

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH, MUMBAI
T. C.P. No. 08 of 2012

Coram: B.S.V. Prakash Kumar, Member Judicial, V. Nallasenapathy, Member Technical

In the matter of Companies Act, 1956 under Sections 397-398, 402 & 403.

AND

Between:

M/s. ELS Developers Pvt. Ltd.

.....Petitioner

V/s.

M/s. Emgee Housing Pvt. Ltd. & Ors.

.....Respondents

Petitioner:

M/s. ELS Developers Pvt. Ltd.

Respondents:

1. M/s. Emgee Housing Pvt. Ltd.
2. Mudhit Madanlal Gupta
3. M/s. Emgee Corporation Pvt. Ltd.

Present on behalf of the parties:

1. Mr. Rahul Moghe, Advocate for the Petitioner.
2. None present for the Respondent.

ORDER

(Heard on 06.10.2016)

On the last adjournment by seeing this CP pending from the year 2012, this Bench peremptorily directed these Respondents to reply to this Company Petition on or before 13.09.2016 but, till date, no reply has been filed.

Today, a person namely Mr. Ketan Pillaikar, claiming himself as Power of Attorney (PoA) to R2, has come up before this Bench with a power of attorney dated 02.11.2011 allegedly executed by one Mr. Modi Gupta who is cited as R2 authorising him to appear on behalf of all the Respondents. This PoA does not reflect anywhere that R2 is Director of R1 Company or that the other Respondents also authorised him to appear on behalf of them as well. Even if this PoA is assumed as authorizing this man to appear on behalf of Modi Gupta, he can at the best be assumed as PoA to R-2, not to others.

Moreover, this CP was filed on 07.08.2012, i.e. subsequent to the execution of this alleged PoA in favour of who Mr. Pallaikar. There is no PoA authorising Pallaikar to appear in this case, except a generalised authorisation.

Now, this Power of Attorney has come up with a request for adjournment on a letterhead of the Advocate of the Respondents on the ground that they have already moved a CA for modification of the Order dated 23.08.2016.

The record says that the Respondents had filed CA u/s. 8 of the Arbitration and Conciliation Act 1996 for reference of this CA to Arbitration, but it went against the Respondents before the Company Law Board, High Court as well. Then, the respondents filed an appeal before the Hon'ble Supreme Court; the same is pending without any stay.

It is needless to say that Courts cannot remain waiting for the disposal of the appeal pending before the Appellate Courts unless stay is granted, therefore, no party is supposed to seek adjournment as of right showing that the appeal is pending before the Appellate Court. If adjournments are given on this ground, Courts will not be in a position to clear the pendency piling up.

For the respondent have failed to obtain stay, he should have at least filed reply in compliance of order dated 23.08.2016.

On perusal of the CA for modification of the order dated 23.08.2016, it appears that R2 has sought modification to the order dated 23.08.2016 for filing reply on the ground he moved an application for stay before Hon'ble Supreme Court.

As these Respondents sought Hon'ble Supreme Court for tagging this Civil Appeal with other cases (Civil Appeals 8783-8790/2014) popularly known as Malhotras matters, the Apex Court, on 18.07.2016, tagged this appeal along Malhotras cases. In those Malhotras Cases, the Hon'ble Supreme Court already made it clear on 10.09.2014 that there is no stay in the matter and the Company Law Board is given liberty to proceed in accordance with the law.

Now these Respondents, by showing their Civil Appeal tagged with Malhotras matters whereas no stay has been granted, cannot seek adjournment of this case for indefinite period.

Though this case is filed in the year 2012, no reply has been filed till date. It is difficult for this Bench to bring this case to logical end unless pleadings are complete, to achieve this objective only; this Bench had given peremptory direction to the Respondents to file reply.

Mr. Pallaikar is not conversant with these proceedings. Today these Respondents made Mr. Pallaikar, who is not even properly authorised to represent R2, stand up before this Bench to take adjournment. This is indicative of casual approach of the Respondents towards this Bench.

For the reasons stated, all the efforts for completion of pleadings are being exhausted, this Bench, by invoking Rule 49 of NCLT analogous to Rule 2 of Order 17 of the CPC, hereby set ex-parte this case against the Respondents u/O. 9 of CPC to proceed with this case on the next date of hearing.

List this matter for hearing this Company Petition on 18.11.2016.

sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)

sd/-

V. NALLASENAPATHY
Member (Technical)