

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH

Company Appeal (AT) (Insolvency) No. 361 of 2021
& I.A. No. 3865 of 2023

[Arising out of Order dated 26.03.2021 passed by the Adjudicating Authority/National Company Law Tribunal, Mumbai Bench, in IA 2168 of 2020 in CP (IB) 4258/MB/ C-II/2019.]

IN THE MATTER OF:

1. TDH Realty LLP

House No. 179, K – Block,
Yashoda Nagar, Kanpur –
208011.

Through its Authorised
Representative Sh. Rajeev Raina

...Appellant No. 1

Versus

1. DHFL Investments Limited

Having its Registered Office at
TCG Financial Centre, 10th Floor,
Bandra Kurla Complex, BKC Road,
Bandra -East, Mumbai-400098

...Respondent No. 1

**2. Dewan Housing Finance Corporation
(DHFL)**

(Through its Administrators/ Resolution
Professional/

Having its Registered Office at Warden
House, Second Floor, Sir P M Road, Fort,
Mumbai, Maharashtra – 400001.

AND

National Office at HDIL Tower, 06th
Floor,
Anant Kanekar Marg, Station Road,
Bandra
(East), Mumbai-400051.

...Respondent No. 2

3. Committee of Creditors of DHFL

Warden House, Second Floor, Sir P M
Road,
Fort, Mumbai, Maharashtra – 400 001

...Respondent No. 3

4. Wadhwan Global Capital LTD.

Ground Floor, Madhava Building, Near
Family Court, Bandra Kurla Complex
Bandra East, Mumbai – 400051.

...Respondent No. 4

5. DHFL Pramerica Life Insurance Company

4th Floor, Building No. 9, Tower B,
Cyber City, DLF City, Phase – III,
Gurgaon, Haryana – 122002

...Respondent No.5

6. IDBI Trusteeship Services Limited

Asian Building, Ground Floor,
17 R. Kamani Marg, Ballard Estate,
Mumbai – 400 001

...Respondent No. 6

7. West End Investment & Finance Consultancy

38, Bombay Mutual
Building, Dr. D.N. Road,
Fort, Mumbai – 400001

...Respondent No. 7

8. Advent Buildwel Pvt. Ltd.

107, Jolly Maker Chambers No. 2,
225 Nariman Point, Mumbai – 400021

...Respondent No. 8

Present:

For Appellant : Mr. Abhijeet Sinha, Mr. Pranaya Goyal,
Mr. Jash Agrawal, Mr. Chiranjivi Sharma,
Mr. Akash Chatterjee, Advocates.
Mr. Sumesh Dhawan, Vatsala Kak,
Y. Mendiratha, Advocates.

For Respondents : Mr. Raunak Dhillon, Ms. Madhavi
Khanna, Ms. Niharika Shukla, Advocates
for R-3.
Mr. Arun Kathpalia, Sr. Adv. With
Chitra, Manikanda, Prabhu, Abhinav
Srivastava, Aditya Dhupar, Advocates for
SRA.

With

Company Appeal (AT) (Insolvency) No. 476 of 2021
& I.A. No. 3865 of 2023

[Arising out of Order dated 07.06.2021 passed by the
Adjudicating Authority/National Company Law Tribunal, Mumbai
Bench, in IA 449/2021 in CP (IB) 4258/MB/ C-II/2019.]

IN THE MATTER OF:

1. TDH Realty LLP

House No. 179, K – Block,
Yashoda Nagar, Kanpur –
208011.

...Appellant

Versus

1. Dewan Housing Finance

Corporation(DHFL)

**(Through its Administrators/
Resolution Professional)**

Having its Registered Office at
Warden House, Second Floor, Sir P M
Road, Fort, Mumbai,
Maharashtra – 400001

...Respondent No.1

2. Committee of Creditors,

Dewan Housing Finance Corporation

Warden House, Second Floor, Sir P M
Road, Fort, Mumbai,
Maharashtra – 400 001

...Respondent No. 2

3. Piramal Capital And Housing

Finance Limited

4th Floor, Primal Tower, Peninsula
Corporate Park,
Ganpatrao Kadam Marg, Lower Parel,
Mumbai, Maharashtra – 400013.

...Respondent No. 3

Present:

For Appellant : Mr. Abhijeet Sinha, Mr. Pranaya Goyal, Mr. Jash Agrawal, Mr. Chiranjivi Sharma, Mr. Akash Chatterjee, Advocates
Mr. Sumesh Dhawan, Vatsala Kak, Y. Mendiratha, Advocates

For Respondents : Mr. Raunak Dhillon, Ms. Madhavi Khanna, Ms. Niharika Shukla, Advocates for R3
Mr. Arun Kathpalia, Sr. Adv. With Chitra, Manikanda, Prabhu, Abhinav Srivastava, Aditya Dhupar, Advocates for SRA.

J U D G M E N T

(27.09.2023)

NARESH SALECHA, MEMBER (TECHNICAL)

1. Two Appeals bearing Company Appeal (AT) (Insolvency) No. 361 of 2021 and Company Appeal (AT) (Insolvency) No. 476 of 2021 are being dealt in the following discussions.

*Company Appeal (AT) (Insolvency) No. 361 of 2021
& Company Appeal (AT) (Insolvency) No. 476 of 2021*

Page 3 / 51

2. Learned Counsels respectively for the Appellant and Respondents presented their case and made averments and cited relevant judgments in both the appeals, which have been captured in coming deliberations.

