

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPANY PETITION NO. 49 of 2016
IN THE MATTER OF COMPANIES ACT, 2013, (18 OF 2013)**

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 241, 244 of the Companies Act, 2013
(Read with Sections 397 & 398 of the Companies Act, 1956).

AND

In the matter of **M/s Arondha Properties Private Limited** having its
Registered Office at F-2, 3rd Floor, Navelkar Trade Centre, Panjim, GOA-403 001.

AND
IN THE MATTER OF

PETITIONERS:

1. Mr. WILSON GODINHO
2. Ms. EVELYSE MARIA DIANA DE MENEZES
MONIZ BARBOSA GODINHO. ... Petitioners

Versus

RESPONDENTS

1. ARONDHA PROPERTIES PRIVATE LIMITED,
2. Mr. PRATEEK KUMAR,
3. Mr. MANU NATH. ... Respondents

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONERS

1. Mr. R.T. RAJGUR00, Advocate.

FOR THE RESPONDENTS

None present from the Respondents' side.

ORDER

Heard on : 11.01.2017

Pronounced on : 16.01.2017

1. At the outset it is necessary to mention that the Petition in question was filed on 22nd of March, 2016 and since inception the Respondent is not participating. The Respondent has not filed a Reply so far. An Ad-Interim directions were pronounced on 1st September, 2016 ex-parte qua the Respondent. Although the Petitioner had served the Notices as well as the Notices were issued through Speed Post but the Respondent remained absent. On one occasion, i.e. on 17.10.2016 one Advocate Mr. Radha Agarwal, appeared to

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represent the Respondents, under the instructions of Learned Advocate P.R. Yadav appeared. The said Ld. Representative was informed that on request the matter stood adjourned to 18.10.2016, to accommodate Mr. Mr. Yadav, so that Mr. P.R.Yadav would come and represent the case. Even on 18.10.2016 the said Learned Advocate did not appear. Therefore, in the presence of Advocate Mr. Radha Agarwal it was pronounced in the Court that in a situation when the Respondent had not filed a Reply to the Petition till that date and seeking time to file the reply, the same was granted subject to a costs of Rs. 5,000/- to be paid to the Petitioner's Counsel. With this condition the matter was adjourned for 28.11.2016 and thereafter on 11.01.2017. Even today no one appeared from the side of the Respondent and the compliance was also not made as instructed earlier. Under these circumstances, this Bench has no option but to proceed ex-parte qua the respondent because of continuous non-attendance and non-compliance from the side of the Respondent.

2. From the side of the Petitioner Mr. R.T.Rajguroo, advocate, has pleaded that the Respondent No. 2 had played fraud and committed serious irregularities of mismanagement therefore, this Petition was filed. He has informed that, the Company (R-1) was **incorporated on 31st May, 2006** having its Registered Office at Goa. The object of the Company was to acquire land and develop for construction of properties as also to deal in Real Estate Business. Subsequently, on 6th October, 2010 the Promoter Directors (Petitioners) transferred 250 Equity Shares, each, to a Body Corporate viz. NSB Infrastructure Private Limited making it a 50% Share Holder. The said Body Corporate has nominated Respondent No. 2 Mr. Pradeep Kumar as Director and inducted in the Board of Directors of the Respondent No.1 Company.

3. Learned Representative has informed that by passing a Resolution the **Petitioner Nos. 1 and 2 were removed** from the Office of the Directors without any Notice. The Petitioners came to know about removal from the ROC Website that as per Form DIR-12 R-1 and R-2 were removed with effect from 16.12.2014 due to **"Vacation of the Office u/s 167 of the Companies Act"**. The Learned Advocate has pleaded that this was an illegal act because as per one of the clause of Article 42 (1) an "Ordinary Resolution" was required to be passed, whereas an alleged 'Board Resolution' was passed instead of passing an 'Ordinary-Resolution'.

4. Learned Representative has informed that the Respondent No. 2 Mr. Pradeep Kumar is absconding from India and in this regard a Public Caution Notice

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is placed on record. Learned Representative has emphasised that R-2 had committed fraud in the past as well.

5. Further it is informed that, the Authorized Capital of the Company was illegally increased from Rs. 1,00,000/- to Rs. 20,00,000/- by an alleged Ordinary Resolution dated 10th of January, 2015 without any Notice to the Petitioners. He has informed that on the said date the Respondent No. 2 was not even in India, which proves on the face of the facts that factually there was no Meeting held on the said date, hence the increase of the Capital was an illegal act to be declared as void-abinitio. This act was oppressive in nature vis-à-vis Petitioners. It is informed that 19000 Equity Shares @ Rs. 100/- were allotted. However, interestingly, one share each was allotted to 25 persons and 18,975 shares were allotted to one Company viz. Stride Infracon Pvt. Ltd. That was a mischievous action of R-2, he has pleaded. It has also been informed that, the amount collected was not deposited in the accounts of the Company.

6. Learned Representative has therefore concluded that the R-2 was involved in mismanagement and misappropriation activity. His main prayer is that; the Petitioners should be restored back as Directors of the R-1 Company. Further as per Relief sought vide para 12(c) the appointment of R-3 should be declared invalid. It has also been prayed that the increase of the authorized capital to Rs. 20,00,000/- should be held illegal.

7. FINDINGS.

(a) The Petition and Case Record is carefully perused in the light of the arguments of the Learned A.R. On the face of records, it is evident that R-2 appears to be negligent about his duties and infringed the provisions of law. Neither he participated in the proceedings before NCLT, nor he had adopted due legal recourse to manage the affairs of the Company (R-1). There is nothing on record to demonstrate that the due process of law was adopted while nominating the Additional Director (R-3). Even the Resolution which was alleged to have been passed to increase the Authorized Capital was not found to be supported by due evidence. Moreover, a serious doubt was created that the date on which the said alleged Resolution was claimed to have been passed, the R-2 was not present in India.

(b) Considering several instances of mismanagement, misappropriation, oppressive action etc., as listed in the Petition, it is hereby held that the removal of the Petitioner Nos. 1 and 2 as Directors was not in the interest of the R-1 Company. Therefore, it is decided that, to conduct the normal business of the

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Company the Petitioners should be inducted in the Board of Directors of R-1 Company. The Company shall take due legal process in this regard. Next, it is held that the appointment of R-3 was not through proper process of law as per the provisions of The Act hence, declared invalid. Next, the R-1 Company shall take legal action against R-2 to recover the amount collected in the guise of increase of Authorized Capital of the Company, if found not credited in the accounts of the Company.

7. The Petition is therefore, finally decided on the terms as directed above without any costs to any party.

Dated: 16th January 2017

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)