

IN THE HIGH COURT OF BOMBAY AT GOA

CONTEMPT PETITION NO.1 OF 2008

IN

COMPANY APPEAL NO.8 OF 2007

M/S. NORTHERN PROJECTS LTD.,
THROUGH ITS AUTHORIZED
SIGNATORY, SHRI MANISH JAIN ...PETITIONER

V/S

BLUE COAST HOTELS AND
RESORTS LTD. AND 7 ORS. RESPONDENTS

Shri Sreegesh M.K. with Shri Raunaq Rao, Advocate for the
Petitioner.

Shri Rahul Srivastava, Advocate for the Respondents.

Coram : N.M. JAMDAR, J.

Date : 23rd January, 2015

P.C.:

By this petition, the petitioner seeks to punish the respondents under the proceedings of Article 215 of the Constitution of India and Contempt of Courts Act, 1971.

2. Though there appears to be history of litigation between the parties, and the record is voluminous, it is not necessary to advert to all the facts in detail.

3. The contempt alleged is of the ad-interim order dated 20/07/2007 in Company Application No.39/2007 which was taken out in Company Appeal No.8/2007. The ad interim order, which was passed when the respondents were not represented, reads as under:

"P.C.:

Heard Mr. M.S. Sonak, the learned Counsel on behalf of the Applicant. There shall be ad-interim relief in terms of prayer clause (G) of the application which reads thus:-

"That this Hon'ble Court also be pleased to restrain the Respondents from (i) alienating/encumbering or creating any third party interest in any of the assets/properties of the Respondent No.1 Company; (ii) changing the shareholdig pattern/capital structure of the Company in any manner whatsoever."

4. Shri Sreegesh M.K., the learned Counsel for the petitioner submitted that there was clear mandate against the respondents not to change the share holding pattern in any manner whatsoever, but, during the operation of the ad interim order the respondents have proceeded to change the share holding pattern. Shri Sreegesh further submitted that the record shows that the share holding of promoters and promotees group was 45.57 when the ad interim order was passed, was during the operation of the ad interim order, changed to

60.17. Shri Sreegesh submitted that correspondingly the public share holding stood altered. This, according to Shri Sreegesh, was in clear violation of the ad interim order. Shri Sreegesh prayed that suitable action be taken against the respondents for the same.

5. Shri Rahul Srivastava, the learned Counsel for the respondents submitted that the ad interim order was primarily to protect the petitioner during the pendency of his appeal and it was for the purpose of not placing the petitioner at an disadvantage as regard its share holding. Shri Srivastava submitted that, firstly, share holding pattern was not changed and secondly there are various cogent explanations placed on record. Shri Srivastava also pointed out that the Company Appeal, in which the ad interim order was passed, has been dismissed and the order of dismissal of appeal is confirmed by the Apex Court.

6. The Company Appeal arose from an order passed by the Company Law Board dismissing the Company Petition filed by the petitioner on the ground that petitioner did not have requisite share holding to institute the proceedings as mandated by law. This order was confirmed by dismissing the Company Appeal and, subsequently,

by the Apex Court. This would mean that the ad interim order was passed in a proceeding instituted by the party, who in law was not authorised to institute the same. Reading of the ad-interim order shows that it was not on an detailed adjudication on merits, without hearing the respondents, primarily to protect the petitioner during the pendency of the appeal, before deciding whether the proceedings were maintainable. Once the appeal was dismissed, it stood confirmed that the proceedings were not maintainable. Though Shri Sreegesh has urged that even in the proceedings which are not maintainable, the parties are bound by the orders of the Court and they must obey the same. The factual matrix of the case, wherein liberty has already been given to the petitioner to agitate its claim on merits, I do not think that this is a fit case where stringent action under Contempt of Courts Act needs to be taken against the respondents.

7. The petitioner continues to be a share holder. The acts attributed to the respondents in the Contempt Petition, if they constitute oppression to the petitioner, as alleged, it is always open to the petitioner to approach appropriate authority, as per law, where he can ventilate his grievance. It will be open to the respondents to

contest such proceedings on merits. In view of this position, no further orders are necessary to be passed in this Contempt Petition, which is accordingly dismissed.

N.M. JAMDAR, J.

NH/-