In Company Appeal (AT) (Insolvency) No. 361 of 2021

3. The present appeal bearing Company Appeal (AT) (Insolvency) No. 361 of 2021 has been filed by TDH Realty LLP, under Section 61 of the Insolvency & Bankruptcy Code, 2016 (in short '**Code**') against the Impugned Order dated 26.03.2021 in IA 2168 of 2020 in CP (IB) 4258/MB/ C-II/2019 passed by National Company Law Tribunal, Mumbai Bench (in short, the '**Adjudicating Authority**'), whereby the Adjudicating Authority passed two orders in I.A. No. 2168 of 2020, both dated 26.03.2021. The Impugned Interim Order dated 26.03.2021 vacated the earlier Interim order dated 11.01.2021 granted in favour of the Appellant. The impugned final order dated 26.03.2021 has been passed disposing the Application as being not maintainable in view of the statement made by the Counsel for DHFL Investments Limited i.e., Respondent No. 1 that they are not going to sell the shares of Respondent No. 5- DHFL Pramerica Life Insurance Company (in short '**DPLI**') as there were no bids and therefore, sale of shares in Respondent No. 5 will not take place for the time being.

4. It is the case of the Appellant that the Adjudicating Authority, in gross violation of settled legal principles, at Para 150 of the impugned final order, made some undesirable observations on the merits of the case even though it dismissed the application on the ground of the same being rendered infructuous. The Appellant states that observation were made without

considering submissions of the Appellant and without assigning any reasons, therefore the Adjudicating Authority violated the principles of natural justice, which requires that judicial decisions should be based on sound reasoning after recording reasoned and speaking orders.

5. To understand the background of the case, it will be important for this Appellate Tribunal to note relevant facts which led to Impugned Orders passed by the Adjudicating Authority on 26.03.2021.

6. Dewan Housing Finance Corporation (in short '**DHFL**') is the Corporate Debtor and is the Respondent No. 2 herein. The Respondent No. 2 held 50% shares in Respondent No. 5 i.e., DHFL Pramerica Life Insurance Company (in short '**DPLI**'). The Respondent No. 2 i.e., Corporate Debtor sold its shares in Respondent No. 5 i.e., DPLI for Rs. 2,000.5 Crores to DHFL Investment Limited i.e., Respondent No. 1. In order to finance the acquisition of said 50% shares in Respondent No. 5, the Purchaser i.e., Respondent No. 1 (DHFL Investment Limited) issued Compulsory Convertible Debentures (in short '**CCDs**') to Respondent No. 4 i.e., Wadhwan Global Capital LTD, by way of CCDs Subscription Agreement.

7. The Respondent No. 4 i.e., Wadhwan Global Capital LTD, in order to finance and acquire CCDs, issued Non-Convertible Debentures (in short '**NCDs**') of Rs. 1900 Crores by pledging its CCDs, which were subscribed by three mutual fund companies, who became NCDs holders. This process was done by way of Debenture Subscription Agreement, where Respondent No. 6 i.e., IDBI Trusteeship Services Limited agreed to act upon as Debenture Trustee. Apart from pledging over the CCDs, Respondent No. 2 also entered

into an Option Agreement by virtue of which, in the event of a default, Respondent No. 2 was compulsorily required to purchase the CCDs of Respondent No. 4 by paying the NCD holders the entire consideration of their NCDs including interest payable thereon.

8. Thus, it becomes quite clear that 'in effect' the entire financing of said 50% shares in Respondent No. 5 by Respondent No. 2 was received indirectly from NCDs holders i.e., three mutual funds who subscribed to these NCDs making Respondent No. 4 as conduit and this fact is stated to have been certified by the RBI in noting that Respondent No. 4 by subscribing to CCDs of Respondent No. 1 has acquired an interest in share capital of Respondent No. 5. In a broad sense, all such parties connected with sale and purchase of shares and issue and subscription of CCDs & NCDs i.e., Respondent No. 1 - DHFL Investment Limited, Respondent No. 2 - Dewan Housing Finance Corporation (DHFL), Respondent No. 4 - Wadhwan Global Capital LTD. & Respondent No. 5 - DHFL Pramerica Life Insurance Company were belonging to same group, directly or indirectly.

9. The Appellant i.e., TDH Realty LLP, purchased 10,605 NCDs from Respondent No. 7 i.e., West End Investment & Finance Consultancy and Respondent No. 8 i.e., Advent Buildwel Pvt. Ltd. by way of Purchase Agreement and Deed of Accession dated 30.10.2019. It has been stated that in terms of Clause 7 of Debentures Subscription Agreement, the Appellant acquired all the rights as available to original subscriber of NCDs i.e., three mutual funds and also acquired rights to take steps in terms of relevant transaction documents to protect conversion of NCDs at pre-determined

contractual value. The Appellant's ownership of 10,605 NCDs was noted and recorded by Respondent No. 6 Debenture Trustee in suitable records.

10. It has been brought out that the Corporate Debtor i.e., Respondent No. 2 at a later stage was admitted in Corporate Insolvency Resolution Process (in short '**CIRP**') by the Adjudicating Authority. The Resolution Professional of the Corporate Debtor/ Respondent No. 2, however refused to honour commitment as available and permissible under option agreement. In the meanwhile, the Respondent No. 3 i.e., the Committee of Creditors (in short '**CoC**') of Respondent No. 2 i.e., Corporate Debtor passed a resolution to sale of 50% shares held by Respondent No. 1 in Respondent No. 5. It is the case of the Appellant that this was not permissible and was blatant illegal act violating Section 20 of the Code as the assets of the subsidiary company cannot be sold by the Resolution Professional of the Corporate Debtor. This was also a violation of Clause 5.6 of the CCDs Agreement, which restricted any action by the Respondent No. 1 against impairment of value of investment by Respondent No. 4. It is further the case of the Appellant that the sale of shares of Respondent No. 5 would render the value of the CCDs pledged with the Appellant as zero and worthless, and therefore, if such a sale was to go through, the Appellant would not be in a position to redeem its investments from the NCDs.

