

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI
COMPANY PETITION No. 128/397-398/CLB/MB/MAH/2013**

CORAM:

**SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)**

In the matter of Section 397-398, 402,403 and other applicable provisions of the Companies Act, 1956.

MEMORANDUM OF PARTIES

1. Mr. Rasik Zumberlal Luniya,
Sarhak, 35 Adarsh Nagar,
Pune Satara Road, Pune-411 037.
2. Mr. Rahul Rasik Luniya,
Sarhak, 35 Adarsh Nagar,
Pune Satara Road, Pune-411 037.
3. Mrs. Mangala Rahul Rasik Luniya,
Sarhak, 35 Adarsh Nagar,
Pune Satara Road, Pune-411 037.

... PETITIONERS.

VERSUS

1. Anand Shelters, Developers and Builders Pvt. Ltd.,
Having its registered office at :
"Kohinoor" 88, Sadashiv Peth,
Ganjave Chowk, Pune-411 030.
2. Mr. Balasaheb Shankarrao Ganjave,
4, Nikitha Apartment, Lane No. 3,
Prabhat Road, 459/110, Deccan
Gymkhana, Pune-411 004.
3. Mr. Rajendra Bankelal Goyal,
Plot No. 28, Sant Eknath Co-op. Society
Part II, Bibwewadi, Pune-411 037.

... RESPONDENTS.

PRESENT ON BEHALF OF THE PARTIES:

Mr. Deepak D. Deshpande, Advocate for Petitioner.

Mr. Satyam Israni Advocate for Respondents.

ORDER

Heard on : 07.03.2017
Pronounced on : 05.04.2017

1) This Petition was filed on 27th December, 2013 before the erstwhile CLB by raising allegations of operation and mismanagement. At the outset a question has cropped up that the Petitioner viz. Mr. Rasik Zumberlal Luniya had already moved a Petition earlier before the CLB against the same Respondents viz. M/s Anand Shelters Developers and Builders Pvt. Ltd., which was decided by the **CLB vide Order dated 08.10.2013 in CP No. 85/2010 under Section 397-398** etc., therefore the present Petition is not maintainable being repetitive in nature.

2) From the side of the Petitioner Learned Advocate Mr. Deepak D. Deshpande appeared and pleaded that the relieves sought in C.P. 85/2010 were different than the relief sought in this Petition. One of the main relief, he has stressed upon, in the present Petition is pertaining to the removal of Petitioner No.1 from the Directorship of Respondent No.1 Company. He has also pointed out that in-spite-of the directions the Respondents have acted in malafide manner which has caused losses to the Petitioner hence claiming compensation for the damages of Rs. 50,00,000/- (Rupees Fifty Lakhs only). The subsequent action of the Respondents, after the passing of the said order by the Respected CLB , grants jurisdiction to file another Petition to the Petitioner.

3) On the other hand from the side of the Respondents Learned Counsel Mr. Satyam Israni appeared and vehemently challenged the "maintainability" of the Petition. He has pleaded that the various reliefs sought in this Petition as per the "Final Prayers" are identical, hence matching with the reliefs sought in CP 85/2010. Learned Counsel has filed a copy of the Order of the CLB dated 8th October, 2013 (referred supra) to demonstrate that the issues as well as the reliefs claimed in the present Petition have already been addressed by the CLB. According to him, the principal of "Res judicata" is applicable on the Petition now filed since an Order has already been passed by a Competent Court of Law. Therefore, he has pleaded that the question of restraining the removal of Petitioner from the Directorship of the Company, Holding of General Meeting, Validity of Meeting held on 16.12.2013, Appointment of Administrator, Restrained Order of Transferring of Assets etc. listed in Final Prayers (a) to (i) have already been considered

and adjudicated upon not only by the CLB but later on confirmed by the Hon'ble High Court. An Order of the Hon'ble Bombay High Court titled as Anand Shelters, Developers and Builders Pvt. Ltd. & Ors V/s Sou. Sarita Sanjay Goyal & Ors. Dated 17th November, 2016 (Company Appeal No. 11 of 2014 in CLB Company Petition No. 85 of 2010 with Company Application No. 13 of 2014 with Company Application No. 82 of 2014) is placed before this Bench. According to the arguments of Learned A.R. the Hon'ble Court has taken into consideration the totality of circumstances such as Appointment of the Administrator, the existence of certain Sale Agreements and other like nature issues, hence the Petition now under consideration is purely repetitive in nature. He has concluded that the Petition should not be admitted and to be dismissed in limine without considering the merits.

4) Parties heard at some length. The Preliminary Question is a legal Question revolving around the issue of "maintainability" of the Petition in consideration. The contents of the Order of the CLB dated 8th October, 2013 have been carefully perused by me. I have also examined the Finding Portion/Order of the said order wherein an Investment Agreement was considered and thereafter an Administrator was appointed to conduct the affairs of the Company. On due comparison with the facts and the reliefs claimed in the present Petition, prima facie the two are not matching. It is very obvious because of the reason that Order was passed on 8th October 2013 by the CLB and thereafter the Petition was filed on 27th December, 2013. The cause of action arose in this Petition is stated to be the result of consequent development took place after the CLB Order was pronounced. The Petitioner has legal right to file one more Petition against the Respondents if during the course of business the Petitioner had come to know about the act of operation or mismanagement by the Directors of the Company at any point of time. In this Petition it is alleged that the Respondents have taken steps to remove the Petitioner as Director of R-1 Company. The steps were taken after the said CLB Order, as alleged. Due to the development taken place after the CLB Order, hence the Petition was neither barred by limitation nor fall under the category of "Res judicata". The subsequent events thus give rise to the cause of action to file this Petition. The question of removal from Directorship was not at all raised in the previous Petition. Thus the issues raised now in this Petition are to be decided on merits.

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5) In the light of the above factual matrix and under the totality of the circumstances of the case it is decided as under :-

ORDER

The principal of "Res judicata" do not apply on this Petition because of the basic reason that the reliefs sought in this Petition do not match with the Order of the CLB pronounced in an earlier Petition, although filed by this very Petitioner. The events narrated in this Petition were allegedly subsequent to the Order of the CLB does necessitate deliberation, hence, prima facie a fresh cause of action had arisen for due legally permissible redressal to the Petitioner. Further, it is noticed that the pleadings are not complete because the Respondent was challenging the validity of the Petition. Since the question of fallaciousness/ invalidity of the Petition is hereby turned down and the Petition is admitted for legally permissible adjudication, therefore, the Respondents are directed to file a Reply within 15 days time on receipt of this Order and thereafter the Petitioner can file a Rejoinder, if any, within next 15 days. On completion of the Pleadings, thereupon, the CP listed for hearing on **3rd May, 2017 at 10.30 AM.**

Dated: 05th April, 2017.

sd/-
MUKUL KUMAR SHRAWAT
MEMBER (JUDICIAL)

AAH