

31
**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

IA 62/2017 in C.P. No. 17/213,221/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 07.11.2017**

Name of the Company: Pitamber Manglani & Ors.

V/s.

Dilip R. Shah & Ors.

Section of the Companies Act: Sections 213, 221 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

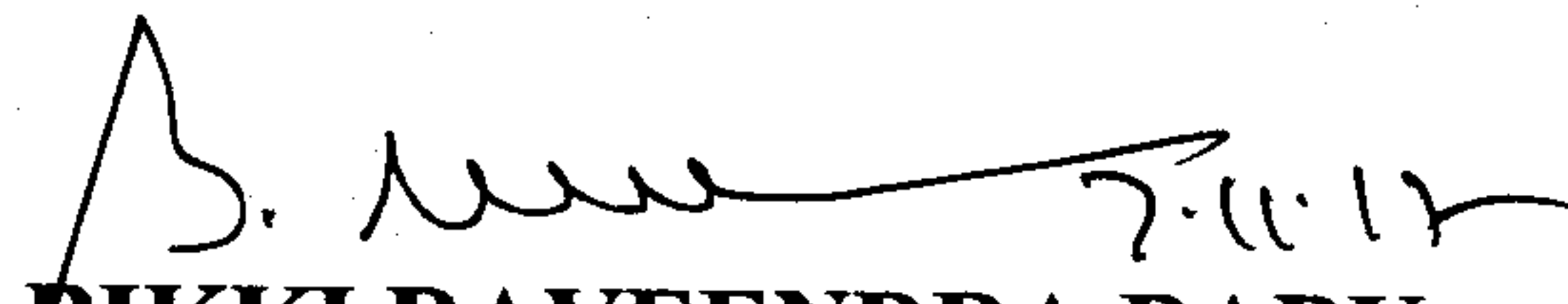
2.

ORDER

None present for Petitioner. None present for Respondents No.1 to 5. None present for Respondent No.6.

Order in IA 62/2017 pronounced in open Court. Vide separate sheets.

List the CP 17/2017 on 18.12.2017.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 07th day of November, 2017.

**BEFORE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

I.A. No. 62/NCLT/AHM/2017

In

C.P. No. 17/213,221/NCLT/AHM/2017

In the matter of:

1. Pitamber T. Manglani
3, New Sindhu Society,
D-Cabin, Sabarmati,
Ahmedabad
2. Meena P. Manglani
3, New Sindhu Society,
D-Cabin, Sabarmati,
Ahmedabad
3. Lalit Manglani
3, New Sindhu Society,
D-Cabin, Sabarmati,
Ahmedabad
4. Kunal Manglani
3, New Sindhu Society,
D-Cabin, Sabarmati,
Ahmedabad

: Petitioners.

Versus

1. Dilip Rasiklal Shah
3, Surjaya Bunglows,
Vastrapur
Ahmedabad
2. Lalchand B. Vaswani
12/A, Shri Nirankar Co-op H.Soc.Ltd.,
Opp: Gopal Bag, Bhairavnath Road,
Ahmedabad
3. Navin Lalchand Vaswani
12/A, Nirankar Society,
Bhairavnath Road,
Maninagar,
Ahmedabad

4. Kaushalyaben Lalchand Vaswani
12/A, Nirankar Soc.
Gopal Chowk,
Bhairavnath Road,
Ahmedabad

5. Dipla Hotels Private Limited
Office No.210, First Floor,
Gopal Tower,
Maninagar,
Ahmedabad

: Respondents.

Order delivered on 7th November, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

Appearance:

Mr. J.M. Shah, learned Advocate with Mr. Dilip Motwani, learned PCS for the Petitioners.

Mr. Harmish Shah, learned Advocate for Respondents No. 1 to 5.

Mr. Ankit Shah, learned Advocate for Respondent No.6.(Proposed).

ORDER

1. Original Petitioners in Company Petition No. 17 of 2017 filed this Application with a request to implead Gujarat Industrial Development Corporation as 'Respondent No.6' in Company Petition No. 17 of 2017.

