

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Company Appeal (AT) No. 206 of 2020

[Arising out of order dated 12th October, 2020 passed by National Company Law Tribunal, New Delhi Bench- V, in CP No. 89/241-242/ND/2020 & CA-396/2020 & 428/2020]

IN THE MATTER OF:

1. Mr. Hemant Khandelwal

S/o Sh. Murari Lal Khandelwal,
R/o – A-87, 1st Floor, Naraina Vihar,
New Delhi- 110 028

..Appellant No.1

2. Poonam Buildwell Pvt. Ltd.

Y-14, 1st Floor,
Loha Mandi, Naraina
New Delhi- 110 028

..Appellant No.2

Vs

1. M/s Niho Construction Limited

Regd. Office at X-22, 1st Floor,
Hauz Khas,
New Delhi- 110 016

..Respondent No.1

2. Mr. Deepak Kapil,

S/o Shri Rajeshwar Kapil,
R/o N-146, 2nd Floor
Panchsheel Park,
New Delhi – 110 017

..Respondent No.2

3. Mr. Jai Prakash Manghtani,

S/o Late Shri Jagandas Mangtani,
R/o 5th Floor, Signature Apartment,
Opp. Sarkari Panch Banglow
Gulbai Tekra, Ahmedabad,
Gujarat- 380 015.

..Respondent No.3

4. Shri Rajeshwari Lal Kapil,

R/o-1451/23,
Naiwala Karol Bagh,
New Delhi – 110 005

..Respondent No.4

5. Ashoo Kapil,

W/o – Mr. Deepak Kapil,
R/o N-146, 2nd Floor,
Panchsheel Park,
New Delhi- 110 017

..Respondent No.5

- 6. Chirag Kapil,**
S/o – Mr. Deepak Kapil,
R/o N-146, 2nd Floor,
Panchsheel Park,
New Delhi- 110 017
..Respondent No.6
- 7. Ashoo Infraestates Pvt. Ltd.**
Regd. Office at 1451/23, Naiwala,
Karol Bagh,
New Delhi – 110 005
..Respondent No.7
- 8. Rakshal Manghtani,**
D/o Mr. Jai Prakash Manghtani,
R/o 5th Floor, Signature Apartment,
Opp. Sarkari Panch Banglow
Gulbai Tekra, Ahmedabad,
Gujarat- 380 015
..Respondent No.8
- 9. Labh Lease and Finance Ltd.**
Regd. Office 104, Shantanu
Sardar Patel Nagar, Ellisbridge,
Ahmedabad- 380 006
..Respondent No.9
- 10. Pratik Mohan Bhai Chauhan,**
S/o Mohan Bhai Arjan Bhai Chauhan,
R/o- 21, Swetel Society
Chunni Lal Chani Road,
Ahmedabad- 380 006
(Address Known)
Current Address in Muyur Vihar
..Respondent No.10

Present:

For Appellants: Mr. Abhijeet Sinha, Ms. Shankari Mishra, Mr. Sumeet Kaul, Mr. Dawneesh Shaktivais, Advocates

For Respondents: Mr. Rajiv Ranjan, Sr. Advocate, with Mr. Kumar Anurag Singh, M/s Pragati Banka and Mr. Zain A Khan, Advocates for the Respondent Nos. 1, 2 & 10. Mr. Ishaan Mukherjee, Advocate for Respondent No. 7

J U D G E M E N T

(5th March, 2021)

KANTHI NARAHARI, MEMBER (TECHNICAL)

The instant Appeal has been filed against the Order passed by the National Company Law Tribunal, New Delhi, Bench-V (In short NCLT) in C.P No. 89/ 2020 in C.A- 396/ 2020 & C.A-428/ 2020 whereby the Learned NCLT dismissed both the Applications vide common Order dated 12th October, 2020. Shri Abhijeet Sinha Learned Counsel appearing for the Appellants submitted the brief facts of the case.

Brief Facts:

2. He submitted that the Appellants Original Petitioners before the National Company Law Tribunal invoked its jurisdiction under Sections 241, 242 and 213 read with Section 166 of the Companies Act, 2013. The Appellants alleging certain acts of oppression and mismanagement committed by the Respondents in relation to the affairs of the Company and the same is prejudicial to the interest of the Appellants. He submitted that the Appellants also filed Application seeking urgent listing of the Company Petition. The Learned NCLT vide Order dated 17.08.2020 was pleased to grant the interim prayers including inspections and examination of Books of Accounts to the Respondent No. 1 Company which were not available on the MCA website with the help of skilled persons in the presence of responsible persons. The Hon'ble Tribunal also passed an Interim Order vide order dated 17.08.2020 directing the Respondents who shall not operate the Bank Accounts of the Respondent No. 1 Company only allowed the

