

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4277-4279/2023

RAJKUMAR GUPTA & ANR.

Appellant(s)

VERSUS

SULOCHANA GUPTA & ORS.

Respondent(s)

WITH

C.A. Nos. 4586-4589/2023 (XVII-B)(IA No. 245655/2026 - APPROPRIATE ORDERS/DIRECTIONS)

Date : 08-09-2026 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MANOJ MISRA
HON'BLE MR. JUSTICE VIJAY BISHNOI

For Appellant(s) : Mr. C. Aryama Sundaram, Sr. Adv.
Mr. Siddhartha Sinha, AOR
Mr. Nring Chamwibo Zeliang, Adv.
Ms. Anu Priya Nisha Minz, Adv.

Mr. P.b Krishnan, Sr. Adv.
Mr. Santosh Krishnan, AOR
Ms. Anila T. Thomas, Adv.
Mr. Ashwin Joseph, Adv.

For Respondent(s) : Mr. P.B. Krishnan, Sr. Adv.
Mr. Santosh Krishnan, AOR
Ms. Anila T. Thomas, Adv.
Mr. Ashwin Joseph, Adv.

Mr. Radha Shyam Jena, AOR

UPON hearing the counsel the Court made the following
O R D E R

I.A. No. 245655/2026 in C.A. Nos. 4586-4589/2023

1. Through this application, the appellants in Civil Appeal nos. 4586-4589/2023 have prayed for suspension of proceedings in Execution Petition nos. EP/1/KOB/2024 in CP/114/KOB/2019, EP/2/KOB/2024 in CP/119/KOB/2019 & EP/3/2024 in CP/125/KOB/2019 during pendency of Civil Appeal nos. 4586-4589/2023.

2. On a petition complaining oppression and mismanagement by the management (i.e., the respondents in C. A. Nos.4586-4589/2023), the National Company Law Tribunal, Kochi Bench, Ernakulum Kerala (for short, NCLT), vide its order dated 31.12.2021 in C.P.No.114/KOB/2019, C.P. No.119/KOB/2019 and C.P.No.125/KOB/2019, held as under:

"After analysing the issue framed, we are of the opinion that the Related Party Transactions done by the respondents are contrary to the provisions of law and in breach of the Articles of Association of the Respondent Company and therefore, the said Related Party Transactions are hereby declared as invalid and all the proceedings which have been done in violation of Articles of Association are also declared as invalid. The other reliefs in these petitions are consequential reliefs. Since we have declared that the action of the Respondents are illegal, we are not ordering any investigation into the Respondent Companies affairs and imposing any penalty on the Respondents for non-compliance of the rules/articles of the Company."

3. As consequential reliefs were not spelt out in the operative portion of the order of the NCLT dated 31.12.2021, the petitioners before NCLT i.e., Sulochana Gupta and Meenakshi Gupta applied for rectification of the said order.

4. On the aforesaid application, an order was passed by the NCLT on 16.03.2022, the operative portion of which is found in paragraph 31 of the judgment which is extracted below:

"31. Thus, considering the above and the findings in the common order dated 31.12.2021, and with a view to ensure clarity in the order dated 31.12.2021 and to ensure its operability, the present Application is disposed of enumerating the consequential reliefs granted to applicants as stated in Para 55 of the Order to be as follows:

I. The 2nd and 3rd respondents (i.e., Mr Rajkumar Gupta and Mr Vishnukant Gupta) have vacated office as directors of the 1st Respondent Companies (i.e., Mssrs RBG Enterprises Private Limited, Mssrs RBG Trading Corporation Private Limited and Mssrs RBG Retail Private Limited) in accordance with Sections 167(1)(c) and 167(1)(d) of the Act with effect from 31.12.2021;

II. The 2nd and 3rd respondents are not fit and proper persons to hold the office of Director or any other office connected with the conduct and management of any company as contemplated under section 242(4A) of

the Act with effect from 31.12.2021;

III. On a consideration of the documents filed by the Respondent pursuant to the directions of this Hon'ble Tribunal on 28.07.2021 and 12.08.2021, the affirmation of the 3rd Respondent (i.e., Mr Vishnukant Gupta) to the Review Petition, the reliefs sought for in IA/195/KOB/2023 shall stand allowed. The Registry is directed to take necessary action forthwith;

IV. In view of our finding that the 2nd and 3rd respondent have failed to comply with the provisions of Act governing related party transactions (including Section 184 and 188), they shall stand disqualified as Directors of the 1st respondent Companies having regard to section 164(1)(g) of the Act with effect from 31.12.2021;

V. Mrs. Sulochana Gupta (DIN 02233110) and Mr Radha Ballabh Gupta (DIN -00643069) shall stand appointed as Directors of the 1st respondent Companies with immediate effect;

VI. Mrs. Sulochana Gupta (DIN 02233110) and Mr Radha Ballabh Gupta (DIN-00643069) are hereby directed to convene the Annual General Meetings of the 1st respondent Companies in CP/114/KOB/2019, CP/119/KOB/2019 & CP/125/KOB/2019 for the years FY 2015-2016 till date and to table the financial statements of the 1st respondent Companies for consideration of the shareholders;

VII. The 2nd and 3rd respondent, and their spouses, Mrs Ritu Gupta and Mrs Anika Gupta are hereby directed to refund all amounts drawn illegally by them through related party transactions including remuneration, as disclosed in the financial statements from FY 2015-16 till date, within 30 days from the date of this order

VIII. The Registrar of Companies, Kerala is directed to notify the change in the Board of Directors of the 1st respondent Companies (ie, Mssrs RBG Enterprises Private Limited, Mssrs RBG Trading Corporation Private Limited and Mssrs RBG Retail Private Limited) within a period of three working days from today;

IX. The Bankers of the 1st respondent Companies are hereby directed to immediately change the signatories to the bank accounts based on the mandate signed by Mrs. Sulochana Gupta (DIN 02233110) and Mr Radha Ballabh Gupta (DIN -00643069);

X. The above directions shall apply in respect of all other Company Petitions, ie, CP/119/KOB/2019 and CP/125/KOB/2019;

XI. The Registry is also directed to immediately forward a copy of this order to the Registrar of Companies, Kerala for compliance."

