

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.P. NO. 24(ND)/2016

IN THE MATTER OF:

Vikrant Puri

.....Applicant/Petitioner

v.

Southend Infrastructure Pvt. Ltd. & Ors.

.....Respondents

SECTION : Under Section 397 & 398 of The Companies Act, 2013

Order delivered on 07.2017

Coram:

CHIEF JUSTICE M.M.KUMAR
Hon'ble President

Deepa Krishan
Hon'ble Member (T)

For the Applicant/petitioner(s):

Shri Amit Chadha, Senior Advocate
Shri A.T. Patra, Advocate
Shri Gautam Khaitan, Advocate
Ms. Rashi Misra, Advocate
Shri Sahil Mongia, Advocate
Ms. Srishti Govil, Advocate
Ms. Mansi Gupta, Advocate

For the Respondent(s) :

Shri U.K. Chaudhary, Senior Advocate
Shri Jayant Mehta, Advocate
Shri Himanshu Vij, Advocate
Shri Ashok Kumar Sharma, Advocate
Shri Kausaubit Sinha, Advocate

Shri Satvinder Singh, Advocate
Shri P. Nagesh, Advocate
Ms. Anshee M. Gupta, Advocate
Shri Lucky Palta, Advocate

CHIEF JUSTICE (RETD.) M.M.KUMAR, HON'BLE PRESIDENT

ORDER

This is an application filed by the respondents with a prayer that the non-applicant-petitioner and non applicant-respondents be restrained from convening the extraordinary general meeting of the respondent No. 1 company which is proposed to be held on 20.03.2017. Notice of the aforesaid meeting was issued on 22.02.2017. It is further prayed that non applicant-petitioner and the non applicant-respondent No. 6 to 11 may also be restrained from passing the impugned agenda items.

2. It is appropriate to mention that in the agenda for the aforesaid meeting, the following resolutions are proposed to be passed:

"SPECIAL BUSINESS:

1. APPOINTMENT OF CHAIRMAN



To consider and if thought fit, to pass with or without modification(s), the following resolution as an **ORDINARY RESOLUTION:**

“RESOLVED THAT *in supersession of any earlier shareholder or board resolutions, if any, in this regard, Mr. Kamal Kumar Jain, Director of the Company be and is hereby appointed as the Chairman of the Company and Chairman of the Board for a period of 1 year. i.e. with effect from [.] to [.]”.*

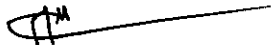
2. AUTHORITY REGARDING COMPANY’S PROPERTY/PROJECT AT OKHLA

To consider and if thought fit, to pass with or without modification(s), the following resolution as an **ORDINARY RESOLUTION:**

“RESOLVED THAT *in supersession of any resolution passed by the shareholders or board of the Company earlier in this regard (including but not limited to the board resolution dated 06.06.2013 giving sole authority to Mr. Dinesh Kumar Gupta or*



any resolution otherwise), a working committee of directors comprising of (i) Mr. Kamal Chand Jain **and** (ii) Mr. Vikrant Puri, (together referred to as "**Authorised Persons**"), be and is hereby constituted, and the Authorized Persons of the working committee are authorized by the Company **JOINTLY** to exclusively deal in relation to the property of the Company at B-319, Okhla Industrial Area, Phase I, New Delhi 110048 on behalf of the Company, and to enter into any agreement or understanding or settlement with M/s Wonder Space Properties Private Limited and/or Godrej group/and/or any other parties on behalf of the Company for development of the property/project or otherwise. The said Authorized Persons are **JOINTLY** authorized on behalf of the Company to sign any documents (including but not limited all applications, affidavits, agreements, or any other document), or carry out any formalities (including but limited to procuring permissions, approvals,



sanctions) whatsoever as may be necessary for the above purposes.

FURTHER RESOLVED THAT any power of attorney in the name of Mr. Dinesh Kumar Gupta, Director of the Company to represent the Company in relation to the property/project be and is hereby revoked with immediate effect and a fresh power of attorney to give effect to this resolution be issued **JOINTLY** in favour of the Authorized Persons hereinabove referred, under the signature of any one director of the Company.

FURTHER RESOLVED THAT any act not in conformity with this resolution shall be null and void, and the Company shall not be bound to honour the same.”