11. It has been submitted by the Appellant that he approached the Adjudicating Authority with prayers, inter- alia, to restrain Respondent No. 1, Respondent No. 2 and the Respondent No. 3 from dealing with and/or disposing off 50% stake in Respondent No. 5, which if undertaken, would

severely affect the rights of the Appellant as a holder of NCDs issued by Respondent No. 4. The Adjudicating Authority vide Order dated 11.01.2021 directed the Corporate Debtor i.e., Respondent No. 2 not to sell the subject shares of Corporate Debtor in DIL/DPLI. During the course of final hearing, based on statement made by the Respondent No. 1, the Adjudicating Authority passed the Impugned Order noting that the Application has become infructuous and directed the Respondent No. 1 to give a notice of minimum 48 to 72 hours to present the Appellant if it intends to sell the shares of DPLI.

12. It has also been brought out by the Appellant that the CoC of the Corporate Debtor approved the Resolution Plan of Piramal Capital and Housing Finance Limited, who is the Successful Resolution Applicant of the Corporate Debtor (in short '**PCHF**'/ SRA) and in terms of Clause 1.8 of Part A of the 'Financial Proposal' of the Resolution Plan under the head 'DIL Divestment Process' permits the Administrator of the Corporate Debtor (appointed by RBI) to continue with the sale of DPLI shares held by DIL even after the implementation date. It is the case of the Appellant that the Adjudicating Authority approved the Resolution Plan of the SRA vide Order dated 07.06.2021 without hearing the objections of the Appellant.

13. The Appellant has challenged both the Impugned Orders dated 26.03.2021 on several grounds including the Impugned Orders being non-speaking, not maintainable and also asserted that the Corporate Debtor cannot be allowed to escape its contractual arrangement and so on.

In Company Appeal (AT) (Insolvency) No. 476 of 2021

14. The Company Appeal (AT) (Insolvency) No. 476 of 2021 has been filed under the provisions of Section 61 of Code against the Adjudicating Authority order's dated 07.06.2021 in the I.A. No. 449/2021 in Company Petition No. 4258 of 2019 approving the Resolution Plan of the PCHF/ SRA.

15. It has been brought by out the Appellant that the CoC approved the Resolution Plan of SRA and the Administrator of the Corporate Debtor moved an application bearing I.A. No. 449 of 2021 for approval of Resolution Plan of SRA.

16. The Appellant filed its Objections to the Resolution Plan before the Adjudicating Authority primarily on the following grounds:

- a. The Resolution Plan cannot deal with the assets of the subsidiary of the Corporate Debtor i.e. the 50% shares of DPLI held by DIL.
- b. Resolution Applicant cannot seek to unilaterally alter/ modify/ terminate/ extinguish contracts or agreements entered into by the Corporate Debtor and/ or the subsidiary of the Corporate Debtor.

17. The Appellant is aggrieved by the fact that the Resolution Plan permits that the Administrator and CoC to continue with the divestment of the 50% shares of DPLI held by DIL even after the implementation date. Further, the Resolution Applicant has attributed a valuation of Rs. 1000 Crores to the shares of DPLI held by DIL and an amount equal to the valuation of DPLI shares forms part of the upfront cash recovery, which means that the shares of DPLI held by DIL will be transferred to the SRA. The Appellant has a pledge over the CCDs issued by the Respondent No. 2 -DIL and the only

asset of DIL is the 50% shares of Respondent No. 1 - DPLI held by it. The Appellant argued that the only manner in which the NCDs held by the Appellant can be redeemed is by sale of CCDs. However, if the only asset held by DIL is alienated, then the CCDs would become worthless and the Appellant will not be able to redeem its NCDs.

18. The Appellant is also aggrieved by the fact that the Respondent No. 3 seeks to unilaterally terminate the Option Agreement and the letter agreement. The Option Agreement mandatorily requires that upon occurrence of an Event of Default, the Corporate Debtor is obliged to purchase the CCD's at a predetermined Price which will be deposited in the Escrow Account held by the Respondent No. 6 as Debenture Trustee and will be utilized for redeeming the NCD holders.

Appellants Withdrawal Applications

19. The Appellant, in both the Appeals before us, has requested to allow I.A. No. 3864 Company Appeal (AT) (Insolvency) No. 476 of 2021 and I.A. No. 3865 Company Appeal (AT) (Insolvency) No. 361 of 2021 i.e., to withdraw the Appeals.

20. It has been brought out that during the pendency of the Appeals, the Appellant executed a Settlement Agreement dated 30.06.2023 (in short "**Settlement Agreement**"), which inter alia, requires the Appellant to withdraw the Appeals. A copy of the Settlement Agreement has been placed before this Appellate Tribunal on 03.07.2023 and the same was taken on record. The Appellant also submitted that other obligations / formalities mentioned in the Settlement Agreement have also been complied with by the

parties therein, including the Appellant in both the Appeals. The Appellant pleaded that in accordance with Settlement Agreement, the Appellant is duty bound to withdraw both the Appeals, therefore, the Appellant has filed the instant applications seeking leave of this Appellate Tribunal to unconditionally withdraw the captioned Appeals.

