

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 5042 of 2021****With****CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021****In R/SPECIAL CIVIL APPLICATION NO. 5042 of 2021****With****CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 3 of 2021****In R/SPECIAL CIVIL APPLICATION NO. 5042 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 5090 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 5088 of 2021**=====

DINESHCHANDRA BHAGWANDAS JARIWALA

Versus

RESOLUTION PROFESSIONAL OF SWISS RIBBONS PVT. LTD. GEORGE
SAMUEL=====

Appearance:

MR KAMAL TRIVEDI, SENIOR ADVOCATE WITH MR VISHWAS K

SHAH(5364) for the Petitioner(s) No. 1,10,11,12,2,3,4,5,6,7,8,9

MR ATUL SHARMA(11174) for the Respondent(s) No. 1

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2,3,4,5

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CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 26/10/2021

ORAL ORDER

THE HIGH COURT OF GUJARAT
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Heard learned Senior Advocate Mr.Kamal Trivedi assisted by learned advocate Mr.Vishwas Shah for the petitioners and learned advocate Mr.Sandeep Singhi assisted by learned advocate Mr.Atul Sharma for the respondent No.1.

2. Considering the averments made in the application, the Civil Application (FOR BRINGING HEIRS) No.3 of 2021 is **allowed**. The legal heirs of the deceased Dineshchandra Bhagwandas Jariwala are ordered to be brought on record of Special

Civil Application No.5042 of 2021.

3. This Court passed the following order on 18th March, 2021 :

"Heard learned advocate Mr.Vishwas K Shah for the petitioners. It is pointed out from the averments made in paragraph 2.18 of the petition that the respondent no.5-National Company Law Tribunal ('NCLT' for short) had heard all the matters and the matters were reserved for judgment vide order dated 19.1.2020. Thereafter, matters were not notified in the cause list published by NCLT for pronouncement. The advocates of the petitioners were regularly checking the cause list daily of Court no.2 of NCLT, Ahmedabad to track the pronouncement of the matter. It is further stated that on 8.3.2021, the petitioners got an e-mail from RP intimating uploading of order dated 1.3.2021 on NCLT website. When the petitioners checked the cause list of 1.3.2021, it was revealed that the matter of the petitioners was not listed in the said cause list or the supplementary cause list. Hence, there is no pronouncement in realm of law. Learned advocate has referred to page nos.365 and 381 of the compilation in support of the aforesaid statement. At this stage, learned advocate has referred and placed reliance upon the decision rendered by the Bombay High Court in the case of Kamal K Singh V/s Union of India, Through the Ministry of Corporate Affairs and Others being Writ Petition (L) No.3250 of 2019 decided on 29.11.2019 and submitted that in almost similar type of facts, the Bombay High Court has quashed the order and matter was remanded back to NCLT. Copy of the said decision is placed on record.

In view of the aforesaid submissions canvassed by learned advocate for the petitioner, issue Notice to the respondents returnable on 28.4.2021. Till next date of hearing, ad-interim relief in terms of paragraph 9(B) is granted. Direct service is permitted."

4. It appears that thereafter, the matter is adjourned from time to time.

5. Learned Senior Advocate Mr.Trivedi assisted by learned advocate Mr.Shah referred to the order dated 11th August, 2021 passed by this Court (Coram: Hon'ble Mr.Justice Nikhil S. Kariel) in Special Civil Application No.11031 of 2021 and submitted that if similar order is passed in the present proceedings, the grievances of the petitioners would be taken care of.

6. On the other hand, learned advocate Mr.Sandeep Singhi appearing for the respondent No.1 submitted that if time bound schedule is fixed by this Court to complete the ceremonial formalities of giving an opportunity to the petitioners after pronouncement of the order by the Tribunal within a period of 2-3 days, the respondents are agreeable for such order to be passed.

7. This Court passed the following order in Special Civil Application No.11031 of 2021 on 11th August, 2021 :

"Heard learned Advocate Mr. Vishwas K. Shah for the petitioner, learned Senior Advocate Mr. Navin Pahwa with learned Advocate Mr. Anip A. Gandhi for the respondent no.1, learned Advocate Mr. Raju K. Kothari for respondent no.1.

2. A grievance is raised in the present petition inasmuch as it is contended by the learned Advocate for the applicant that in the proceedings before the learned NCLT in CP (IB) No. 249 of 2018, NCLT Ahmedabad, the learned NCLT has not notified the matter for pronouncement, on the date when the judgment had been declared on 27.7.2021. Learned Advocate in support of such contention has relied upon the cause list of the learned NCLT on that particular date which shows that the matter was not listed for pronouncement.

