

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPANY PETITION NO. 60/397, 398/CLB/MB/2014**

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 397, 398 of the Companies Act, 1956 and 241, 242 of the Companies Act, 2013.

BETWEEN:

Shri Harish Joshi & 2 Ors. ... Petitioners

Versus

Haridwar Developers Pvt. Ltd. & 2 Ors. ... Respondents

PETITIONERS:

1. Shri Harish Joshi
2. Shri Shreekumar Nair
3. Smt. Shilpa Mhatre

RESPONDENTS

1. Haridwar Developers Pvt. Ltd.
2. Shri Parshuram Narkar
3. Shri Sunil Dhuri

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONERS

1. Ms. Kavita Shinde, Advocate
2. J.D. Keni, Advocate

FOR THE RESPONDENTS

None present from the Respondents' side.

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ORDER

Reserved on: 11.11.2016
Pronounced on: 25.11.2016

1. This is an old Petition filed on 15th July, 2014 and as per case records, dated 21st July, 2014, it was remarked by the then respected Member (Judicial), CLB, Mumbai Bench, Mumbai that none appeared from the side of the Respondents even though a notice in advance was issued to them. The Respondents were directed to file their Reply within two weeks' time and the Petition was then listed for hearing on 22nd September, 2014. Thereafter, despite notices, none appeared on behalf of the Respondents. **No Reply from the side of the Respondents is on record despite several opportunities.** One of the Petitioners Mr. Harish Joshi remained present on few occasions along with Advocate Mr. Pramod Y. Keni. The matter was transferred to NCLT, Mumbai Bench, Mumbai and again notice was issued to the parties fixing date for hearing on 10th October, 2016. On that day the Bench has remarked that the Petition pertained to the year 2014, therefore, should not be kept pending any more. Hence, the Petitioner was directed to argue the Petition on the next date of hearing. The matter was listed for hearing on 11th November, 2016. Ld. Advocates for the Petitioners were present. The Petitioners have placed on record the proof of notices issued to the respondents, but none of the notices were responded by the respondents. Even today no one is present from the Respondents' side. It is, therefore, decided to proceed ex-parte *qua* the Respondents.

2. The Petitioners have explained that the Respondent No.1 Company was incorporated on 12th January, 1999 as a private limited company to construct a residential building known as "Haridwar" at Plot No. 270, Vashi Village, Navi Mumbai, Maharashtra. **The Company has no other immovable property except the residential building known as "Haridwar".** The total number of shares were 10,000 out of which the Petitioners have claimed that their total holding is 5,998 shares constituting 59.98% of the total equity shares.

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The allegation is that for the purpose of maintenance of the building certain persons were given the responsibility. They were permitted to act as Directors of the Company. But, due to mismanagement, the **building is in a dilapidated condition**. Further allegation is that accounts of the Company for the last 10 years were not placed before the members. Rather, the allegation is that no books of accounts have been maintained. The cash withdrawals from the bank also remained unaccounted. One of the allegations is that the Respondent No.2 and Respondent No.3 have illegally took over possession of stilt area of the building admeasuring about 400 sft. The Petitioners have raised objection and wrote letter to the Registrar of Companies indicating that without holding meeting or approval of the members the stilt area was sold illegally to R-2. A letter was also written to the Company on 30th September, 2010, but there was no response. In the Petition, it is mentioned that another letter was issued to the RoC, but the RoC has informed that the question of mismanagement is to be raised before the Company Law Board and not before RoC.

2.1 In an additional Affidavit, one of the Petitioners Mr. Harish Joshi has alleged that the Respondents have arbitrarily changed the appointed Auditors and failed to give the copies of the Balance Sheet and Minutes Book. No meeting was held by the Board of Directors. The allegation is that the respondents has misappropriated the funds on one hand and on the other hand failed to take the care of the building. The Petitioners have started taking care of the building which was stated to be in a dilapidated condition. According to the Petitioners, about a sum of ₹83,946/- has been incurred by them for different repair works done to maintain the building. The Petitioners have thus made a Prayer that the Auditor's Report in respect of the account w.e.f. 1st April, 2006 onwards should be placed in the AGM and AGM should be convened at an earliest possible date. It has also been brought to the notice that an Independent Director should be appointed to control the affairs of the Company.

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2.2 The contents of the Petition are properly perused in the light of the annexures forming part of the compilation. It is very strange that the Respondents have not appeared even once, although several efforts have been made by the Registry as well as by the Petitioners, but all in vain. During the course of argument, it is informed that the Respondent Nos. 2 & 3 are not residing at the given address and absconding.

2.3 As per the factual matrix of the case, the Petitioners have made several attempts in the past asking the Respondents to convene the AGM, but not heeded. All attempts rendered futile also unproductive. The Petitioners have also written complaints to the Ld. RoC; however, that was treated as not within his jurisdiction. The main grievance of the Petitioners is that the building has not been maintained by the Respondents due to which the residents of the building are facing acute difficulty. As alleged, the building is in a dilapidated condition. In the light of the factual matrix and the background discussed supra, it is hereby ordered as under:

- (i) The Petitioners i.e. Shri Harish Joshi, Shri Shreekumar Nair and Smt. Shilpa Mhatre shall act as Independent Directors of Respondent No.1 Company i.e. Haridwar Developers Pvt. Ltd., as an interregnum arrangement.
- (ii) The so appointed Independent Directors shall convene a meeting of all the members within 30 days on receipt of this Order.
- (iii) The main agenda of this meeting shall be to constitute an elected Board of Directors in a democratic manner. The Board of Directors so elected shall manage the affairs of the Company by arranging funds so that the building in question i.e. "Haridwar" shall be properly maintained.

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- (iv) The Respondents are hereby directed to surrender all records of the Company along with accounts and the bank accounts to the newly elected Directors without fail.
- (v) The Respondents shall not deal in any manner with the movable or immovable property of Respondent No.1 Company henceforth.
3. Ordered accordingly. Petition allowed on the terms as directed above.
No Order as to costs.

Dated: 25.11.2016

M. K. Shrawat
Shri M.K. Shrawat
Member (Judicial)