3. CLOSURE OF BANK ACCOUNT WITH VIJAYA BANK, NEHRU PLACE, NEW DELHI

To consider and if thought fit, to pass with or without modification(s), the following resolution as

~~an~~ **ORDINARY RESOLUTION:**

“RESOLVED THAT the Company’s Banking **Current Account No.** 603500301000649 with Vijaya Bank, Nehru Place, New Delhi, be closed with immediate effect and the amount, if any, lying in the said account be returned to the Company by way of issuance of Banker’s Cheque payable at New Delhi or transfer to other Current Account in the name of the Company, and the following Directors of the Company be and are hereby severally authorized to do all such acts, deeds and things and to sign all such documents, papers and writing as may be necessary in this regard:

- . Mr. Kamal Chand Jain, Director

- . Mr. Vikrant Puri, Director

“RESOLVED FURTHER THAT the above said Directors of the Company be and are hereby severally/jointly authorized to do all such acts, deeds and things and to sign all such documents as may be required in connection with the closure of the said Account.”



4. CLOSURE OF BANK ACCOUNT WITH HDFC BANK, KALKAJI, NEW DELHI

To consider and if thought fit, to pass with or without modification(s), the following resolution as an **ORDINARY RESOLUTION:**

“RESOLVED THAT the Company’s Banking **Current Account No.** 02712000009308 with HDFC Bank, Kalkaji, New Delhi, be closed with immediate effect and the amount, if any, lying in the said account be returned to the Company by way of issuance of Bankers’ Cheque payable at New Delhi or transfer to other Current Account in the name of the Company, and the following Directors of the Company be and are hereby severally authorized to do all such acts, deeds and things and to sign all such documents, papers and writing as may be necessary in this regard:

. Mr. Kamal Chand Jain, Director

. Mr. Vikrant Puri, Director



“RESOLVED FURTHER THAT the above said Directors of the Company be and are hereby severally/jointly authorized to do all such acts, deeds and things and to sign all such documents as may be required in connection with the closure of the said Account.”

5. CLOSURE OF BANK ACCOUNT WITH HDFC BANK, ANAND LOK, NEW DELHI

To consider and if thought fit, to pass with or without modification(s), the following resolution as an **ORDINARY RESOLUTION:**

“RESOLVED THAT the Company’s Banking **Current Account No. 50200009545831** with HDFC Bank, Anand Lok, New Delhi, be closed with immediate effect and the amount, if any, lying in the said account be returned to the Company by way of issuance of Bankers’ Cheque payable at New Delhi or transfer to other Current Account in the name of the Company, and the following Directors of the Company be and are hereby



severally authorized to do all such acts, deeds and things and to sign all such documents, papers and writing as may be necessary in this regard:

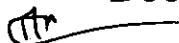
- . Mr. Kamal Chand Jain, Director
- . Mr. Vikrant Puri, Director

“RESOLVED FURTHER THAT the above said Directors of the Company be and are hereby severally/jointly authorized to do all such acts, deeds and things and to sign all such documents as may be required in connection with the closure of the said Account.”

6. CLOSURE OF BANK ACCOUNT WITH HDFC BANK, DEER PARK, NEW DELHI

To consider and if thought fit, to pass with or without modification(s), the following resolution as an **ORDINARY RESOLUTION:**

“RESOLVED THAT Current Account in the name of the Company be opened with the **HDFC Bank, Deer Park, New Delhi,** for the operations of the



activities of the Company and that the following Authorized Signatory (ies) of the Company be and are hereby authorized **jointly** to open and operate the said account:

- . Mr. Kamal Chand Jain, Director
- . Mr. Vikrant Puri, Director

And

1. **THAT** the said Bank be instructed to accept and act upon any instructions relating to the account kept in the name of the Company or relating to any transactions of the Company with the Bank, provided the instructions are signed by the authorized signatory(ies) of the Company in the manner mentioned as above.

2. **THAT** the said Bank be instructed to accept receipts for money, deeds, securities or other documents or papers or property or any indemnities given on behalf of the Company provided they are signed by the authorized



signatory(ies) of the Company in the manner as mentioned above.