Company for the purpose of making the salaries of the employees and no other transaction shall be made during the pendency of the petition. Further, the Learned NCLT directed the Respondents who shall not dispose off any immovable or movable property of the Respondent No. 1 Company. The Learned Counsel further submitted that in the light of the above Interim Order, the Appellants via e-mail dated 17th August, 2020 conveyed to the Respondents for inspection of the statutory records of the Respondent No. 1 Company on 18th August, 2020. However, the Respondents rejected the request of the Appellants for the reason that the office being not functional due to COVID-19 situation. He submitted that the Respondents instead of allowing the Appellants for inspection of the records fixed the date later so that the statutory documents of the Company could be manipulated by Respondents. In view of the reasons, the Appellants herein, filed a Contempt Application being C.A. No. 396/ 2020 for non-implementation part of the Order dated 17th August, 2020 passed by the Hon'ble NCLT. The Contempt Application was listed on 21st August, 2020. The learned NCLT directed the Respondents to allow the Appellants for inspection of Books of Accounts of the Respondent No. 1 Company immediately vide Order dated 21.08.2020. Thereafter, on 21.08.2020 Respondent No. 2 & 10 along with Respondent No. 1 Mr. Santosh, who was present at the premises, were handed over the list of documents to them for inspection to be carried out by the Appellants. However, the Respondents caused a hindrance to the Appellants in carrying out the said inspection. In spite of the

directions passed by the Hon'ble NCLT vide its Order dated 17.08.2020 an Interim Order in the main Company Petition and Order dated 21.08.2020 in C.A No. 396/2020, the Respondents have not complied with the Orders.

3. The Learned Counsel further submitted that the Appellants filed an Application being C.A. 428/2020 for appointment of 4 Local Commissioners on 25th August, 2020. The Learned Counsel submitted that the Appellants were called to the Registered Office for inspection at 1:00 P.M. on 26.08.2020, 27.08.2020 and 28.08.2020. It is submitted that the Respondents never granted an unhindered inspection to the Appellants. It is also recorded in the Minutes of the Meeting that the Respondents did not give the Appellants an access to un-manipulated documents at source. The Respondents have not provided the detailed list of documents which were handed over to the Respondents on 21.08.2020. The Learned Counsel also brought to our notice regarding the records in the Minutes of Meetings dated 26.08.2020, 27.08.2020 and 28.08.2020 as reproduced at page 30 and 31 of the Appeal Paper Book. Further, the Minutes of Meetings dated 01.09.2020 and 02.09.2020 are extracted at page 32 & 34 of the Appeal Paper Book.

4. The Learned Counsel submitted that on 02.09.2020 when C.A. 428/2020 came up for hearing before the Hon'ble Tribunal once again directed the Respondents to provide the documents as mentioned by the Appellants, the list handed over to them and granted time to the

Respondents to file Reply and Rejoinder, if any. After the Order passed by the Hon'ble NCLT the Appellants went for inspection of the documents. However, the Respondents did not give the access to un-manipulated documents at source and further, handed over the bunch of unsigned papers stated to be indirect expenses which did not form part of list of statutory documents which did not demanded by the Appellants.

5. The Learned Counsel submitted that the Hon'ble NCLT when considering that the Appellants are entitled for inspection of Books of Accounts of the Company as provided by law, however, failed to provide the inspection and copies of the documents to the Appellants.

6. The Learned NCLT did not consider the submissions of the Appellants, however, passed the Impugned Order rejecting the prayers of the Appellants.

7. The Learned Counsel for the Appellants in support of his contention relied upon various Judgments of the Hon'ble Supreme Court and the Hon'ble High Courts in '**M/s Rajdhani Roller Flour Mills Pvt. Ltd.' V/s. 'Shri Mangilal Bagri & Others'** Appeal No. 18/89 held as under;

"6. Counsel for the appellant, in support of his contention, placed reliance on some case law and particularly the decision of Calcutta High Court

in Lalita Rajya Lakshmi M.P. v. Indian Motor Co., AIR (49) 1962 Calcutta 127. (1) The Judgment refers to the provisions regarding right of inspection. Section 209(iv) of the Companies Act permits inspection by the directors of the books of accounts. On the basis of Section 209 it cannot be argued that in order to prove the allegations made under Section 397 and 398, shareholders have got no right of inspection of the books of account and other relevant papers of the company. It is true that detailed provisions have been made with regard to inspection of documents by shareholders and directors but on the basis of such provisions it cannot be argued that at the time of trial under Sections 397, 398 the right of the shareholders is in any way restricted. The Calcutta case, in our opinion, would not apply in the given situation and we express our disagreement with the view that the right of inspection is limited to the Board of Directors under Section 209(iv) and the right is not available to the shareholders for inspection of the books of account of the Company in the course of

proceedings under section 397 and 398 of the Act.

It may be mentioned that there are allegations and counter allegations in the petition regarding misuse of the funds of the company in arbitrary manner. It is only with the help of books of accounts that the matter can be investigated and the parties should be in such a case be at liberty to look into the books of accounts and substantiate their case. It is significant to take note of the fact that inspection has already been completed. There could be no valid reason for refusal of the supply of zerox copies. In our opinion, supply of zerox copies would facilitate the trial of the petition. It would be a time saving device for the court as well as for the lawyers on both the sides.”