21. The Appellant submits that the present Appeals have been filed by it through Mr. Shashank Dixit, who is a designated partner of the Appellant LLP since the time of its incorporation of LLP in October 2017. It is also stated that the Ministry of Corporate Affairs (in short '**MCA**') Master Data of the Appellant, reflects the name of Mr. Shashank Dixit and Mr. Dinesh Kumar as the only two designated partners of the Appellant. It is also stated by the Appellant that the annual returns of the Appellant as well as the Income Tax Returns of the Appellant since 2020 reflect clearly that Mr. Shashank Dixit and Mr. Dinesh Kumar have been the only designated partners of the Appellant and have completed all statutory compliances with respect to the Appellant. Copies of the Annual Returns as well as the Income Tax Returns of the Appellant for the years 2020-21, 2021-22 and 2022-23 have also been filed with I.A. No. 3864 of 2023 along with the Master data of the MCA.

22. During the hearing of both the Appeals by us, prior to filing I.A. No. 3864 in Company Appeal (AT) (Insolvency) No. 476 of 2021 and I.A. No. 3865 in Company Appeal (AT) (Insolvency) No. 361 of 2021, Mr. Sumesh Dhawan, the Learned Counsel for the Proposed Intervenors i.e., Mr. Rajeev Raina and Mr. Rakesh Arora brought to our notice that he is opposing to the

withdrawal of the Appeals. It is the case of the Proposed Intervenors that Mr. Rajeev Raina, on behalf of the Appellant TDH Realty LLP, had himself filed the original applications against the Respondents. The Proposed Intervenors stated that Mr. Rajeev Raina is the only rightful authorized person who can withdraw the appeals, if required, and he wants to pursue the Appeals and therefore he should be allowed to intervene in the matter.

23. It has been brought out by the Proposed Intervenors that on 12.11.2020, both the designated partner of the TDH Realty Limited i.e., Mr. Dinesh Kumar (DPIN 08677427) and Mr. Sashant Dixit (DPIN 07930316), authorized and issued letter of authority to Mr. Rajeev Raina to appoint advocate etc., in various legal matter by or against the Appellant in various legal fora. It is his case that in terms of this Legal & Valid Authorisation, Mr. Rajeev Raina he had filed both the Appeals before this Appellate Tribunal.

24. It is further the case of the Proposed Intervenors that they have given the consent to act as designated partners on 12.11.2020 and gave two different formal consent letters in Form 9 [Rule 7 and Rule 10(8)], as stipulated in the Limited Liability Partnership Act, 2008 (in short '**LLP Act**') and Limited Liability Partnership Rules, 2009 (in short '**LLP Rules**').

25. The Proposed Intervenors emphasised that the outgoing designated partners of the Appellants TDH Realty LLP i.e., Mr. Dinesh Kumar (DPIN 08677427) and Mr. Sashant Dixit (DPIN 07930316), passed a resolution in the meeting held on 12.11.2020 to appoint Mr. Rajeev Raina and Mr. Rakesh Arora as designated partners of the TDH Realty LLP.

26. The Proposed Intervenors have also submitted that all four concerned parties of the Appellant/TDH Realty LLP i.e., Mr. Rajeev Raina and Mr. Rakesh as incoming partners as well as the designated partners and Mr. Shashant Dixit and Mr. Dinesh Kumar as outgoing partners as well as outgoing designated partners, signed a Supplemental Agreement on admission cum retirement of partners on 12.11.2020. The Proposed Intervenors submitted that this Supplemental Agreement was in continuation and in connection with the Appellant's Original Agreement dated 22.10.2017 and its subsequent Supplemental Agreement dated 23.01.2020. This new and latest Supplemental Agreement dated 12.11.2020 was duly witnessed by two independent witnesses and the same was also notarised on 13.11.2020, which clearly establishes that the entire process was legal having binding force on all signatories of this Supplemental Agreement.

27. It has been submitted by the Proposed Intervenors that incoming and new as well as legal designated partners Mr. Rajeev Raina and Mr. Rakesh Arora passed necessary resolution noting the resignation of Mr. Dinesh Kumar and Mr. Shashant Dixit from the Appellant – TDH Realty LLP.

28. It has been brought out by the Proposed Intervenors that the outgoing partners have completed all the formalities required and signed the Form 13 as referred in Section 24(1) of the LLP Act. Mr. Shashant Dixit and Mr. Dinesh Kumar had signed notice of intention to resign as designated partner of TDH Realty LLP w.e.f. 12.11.2020. It has also been brought out that Mr. Shashant Dixit and Mr. Dinesh Kumar have given declarations on stamp

paper purchased by themselves stating that there was no management dispute between outgoing and incoming partner of TDH Realty LLP and they had voluntarily decided to resign due to their other professional assignments.

29. The Proposed Intervenors submit that on similar basis they also declared that there was no management dispute between them and outgoing partners and such declarations were registered on e-stamp papers.

30. It is the case of the Proposed Intervenors that LLP in Form 8 in pursuant to Rule 24 of LLP Rules, made financial disclosures as on 31.03.2020 of TDH Realty LLP which clearly demonstrate that partner's fund (akin to equity shareholder of the incorporated company as per Companies Act, 2013) was Rs. 1 Lakh, whereas the assets/ liabilities of the Appellant was reflected as 1,758 Crores. The Proposed Intervenors emphasised that there was clear understanding between the Proposed Intervenors and the outgoing Designated Partners of the Appellant herein was that there would be a consideration of Rs. 1 Lakh in order to effect the changes in the incoming and outgoing partners of the Appellant LLP. The Proposed Intervenors assailed the conduct of the outgoing Designated Partners of the Appellant who have breached the understanding and violated the written documents to defraud the Proposed Intervenors and to deprive the Proposed Intervenors of huge financial stakes in the Appellant - TDH Realty LLP.