3. **THAT** the bank be furnished with a list of the names of Directors of the Company and a copy of the Memorandum & Articles of Association and be from time to time informed by notice in writing under the hand of the Directors/Authorized Signatory of the Company of any changes which may take place therein and be entitled to act upon any such notice until the receipt of further notice under the hand of any Directors/ Authorized Signatory.

4. **THAT** the resolution be communicated to the Bank and remain in force until duly rescinded and notice thereof in writing be given to the Bank by any of the Directors of the Company.”

“RESOLVED FURTHER THAT the aforesaid power entrusted to the said official shall be valid and effective unless revoked earlier by the Board or shall be

exercisable by him so long as he is in the concerned to the Company.”

“RESOLVED FURTHER THAT all acts, deeds, things, matters, etc. as aforestated shall be deemed to be valid and enforceable only if they are consistent with the instant resolution as may be relevant in this case and that the Board shall not be responsible for any acts beyond the scope of the aforestated powers done by the authorized signatory(ies) and such invalid, illegal acts, and acts done beyond the scope of powers granted in this Resolution shall not bind the Company against any third parties or before any authorities in any manner and that the Board shall not be answerable in that behalf.”

“RESOLVED FURTHER THAT a certified copy of the resolution be given to any one concerned or interested in the matter.”

7. AUTHORITY REGARDING COMPANY’S LITIGATION MATTERS



To consider and if thought fit, to pass with or without modification(s), the following resolution as an

ORDINARY RESOLUTION:

“RESOLVED THAT *in supersession of any earlier shareholder or board resolutions in this regard, Mr. Kamal Chand Jain and Mr. Vikrant Puri, Directors, be and are hereby jointly authorized to (a) operate, sign, verify, declare, affirm, make, present, submit and file all necessary notices, plaints, petitions, written statements, affidavits, undertakings, vakalatnamas, declarations, Appeals, Revisions, applications, statements, complaints, papers and documents and all proceedings and matters in connection with any suit(s) or proceeding(s) filed by or against the Company before any court of law or any tribunal or any quasi-judicial or statutory or administrative authority; and (b) nominate, appoint and engage advocates, solicitors, counsel or other professionals and retainers; and to do all such acts, things, deeds as may be necessary or proper to carry out the purposes mentioned hereinbefore.*



Provided however, that Mr. Vikrant Puri, Director shall not be so authorized for the above purposes in relation to the Company Petition filed by Mr. Vikrant Puri before the National Company Law Tribunal.”

3. When this application came up for hearing on 17.03.2017 we heard the matter in detail and passed an interim order which is in operation till date. The order reads as under:

“Having heard all the learned counsel we are prima facie of the view that the EGM proposed to be held on 20.03.2017 should be deferred because this application has to be decided first and in the absence of complete pleadings in the form of reply of the non-applicant-petitioner, non applicant/Respondents and intervener it would not be possible to decide the application. In our view the parties have raised serious issues. We have been persuaded to take the aforesaid view because during the course of arguments it has been pointed out that the petitioner as well as the non applicant/respondents have been named in FIR

No.0077 dated 12.6.2015 at the Police District Crime and Railway EOW. A casual glance on the FIR shows that the names of the applicants and the non-applicants/petitioner figure including some of the other respondents. The EGM is comprised of applicant/Respondent Nos.2 to 5, non applicant/Respondent Nos. 6-12 and non applicant-Petitioner. If that be so then a larger issue is likely to arise with regard to the affairs of the company and to whom the affairs of the company should be entrusted. It is for that reason that we are persuaded to accept the submission for completion of pleadings in the application so that all detail facts are placed before us. It has also been argued by Mr. Mehta that interim order passed by Delhi High Court has a direct bearing on the issue raised during the course of hearing and the agenda which is to be taken up before EGM proposed for 20.03.2017. Therefore we direct that the EGM shall remain deferred till further orders. The company is further restrained from conducting any business

and/or operating its bank account without prior permission of this court.

The non applicant/Petitioner and Respondents are granted one week time to file their replies alongwith and all the relevant documents with a copy in advance to the counsel for the applicant. Likewise the intervener may also file its reply within a week with a copy in advance to the counsel for the applicant. Rejoinder if any be filed within a week thereafter. We expect that the time line given would be adhered to, failing which we would not be able to give any further time and the arguments shall be heard on 21.04.2017.”