8. Further, the Learned Counsel relied heavily upon the Judgment of the Hon'ble Supreme court in **'Padam Sen and Another' V/s. 'State of Uttar Pradesh' reported in AIR 1961 SC 218'**. Paragraph-9 of the Judgement held as under:

“9. The question for determination is whether the Impugned order of the Additional Munsif appointing Raghubir Pershad Commissioner for

seizing the plaintiff's books of account can be said to be an order which is passed by the Court in the exercise of its inherent powers. The inherent powers saved by Section 151 of the Code are with respect to the procedure to be followed by the Court in deciding the cause before it. These powers are not powers over the substantive rights which any litigant possesses. Specific powers have to be conferred on the Courts for passing such orders which would affect such rights of a party. Such powers cannot come within the scope of would affect such rights of a party. Such powers cannot come within the scope of inherent powers of the Court in the matters of procedure, which powers have their source in the Court possessing all the essential powers to regulate its practice and procedure. A party has full rights over its books of account. The Court has not inherent power forcibly to seize its property. If it does so, it invades the private rights of the party. Specific procedure is laid down in the Code for getting the relevant documents or books in Court for the purpose of using them as evidence. A party is free to produce such documents or books in support of its case as be relevant. A party can ask the help of the Court to have produced in Court by the other party such documents as it would like to be used in evidence

and are admitted by that party to be in its possession. If a party does not produce the documents it is lawfully called upon to produce, the Court has the power to penalize it, in accordance with the provisions of the Code. The Court has the further power to draw any presumption against such a party who does not produce the relevant document in its possession, especially after it has been summoned from it. Even in such cases where the Court summons a document from a party, the Court has not been given any power to get hold of the document forcibly from the possession of the defaulting party.”

9. In view of the submissions Learned Counsel requested the Bench to allow the Appeal.

10. The Respondent No. 1 & 2 filed their Reply Affidavit. Shri Rajeev Ranjan Learned Senior Advocate appearing on behalf of these Respondents submitted and raised a preliminary objection with regard to maintainability of the Appeal against dismissal of C.A. 396/ 2020 wherein the Appellants alleged that the Respondents are in contempt of the Order dated 17.08.2020 passed by the Hon'ble NCLT in main petition along with C.A. 428/ 2020 wherein the Appellants sought appointment of at least four Local Commissioner to authenticate

documents as provided by the Respondents during the inspection from 26.08.2020 to 02.09.2020.

11. The Learned Senior Counsel submitted that it is a settled law that Appeal of Contempt Order passed by the Hon'ble NCLT under Section 425 of the Companies Act is not maintainable before this Hon'ble Appellate Tribunal. He further submitted that the Appellants have not approached this Tribunal with clean hands and sought to mislead this Tribunal by deliberately suppressing relevant facts and material. The Learned Senior Counsel submitted that the Interim Order passed by the Hon'ble NCLT on 17.08.2020 in main C.P. has been duly complied with by the Respondents and taken into consideration by the Hon'ble NCLT thereby dismissed the Contempt Application against the Interim Order. The Learned Senior Counsel submitted that the Hon'ble NCLT in the Impugned Order observed that the Interim Order dated 17.08.2020 passed in main Company Petition was only for a limited purpose, pending consideration of merits of main case. The Hon'ble NCLT was also of the view that when examining merits of the main Petition it was not proper to appoint any Commissioner by exercising the powers under the Companies Act. The Learned Senior Counsel submitted that the Respondents have complied with the Order dated 17.08.2020 and Hon'ble Tribunal also recorded the said fact. In respect of the above, the Learned Senior Counsel submitted that from the perusal of the Minutes of meeting (MOM) dated 21.08.2020, 24.08.2020, 26.08.2020, 27.08.2020,

28.08.2020 and 01.09.2020 annexed at Page 185 to 195 of the Appeal Paper Book and Minutes of the Meeting dated 02.09.2020 at Page 210 of the Appeal Paper book, it is revealed from the said MOM that the Appellants with the sole intention of conducting a witch-hunt committed to seek alleged evidence to support their baseless allegations made against the Respondents in the main Petition. From the MOM it also reveals that the Respondents were co-operating and were more than willing to comply with the Order dated 17.08.2020 as has been admitted in various e-mails shared between the Parties. The Appellants have selectively provided a trail mail and have intentionally concealed various other comprehensive e-mails exchanged between the Parties. The Learned Senior Counsel submitted that the Respondent No. 2 is a heart patient and has been advised by his doctor to avoid too much movement and additionally Respondent is at greater risk of contracting the COVID-19 virus owing to his age and health condition. The Learned Senior Counsel submitted that the various allegations have been made against the Accountant on his absence from the Office. The Learned Senior Counsel submitted that the Accountant Mr. Shyam was on leave since 12.08.2020 as his wife was in the final month of her pregnancy and Accountant resides in a remote town outside the NCR. The Appellants were informed about the unavailability of the Accountant vide e-mail dated 17.08.2020, 18.08.2020, 24.08.2020, 26.08.2020 and 30.08.2020. The genuine absence of the Accountant priorly intimated to the Appellants vide various communications which have also been noted by the Hon'ble

NCLT in its Order. The Learned Senior Counsel also submitted that in compliance of the Order dated 17.08.2020 the Respondent No. 2 provided 33 documents running beyond 700 pages in accordance with the list of documents sought which were provided by the Appellants on 21.08.2020 and 26.08.2020. The documents provided by the Respondents during inspection have been duly authenticated, thus the question of the manipulation does not arise. The Learned Senior Counsel submitted that the said fact also recorded and observed by the Hon'ble NCLT in its Judgment. The Learned Senior Counsel also submitted and it is also part of the Reply at Para-30 Page-11 of the Reply Affidavit filed by the Respondent No. 1 and 2 vide Diary No. 23711 on 25.11.2020.