31. The Proposed Intervenors submitted that they had approached the outgoing Designated Partners of the Appellant on several occasions to

upload the required resignation and appointment forms on the MCA Website, however, on one pretext or the other. the same was never done and the Proposed Intervenors, keeping in view the good relationship and in good faith accepted the assurance that the needful would be done in time. However, the Form 3 and Form 4 effecting such change in the Designated Partners has not been filed before ROC. Therefore, the Master Data of LLP has not been updated.

32. The Proposed Intervenors further stated that as per Section 24(6) of LLP Act, 2008, the outgoing Designated Partners of the Appellant have no right to interfere in the management of the LLP after their cessation and as per Section 27(1) of the LLP Act, 2008 the Appellant/ TDH Realty LLP is not bound by anything done by a partner in dealing with a person in the absence of authority to act for the LLP.

33. The Proposed Intervenors stated that after fulfilling all formalities as required in accordance with LLP Act, 2008 and signing of various documents, both by the incoming designated partners and outgoing designated partners, it is only the Proposed Intervenors, who are authorized designated partners to decide about withdrawal of the Appeals. It is the case of the Proposed Intervenors that the withdrawal applications of the Appellant filed through Mr. Shashank Dixit and Mr. Dinesh Kumar through I.A. No. 3864 in Company Appeal (AT) (Insolvency) No. 476 of 2021 and I.A. No. 3865 in Company Appeal (AT) (Insolvency) No. 361 of 2021, are fraudulent and should be dismissed by this Appellate Tribunal and allow the Proposed Intervenors to intervene in the Appeals.

34. Per-contra, the Appellant refuted all averments of the Proposed Intervenors and opposed allowing any application by the Proposed Intervenors. The Appellant submitted that admittedly they authorized Mr. Rajeev Raina as authorized representative vide resolution dated 12.11.2020, however the same was withdrawn by resolution passed in the meeting held by the Appellant on 26.05.2023.

35. The Appellant stated that Mr. Rajeev Raina was acquainted to Mr. Shashant Dixit and in view of that Mr. Rajeev Raina was well averse with the legal system, the Designated Partners of the Appellant passed a resolution dated 12.11.2020 in favour of Mr. Rajeev Raina and authorised him to appoint advocates on behalf of the Appellant LLP, including the I.A. No.1040 of 2021 before the Tribunal and the captioned Appeal before this Tribunal.

36. The Appellant stated that even in the rejoinders filed on behalf of the Appellant in June 2021, Mr. Raina has signed only as an "Authorized Representative" of the Appellant and not as Designated Partners of the Appellant.

37. It is the case of the Appellant that the relationship between Mr. Rajeev Raina and Mr. Shashant Dixit as well as Mr. Dinesh Kumar soured with time and Mr. Shashant Dixit and Mr. Dinesh Kumar issued a revocation letter dated 02.07.2023 on behalf of the Appellant LLP and they revoked the authority given to Mr. Rajeev Raina.

38. The Appellant emphatically submitted that during the course of the hearing before this Appellate Tribunal, the Proposed Intervenors tendered a

purported supplementary agreement dated 12.11.2020 and purported Resignation Letters executed by the legal Designated Partners of the Appellant for resigning from the Appellant LLP, however, the Proposed Intervenors have failed to produce any document whatsoever that the purported supplementary agreement / resignation letters were ever given effect to by the Appellant and all statutory record clearly show only Mr. Shashant Dixit and Mr. Dinesh Kumar as the designated partners.

39. The Appellant emphatically submitted that no contribution of monies or properties or benefits has been made by Mr. Rajeev Raina or Mr. Rakesh Arora to the Appellant as mandated under the LLP Act, 2008 and the ancillary Rules.

40. The Appellant strongly refuted the claims of the Proposed Intervenors that the Proposed Intervenors approached the Appellant on multiple occasions to make the necessary filings with the MCA/ ROC to record the purported change in partnership. The Appellant asserted that the Proposed Intervenors have failed to produce even a single document showing such purported requests made by either of them and the Appellant LLP has been solely managed by the designated partners i.e. Mr. Shashant Dixit and Mr. Dinesh Kumar and had Mr. Rajeev Raina or Mr. Rakesh Arora been the partners, they ought to have participated in the management or at least enquired about the management and statutory compliances of the Appellant LLP since 12.11.2020, however, Mr. Rajeev Raina or Mr. Rakesh Arora have not even averred that they intended to participate in the affairs of the Appellant LLP, let alone produce any documents in support thereof.

41. The Appellant submitted that Mr. Rajeev Raina and Mr. Rakesh Arora merely acted as advisors for the Appellant in view of their legal knowledge and were aware of the fact that it was only Mr. Shashank Dixit and Mr. Dinesh Kumar who participated and managed the affairs of the Appellant LLP and there have never been any objections whatsoever by Mr. Rajeev Raina or Mr. Rakesh Arora to the authority exercised by Mr. Shashank Dixit or Mr. Dinesh Kumar for representing the Appellant LLP before third parties and statutory authorities.

