

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No.84(MAH)/2015
I/A No. 34/2016

CORAM:

Present: SHRI M. K. SHRAWAT
MEMBER (J)

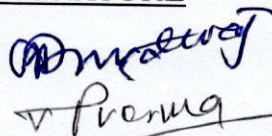
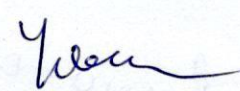
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 17.10.2016

NAME OF THE PARTIES: Mr. Arjundas Alreja

V/s.

M/s. Golden Sill & Shelter Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 397/398 & 111 of the Companies Act
1956 and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
1	M.S. BHARDWAJ & Shri V.P. Verma	Advocate for Petitioner	
2	Mr. Y.V. Divekar with Mr. Ashwin i Pawan (S. No. 1 & 2)	Advocate for Respondents 1 & 2	

ORDER

I.A. No. 34/2016 in C.P. No. 84/397-398/CLB/MB/MAH/2015

1. From the side of the Petitioner / Applicant, Ld. Advocate Mr. M.S. Bhardwaj and from the side of Respondent Nos. 1 and 2, Ld. Advocate Mr. Y.V. Divekar are present.

2. Supporting the Application now under consideration, Ld. Counsel of the Applicant has pleaded that as per C.P. No.84/2015 following parties were the Respondents:

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|------|---|-----------------|
| i) | M/s. Golden Sill & Shelter Private Limited .. | Respondent No.1 |
| ii) | Mr. Shankar Jethani .. | Respondent No.2 |
| iii) | Mr. Manoj Kumar Chaudhary .. | Respondent No.3 |
| iv) | Mr. Sanjay Kumar Jain .. | Respondent No.4 |

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2.1 In addition to the above Respondents, now the parties listed below are also to be impleaded in this case:

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|-------|--|------------------|
| i) | Mrs. Rekha Jethani, w/o Shankarlal Jethani .. | Respondent No.5 |
| ii) | M/s. Solitaire Residency Services Pvt. Ltd. .. | Respondent No.6 |
| iii) | M/s. Genius Commo Trade Limited .. | Respondent No.7 |
| iv) | M/s. Supreme Telecom & Network India Ltd... | Respondent No.8 |
| v) | M/s. Ken Securities India Ltd. .. | Respondent No.9 |
| vi) | Shri Thakur Indra Vijay Singh .. | Respondent No.10 |
| vii) | M/s. Dream Negotiants World Wide .. | Respondent No.11 |
| viii) | M/s. Krishna Vatika Homes Private Limited .. | Respondent No.12 |
| ix) | M/s. Adlab Films Ltd. .. | Respondent No.13 |
| x) | M/s. Plantaloons Retail India Limited .. | Respondent No.14 |
| xi) | M/s. Krishna Abodes Private Limited .. | Respondent No.15 |

2.2 According to the argument of Ld. Advocate for the Applicant, the main Respondents as per the C.P. in question have on an earlier occasion raised an objection that in a situation when the parties to whom the shares have been allotted were not made the Respondent / Party to the main Petition, the relief sought against those parties does not survive. The Ld. Counsel has pleaded that to protect the interest of the Petitioner, this Amendment Petition is hereby moved seeking permission for the impugned amendment. A reliance has been placed on the Order of the Hon'ble Calcutta High Court pronounced in the case of Bengal India Global Infrastructure Ltd. v/s. Chaitanya Alloys Pvt. Ltd. & Others reported as CDJ 2015 Cal HC 617 and the decision of Hon'ble Supreme Court pronounced in the case of Vidur Impex And Traders Private Limited And Others reported in (2012) 8 Supreme Court Cases 384.

3. From the side of the Respondent Nos. 1 and 2, Ld. Advocate has objected the Amendment Application and vehemently pleaded that in a situation when the Petitioner himself is seeking the amendment of the Petition, then it was unfair on the part of the Petitioner to press the demand of filing of reply by the Respondent. Rather, the

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Respondents were fined for a sum of Rs.5,000/- and further a sum of Rs.25,000/- which should now be refunded because the Reply to the C.P. can only be filed after the amendment of C.P., if allowed.

4. On hearing both the sides, at the outset, I hereby make an observation that the Respondents' objection on imposition of costs and due to the latest development, refund of the same is premature at this stage, because the amendment of the Petition has so far not been granted. The question of amendment and impleadment is sub-judice. The said prayer, at present being premature, is turned down. MKS

4.1 As far as the question of impleadment of the parties as listed above is concerned, it is worth to mention that the provisions of Section 242(2) i.e. "Powers of Tribunal" have been discussed in the Court. The Ld. Counsel of the Applicant has mentioned that according to Section 242 (2)(f) of Companies Act, 2013 any person having effective connection with the main pleadings in a Petition can be impleaded, but after due notice and also after obtaining the consent. Records available have not exclusively established that there was a proper legal service of the Notice to the parties as listed above sought to be impleaded in the Petition in question. In a situation when one of the conditions precedent, as prescribed under the said provision, is mandatory of service of Notice to the persons required to be impleaded in a Suit. Therefore, the Petitioner is hereby asked to serve a proper legal Notice to the alleged Respondents and also furnish an Affidavit of Service of Notice on record. Natural Justice also demands to grant proper opportunity of hearing to a person before dragging him into a litigation. On due compliance of the direction, the question whether it is "necessary" and "proper" to implead the parties listed (supra) shall be decided after considering the submissions of both the sides.

5. Registry is directed to issue a certified copy of this Order to the Applicant / Petitioner so that due compliance of service of Notice to the enlisted parties can be made.

6. Let this C.P. be fixed for hearing on 24th of November, 2016.

Dated: 17.10.2016

sd/-
Shri M.K. Shrawat
 Member (Judicial)