12. The Learned Senior Counsel submitted that the Appellant is in possession of Jodhpur Project wherein a land area admeasuring 317 Bigha and 3 Biswa (195 acres approximately) is in possession of the Appellant. It is submitted that Khasra No. 177 is in possession of Respondent No. 1 however, recently it has come to the knowledge of Respondent that on the same Khasra another builder has launched his project. On being repeated request to provide information regarding the same the Appellant No. 1 has evaded all questions and refuses to Reply to any of the Notices issued by the Respondent No. 1. The Learned Senior Counsel submitted that on 18.08.2020 the Appellants in C.A. 396/2020 alleging non-compliance of the Order dated 17.08.2020 that is within 24 hours of the Order being passed by

the Hon'ble NCLT. The Respondents were requested to re-schedule the inspection vide e-mail dated 17.08.2020 however, disregarding the same Appellants arrived at the Registered Office of the Respondent No.1 Company and threatened the Respondent that locks will be broken if need be. The Learned Senior Counsel submitted that the Appellants did not inspect the documents after 02.09.2020 as they realized that both the C.A. 396/2020 and C.A. 428/2020 would become infructuous if they continue inspection. Thus, Appellants have raised the false and baseless allegation of manipulation of the documents by the Respondents. The Learned Senior Counsel also submitted that the Appellants were trying to inspect and intimidate the Accountant at the Office and asking irrelevant questions which was not the intention of the Hon'ble NCLT in its Order dated 17.08.2020. The Appellants concealed the letter dated 05.09.2020 issued by Respondents seeking details of Jodhpur Project being suppressed by the Appellants No. 1 herein. It is pertinent to know that no response of acknowledgment of the same has been issued by the Appellants. The Appellants have further concealed the legal notice dated 29.10.2020 issued by the Respondents seeking details of Jodhpur Project in furtherance of the letter dated 05.09.2020. However, no Response or acknowledgment of the same has been received by the Respondents. The Learned Senior Counsel submitted that the Respondents have provided the documents, namely, Balance-sheet, Cash Flow Statements, Directors Report, Expense and Auditors

Report, etc. The Learned Senior Counsel relied upon various judgments in support of his case.

13. In view of the submission the Learned Senior Counsel requested the Bench to dismiss this Appeal as not maintainable. The Respondent No. 10 also filed Reply Affidavit denied the allegations made by the Appellants herein. Heard the Learned Counsel appeared for the respective Parties perused the pleadings, documents and the Judgments relied upon by them.

Findings:

14. The grievance of the Appellants is that the Respondents have not provided unhindered access to the Books of Account and they are in contempt of the Interim Orders passed by the learned NCLT on 17.08.2020, 20.02.2020, 28.02.2020 and 02.09.2020. On the other hand, the learned Senior Counsel for the Respondents submitted that they have provided unhindered access to the documents and also provided the copies of the said documents to the Appellants as directed by the Hon'ble NCLT and the said fact has been recorded in the Minutes of Meeting signed by both the parties.

15. The Appellants in the grounds of Appeal also raised the same issue with regard to non-compliance of the Orders passed by the Hon'ble NCLT and they are in contempt of the Orders of the Tribunal. The Appellants sought relief that the Appellants be allowed inspection of the Books of Accounts and documents at source under Section

128(3) of the Companies Act, 2013 and pass an order to hold the Respondents guilty of the contempt as they are in defiance of the orders dated 17.08.2020 and 21.08.2020. The prayers of the Appellants are similar which were made before the learned NCLT in CA No. 396 of 2020.

16. We have perused the detailed order passed by learned NCLT on 12.10.2020 wherefrom it is evident that the Appellants have filed CA No. 396 of 2020 praying the following reliefs, inter alia;

- a) Pass an order granting petitioners unhindered access to the Registered Office of the Respondent No. 1 Company in terms of the order dated 17.08.2020 passed by the Tribunal;
- b) Pass an order holding the Respondents specifically the Respondent No. 2 in contempt of the order dated 17.08.2020 passed by the Tribunal;
- c) Pass an order for granting Police protection to the Petitioners for taking over the possession of the documents.

17. While so, the Appellants also filed C.A. No. 428 of 2020 before the learned NCLT praying the Tribunal to pass an order to appoint at least four Local Commissioners to authenticate the documents available at the Registered Office of the Respondent No. 1-Company and pass an order granting the petitioners unhindered access to the Registered Office of the Respondent No. 1-Company in terms of the

orders dated 17.08.2020 & 21.08.2020 and pass order holding the 2nd Respondent in contempt of the Orders dated 17.08.2020 and 21.08.2020.

18. From the perusal of the reliefs in both the C.A.s, except the relief prayed in C.A. No.428 of 2020 with regard to seeking direction to appoint four Local Commissioners, the other reliefs are similar in both the Applications, viz, the praying the Tribunal to pass an order directing the Respondents to provided unhindered access to the Books of Account of the Respondent No. 1-Company to the Appellants (Petitioners) and pass an order holding Respondent No. 2 in contempt of Court.