42. We note that, the Limited Liability Partnership Act, 2008 (6 of 2009) (07.01.2009) is an Act to make provisions for the formation and Regulations of Limited Liability Partnership and for the matters connected therewith and incidental thereto. The LLP Act came into force on 31.03.2009. By this act, a new form of legal business entity was allowed as an alternative to normal company structure as well as traditional and conventional partnership form with intended benefits of limited liability at affordable compliance costs. The unique feature of such LLP is that the liability of LLP is to the extent of its assets but the liability of partners is limited, thus in essence, the LLP incorporates distinct features of both partnership and the company style of business, in typical hybrid manner. The LLP is a distinct body corporate having a common seal and has advantage of perpetual succession irrespective of its partners, unless dissolved or wound up by following due process of law. The LLP is formed by suitable LLP Agreement defining the rights and obligations of partners in accordance with provisions of LLP Act, 2008. The business of LLP is carried out and its managed by the designated

partners. The LLP can consist of minimum two partners with no upper limit and such partner can be either individuals or body corporate through the nominee. The LLP is required to have minimum two individuals as designated partners for performing duties including doing all the acts, matters and things as required to be done by the LLP and such designated partners are issued DPIN (Designated Partner Identification No.) allotted by Ministry of Corporate Affairs. Only designated partners are responsible for all the compliances and penalties under the LLP Act including filing annual statement of accounts, statement of solvency, annual returns every year.

43. In this backdrop, we will examine the contention of the Appellant as well as Proposed Intervenors, to establish if the Appellant are within their rights to withdraw the Appeals or the Proposed Intervenors have rights to be treated as Intervenors, if the withdrawal applications through I.A's No. 3865 & 3864 of 2023 of the Appellant are not allowed.

44. For this, we need to factor into few relevant sections of the LLP Act, 2008 and relevant rules of the LLP Rules, 2009, which have been quoted by both the parties i.e., the Appellants and the Proposed Intervenors. Some of the relevant provisions read as under :-

LLP Act, 2008

“2. Definitions.—(1) In this Act, unless the context otherwise requires,—

(d) "body corporate" means a company as defined in 4 [clause (20) of section 2] of 3 [the Companies Act, 2013 (18 of 2013)] and includes—

(i) a limited liability partnership registered under this Act;

(j) "designated partner" means any partner designated as such pursuant to section 7;

(n) "limited liability partnership" means a partnership formed and registered under this Act;

(o) "limited liability partnership agreement" means any written agreement between the partners of the limited liability partnership or between the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership;

(q) "partner", in relation to a limited liability partnership, means any person who becomes a partner in the limited liability partnership in accordance with the limited liability partnership agreement;

3. Limited liability partnership to be body corporate.—(1) A limited liability partnership is a body corporate formed and incorporated under this Act and is a legal entity separate from that of its partners.

(2) A limited liability partnership shall have perpetual succession.

(3) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

7. Designated partners.—(1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one

or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

Explanation.—For the purposes of this section, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty-two days during the financial year.

(2) Subject to the provisions of sub-section (1),—

(i) if the incorporation document—

(a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or

(b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every such partner shall be a designated partner;

(ii) any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.

(3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.

(4) Every limited liability partnership shall file with the registrar the particulars of every individual who has given his consent to act as designated partner in such form and

manner as may be prescribed within thirty days of his appointment.

(5) An individual eligible to be a designated partner shall satisfy such conditions and requirements as may be prescribed.

(6) Every designated partner of a limited liability partnership shall obtain a Designated Partner Identification Number (DPIN) from the Central Government and the provisions of sections 266-A to 266-G (both inclusive) of the Companies Act, 1956 shall apply mutatis mutandis for the said purpose.

8. Liabilities of designated partners.—Unless expressly provided otherwise in this Act, a designated partner shall be—

(a) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and

(b) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

9. Changes in designated partners—A limited liability partnership may appoint a designated partner within thirty days of a vacancy arising for any reason and provisions of sub-section (4) and sub-section (5) of section 7 shall apply in respect of such new designated partner:

Provided that if no designated partner is appointed, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner.

23. Relationship of partners.—

(2) The limited liability partnership agreement and any changes, if any, made therein shall be filed with the Registrar in such form, manner and accompanied by such fees as may be prescribed.

24. Cessation of partnership interest.—

(6) A former partner or a person entitled to his share in consequence of the death or insolvency of the former partner shall not have any right to interfere in the management of the limited liability partnership.

25. Registration of changes in partners.—

(1) Every partner shall inform the limited liability partnership of any change in his name or address within a period of fifteen days of such change.

(2) A limited liability partnership shall—

(a) where a person becomes or ceases to be a partner, file a notice with the Registrar within thirty days from the date he becomes or ceases to be a partner; and

(b) where there is any change in the name or address of a partner, file a notice with the Registrar within thirty days of such change.

(3) A notice filed with the Registrar under sub-section (2)—

(a) shall be in such form and accompanied by such fees as may be prescribed;

(b) shall be signed by the designated partner of the limited liability partnership and authenticated in a manner as may be prescribed; and

(c) if it relates to an incoming partner, shall contain a statement by such partner that he consents to becoming a partner, signed by him and authenticated in the manner as may be prescribed.

(4) If the limited liability partnership contravenes the provisions of sub-section (2), the limited liability partnership and every designated partner of the limited liability partnership shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

(5) If any partner contravenes the provisions of sub-section (1), such partner shall be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

(6) Any person who ceases to be a partner of a limited liability partnership may himself file with the Registrar the notice referred to in sub-section (3) if he has reasonable cause to believe that the limited liability partnership may not file the notice with the Registrar and in case of any such notice filed by a partner, the Registrar shall obtain a confirmation to this effect from the limited liability partnership unless the limited liability partnership has also filed such notice:

Provided that where no confirmation is given by the limited liability partnership within fifteen days, the Registrar shall register the notice made by a person ceasing to be a partner under this section.

