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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 3rd August, 2023

\+ **CO.A(SB) 20/2015**

SH. SUDHIR KR. GUPTA & ANR. ..... Appellants
Through: Mr. Mudit Sharma and Mr. Parvez A Khan, Advs. (M: 9582382576)

versus

SH. RAHUL GUPTA & ANR. ..... Respondents
Through: Mr. Jitender Chaudhary and Ms. Shilpa Chohan, Advs. (M: 9810494638)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. The present appeal has been filed by the Appellants-Mr. Sudhir Kumar Gupta, and Mr. Utkarsh Gupta against Respondents, Resp. No. 1 - Mr. Rahul Gupta and Respondent No. 2 - the company Ashish Ashiayana Pvt. Ltd under Section 10F of the Companies Act, 1956. The Appellants and the Respondent No.1 are the ex-directors of Respondent No. 2.

3. The appeal challenges the order of the Company Law Board (*'CLB'*), New Delhi dated 30th December, 2014. Respondent No. 2 has already been struck off from the Register of Companies, as per the current status reflected in the ROC website.

4. The outstanding dispute between the parties is in respect of the land located at G.T Road, Etah, Uttar Pradesh *admeasuring* 467.43 sq. meter. The allegation is that one Shri Sudhir Kumar Gupta (a different person from the

Appellant herein) had sold this land to the Respondent No. 2 on 25th August 2009 *qua* which 21 cheques were given, which were, however, never encashed by the said Mr. Sudhi Kumar Gupta but were withdrawn by the Appellant. This issue was raised before the CLB, in respect of which the CLB decided as under:

> "*23. In view of the same, I am of the view that these parties may have to part ways on fair valuation, since the respondents are still running company, the respondents shall provide honourable exit to the petitioner on fair valuation on 50-50 basis. Now the company has land for development, therefore the company business being real estate, the ·proper value could be ascertained only when it is assessed on asset base valuation. Since the asset lying in the company being immovable property and appreciating time to time, the cut-off date for valuation shall be taken as 31.03.2014. For valuation of the shares of the company on asset based valuation, Shri Deependra Mohan, C.A. 1, Swadeshi Bima Nagar, M.G. Road, Agra (Phone No. 0562-2524040, Mob-9219650111) is hereby appointed as valuer on remuneration agreeable to the valuer. The petitioner and R1&2 shall bear the remuneration 50:50 i.e. in proportion to their shareholding. The valuer shall file the report within two months from the date of order; the parties shall cooperate with the valuer in providing information for valuation as directed· by this Bench.*
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> *24. This order is hereby concluded, directing R3 company to give effect to cancellation of appointment of R-2 as a director of the company, to cancel the allotment made to R2 and to restore the petitioner as director of the company and the same shall continue in the company till payment towards the shareholding of the petitioner has*

been made by the respondents .”

5. This order of the CLB has been challenged in this appeal. Vide order dated 20th April, 2015, both the parties gave an undertaking that no further business shall be carried out by the Respondent No. 2, and the assets shall not be alienated without prior permission of the Court.

6. The question that arises currently is that the seller i.e. Shri Sudhir Kumar Gupta of the same name as Appellant herein has challenged the sale deed in respect of the land, on the ground that the consideration has never been paid. By way of a civil suit bearing no.***824/2019 ‘Sudhir Kumar Gupta v. Rahul Gupta, Sudhir Kumar Gupta and others’*** where Shri Sudhir Kumar Gupta, the seller has impleaded the following persons as Defendants in the said suit:

- Shri Rahul Gupta-the Respondent No. 1,
- Shri Sudhir Kumar Gupta, Petitioner herein,
- Smt. Anju Gupta and
- Shri Rajesh Gupta,

The suit is pending before the Civil Court in Etah, UP.

7. Since the Respondent No.2 has now been struck of from the Register of Companies, and the pending dispute between the parties is in respect of the land which is subject matter of the suit in Etah, the present petition is disposed of with the direction that the CLB’s observations in respect of the said sale deed transaction shall not be binding on the Civil Court in Etah, UP, which shall decide the same in accordance with law.

8. Insofar as other issues are concerned, there are other proceedings including criminal proceedings, which are pending. It is clarified that the

CLB order's observations would also not affect any other proceedings between the parties. No other reliefs are sought in this Appeal.

9. The present appeal is disposed of in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 3, 2023/*dk/dn*