4. Reply to the application has now been filed by non applicant-respondent Nos. 1, 2, 3 & 5. A separate reply has also been filed on behalf of respondent No. 15. The intervener through learned counsel Mr. Mehta has placed on record a compilation of various orders.

5. We have heard learned counsel for the parties at length.

6. The allegation of the non applicant-respondent Nos. 1, 2, 3 & 5 is that the impugned agenda is a malafide attempt on behalf of petitioner-non applicant in collusion with other non applicant-respondent Nos. 6 to 11 to usurp the management of respondent No. 1 Company despite the fact that status quo order is operating since 23.02.2016. Learned counsel for the respondent has submitted that status quo in respect of shareholding and the Board of Director was to be maintained till the next date of hearing as is evident from the order dated 23.02.2016 and the interim direction was subsequently continued. The whole purpose of issuing the agenda is to defeat the relief claimed in the petition.

7. There are four shareholder groups of the respondent No. 1 Company. The petitioner is stated to be holding 37%, Gupta Group 30.27%, Jain Group 27.03% and Chaurasia Group 6.08%. The shareholding of the petitioner-non applicant has increased further by share purchase agreement by 20% therefore the allegation is that by virtue of his increased shareholding petitioner-non applicant wants to grab the Company to the detriment of the respondent-applicant. The only property left out in the hands of the Company is one situated at B-319, Okhla

Industrial Area, Phase I, New Delhi 110048 and the non applicant-petitioner wants to proceed with some agreement in respect of aforesaid property with an outside agency.

8. Mr. Mehta learned counsel for the intervener has pointed out that there is interim order in respect of property known as B-319, Okhla Industrial Area, Phase I, New Delhi 110048 passed by the Hon'ble Supreme Court on 05.05.2017. After quoting the prayer for relief, Hon'ble the Supreme Court has passed the order which reads as under:

“The interim relief sought for reads as under:-

“(a) till such time the interest bearing fixed deposit and/or unconditional bank guarantee to satisfaction of the Petitioner is furnished, Restrain Respondent No. 12 from creating any kind of third party rights or encumbrance or dealing in any manner whatsoever with its share (i.e. 47.5% of constructed area in terms of the Conveyance Deed dated 10.6.2013 with Wonder Space Properties Pvt. Ltd., B-319, Okhla Industrial Area, Phase I, New Delhi 110020 and



appoint a Court Receiver for the said share of Southend under the Conveyance Deed dated 10.06.2013 pending the execution of the award dated 2.3.2015.”

Interim relief, as above, is granted until further orders.”

9. Mr. Chadha learned Senior Counsel appearing for the non applicant-petitioner at the first instance argued at length and then realising that interim order in respect of Okhla property albeit in another proceedings has been issued by Hon’ble the Supreme Court, has stated that the controversy can be resolved by appointing a Former Judge of the Hon’ble Supreme Court to conduct the affairs of the Company as the applicant-respondent is facing serious allegations in FIR No. 0077 dated 12.06.2015. It is also conceded that the names of the non applicant-petitioner also figure in the aforesaid FIR. The EGM is comprised of the applicant-respondent Nos. 2 to 5, non applicant-respondent Nos. 6 to 12 and the non applicant-petitioner.

10. The suggestion made by Mr. Chadha learned Senior Counsel for the non applicant-petitioner has not been opposed

by Mr. Mehta learned counsel for the intervener or the counsel for the applicant/respondent Nos. 3 & 5.

11. In view of the above and without going into the rival contentions of the parties we are of the view that the affairs of the respondent No. 1 Company shall be handled by a Court appointed Administrator. Accordingly, we nominate Hon'ble Mr. Justice S.S. Nijjar, a former judge of the Supreme Court (Mobile No. 9560453535) as the Administrator who may convene the meetings of the Board of Directors for taking any decision including the decision to call EGM. No meeting as per the impugned agenda shall be held without the prior approval of the Court appointed Administrator. The Administrator shall be entitled to settle his own fee.

12. The application is disposed of in the above terms.

Sd/-
(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT

Sd/-
(DEEPA KRISHAN)
MEMBER(JUDICIAL)

07.07.2017
Vineet