

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

COMPANY PETITION NO. 265 OF 2017

**IN THE MATTER OF COMPANIES ACT, 2013
SECTION 241, 242 & 244**

IN THE MATTER OF

FIBA SHIPPING AGENCY & ORS.

.... Petitioners

Versus

**Dreams The Mall Company Ltd.
& Ors.**

... Respondents

Order Delivered on : 31.8.2018

Coram : Hon'ble Shri. B.S.V. Prakash Kumar, Member (Judicial) &
Hon'ble Shri. Ravikumar Duraisamy, Member (Technical)

For the Petitioner : Adv. J. S. Kirti
i/b S. Dubey

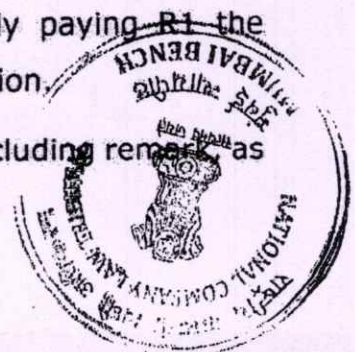
For the Respondent : Adv. Sagar Shetty
Adv. Anil Wani
i/b Subir Kumar

Per B.S.V. Prakash Kumar, Member (J)

ORDER

Oral order dictated in the open Court on 20.8.2018

1. In the order passed by this Bench on 23.4.2018, a Commissioner was appointed to have physical visit and inspect Dreams The Mall at L-25 L.B.S. Marg, Bhandup (West), Mumbai - 400078 to ascertain as to whether common facilities as mentioned in the Memorandum of Association have been provided or not; whether payments have been made by R1 to various Departments/Authorities and whether the Petitioners and other shop-owners have been regularly paying R1 the amount mentioned in the Articles of Association.
2. On such visit, this Commissioner made a concluding remark as stated in the Report which is as follows:



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(i) The Common facilities mentioned in the Articles of Association are non-functional/non-operational and in fact, the said property is not being maintained and basic amenities such as electricity, water, escalators, elevators, air-conditioners etc. are lacking. Thus, the undersigned concludes that Respondent No.1 has failed to provide common facilities mentioned in the Articles of Association;

(ii) Respondent No. 1 has not paid property tax amounting to ₹15,92,75,270/- which is due and payable as on March, 2018. Respondent No.1 has also not paid the electricity charges for the common areas amounting to ₹1,65,66,882/- calculated as on 2nd February, 2017. Respondent No.1 has also not paid an amount of ₹79,76,281/- payable towards water charges. Thus, the undersigned concludes that there are arrears in payment of property tax, electricity charges and water charges by the Respondents to the respective departments/authorities and as a result thereof electricity and water supplies to the said property has been disconnected.

(iii) Out of the 138 Petitioners, 91 Petitioners have paid CAM charges upto March, 2015. In case of 49 Petitioners, the CAM charges payable are less than the property tax payable by the Respondents and therefore, they claim that instead of paying the CAM charges, they have directly paid the property tax arrears to the Mumbai Municipal Corporation. In case of remaining 15 Petitioners, their CAM charges are more than the property tax payable by the Respondents.

(iv) Further, the Petitioners have not paid any amounts towards CAM charges to the Respondent No.1 after March 2015 but they have made payments towards property taxes directly to the Mumbai Municipal Corporation.

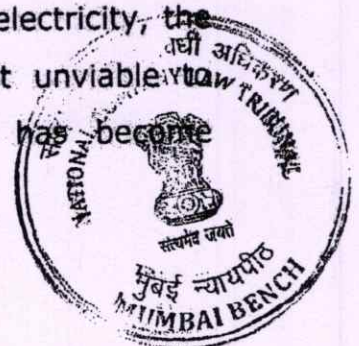
5. This Company Petition has been filed by 138 Petitioners before this Bench on 4.7.2017 stating that they jointly hold 27,500 of



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the total shares of R1 Company. Based on this, the Petition is maintainable as their number is more than 100 as stated in Section 244 of the Companies Act, 2013. The Petitioner submits that the Main Object of R1 company is to provide services to the Shop-owners i.e. Shareholders in the premises of the company. This company was incorporated to maintain the Mall, namely Dreams The Mall Company Ltd. to provide services to the shareholders who have shops in the Mall. Though they are in minority, they are majority in numbers to avail services as provided by R1 Company. This company has been run by R2, it is submitted that they have never received notice to any of the Annual General Meetings ever since the company has been incorporated. The grievance of the Petitioners and other Shop-owners is that they had been paying maintenance charges, including taxes to R1, which is managed by R2 & R3, but subsequently it has come to the notice of the Petitioners and Shop-owners that these Respondents have never paid either taxes, water charges, LCD charges, in the result their electricity has been cut off, water has not been provided for this Mall for the last three years, and it has been submitted that they have been running pillar to post for restoration of these basic amenities to them, since nothing happened until before filing this petition, they said, they have filed this Petition before this Bench. They further submit that they have received a letter from Bombay Municipal Corporation for non-payment of outstanding property taxes, copies of which are annexed and marked as Exhibit - L to Exhibit - Q along with this Company Petition. They further submit that these Respondents have also collected six months' advances towards common area maintenance charges, i.e., ₹4.82 crore for 4.46 lac sq. ft at @₹18 per sq.ft. Since the premises having no electricity, the Petitioners submit that it has become almost unviable to continue their businesses in the Mall and has become



