

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Comp. App. (AT) (Ins.) No. 1648 & 1649 of 2023**

**&**

**I.A. No. 5944, 5945, 5946, 5947, 5948 of 2023**

**IN THE MATTER OF:**

**Gujarat Industrial Development Corporation                      ...Appellant**

**Versus**

**Zaveri & Co. Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant :** Mr. Virender Ganda, Sr. Advocate, Ms. Tanya Hasija, Mr. Srijan Jain, Ms. Henna George, Mr. Arjun Seth, Advocates.

**For Respondents :** Mr. Abhijeet Sinha, Sr. Advocate, Mr. Tirth Nayak, Mr. Palash S. Singhai, Mr. Saikat Sarkar, Advocates for R-1.

Mr. P. Nagesh, Sr. Advocate, Mr. Raheel Patel, Mr. Akshay Sharma, Mr. Harsh Saxena, Mr. Shevaaz Khan, Advocates for R-2.

**J U D G M E N T**

**Per: Justice Rakesh Kumar Jain:**

**I.A. No. 5944 of 2023:** This application is filed under Rule 31 of the NCLAT, Rules, 2016 (in short 'Rules') seeking condonation of delay of 27 days in re-filing of the appeal. It is averred in the application that the delay has been caused because of personal difficulty of the counsel which was neither intentional nor

deliberate. We are satisfied with the reasons mentioned in the application and thus, the application is allowed and the delay in refiling is hereby condoned.

**I.A. No. 5945 – 5946 of 2023:** These applications are filed for seeking condonation of delay of 15 days in filing the appeal against the order dated 13.09.2023 passed in I.A. No. 136 of 2022 and 9 days in filing the other appeal against the order dated 19.09.2023 passed in I.A No. 4585 of 2021. Notices in the applications were issued. Counsel for the Appellant/Applicant has submitted that the present appeal has been filed against two orders dated 13.09.2023 and 19.09.2023. It is submitted that the Appellant was not intimated by its counsel about the pronouncement of the orders and on 09.10.2023, the officers/representative of the Appellant, on checking the records, came to know about the impugned orders having been passed and thereafter the Appellant took legal advice and filed the present appeal but in this process, the delay has occurred. It is submitted that thus the delay is neither intentional nor deliberate, therefore, the same may be condoned. On the other hand, Counsel appearing on behalf of Respondent has opposed the prayer on the ground that the reason given in the application

is not sufficient. We have heard Counsel for the parties and after taking into consideration the averments made in the application, supported by an affidavit of the Appellant, are of the view that the reasons given in the application are sufficient for the purpose of condoning the delay. Hence, the applications are hereby allowed and the delay is condoned.

**Comp. App. (AT) (Ins.) No. 1648 & 1649 of 2023**

The Appellant has in fact challenged two orders in this appeal, one passed in I.A. No. 136 of 2022 on 13.09.2023 and other passed in I.A. No. 4585 of 2021 on 19.09.2023, therefore, two appeal numbers have been assigned.

2. Brief facts of this case are that the Appellant, namely, Gujarat Industrial Development Corporation, a Government Corporation was established under Section 3 of the Gujarat Industrial Development Act, 1962 (in short 'Act, 1962'), having power under Section 14 of the Act, 1962 to lease its property on such terms and conditions as it may deem fit. The Appellant executed a lease deed on 21.02.2008 as lessor and Gujarat Hydrocarbon & Power SEZ Ltd. (Corporate Debtor) as a lessee for the land admeasuring 276-18-13 H-A sq. mts. situated in

industrial Plot No. 6 in Vilayat Industrial Estate, District Bharuch for a period of 99 years for the purpose of setting up a Special Economic Zone (SEZ) on the consideration of an amount of Rs. 51,97,50,000/-, paid by the Corporate Debtor to the Appellant. As per clause 3.9 of the lease deed, the Corporate Debtor had applied to the Appellant for its permission to create a charge in the form of mortgage in favour of the Financial Creditor, SREI Infrastructure Finance Ltd., vide its letter dated 04.01.2011. The permission was granted to create a charge on its lease hold interest in the land in favour of the Financial Creditor but it was categorically mentioned that such mortgage shall not effect the rights and powers of the lessor under the deed.