5. The afore-extracted order dated 16.03.2022 was passed during pendency of company appeal(s) preferred by Raj Kumar Gupta and another against the order dated 31.12.2021. However, after the order dated 16.03.2022 was passed, Raj Kumar Gupta and another preferred another appeal. As a result, four appeals came to be filed before the National Company Law Appellate Tribunal (for short, NCLAT) at Chennai. All four appeals were decided by common order dated 27.04.2023 which is impugned in the appeals before us. The operative portion of the impugned order is contained in paragraph 44 of the judgment, which is reproduced below:

"44. Keeping in view that this 'Tribunal' has found no error in the 'Common Impugned Order' dated 31.12.2021 and has confirmed the findings of the NCLT with respect to 'Related Party Transactions', but at the same time it is noted that there was no specific findings of 'Oppression and Mismanagement', by the 'NCLT', the directions given in the 'Review Application', are set aside to secure the 'ends of justice', and the matters are remanded back to the 'NCLT'/'Tribunal' to hear the matter afresh on the limited point of whether the acts committed by the 'Appellant' herein fall within the ambit of 'Oppression and Mismanagement', and then, pass a 'reasoned speaking order', by adverting to the points raised and to grant 'appropriate relief', as deemed fit in the matter, based on the facts and circumstances of the case, which float on the surface, of course, within the four parameters of 'Law'."

6. The aforesaid order has been challenged by Raj Kumar Gupta and another, *inter alia*, on the ground that on their appeal before NCLAT, they cannot be put in a situation worse than what they were, had they not preferred an appeal. Their contention was that once the rectification order is found erroneous, the same ought to have been set aside but there should not have been a remand.
7. On the other hand, Sulochana Gupta and Meenakshi Gupta, who have also challenged the impugned order through their separate appeals, claim that the rectification order was just and proper and ought not to have been interfered with,

because if the finding of NCLT regarding party related transactions and siphoning of funds is sustained, there would be oppression and mismanagement, therefore, consequential relief is necessitated. It is their case that even NCLT in the operative part of its order dated 31.12.2021 indicated that the applicants are entitled for consequential reliefs. In such circumstances, it is contended on their behalf that the rectification order was sustainable in law and since NCLAT has not disturbed the findings with respect to party related transactions, the directors, Raj Kumar Gupta and Vishnu Kant Gupta have incurred disqualification and are liable to be removed.

8. It be noted that while entertaining these appeals, the proceedings pursuant to the order of remand were stayed but the impugned order as such was not stayed. Therefore, what should be the consequence of the rectification order being set aside by NCLAT, is the issue that has resulted in filing of this Interlocutory Application.
9. On behalf of Sulochana Gupta, etc., it has been contended that once the order of remand, as found in paragraph 44 of the impugned order, has been stayed, it would be travesty of justice if the execution proceedings are allowed to continue and the directors, who have incurred disqualification in view of the finding returned by NCLT and affirmed by NCLAT, are allowed to be reinstated through execution proceedings. It has also been submitted that after the rectification order was passed, a fresh Board of Directors was constituted which has been ratified by the resolution at the Annual General Meeting (A.G.M.). It has thus been prayed that ends of justice would be served, if pending consideration of these two appeals, the execution proceedings seeking reinstatement of the ousted directors be stayed and status quo be maintained.

10. Learned counsel appearing for Raj Kumar Gupta and Vishnu Kant Gupta submitted that the consequence of setting aside the rectification order would be automatic and since there is no stay on the order of NCLAT, except that the proceedings pursuant to the order of remand have been stayed, the execution proceedings being in the nature of restitution need not be stayed.
11. We have accorded due consideration to the rival submissions. What is clear from the record is that as on date there is a finding operating against Raj Kumar Gupta and Vishnu Kant Gupta in respect to related party transactions. Besides, NCLT in its order, though did not spell out the consequential reliefs, had observed that the applicants were entitled to consequential relief(s). In such circumstances, the scope of these two appeals is not limited to testing the correctness of the order of remand. Moreover, both sides are in appeal.
12. Having regard to the above, taking into account that the rectification order was acted upon and the Board was reconstituted and, in between, AGM has ratified the re-constitution of the Board, it would not be appropriate to allow the execution proceedings to continue while these appeals are pending before us.
13. In view of the above, without expressing any opinion on the merits of the rival contentions, we are of the view that it would be appropriate that the execution proceedings are hereby stayed pending consideration of these appeals.
14. The application is, accordingly, allowed. The execution proceedings shall remain stayed pending consideration of these appeals.
15. List these appeals for final hearing on 27.10.2026.

(KANIKA TAYAL)
COURT MASTER (SH)

(SAPNA BANSAL)
COURT MASTER (NSH)