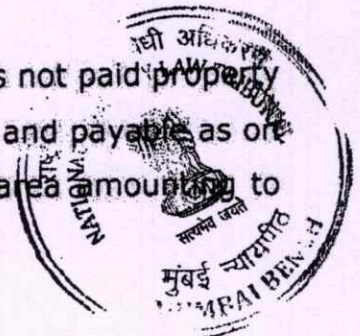
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hazardous to the shareholders and public at large visiting the mall. It is submitted that the washrooms condition has become bad to worse, the house-keeping in the Mall is not even up to the basic standards. The shareholders being shop-owners, they have been suffering from water connection has been disconnected due to non-payment of water bill by R1 company, there is no security arrangement for the Mall to where public regularly visit at large on daily basis, and they further submit that air-conditioning of the Mall being centralized, unless dues of arrears paid by R1, it will not function, because of which, the Shop owners as well as the public coming to mall are not getting proper ventilation. They further submit that the only reason for formation of R1 Company was for the purpose of retaining control and possession of all common rights in respect to the complex, otherwise this Mall maintenance would belong to the Association of shop owners.

4. In view of this precarious situation, since these Respondents having not come forward either to pay charges towards amenities that have to be provided and also property tax to the Tax Authorities, when these people filed this Company Petition, this Bench so as to ascertain the ground position, appointed the Commissioner abovementioned to find out as to whether any truth lies in the allegation made by these Petitioners, upon which, when the Commissioner went to this Mall, he has in person noticed that this Mall is not being maintained and basic amenities such as electricity, water, elevators, escalators, air-conditioners are not functioning. He has further stated according to the Articles of Association, R1 is under obligation to provide common facilities to the Shareholders i.e., Shop-owners of this Mall.

3. In addition to it, he has also stated that R1 has not paid property tax amounting to or around ₹16crores, which is due and payable as on 31.3.2018 and electricity charges for the common area amounting to



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₹1,65,66,882 have not been paid. Likewise, R1 has not been even paid property tax despite R2 and R3 continuously collected maintenance charges upto 2015. They have categorically mentioned that the common area management charges have not been paid by R1 company.

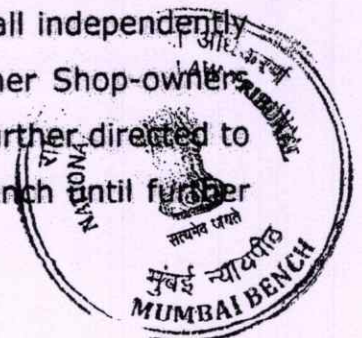
4 The Commissioner filed his report on 17.7.2018, whereas these respondents till date have not filed any reply before this Bench, and now when this Bench has asked the Counsel of the Respondents why reply has not been filed, the Counsel has started requesting for one more week for filing reply.

5. On looking at the report of the Commissioner, it appears that the condition prevailing in the Mall is not only creating problems to the Petitioners and other Shop-owners in respect to their business, but it is life threatening not only to the Petitioners but also to the public regularly visiting the Mall.

When we see the financial position of R1 company, it is apparent on record that it has been consistently in losses, therefore, if maintenance of the Mall is left in the hands of R1 Company, which has been admittedly continuing in losses, it may not be possible for this company to clear all these dues and provide services to the shareholders in near future.

In view of the same, we are of the view that for time being if an Administrator is appointed to run this Mall for providing common areas maintenance on the contribution provided by the Petitioners and other Shop-owners of the company, atleast for the time being there would not be any problem for the shop-owners and shareholders doing business in the Mall.

6 Accordingly, Mr. Rahul P. Sahasrabuddhe, Company Secretary, SPRS Co., B-411, 4th Floor, Kanara Business Centre, Ghatkopar - Andheri Link Road, Laxmi Nagar, Ghatkopar (East), Mumbai - 400075, is hereby appointed as an Administrator to run this Mall independently on the contributions made by the Petitioners and other Shop-owners herein until further orders. The said Administrator is further directed to file progress report on fortnightly basis before this Bench until further



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directions. As to the remuneration of the Administrator is concerned, these Petitioners and other Shop-owners are directed to pay remuneration as agreeable to the Administrator by this Bench. However, since this Bench has not seen what the Reply of the Respondents, they have been given a liberty to file reply within three weeks hereof and rejoinder if any, within two weeks thereof. It is further clarified that this order will not have any bearing on the rights and contentions of either side, it is an order to run the Mall so as not to let any hazards come upon the people working there and public coming there.

7. The Administrator appointed in this case is limited to carry on the functions of the common areas maintenance of the Mall, not in relation to the affairs of the company.

SD/-

RAVIKUMAR DURAISAMY
MEMBER (T)

SD/-

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



Certified True Copy
Copy Issued "free of cost"
On 31/8/2018

Assistant Registrar
National Company Law Tribunal Mumbai Bench