3. Subsequently, by way of a rectification deed dated 11.02.2011, the land allotted to the Corporate Debtor was increased from 276-18-12 H-A sq. mts. to 296-47-81 H-A sq. mts.

4. It is alleged that the Corporate Debtor failed to submit the plan for construction on the land, therefore, the Appellant issued a notice dated 11.03.2011 giving opportunity to the Corporate Debtor to explain why such actions as per the agreement be not taken. It is alleged that the Corporate Debtor did not utilise the

land for the purpose it was leased out and a letter dated 20.12.2018 was written to the Corporate Debtor to explain why such defaults have continued.

5. The Appellant also initiated proceedings under the Gujarat Public Premises Eviction of Unauthorised Occupants Act, 1972 and issued show cause notice dated 04.02.2019. The Corporate Debtor was admitted to the CIRP on 18.11.2020 in CP (IB) No. 571/ND/2020 instituted against it by the Financial Creditor. The Appellant filed its claim in Form B for an amount of Rs. 1,806,253,182/- which consists of NU Penalty, Conversion Fees and Revenue Charges.

6. Respondent No. 1 (Zaveri & Co. Pvt. Ltd.) submitted the resolution plan which was approved by the CoC and an application bearing I.A No. 4585 of 2021 was filed by Respondent No. 2 /Rakesh Kumar Agarwal (RP) before the Adjudicating Authority for the approval of the resolution plan under Section 30(6) r/w Section 31 of the Code and Regulation 39(4) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short 'Regulations').

7. It is alleged that when the Appellant came to know about the aforesaid application and the fact that Respondent No. 1 has

allocated Rs. 6,14,49,685/- against the verified claim of Rs. 1,80,62,53,182/-, it filed the application bearing I.A. No. 136 of 2022 under Section 60(5) of the Code giving complete history of its relation with the Corporate Debtor and prayed for “a. remand the matter to the CoC for reconsideration keeping in view the status of the leased land as being owned and under the title of the Applicant; or b. in the alternative reject the approval of the resolution plan of the SRA; or c. pass any such other further order/s as this Hon’ble Tribunal may deem fit”.

8. It is alleged by the Appellant that it had executed power of attorney/Vakalatnama in the name of Aashta Mehta, Adv. for pursuing this case but the application bearing 136 of 2022, when listed on 13.09.2023, was withdrawn on the statement of Purna Mohapatra, Adv. who had appeared on behalf of Aashta Mehta, Adv.

9. While assailing the order dated 13.09.2023, it is submitted that the Appellant, the Government Corporation, did not give any instruction either orally or in writing to Ms. Aashta Mehta, Adv. to withdraw the application bearing 136 of 2022 which has been withdrawn by her through Adv. Purna Mohapatra to whom the power of attorney was not given by the Appellant. It is submitted

that the Appellant is thus not bound by the order dated 13.09.2023 which deserves to be set aside and the application bearing 136 of 2022 deserves to be restored and decided in accordance with law. In support of his submissions, Sr. Counsel for the Appellant has relied upon a decision of the Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society Vs. Balwan Singh & Ors., (2015) 7 SCC 373.

10. On the other hand, Sr. Counsel appearing on behalf of Respondent No. 1, contesting the appeal has submitted that Adv. Prerna Mohapatra has not withdrawn the application in the absence of Aastha Mehta because Aastha Mehta presence has also been marked in the order dated 13.09.2023 and has made the statement to withdraw the application upon instructions. It is therefore submitted that it is too late for the Appellant to submit that the withdrawal of the application is not on their instructions. He has further submitted that even otherwise this Court, in appeal, cannot decide this kind of an issue which pertains to the proceedings which took place before the Tribunal. In this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of State of Maharashtra s. Ramdas Shrinivas Nayak & Ors. (1982) 2 SCC 463.