19. Shri Rajiv Ranjan, learned Senior Counsel appearing for the Respondents, took preliminary objections that the Appeal is not maintainable for the reason that the Hon'ble Tribunal dismissed the Application being C.A. No. 396 of 2020 whereby the Appellants prayed the Tribunal to pass an order holding the Respondent No. 2 guilty of Contempt Court and the learned NCLT dismissed CA No. 396 of 2020 and C.A. No. 428 of 2020 by a common order dated 12.10.2020, thereby the Appeal is not maintainable before this Tribunal against the dismissal of Contempt Application. The learned Counsel in this regard relied upon judgment of this Tribunal passed in **Mukesh Goel Vs. Goel Entrade Pvt. Ltd. & Ors.** passed in Company Appeal (AT) No. 117 of 2019 whereby this Tribunal held: "*since the Hon'ble NCLT after taking*

into consideration the relevant facts, came to a definite conclusion not to initiate contempt proceedings”.

20. Learned Senior Counsel also relied upon the judgement of the Hon’ble Supreme Court in the matter of ***D.N. Taneja Vs. Bhajan Lal reported in 1988(3) SCC 26*** and held that no appeal lies under the Contempt of Courts Act, 1971 once an order for dismissing the Contempt Petition has been rightfully passed. Learned Senior Counsel submitted that since Contempt Application has been adjudicated by the Hon’ble NCLT, vide a well-reasoned and extensive order and no appeal lies against the same order under Section 421 of the Companies Act, 2013.

21. Admittedly the Appellants filed the present Appeal under Section 421 of the Companies Act, 2013 against the order dated 12.10.2020 passed in C.A. No. 396 of 2020 and C.A. No. 428 of 2020 in C.P. No. 89/241-242/ND/2020.

22. We agree with the submission of the Learned Senior Counsel for the Respondents that as per the decision of the Hon’ble Supreme Court in the matter of ***D.N. Taneja Vs. Bhajan Lal reported in 1988(3) SCC 26*** that no appeal under the Contempt of Courts Act, 1971 once an order passed dismissing the Contempt Petition. In this regard, it is made clear that Section 425 of the Companies Act, 2013, the statute provides power to punish for the contempt under the said provision. However, by careful reading of the said provision, the Tribunal and

Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the Hon'ble High Courts and may exercise for this purpose, the powers under the Contempt of Courts Act, 1971. As per this provision, the Tribunal i.e., NCLT and this Appellate Tribunal have the jurisdiction and power in respect of contempt of themselves. The provision explicitly provides that the Appellate Tribunal has jurisdiction and power of contempt of themselves meaning thereby that if any order is passed by this Tribunal and the said order is not implemented, then the aggrieved party may file a Contempt Petition by invoking Section 425 of the Companies Act, 2013 for initiation of Contempt Proceeding if the party, i.e., the Contemnor flouts the order of this Tribunal and found guilty.

23. We agree with the submission of the learned Counsel that once an order passed by learned NCLT dismissing the Contempt Petition, there lies no appeal against the said order.

24. However, from the perusal of the order passed by learned NCLT in both the C.A.s that apart from seeking initiation of Contempt Proceeding against the Respondents, there are other directions/reliefs and learned NCLT passed a detailed order dealing with all the aspects as made in both the Applications. Accordingly, this Appeal cannot be said to have been filed only against dismissal of the Contempt Application.

25. Now we deal with whether the Appellants have made out any case which necessitated for any interference of the order passed by the learned NCLT. The Respondents have filed a detailed counter affidavit to the Application before the learned NCLT and learned NCLT took note of the Reply Affidavits and its contents wherefrom it is evident that the inspection process were duly carried on 21.08.2020, 24.08.2020, 26.08.2020, 27.08.2020 and 28.08.2020. It is also on the record that the Appellants have been provided 18 documents running 289 pages during the course of examination of Book of Accounts conducted by the Appellants.

26. In reply to C.A. No. 428 of 2020, the Respondents have clearly stated that the Appellants have been provided the Books of Accounts and the Respondents have been continuously cooperating with the inspection as directed by the learned NCLT, vide orders dated 27.08.2020, 28.08.2020 and 02.09.2020. Learned NCLT, vide its order at paragraph 30 at pages 75-76 of the Appeal Paper Book, observed that the Respondents provided true copies of certain documents. A chart shows that 33 documents running 718 pages have been provided to the Appellants. It is also seen from the Chart that the parties had in the minutes of the meetings held on 26.08.2020, 27.08.2020, 28.08.2020, 01.09.2020 and 02.09.2020 carried out inspection. On 21.08.2020, learned NCLT passed interim order in the main Company Petition which observed as under:

...

