

NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

CA 204/C-II/2017 in
CP No. 90 (ND)/2014

CORAM:

PRESENT: SH. S. K. MOHAPATRA
HON'BLE MEMBER(T)

SMT. INA MALHOTRA
HON'BLE MEMBER (J)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE NEW
DELHI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON
20.12.2017**

NAME OF THE COMPANY: M/s BPTP Special Economic Zone Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 397/398

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	For the Petitioner (s) :	Mr. Vaibhav Gaggar, Advocate Mr. Shiv Johar, Advocate Mr. Adarsh Chamoli, Advocate		
	For the Respondent (s) :	Ms. Chetan Sharma, Sr. Advocate with Mr. Jayant Mehta, Advocate Mr. Kaushik Poddar, Advocate		

ORDER

Ld. Counsel for the Petitioner has vehemently pressed for disposal of his Contempt petition as well as for proceeding with the Execution. The Petitioner's initial claim was close to Rs. 400 crores but under a compromise, they had agreed to settle the same under Rs.200 crores which was undertaken to be paid by July, 2016. Despite the undertaking given by the JD/Contemnors and more specifically by the personal guarantor, they have failed to deliver as promised. The JD/Contemnor has pleaded financial difficulties in complying with his undertaking by citing financial hurdles beyond his control on account of decline in the Real Estate Market, imposition of Statutory Regulations and unforeseen requirements of depositing huge amounts of licence fees etc.

(Sapna Bhatia)



2. On filing of the aforesaid executions and contempt petition and during its pendency, the JD has paid a sum of Rs. 50 crores to the Decree Holder. Ld. Counsel for the Decree Holder is not satisfied with this fractional payment and vehemently presses for attachment of all fixed and liquid assets of the companies and more particularly of the guarantor. It is the conviction of the Petitioner that the personal assets of the guarantor would be sufficient to liquidate the liability qua them. Pursuant to further directions in this behalf, the JD/Contemnor has given three post-dated cheques as per details given below for a total sum of Rs.15 crores. The last of the cheque being dated 25.1.2018.

S.No.	Cheque No.	Date	Bank	Amount (Rs.)
1.	544581	31.12.2017	RBL Bank, M-6, Hauz Khas, New Delhi-110016.	5,00,00,000/-
2	544582	15.01.2018	RBL Bank, M-6, Hauz Khas, New Delhi-110016.	5,00,00,000/-
3	544584	25.01.2018	RBL Bank, M-6, Hauz Khas, New Delhi-110016.	5,00,00,000/-
			Total	15,00,00,000/-

3. A lenient view has been taken by the Bench so far as it is felt expedient to persuade the contemnor to pay up rather than committing him to judicial custody which would be the last resort. Attachment of the Bank Accounts of the various companies would also derail the various businesses completely which is likely to effect many in the Real Estate sector. The JDs also have to comply with liquidating the liability towards other debtors under direction of the Hon'ble High Court of Delhi. It has been contended before us that the financial position shall improve by March end, in view of certain sales of large chunks of properties to be concluded by then . In no uncertain terms, it has been portrayed before this Bench that in view of the receivables from the sales of two parcels of properties to meet the obligations

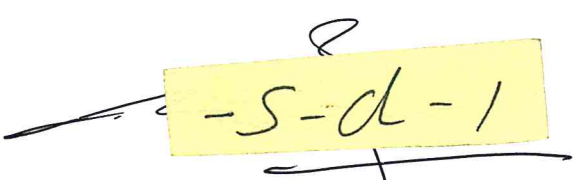
(Sapna Bhatia)

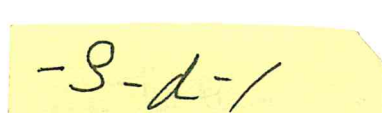



under directions of the Hon'ble High Court of Delhi, there shall still be sufficient surplus to liquidate the liability towards the Decree Holder in this case in terms of the MOU by March, 2018. In the light of this submission, time for extension was initially sought till March 2018, which was opposed tooth and nail by the Decree Holder. However, this Bench was more inclined to grant latitude if the contemnor made serious efforts to make payments.

4. Accordingly, we are inclined to renotify this case on 29th January, 2018 for consideration of the contempt and the execution by which time the PDCs given today shall be honoured.

5. Since this Bench on previous dates had been given to understand that the entire payment would be liquidated by March, 2018, it is being made abundantly clear that in case of any default in this payment and/or failing to take further steps on 29th January, 2018 to liquidate the entire outstanding by the end of March, 2018, the contemnor is liable to face contempt proceedings as enough indulgence has already been granted to him. Beyond a point, no further latitude can be shown, as that would be at the cost and interest of the Petitioner. The situation here has required a delicate balance in the larger interest of the businesses of JDs not collapsing as well as to ensure that the petitioner is also able to retrieve its investments in terms of the MOU at the earliest. Therefore, on the next date of hearing, i.e. 29th January, 2018, should positive steps not be taken to liquidate the entire outstanding by way of a Draft / PDC payable on or before 31st March 2018, contempt shall necessarily follow with any further indulgence.


(S. K. Mohapatra)
Member (T)


(Ina Malhotra)
Member (J)