11. We have heard Counsel for the parties and perused the record with their able assistance.

12. Since, we have narrated the facts in detail, therefore, for the sake of brevity we will not give the facts again but it is suffice to say that the Appellant is a Government Corporation, filed the claim of Rs. 1,80,62,53,182/- which was admitted by the RP but the amount proposed as full and final settlement against the same is Rs. 6,14,49,685/-. It is also not in dispute that as soon as the Appellant came to know about the application having been filed by RP for approval of the resolution plan, it had filed an application bearing 136 of 2022 and made a categorical prayer therein for remand of the matter to the CoC for reconsideration keeping in view the status of the leased land as being owned and under the title of the Appellant and to reject the approval of the resolution plan. The said application was listed on 13.09.2023 and on that date it was withdrawn on the statement of Purna Mohapatra who was not authorised by the Appellant to appear on its behalf, however, it appears from the impugned order that Aastha Mehta, Adv. who had been authorised to appear on behalf of the Appellant was present and on her instructions the application was withdrawn by the said counsel.

13. Nothing has been brought on record by Respondent No. 1 that the instructions much less in writing were given by the Appellant to Aastha Mehta for the purpose of withdrawal of the application. Moreover, no instruction were also given to Aastha Mehta to ask some other counsel to appear on her behalf and withdrew the application which was being seriously pursued. In this regard, we are guided by the decision of the Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society (Supra). The facts of that case were that Himalayan Coop. Group Housing Society (Appellant) was a cooperative society registered under the provisions of the Delhi Cooperative Societies Act, 1972. The members of the society did not pay the demand as raised by the society of the amount towards allotment of residential quarters/apartments and committed default. The Appellant society following the due procedure had passed a resolution expelling the respondents from the membership of the society. The said resolution required confirmation from the Registrar of Cooperative Societies under Rule 36 of the Delhi Cooperative Societies Rules, 1973 and therefore, it was placed before the Registrar for his consideration and approval. The Registrar after due verification of the records of the Appellant

society and in compliance with the procedure as contemplated under the provisions of the Act and the Rules approved the resolution passed by the Appellant Society but in the interest of justice the Registrar provided a last opportunity to the Respondents to pay their outstanding dues but the Respondents did not comply with the order and the said resolution was confirmed. The order of registrar was challenged in appeal which was withdrawn but a Revision Petition was filed by the members of the society. The Revisional Authority confirmed the order of the Registrar. This led to the filing of the writ petition before the Hon'ble High Court for setting aside the order passed by the Registrar and Revisional Authority. The Writ Court upheld the order passed by the Registrar and Revisional Authority, however, on a request made by the Respondents seeking issuance of direction to the appellant for consideration of their request to construct and allot the additional quarter/apartments to them, the same being agreeable to the Ld. Counsel appearing for the Appellant, the Court issued certain directions to the Appellant for construction of additional quarters/apartments and their allotment to the Respondents by the judgment and order dated 25.11.2010.

14. In the said case, it was the case of the Appellant that it had not authorised the Ld. Counsel of the Appellant before the writ court to make any concession in favour of the respondents, therefore, it preferred a review petition. The said review petition was dismissed, therefore, the matter reached up to the Hon'ble Supreme Court where it was argued by Counsel for the Appellant that at no point of time the Appellant had authorised the Counsel for the Appellant to make any concession before the Writ Court and therefore, the Writ Court ought not to have issued any further direction to the Appellant society solely on the basis of a concession made by the lawyer appearing on its behalf without any express consent by the Appellant society.

15. In this background, the Hon'ble Supreme court had observed that "thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a

compromise/settlement". The Hon'ble Supreme Court has also observed in para 32 and 33 which read as under:-

"32. Generally, admissions of fact made by a counsel is binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the Court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. Lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the Court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting client. While in others, the decision is reserved for the client. It is often said that the lawyer can make decisions as to tactics without consulting the client,

while the client has a right to make decisions that can affect his rights.

33. We do not intend to prolong this discussion. We may conclude by noticing a famous statement of Lord Brougham: “an advocate, in the discharge of his duty knows but one person in the world and that person is his client.”