“At this juncture, we have again gone through the mail exchanged between the parties and we find that both the parties are very serious in taking the steps in order to comply the order passed by this Tribunal and that is the reason on the date when the order was passed by this Tribunal in the mid-night a mail was sent by the petitioner and reply quickly was also sent by the respondent, we further noticed that the respondent has not rejected the prayer of the petitioner rather he made a request to reschedule the inspection and aggrieved by this request, the present application is filed. We further noticed that the entire grievance is against respondent no. 2, therefore, before taking any action against respondent no. 2, we think it proper to give opportunity to respondent no. 2. Respondent no. 2 is directed to appear in person and explain the circumstances under which he made a request to reschedule the inspection programme and we further direct the respondents to be present in person in the office on 26.08.2020 at 10.30 a.m. and on that day, the petitioner shall inspect the books of accounts without any hindrance. If, any hindrance is caused, the person liable to cause it shall be dealt in accordance with the provision of law.

In course of writing of the order, Hon'ble Technical Member suggested that we have passed an order on 17.08.2020 and today is 21.08.2020, therefore, we may also direct the respondent to permit the petitioner to inspect the books of accounts from today. In the light of that, we hereby modify our earlier order by which we directed the respondent to be present in person on 26.08.2020 and also directed the petitioner to inspect the records on that day.

Now, we are passing order that the petitioner is directed to inspect the books of accounts immediately i.e. from 21.08.2020. Any obstruction or hindrance by any person will be dealt in accordance with the provision of law. List the case on 12.09.2020. In the meantime, respondent no. 2 is directed to file the reply, if any.”

...

27. We have also seen that when the Interim Order dated 17.08.2020 was passed on very same day, the Appellants have sent an e-mail at 9:45 PM (dated 17.08.2020, Annexure-A5 at page 112 of the Appeal Paper Book) and it is made clear in the mail that the Appellants would be inspecting the documents of the Company on 18.08.2020 along with the skilled persons and requested the Respondents for full cooperation.

28. Learned NCLT in paragraph-72 (page-97) recorded the reasons due to prevailing COVID 19 situation, the Accountant of the Respondent No. 1 Company was unable to attend the office and working from home. However, the Accountant joined duty on 26.08.2020 and thereafter he was cooperating Appellants in conducting the inspection of the documents. Therefore, the learned NCLT was of the view that due to the prevailing COVID 19 the Accountant, who is the custodian of the Books of Accounts could not attend the office and after joining his duties, he was cooperating with the Appellants for inspection of Books of Accounts of the Company. It is also mentioned that due to Covid 19 Pandemic, the office of the private company, public company and even the Government Offices are not functioning properly as per the order of the State and Central Governments and they are permitted to function from their residences, if the area in which they are residing comes under the Zone from where it is prohibited to move.

29. In paragraph-75 of the impugned order, learned NCLT had categorically stated that several documents have been produced before the Appellants which are related to the accounts and the Respondents shown their willingness to produce more documents and made a request to the Appellants to visit the office regularly. However, the Appellants did not visit the office, the reasons best known to the Appellants. Learned NCLT categorically observed and was of the view that there is no intentional dis-obedience of the orders committed by

the Respondents. However, learned NCLT held that there is no intentional dis-obedience of the orders dated 17.08.2020 and 21.08.2020. In paragraph-75 of the impugned order at page 101 of the Appeal Paper Book reproduced here at:

..

“75. So far the production of documents from 26.08.2020 are concerned, we noticed that several documents had been produced before the petitioners, which are related to the accounts and respondents shows their willingness to produce more documents and made a request to the petitioners to visit the office regularly but it was petitioners, who did not visit the office after 02.09.2020. Why the petitioners have not visited the office in pursuant of our order, the reason best known to the petitioners, therefore, we are of the considered view that there is no intentional disobedience of the order passed by us by the respondents. We find and hold that there is no intentional disobedience of the order dated 17.08.2020 and 21.08.2020 passed by us rather the prevailing circumstances compelled the respondents to made a prayer to reschedule the programme according to the convenience of the petitioners but it was the petitioners who instead of accepting the request made by the respondents again moved before the Tribunal on

18.08.2020 i.e. on the next day of passing of the first order by us.”

..

30. Learned NCLT with regard to CA No. 428 of 2020 whereby the Appellants sought a prayer to appoint four Local Commissioners to authenticate the documents available at the regd. Office of the Respondent No. 1-Company. Before examining the aspect of appointment of Local Commissioners, the Tribunal was of the view that the Appellants have filed the Petition under Sections 241 and 242 of the Companies Act, 2014 and the hearing of the Petition is still pending and the pleadings have not been completed in the main Company Petition and only Interim Orders have been passed for limited purposes without examining the merit of the case. Hence the question whether it is proper to pass an order appointing Commissioner without examining the merit of the case. Hence the question whether it is proper to pass an order without examining the maintainability of the main Petition. Having considered this important issue, learned NCLT was of the view that unless the merits of the main Petition not gone into, it was not proper to appoint any Commissioner by exercising its powers under Section 426 of the Companies Act, 2013. The relevant findings of the impugned Order at paragraph-76 at page 102 of the Appeal Paper Book is extracted hereunder:

..