2. The facts in brief, that are germane for the disposal of this Interlocutory Application, are as follows;

2.1. Applicants herein filed Company Petition No. 17 of 2017 under Section 213 and 221 of the Companies Act, 2013 seeking

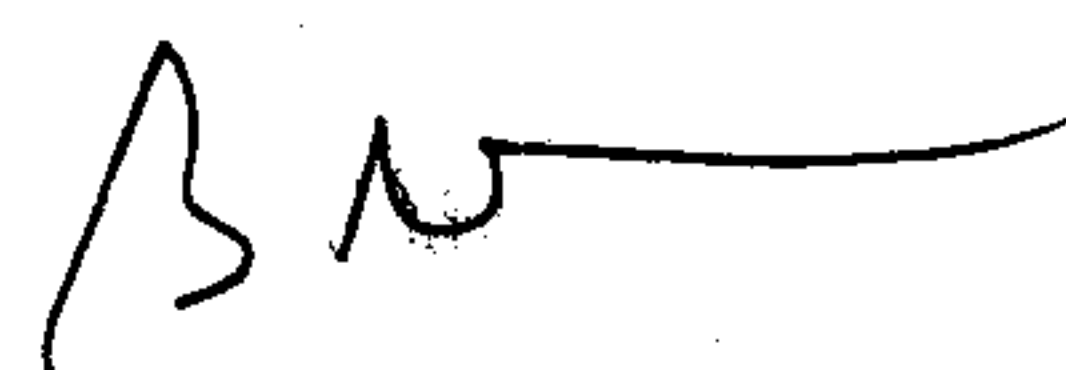
several reliefs. However, this Tribunal, vide order dated 23rd January, 2017 admitted the Petition only in respect of inspection under Section 213 of the Companies Act and freezing of assets under Section 221 of the Companies Act.

3. A reading of the original Petition goes to show that there is a dispute between the Petitioners No. 1 to 4 and Respondents No. 1 to 4 regarding Share Transfer Agreement dated 4th May, 2015; illegal appointment of 1st Respondent as Director; and regarding non-providing of information to the Petitioners.

4. During the pendency of the main Petition, original-Petitioners filed this Application.

5. It is averred in this Application that Gujarat Industrial Development Corporation ('GIDC') ('proposed Respondent'), in collusion with the Respondents No. 1 to 4 ordered Respondent No.5 Company to vacate the plot and hand over vacant and clear possession of the plot to GIDC under Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972. It is also alleged in the Application that Respondents No. 1 to 4 may unauthorizedly and illegally hand over possession of the leasehold land which is the property of Respondent No.5 Company, to the GIDC. It is stated in the Application that this Tribunal has already freezed the property of the 5th Respondent, but it is factually incorrect. It is also stated in the Application that GIDC acting at the instance of Respondents No. 1 to 4 wants to take possession of the frozen assets of Respondent No.5 Company. It is stated in the Application that the presence of GIDC is necessary to dispose of the main Petition.

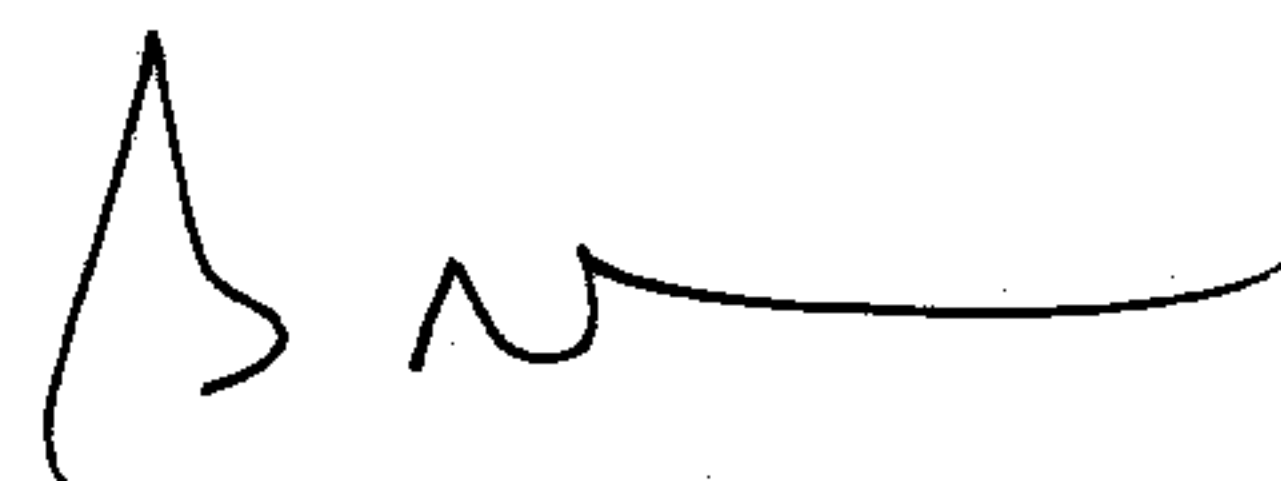
6. Respondents No. 1 to 5 filed Reply denying the alleged collusion between them and GIDC. Respondents stated that 5th



Respondent Company filed Special Civil Application No. 5113 of 2017 before the Hon'ble High Court of Gujarat challenging the action of GIDC and the orders passed by the GIDC. It is also stated in the Reply that the Petitioners herein filed Regular Civil Appeal No. 14 of 2017 before the Hon'ble Principal District Judge, Gandhinagar, challenging the order passed by the GIDC under the provisions of the Gujarat Public Premises (Eviction of Unauthorized Occupants) Act, 1972 and which is pending.