3. Learned Advocate Mr. Shah submits that by not listing the matter for pronouncement the matter an important right available to the petitioner i.e to request the learned NCLT for staying of the order concerned, which may or may not have been considered by the learned NCLT was lost and hence he submits that the matter be remanded back to the learned NCLT.

4. Learned Senior Advocate Mr. Pahwa submits that the petitioner in his petition himself admits that he has received a copy of the order dated 27.7.2021 on 28.7.2021 when his colleague was checking up on the website of the NCLT and therefore, as such no prejudice has been caused to the present petition and it was always open for the petitioner to approach the appropriate forum for challenging the said decision. At the same time learned Senior Advocate Mr. Pahwa would also submit that the matter may be remanded back to the learned NCLT on a limited ground for considering the request of the present petitioner for staying the judgment which request may be considered by the learned NCLT on its own merits and whereas no new hearing or no order requires to be passed by the learned NCLT as regards the matter which is already heard and decided vide judgment dated 27.7.2021, and if such an arrangement is made learned Senior Advocate submits that he would not have any objection.

5. In this view of the matter more particularly since the ground of prejudice pointed out by learned

Advocate for the petitioner is only with regard to not being able to make a request to the learned NCLT for staying its own judgement, this Court deems to pass the following directions.

5.1 The learned NCLT shall notify CP (IB) No. 249 of 2018 for the purpose of pronouncement on 23.08.2021 and whereas on such date it will be open for the applicant to submit a application for staying the judgment if he so desires which request may be considered by the learned NCLT independently on its own merits. It is made clear that neither the learned NCLT is required to pass an order afresh nor it is required to afford a hearing to any of the parties except for considering request for staying of the judgment concerned for the purpose of preferring the appeal. The order of learned NCLT upon the request of the petitioner, if any, shall be treated as a part of the judgment and order dated 27.7.2021.

6. It is made clear that this Court has not gone into the merits of the matter as stated herein above. The learned NCLT shall take decision in accordance with law on the limited issue for which the matter is remanded back to the learned NCLT Ahmedabad within one week from the date of receipt of the order.

7. It is clarified that for the purpose of compliances as per the Act the date of fresh pronouncement i.e 23.08.2021 as declared by the NCLT would be treated as relevant date.

8. This petition is disposed of as partly allowed."

8. In view of the above, similar order is passed in the present proceedings without going into the merits of the matter by issuing the following directions, which would meet the interest of justice :

8.1 The NCLT shall notify I.A. No.537 of 2020 & I.A. No.567 of 2020 & I.A. No.700 of 2020 & I.A. No.788 of 2020 in TP 03 of 2020 [CP(IB) No.30 of 2018] for the purpose of providing an opportunity to the petitioners to make further prayers after the pronouncement of the decision, which was already pronounced on 1st March, 2021, so as to redress the grievances of the petitioners that without awareness of the petitioners, the order dated 1st March, 2021 was pronounced by the NCLT.

8.2 It is also made clear that the order dated 1st March, 2021 passed in the aforesaid proceedings shall remain as it is and the NCLT is not required to pass an order afresh nor it is required to offer a hearing to any of the parties, except considering the request, if any, for stay of the order pronounced for the interregnum period to prefer appeal by the aggrieved party.

9. It is brought to the notice of this Court that the learned members who have pronounced the order on 1st March, 2021 have demitted the office.

10. In view of the aforesaid directions, the members who are presently presiding over the Bench of Court No.2 of the National Company Law Tribunal, Ahmedabad Bench, shall fix the matters

on 29th October, 2021 at 10.30 a.m. for carrying out the aforesaid directions.

10.1 It is also made clear that the learned advocates of both the sides shall co-operate each other and shall not seek any adjournment.

10.2 In absence of the members presiding over the Bench of Court No.2 of NCLT on 29th October, 2021, the members of other Bench will hear these matters. In no circumstance the matters will be adjourned beyond 29th October, 2021.

10.3 It is made clear that this Court has not gone into the merits of the matter as stated hereinabove and the NCLT shall pass further orders in accordance with law on the limited issue for which the aforesaid arrangement is made.

11. With the above directions, these petitions are disposed of. The Civil Application (FOR DIRECTION) No.1 of 2021 is also disposed of.

12. **Direct service is permitted today to all the concerned parties.**

(BHARGAV D. KARIA, J)

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