“76. Now, coming to the other prayer of the petitioners in CA-428/2020 and also made a prayer to

appoint four local commissioner to authenticate the documents available at the registered office of the Respondent No. 1 Company, there is no doubt that under Section 426 of the Companies Act, 2013, there is a provision of delegation of power, the Tribunal may authorise any of its officer, employee or any person to enquire into the matter but before that, we have to examine this aspect that the petitioners have filed the application under Section 241-242 of the Companies Act, 2013 and the hearing of the main application is still pending, which would be evident from the first order dated 17.08.2020 and the main application is listed for hearing on 12.10.2020 and the reply of the respondents have not come as yet and interim order was passed only for limited purpose without examining the merit of the case then the question, is it proper to pass an order to appoint a commissioner without examining the maintainability of the main application? In our considered view unless we examined the merits of the main application, it is not proper to appoint any commissioner by exercising our powers under Section 426 of the Companies Act, only with a view to permit any person to collect any evidence.”

..

31. Learned NCLT having considered all the aspects and was of the clear opinion that the Respondents have produced various documents before the Appellants during the course of inspection and it was the Appellants who objected not to visit the office for inspection after 02.09.2020 and therefore, held that the Appellants have not made out any case particularly initiation of contempt against the Respondents. Accordingly, initiation of the contempt is rejected. Further at paragraphs-78 and 79 of the impugned order at pages 104 and 105 of the Appeal Paper Book reproduced here at:

..

“78. In the light of that aforesaid decision, when we shall consider the case in hand then we are of the considered view that the respondents have produced various documents before the petitioners during the course of inspection and it was the petitioners, who opted not to visit the office for the inspection after 02.09.2020, therefore, for the reasons discussed in the aforementioned and in view of the decision referred above, we are unable to accept the contention of the petitioners to initiate contempt against the respondents, accordingly their prayer to initiate contempt is here by rejected.

79. As we have already stated in the aforementioned paras that the main application is still pending for hearing, so under such circumstances

without examining the merit of the case, we are not inclined to appoint the commissioner to authenticate the documents. It is for the petitioner to establish that there is a oppression and mis management committed by the respondents and the Tribunal cannot be used as a weapon to collect the evidence. Accordingly, this prayer is also hereby rejected.

..

32. However, the application seeking appointment of Local Commission also dismissed holding that it is for the Appellants to establish that there is an oppression and mismanagement committed by the Respondents and specifically held that the Tribunal cannot be used as a weapon in calling evidence. Accordingly, this prayer is also rejected.

33. Learned Counsel for the Respondents further submitted on the conduct of the Appellants that though the Appellants filed Application being C.A. No. 396 of 2020 on 18.08.2020 alleging non-compliance of the Interim Order dated 17.08.2020 i.e., within 24 hours of the order being passed by the learned NCLT. By the above Act it shows that the Appellants instead of taking inspection of the documents intend to harass the Respondents with malafide intention and arm twist the Respondents to agree to their whimsical terms by creating pressure. He submitted that the Appellant No. 1 is in possession of the Jodhpur Project which consists land admeasuring 317 bigha and 3 biswa

(approx. 198 acres). However, the said property is part of the Respondent No. 1-Company. It came to the notice of the Respondents that another builder has launched his project at the site. The Respondents repeatedly requested the Appellant No. 1 to provide information regarding the same. However, the Appellant No. 1 evaded all questions and refused to reply to any of the notices issued by Respondent No. 1 Company. The Respondents addressed a letter dated 05.09.2020 to the Appellant No. 1 seeking details of the Jodhpur Project and thereafter issued a Legal Notice dated 29.10.2020 which the Appellants have concealed the said information. We have also perused the e-mail dated 05.09.2020 sent by Respondents to Appellant (page-49 of the Reply Affidavit of Respondent No. 1 & 2) wherein it is stated as under:

....

“Dear Ma’am,

Your e-mail dated 05.09.2020 yet again does not reflect the sequence of events as recorded in the minutes of meeting(s) which are part of records. Your email is an attempt to conflate the matter and create prejudice against the Respondents.

It is evident from the minutes of meetings dated 02.09.2020, the inspection of the books of account was carried out by the Petitioners in accordance with the directions of the Hon’ble NCLT orders dated 17.08.2020, 21.08.2020 & 02.09.2020. Without

reiteration of facts as stated in the trailing mails, the Respondents have always been provided unhindered access to the books of account of the company and remain committed to cooperate in the inspection process in accordance with law.

You have already been informed that the registered office of the company is functioning on limited scope due to COVID pandemic and was specially kept open for inspection of the requested documents on 03.09.2020 & 04.09.2020, however, none were present from on behalf of the Petitioners. It is further clarified that the present sequence of emails are mere reiteration of facts and development and there's no question overreaching the Orders of the NCLT.

We also find in minutes of the meeting dated 02.09.2020, that a thorough inspection was carried out by the Petitioners and multiple observations were also recorded. Ledger accounts and balance sheets form part of books of accounts as per the Companies Act, 2013 and are also part of the requisition list shared by the Petitioners on 21.08.2020 & 26.08.2020. If you don't require these kindly let us know with clarity.

Based on available record, we reiterate that books of accounts as requested by the Petitioners, have been provided to you for inspection on various occasions and

all of it have been recorded in the minutes of meetings. All documents are certified as true copies and presented for your inspection and your allegation of any manipulation etc. is baseless and absurd. Further, no hindrance in any form has been caused to the inspecting team as is also evident from the records of the inspection. Further, at all days, complete cooperation and courtesy has been extended to all the representatives of the Petitioners to support the inspection process.

