

Comp.A.No.562 of 2017 in
C.P.No.371 of 2015
&
Comp.A.No.398 of 2019 in
C.P.No.371 of 2015

M.SUNDAR.J.,

'ETA Star Infrastructure Ltd.,' (hereinafter 'said Company' for the sake of convenience and clarity) is the company that went into liquidation in aforementioned Company Petition i.e., C.P.No.371 of 2015 (hereinafter 'main CP' for the sake of convenience and clarity), which was at the instance of a petitioning creditor, namely NKC Projects Pvt. Ltd.

2. One Pink City Expressway Private Ltd., was joint venture associate qua said company and this company has been impleaded /arrayed as third respondent in one of the captioned applications i.e., C.A.No.562 of 2017 for the limited purpose of delivering books/records qua said company *inter alia* under Section 468 of 'The Companies Act, 1956' (hereinafter 'said Act' for the sake of brevity).

3. In the web-hearing on a video-conferencing platform today, Mr.Bavisetty Sridhar, learned 'Deputy Official Liquidator' (hereinafter 'Deputy OL' for the sake of brevity) representing 'Official Liquidator attached to this Court' (hereinafter 'OL' for the sake of convenience and clarity), Mr.Bhawath Krishna, learned counsel representing the counsel on record for two ex-directors of said company (Respondents 1 and 2 in captioned C.A.No.562 of 2017), Mr.M.Kempuraj, learned counsel for impleaded third respondent in captioned C.A.No.562 of 2017 and Ms.Gladys Daniel, learned counsel on record for original petitioning creditor, namely NKC Projects Pvt. Ltd. are before me.

4. There is no disputation or disagreement before this Company Court today that the books/records of said company have since been handed over to the Office of the OL pursuant to earlier directions of this Court given by Hon'ble predecessor Judge vide order dated 18.10.2019

inter alia in captioned applications which reads as follows:

'These applications are filed by the Directors of Pink City Expressway Private Ltd. to recall the bailable warrant issued against the Directors of the said company by an order dated 30.08.2019 in C.A.No.562 of 2017 in C.P.No.371 of 2015 and also to grant six weeks time to the applicant to furnish the details of the affairs and deliver all the assets and books / records of the applicant company to the Official Liquidator.

2. At the hearing, the learned Counsel for the applicant, the learned Counsel for the petitioning Creditor in the winding up petition and the Deputy Official Liquidator were heard. The learned Counsel for the applicant submitted that the directors of Pink City Expressway Private Ltd. were not directors of the company in liquidation and that therefore they do not have the books / records of the company in liquidation. Further, it is stated that in para 9 of the affidavit that they have the books / records and information relating to the assets and affairs of Pink City Expressway Private Ltd. but not ETA Star Infrastructure Limited.

3. In response, the learned Counsel for the ex-Directors of the company in liquidation submits that the records relating

to the company in liquidation were maintained at the Gurgoan office of the company in liquidation, which is the common office for the company in liquidation and the applicant company. In this regard, he referred to the form A.O.C. dated 20.11.2013 so as to substantiate the submission that the books of accounts are maintained at the said office.

4. The learned Counsel for the Petitioning Creditor in the winding up petition submitted that it is important that the books of accounts and other records of the company in liquidation are provided to the Official Liquidator and not the books of account and other records of Pink City Expressway Private Ltd.

5. From the above submissions, it appears that the ex-Directors are attempting to pass the buck to the Directors of Pink City Expressway Private Ltd. and vice versa. The primary obligation to provide the statement of affairs lies on the ex-Directors of the company in liquidation. Therefore, they cannot evade this responsibility merely by stating that the books are available with the Pink City Expressway Private Ltd. In these circumstances, the following directions are issued;

1. The applicant is directed to permit the ex-Directors of the company in liquidation to visit the

office of Pink City Expressway Private Ltd. at Gurgaon within a period of two weeks from the date of receipt of a copy of this order so as to identify and prepare a list of the relevant records and books of accounts, which are available there, and within one week thereof to provide the said information to the Official Liquidator.

2. The Director of Pink City Expressway Private Ltd., namely, the applicant herein, is directed to provide copies of all the records and information available with the said company pertaining to Pink City Expressway Private Ltd. and all available original records of ETA Star Infrastructure Limited to the Official Liquidator within a period of four weeks from the date of receipt of a copy of this order.

3. On the basis of information collected in the manner aforesaid, the ex-Directors of the company in liquidation shall file a revised statement of affairs with the Official Liquidator within a period of six weeks from the date of receipt of a copy of this order.

4. The bailable warrant dated 30.08.2019 is recalled subject to the above undertakings. It is made

clear that if there is any default in completion, severe action would be taken against the applicant

6. The applicant is hereby set at large. Accordingly the Comp.A.No.397 of 2019 is disposed of on the above terms.

7. Insofar as the Comp.A.No.398 of 2019 is concerned, as observed above, six weeks time is granted.

List the main C.P. along with Comp.A.No.398 of 2019 on 01.11.2019.'