7. The short point, that emerges for consideration in this Application, is whether GIDC is a proper and necessary party for the disposal of Company Petition No. 17 of 2017. In fact, the Company Petition No. 17 of 2017 is admitted in respect of the reliefs of inspection under Section 213 and freezing of assets under Section 221 of the Companies Act, 2013 in respect of Respondent No.5 Company, i.e., Dipla Hotels Private Limited. There is no order by this Tribunal freezing assets of Dipla Hotels Private Limited as alleged by the Applicants in this Application.

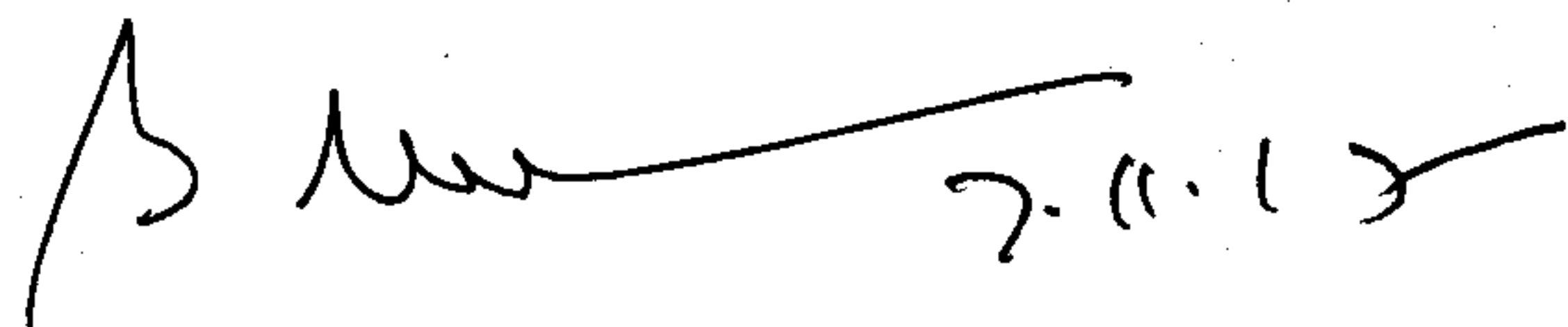
8. From the material placed on record, it appears that leasehold land, Plot No. 5/A, Bhat Estate, GIDC, District Gandhinagar admeasuring 9,340 square meters was taken on lease by the Respondent No.5 Company. It is also clear from the material on record that GIDC has extended time for construction of hotel building on the aforesaid plot of land till 31st March, 2017. As can be seen from the Special Civil Application No. 5113 of 2017, GIDC imposed penalty amount of Rs. 3,57,31,104/- on Respondent No.5 on 26.8.2016 and further the GIDC passed order on 18.2.2017 rejecting the transfer of leasehold plot from Respondent No.5 Company to L.D. Hotels. Respondent No.5 also challenged the order of the GIDC whereby the License Agreement was terminated on 22.12.2016.



9. From the above said facts, it is not possible to say that there is collusion between the Respondents No. 1 to 4 and GIDC. In fact, the Applicants are questioning the action of GIDC in the form of Appeal before the District Court. Respondent No.5 is challenging the orders of the GIDC in Special Civil Application No. 5113 of 2017 before the Hon'ble High Court of Gujarat.

10. Moreover, in order to decide whether inspection has to be granted or not and whether the assets of the Respondent No.5 Company have to be freezed or not, there is no need to implead the GIDC as party Respondent in the Petition. The actions of GIDC are already in question before the District Court and the Hon'ble High Court of Gujarat. Therefore, the presence of GIDC is not at all necessary for adjudicating the issues involved in the Company Petition No. 17 of 2017. In fact, the GIDC is not a proper party for the adjudication of the issues involved in Company Petition No. 17 of 2017. Moreover, if GIDC is impleaded in this Petition, it will unnecessarily lead to multiplicity of litigation. This Tribunal, exercising summary jurisdiction, may not have jurisdiction to give any direction to the GIDC relating to its orders passed against the Respondent No.5 Company that are already under challenge in the Appeal filed by the Petitioners in Civil Court and in the Special Civil Application filed before the Hon'ble High Court of Gujarat. In view of the above discussion, GIDC is not a proper and necessary party to the proceedings in Company Petition No. 17 of 2017. Hence this Application being devoid of merits and it is dismissed. There is no order as to costs.

Signature:



Sri Bikki Raveendra Babu, Member (J).