32. Form of contribution.—

(1) A contribution of a partner may consist of tangible, movable or immovable or intangible property or other benefit to the limited liability partnership, including money, promissory notes, other agreements to contribute cash or property, and contracts for services performed or to be performed.

(2) The monetary value of contribution of each partner shall be accounted for and disclosed in the accounts of the limited liability partnership in the manner as may be prescribed.

35. Annual return.—

(1) Every limited liability partnership shall file an annual return duly authenticated with the Registrar within sixty days of closure of its financial year in such form and manner and accompanied by such fee as may be prescribed.

LLP Rules, 2009

7. For the purposes of sub-section (3) of section 7, an individual shall give his prior consent to act as a designated partner to the limited liability partnership in Form 9.

8. For the purposes of sub-section (4) of section 7, the particulars of an individual who has given his consent to act as designated partner shall be filed in Form 4 along with fee as mentioned in Annexure 'A'.

[Provided that in case of incorporation, the individual who has given consent to act as partner or designated partner

shall file consent in [Form Fillip] along with fee as mentioned in Annexure A]

10(1) Every individual who intends to be appointed as a designated partner of an existing limited liability partnership, shall make an application electronically in Form DIR - 3 under the Companies (Appointment and Qualifications of Directors) Rules, 2014 for obtaining DPIN under the Limited Liability Partnership Act, 2008 and such DIN shall be sufficient for being appointed as designated partner under the Limited Liability Partnership Act, 2008.

(2) If a person holds both DIN and DPIN, his DPIN shall stand cancelled and DIN shall be sufficient for being appointed as designated partner under Limited Liability Partnership Act, 2008.

(3) Every designated partner, shall intimate his consent to become a designated partner to the limited liability partnership and DPIN, in Form 9 and the LLP shall intimate such DPIN to Registrar on Form 4.

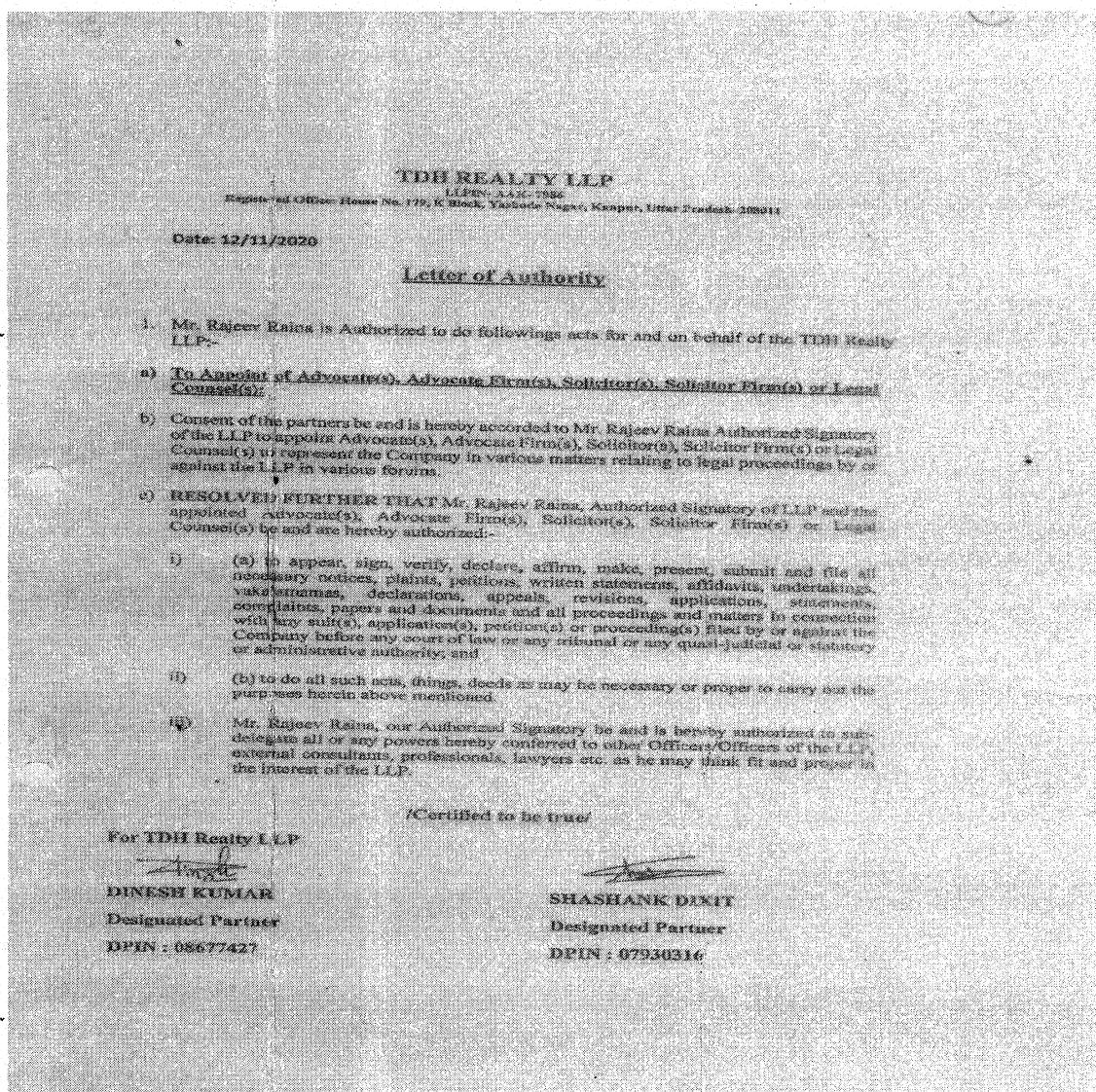
(4) [(i) Every individual who has been allotted a DPIN or DIN under these rules, shall in the event of any change in his particulars, make an application in Form DIR-6 under Companies (Appointment and Qualifications of Directors) Rules, 2014 to intimate such change(s) to the Central Government within a period of thirty days of such change(s).]

