

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP-265(MB)/2017

CORAM:

SHRI B.S.V. PRAKASH KUMAR
MEMBER (J)

SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL
COMPANY LAW TRIBUNAL ON **23.04.2018**

NAME OF THE PARTIES:

Fibra Shipping Agency & Ors.

v/s.

Dreams the Malls Company Ltd. & Ors.

SECTION: 241-242 of Companies Act, 2013

ORDER

As to the grievance of the Petitioner, it is being submitted that first Respondent has not paid property tax, whereas the counsel Mr. Subir Kumar on instruction of the Respondent side made a categorical statement that property tax levied against R1 company has been fully paid.

As to other aspects are concerned, parties are directed to argue this matter in the month of June 2018.

On hearing both the sides, it appears to us that this company has been constituted for maintaining a Mall making the shop owners as shareholders of this Company in pursuance thereof, these petitioners have come with an allegation that the respondent company who owed to provide common facilities such as electricity, water, security, escalator, lift, etc., has not provided any such facilities to the Mall, to which the respondent side has filed a detailed reply refuting the allegations made by the petitioners.

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Owing to paucity of time, this Bench is not in position to hear both sides on the main company petition. However, it appears to us that if some inputs come from an independent person after making a physical visit of that place, it will become clear to hear the petition, because it is not in respect to increase of shareholding or siphoning of money from the company directly, basic thing these petitioners asking is common facility, which this company is agreed to provide according to the petitioners, has not been provided despite payment has been made in respect to the common facility, since this Bench has not fully gone into the pleadings filed by either sides, we cannot say whether facilities have been provided by R1 company or not, but it is true that they are basic amenities required to run a huge Mall, therefore we cannot simply postpone this matter to some other date without addressing the issue.

Since this Bench is of the view that unless somebody is appointed to ascertain the physical position in the Mall, it will be difficult to decide this petition even after completion of hearing, because this respondent company which has come into existence for providing maintenance, if such maintenance is not provided, it will be prejudicial to the interest of the shop owners and the customers visiting that Mall.

Though this company petition is not fully heard, for this Bench is prima facie felt that appointment of a Commissioner to make a physical visit and to ascertain all these things will not be prejudicial to the interest of the petitioner or to the interest of the Respondents, we hereby appoint Adv. Raturaj V. Bankar, 205, 58/64, Hari Chambers, Shahid Bhagat Singh Road, Fort, e-mail: advraturajbankar@gmail.com, cell: 9860434242, with a direction to visit the Mall to ascertain as to whether common facilities which this company has mentioned in the Articles of Association have been

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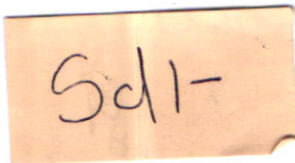
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provided or not and also to check as to whether payments to the respective departments have been paid by R1, and also to ascertain as to whether these petitioners have been regularly paying to R1 as mentioned in the Articles of Association and file his report on or before next date of hearing.

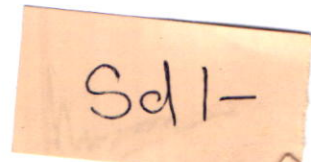
The parties are being asked to provide tax receipts, bills or notices to ascertain the concerns of the parties, and the petitioners as well as the R1 are hereby directed to cooperate with the Commissioner appointed in this case. As to his remuneration is concerned, the petitioners and the company are directed to pay ₹50,000 each to this Commissioner on the day he visits the Mall.

Both the parties are at liberty to produce those documents before the Commissioner when he visits the Mall for inspection.

List this matter for hearing on 08.06.2018.



RAVIKUMAR DURAISAMY
Member (Technical)



B.S.V. PRAKASH KUMAR
Member (Judicial)