16. On the other hand, the judgment relied upon by Respondent No. 1 in the case of State of Maharashtra (Supra) is not applicable to the facts and circumstances of this case. In the said case, Abdul Rehman Antulay was the Chief Minister of the State of Maharashtra till January, 1982. Ramdas Shrinivas Nayak an erstwhile member of the Maharashtra Legislative Assembly made a complaint under the provisions of IPC and prevention of Corruption Act against him. The Learned Metropolitan Magistrate refused to entertain the complaint holding that it was not maintainable without the requisite sanction of the Govt. against which R.S. Nayak filed a criminal revision before the Hon'ble High Court. The State of Maharashtra and Shri Antulay were impleaded as Respondents. During the pendency of the criminal revision, Shri Antulay resigned his position as the Chief Minister of the State of Maharashtra. The

Hon'ble High Court held that sanction was necessary and dismissed the revision application. The High Court noticed that an application had been filed to the Governor of Maharashtra for grant of the requisite sanction and observed that the application should not be decided by the Law Minister or any other Ministers but as it deserves to be decided by the Governor in his individual discretion. The State of Maharashtra though not aggrieved by the dismissal of the criminal revision application, filed special leave to appeal before the Hon'ble Supreme Court on the issue of the direction to the Governor of Maharashtra to exercise his individual discretion in deciding the question whether sanction should or should not be granted to prosecute Shri Antulay and in this regard, the Court recorded that Counsel appearing on behalf of Respondent had conceded that the Governor should act in the exercise of his individual discretion. The concession made by the Attorney General before the High Court was pointed out, the Counsel protested that he never made any such concession. In this background, the Hon'ble Supreme Court has held that it was very difficult for it to decide as to what had transpired in the High Court, therefore, the appropriate application should have been filed before the same

Court because the matter is fresh in their mind and they can decide, the observation in this regard by the Hon'ble Supreme Court is recorded in Para 4 of the said judgment which is reproduced as under:-

“When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".(1) We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh

in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (2) That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate (I) Per Lord Atkinson in Somasundaran v. Subramanian, A.I.R 1926 P.C. 136. (2) (Per Lord Buckmaster in Madhusudan v. Chanderwati, A.I.R. 1917 P.C. 30. Court may permit him in rare and appropriate cases to resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.”

17. This decision in the case of State of Maharashtra (Supra) is in regard to concession having been made and the Court had directed that the application should have been filed before the same Court but in the subsequent case i.e. Himalayan Coop. Group Housing Society (Supra) which is decided by three judges, the same issue about the concession was dealt with and it was held that if there is no instruction given to make a concession to Counsel then the said concession cannot be taken into consideration against the interest of the party.

18. In the present case, the controversy is as to whether instructions were given to Aastha Mehta for the purpose of withdrawal of the application bearing no. 136 of 2022. There is

no material on record which could suggest that the Appellant being a Government Corporation had given the instructions to Aastha Mehta for this purpose who was further even not authorised to ask her colleague Prerna Mohapatra to appear on her behalf and withdraw the application. The word 'upon instructions' appearing in the said order is in regard to the instructions received by Prerna Mohapatra from Aastha Mehta and not the instructions given by the Appellant to Aastha Mehta for the purpose of withdrawal.

19. In view of the aforesaid facts and circumstances, we are of the considered opinion that there is merit in the submissions made by the Appellant which is supported by law laid down by the Hon'ble Supreme Court in the case of Himalayan Coop. Group Housing Society (Supra) and therefore, the appeal succeeds in respect of I.A. No. 136 of 2022 and the order is hereby set aside. Once we have set aside the order dated 13.09.2023, the natural corollary is that the I.A. No. 136 of 2022 is hereby restored. In these circumstances, it is incumbent upon the Tribunal to decide I.A No. 136 of 2022 at the first instance because it was withdrawn on 13.09.2023 before the order dated 19.09.2023 could have been passed.

20. Thus, in view thereof, the order dated 19.09.2023 passed in I.A. No. 4585 of 2021 does not survive and the same is also hereby set aside. For the purpose consideration and disposal of I.A. No. 136 of 2022, the parties are directed to appear before the Tribunal on **09<sup>th</sup> September, 2024.**

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Mr. Naresh Salecha]**  
**Member (Technical)**

**New Delhi**  
**08<sup>th</sup> August, 2024**

*Sheetal*