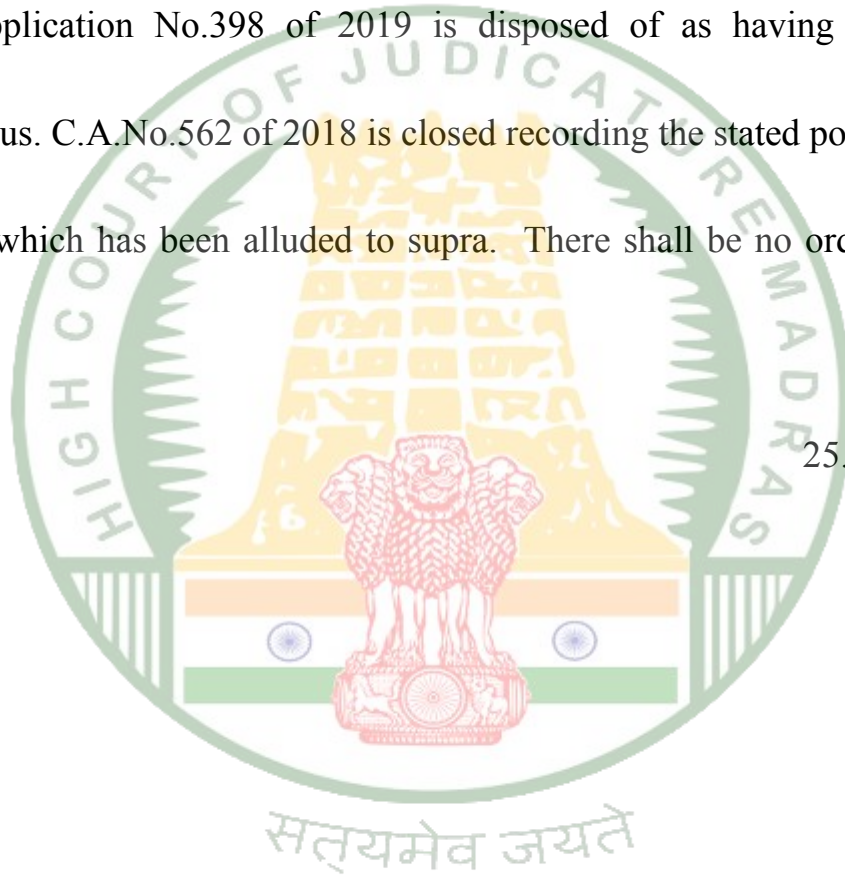
5. The aforementioned order captures essential facts in detail and therefore this Company Court deems it appropriate to not to burden this order with those facts again. Suffice to say that 18.10.2019 order may be usefully referred to in the light of the stated position of OL that as books/records have been handed over and statement of affairs qua said company have also been filed on 09.01.2020, regarding captioned two applications, C.A.No.398 of 2019 becomes infructuous and C.A.No.562 of 2017 deserves to be closed. As the winding up process is still underway, learned Deputy OL makes a request that the rights of the OL

shall be preserved to take out suitable application in future, if the need arises. Though obvious it is made clear that such rights are preserved.

Application No.398 of 2019 is disposed of as having become infructuous. C.A.No.562 of 2018 is closed recording the stated position of the OL, which has been alluded to supra. There shall be no order as to costs.

gpa

25.09.2020

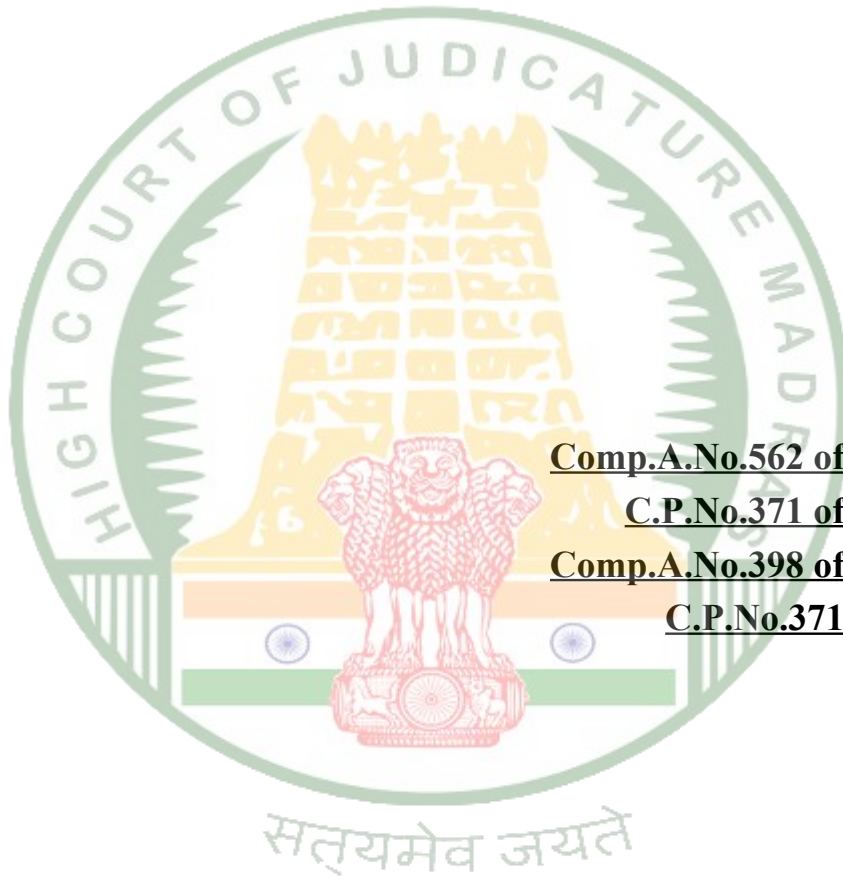


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