempt Petition against the Executor/Observer.

- f) As such implementation of Joint Compromise Petition on sale of remaining land of 37 Acres 37 Guntas is completely paralysed and those proposed buyers who have lent huge advances with the consent of Petitioner No.1 are the sufferer
- g) In view of the request from Petitioner No.1 Sri R.P.Trivikram who apprehend that the Company may register the land covered in the Joint Compromise Petition & Injunction Order without his consent as per term 5.c of the JCP letter was sent to Sub-registrar and District Registrar on 02.05.2020 not to register the land without the consent of the Petitioner No.1 Sri R.P.Trivikram and the Executor/Observer. These letters were served by the Company/ Petitioner No.1 on the Sub-Registered/Dist. Registrar and acknowledged by Sub-Registrar and District Registrar.



- h) The Petitioner has alleged there is a very serious fraud committed by the Respondent Directors on the Executor, and thus requested him to take immediate action against h Respondents and the entire Board for criminal offence and other. The funds in the Escrow Account are in great danger and we strongly believe the money is not at all safe now. Please write to the Bank immediately and send Mr. Hari to the Bank with your authority to freeze the Account”.*
- i) The operation of the separate designated Bank Account No.36984343328 opened as per the Order of the NCLT and other Bank Accounts are blocked and parties are asked to submit their reply in response to the email sent by Petitioner No.1 Sri R.P.Trivikram.”*

**(2) In the Second Report dated 04.09.2020, he has inter alia stated as follows:**

- a) He has all long acted in an impartial manner with an intention to resolve the issues amicably without loss of time. This fact is evident from the various proceedings/sittings held with parties, averments of the Petitioners in I.A No.227/2019 filed before this Hon’ble NCLT by the Petitioners and also from the averments of the Respondents in I.A.No.606/2019 filed before this Hon’ble Tribunal by the Respondents.*
- b) The Executor/Observer is of the view that the company, its representative and its directors have suppressed the facts before the Executor/Observer and also that the District Registrar/Sub Registrar concerned have registered the sale deeds despite prior intimation by the undersigned to refrain from registering the sites under the specified survey nos. Lands are registered in between 07.08.2020 to 12.08.2020 with the violation of the orders of Hon’ble NCLT and the terms*



*and conditions of the JCP. Executive Directors have not honoured their own undertakings which were endorsed by the Professional certificate and Professional representative did not honour his own assurance. By not abiding by the directions of this Hon'ble NCLT contained in the orders dated 07.08.2018 and 08.08.2019 and the directions of the Executor/Observer appointed by this Hon'ble NCLT and also violating the Joint compromise Petition approve by this Hon'ble NCLT vide its order dated 20.06.2017 and 07.08.2018, and further the Respondents Company and its Directors executed/registered the sale deeds during 07.08.2020 to 12.08.2020 without the knowledge and consent of the Executor/Observer appointed by this Hon'ble Tribunal, thereby the company and its directors have shown disrespect to this Hon'ble NCLT. Therefore, with gratitude to this Hon'ble Tribunal for the opportunity, I hereby tender my resignation as Executor/Observer which may please be accepted and shall continue to render the services except stated earlier until acceptance of my resignation by this Hon'ble Tribunal."*

8. As stated supra, while disposing of the main Company Petition vide Order dated 07.08.2018, the Tribunal has given the following directions:
- a) We hereby declared that the Joint Compromise Petition dated 14.06.2017 is legally valid and binding on all the parties;
  - b) We hereby appointed Shri B.N.Harish, Retired Regional Director, Ministry of Corporate Affairs, No.18, Shuklam, I Main, I Avenue, Near ICICI Bank, Shub Enclave, Harlur Road via sarjapur Road, Bangalore – 560 017 as Executor/Observer to execute the terms and conditions of the Joint Compromise Petition dated 14.06.2017;



- c) The Executor is directed to assess the financial requirements of the Company, and also for implementation of the terms and conditions contained in the Joint Compromise Petition. Accordingly, the Executor can submit to the Company for release of necessary funds and the Company is directed to take appropriate action to make available the funds required as submitted by the Executor.
  - d) We hereby fixed the fee of Rs.1.50 Lakhs (Rupees One Lakh Fifty Thousand only) per month to the Executor/Observer excluding expenses, and the same is to be borne by the Company;
  - e) The parties including Executor/Observer are at liberty to file Miscellaneous Applications, if any, seeking any direction of the Tribunal, in implementation of terms and conditions of Joint Compromise Petition;
  - f) All the parties are directed to co-operate with the Executor/Observer;
  - g) The Executor/Observer is hereby directed to give opportunity to all the parties to submit their grievances/views, and he is directed to consider their views, in taking decision on the issues arises in implementation of the terms and conditions of the said Compromise Memo;
  - h) The Executor/Observer is also at liberty to take technical assistance from any professional, and the fee as fixed to those professional is to be borne by the Company.
9. Subsequently, several I.As have been filed for seeking various reliefs. The Tribunal has disposed all Miscellaneous Applications filed by the Parties. Therefore, it is not in dispute that this Tribunal has given specific directions as to how to carry out the JCP dated 14.06.2017 and by entrusting the responsibility to the Executor to execute to supervise the implementation of terms and conditions of the JCP in



order to protect the interest of all stakeholders. However, the Petitioners for the reasons best known to them are resorting to filing frivolous Applications contrary to the directions of the Tribunal Orders passed in main Company Petition and in various I.As. Therefore, the instant Applications are liable to be rejected with exemplary costs.

10. Since the Executor/Observer himself does not want to continue as Executor and thus resigned, is just and proper to appoint another experienced Company Secretary as Executor in place of Mr. Harish.B.N, to discharge duties as assigned by the Tribunal in various orders as stated supra. We find that Shri Dushyantha Kumar.K, CS, is an experienced Company Secretary, also qualified Resolution Professional and have sufficient experience in Company matters is fit person to appoint as Executor. He has also expressed his willingness to act as Executor.
11. In the result, the following orders are passed, in the interest of justice:
  - (1) I.A.Nos.470/2020 and 104/2021 in C.P.No.13/2016 (T.P.No.84/2016) are hereby dismissed:
  - (2) We hereby appointed Shri Dushyantha Kumar.K, CS, having address No. 404/2, 7<sup>th</sup> Main, 9<sup>th</sup> Cross, Jayanagar, 2<sup>nd</sup> Block, Bengaluru - 560011, Contact No. 9341223937 Email ID : dushyanthak@gmail.com, as Executor/Observer in the place of Shri B.N.Harish and with directions to discharge his duties in terms of the various orders passed by the Tribunal vide its Order dated 07.08.2018 and 08.08.2019 and subsequent orders.
  - (3) He is directed to discharge his functions dispassionately in accordance with various orders passed by the Tribunal , and protect the interest of all the stakeholders of R-1 Company, He is



also permitted to engage service of Legal Counsel or any other Chartered Accountant to discharge his functions;

- (4) He is entitled for same fee as earlier Executor entitled and draws;
- (5) He is also permitted to file necessary Misc. Application seeking directions, if any, in discharging of his functions;
- (6) All the Parties including Executive Directors R-1 Company are directed to extend full assistance and co-operation with said Executor/Observer in discharging his functions.
- (7) The outgoing Executor/Observer is directed to handover all the documents of the present proceedings to said Shri Dushyantha Kumar.K, CS immediately.
- (8) The Registry is directed to forward a copy of this order immediately to both the Parties and Executor, Mr. K. Dushyantha Kumar.
- (9) No order as to costs.

**ASHUTOSH CHANDRA  
MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA  
MEMBER, JUDICIAL**

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