In views of the directions of the Hon'ble NCLT, we request you to continue the inspection on 07.09.2020 by making yourself available at the registered office at 2 pm.

Please note that we shall not be responsible for any delay in the inspection on account of your failure or neglect to continue the inspection.

..

34. From the above mail it is clear that the Regd. Office of the Company is functioning on limited scope due to Covid-19 Pandemic and was especially kept open for inspection of the requisite documents on 03.09.2020 and 04.09.2020. However, none were present for and on behalf of the Petitioners. It is further clarified that the present sequence of the e-mails are mere reiterations of the facts and developments and there is no question of over-riding the orders of

NCLT. However, it is also stated that they are requesting the Appellants to continue the inspection on 07.09.2020 by making themselves available at the Regd. Office at 2:00 PM. From the e-mail dated 03.09.2020 it is also seen that Respondents addressed the said e-mail to the Appellants informing *“that the Respondents office of the Company opened at 2:00 PM and kept ready the documents for inspection. The documents for inspection or ledger account (indirect expenses) for the Financial Year 2012-13 and 2013-14 running into over 250 pages. However, they have requested to take inspection of the said documents and continue with the inspection”*

35. As stated supra, the Respondents addressed a letter dated 05.09.2020 to the First Appellant regarding the documents and information as per Annexure-A. The said letter is annexed at R-5 at page -91. However, the Respondents also issued a Legal Notice dated 29.10.2020 to the Appellant No. 1 which is annexed at R-6 at page no. 93. It is also evident from the documents that the Respondents and Appellants have exchanged various e-mails with regard to the inspection of the documents. It is important to note that e-mail dated 02.09.2020 from the Respondent to Appellants annexed at page -36 of the Reply of the Respondent No. 1 & 2 wherefrom it is evident that the Respondents have provided the documents as stated in the said e-mail. It is also evident from the various Minutes of Meetings that they have provided the documents to the Appellants.

36. Learned Counsel for the Respondents relied upon various judgements. However, he strongly relied upon two judgements i.e. in the matter of **Rajdhani Roller Floor Mills Private Ltd vs. Shri Mangilal Bagri & Ors**. In the said judgment, the Hon'ble Apex Court observed that Hon'ble Court was in disagreement that right to inspection was not available to the shareholders or the right of shareholders to carry out inspection was restricted in any manner.

37. In this regard we intend to refer to Section 128(3) of the Companies Act, 2013. Section 128, of the Companies Act 2013 provides Books of Account etc. to be kept by Company. Sub-section 3 reads thus:

..
“(3) The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:

...

As per the said provision the Books of Account and other books and papers maintained by the Company within India shall be open for inspection at the registered office of the Company or at such other places in India by any Director during the business hours. There is no

doubt that the statute provides for inspection of Books of Account and other books and papers maintained by the Company and as per the directions of the NCLT, it is amply clear that the Respondents have provided documents as per the provision of the Act and in dire compliance of the orders of learned NCLT.

38. Further in the judgment of the Hon'ble Supreme Court in the matter of ***Padam Sen and another vs. State of Uttar Pradesh (AIR 1961 SC 218, (1961) 1 SCR 884)***. Learned Counsel for the Respondents relied upon paragraph-9 of the said judgment. Hon'ble Apex Court held that a party can seek a help of the Court to have produced by the other party such documents as it would like. Relevant paragraph of the judgment is extracted herein as under:

...

9. A party can ask the help of the Court to have produced in Court by the other party such documents as it would like to be used in evidence and are admitted by that party to be in its possession. If a party does not produce the documents it is lawfully called upon to produce, the Court has the power to penalize it, in accordance with the provisions of the Code. The Court has the further power to draw any presumption against such a party who does not produce the relevant document in its possession, especially after it has

been summoned from it. Even in such cases where the Court summons a document from a party, the Court has not been given any power to get hold of the document forcibly from the possession of the defaulting party.

39. The facts of the present case are different from the present case as held by the Hon'ble Supreme Court. In the present case, the Appellants are seeking inspection of the documents whereas in judgment in the matter of ***Padam Sen and another vs. State of Uttar Pradesh*** supra it was held that a party can seek help of the Court to have produced in the Court by the other party as it would like to use as evidence and are admitted by that party to be in its possession. Therefore, as stated supra, the facts are distinct from the facts of present case. We are of the view that the Respondents have allowed the Appellants for inspection of the documents as per the direction of the learned NCLT.

40. From the perusal of the well-reasoned impugned order, we do not find any infirmity in the impugned order and the Appellants are seeking same reliefs as rejected by the learned NCLT. Moreover, the Appellants failed to make out any case and the Appeal is devoid of merit and accordingly, the same is dismissed. However, any observation made by this Tribunal in this order cannot be taken as

finding on the merits of main petition since the Company Petition is pending for adjudication.

No orders as to costs.

[Justice Venugopal M.]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Pronounced by one Member of the Bench in terms of Rule 92(1) of the NCLAT Rules, 2016.

(Kanthi Narahari)
Member(Technical)

New Delhi

Ahc