(ii) The concerned designated partner shall fill in the relevant changes to the limited liability partnership(s) on which he is a designated partner within 30 days of such changes.]

(Emphasis Supplied)

45. Having noted the above provisions, it would be required to look into the actual documentation and process followed in this case.

46. Admittedly, Mr. Rajeev Raina was authorized by the Appellant i.e., TDH Realty to represent in various legal proceedings vide letter of authority dated 12.11.2020, however the same authority letter was also withdrawn by letter dated 02.07.2023 issued by the Appellant i.e., TDH Realty LLP. We also note that both the letters were signed by the same designated partners, namely, Mr. Shashank Dixit and Mr. Dinesh Kumar and their name still exist on the Master Data of MCA Portal.



TDH REALTY LLP

LLPIN: AAK-7986

Address: F-003, 1ST Floor, GNS Plaza, Sector-IV, Kashish, Greater Noida, 201310

Email: shashank@tdhstudio.in, architect60@gmail.com

To:

02.07.2023

1. Mr. Raleev Teling,
E: raleevonal@yahoo.co.in
telingvinda123@gmail.com
2. Mr. Monish Panda,
Mr. Kshitiz Arya
Mr. Mrinal Bharat Ram
Ms. Priyamvada Sinha
Ms. Jivika Jolly
E: office@monishpanda.com
kshitiz@monishpanda.com

Sir,

Re: 1. Revocation of authority granted by TDH Realty LLP vide Resolution of Partners in the meeting dated 12th November 2020 and vakalatnama dated May 2021 issued on behalf of TDH Realty in favour of Mr. Monish Panda, Mr. Kshitiz Arya, Mr. Mrinal Bharat Ram, Ms. Priyamvada Sinha and Ms. Jivika Jolly.

We write in relation to the captioned authority given to you No.1, vide the Resolution passed in the meeting dated 12th November 2020 of TDH Realty LLP by the undersigned partners, thereby authorizing you to inter alia appoint Advocates to represent the LLP in various legal matters concerning the LLP ("2020 Resolution") and the vakalatnama executed by you No.1 in favour of Mr. Monish Panda, Mr. Kshitiz Arya, Mr. Mrinal Bharat Ram, Ms. Priyamvada Sinha and Ms. Jivika Jolly, Advocates to represent TDH Realty before the Hon'ble National Company Law Appellate Tribunal ("Hon'ble NCLAT") in Company Appeal (AT) (Ins.) Nos.361 of 2021 and 476 of 2021 ("NCLAT Appeals").

Kindly note that in supersession of the 2020 Resolution, the undersigned partners have now passed a fresh resolution and revoked the authority granted to you No.1 vide the 2020 Resolution as well as the vakalatnama dated May 2021 issued by you No.1 in favour of you No.2 and appointed new Advocates to represent the LLP in the NCLAT Appeals and all Appeals and applications connected thereto.

Accordingly, in view of the authority vested in No.1 being revoked, you Nos.1 and 2 are requested not to represent / appear / make any statement on behalf of the LLP before the Hon'ble NCLAT in the NCLAT Appeals or any appeals / applications / proceedings connected

framed. We understand that all invoices raised by you No.2 have also been cleared by the LLP through its erstwhile authorized representative i.e., No.1.

In view thereof, please note that our new Advocates would be representing us in the NCLAT Appeals which are listed on 30 July 2021 before Court No.4 of the Hon'ble NCLAT of File Nos. 13-14 and you No.1 and No.2 are no longer not authorized by us to represent before the Hon'ble NCLAT or any other forum. We also request you to cooperate and give necessary no objection certificate as and when sought by our new Advocates to represent us in various legal proceedings.

Regards,



Mr. Shashank Dixit, Designated Partner



Mr. Dinesh Kumar, Designated Partner

47. Section 2 (q) of LLP Act, 2008 defines “Partner” as any person in accordance with Limited Liability Partnership Agreement and Section 2(j) defines “Designated Partner” as any partner designated in person to Section 7 of LLP Act. As per Rule 7 of LLP Rule, 2009 an individual is required to place his prior consent to act as a designated partner to LLP in Form 9 to meet the requirement of Sub-section (3) of Section 7 of LLP Act, 2008. Similarly, for the purpose of Sub-section (4) of Section 7 of LLP Act, 2008

the particulars of such individual who has given his consent to act as a designated partner shall be file in Form 4 along with the fees. It is to be noted that in present case that Mr. Rakesh Arora and Mr. Rakesh Ranjan have filled up two separate Form 9 and submitted to the Appellant/ TDH Realty LLP giving their consent to act as a designated partner. These facts were noted by the Appellant i.e., TDH Realty LLP and passed a resolution on 12.11.2020 signed by Mr. Shashank Dixit and Mr. Dinesh Kumar.

Form 4
(See rule 7 and 10(3))
Consent to act as Designated Partner

Date : 12/11/2020

To:
TDH REALTY LLP,
House No. 179, K Block,
Yashoda Nagar, Kanpur,
Uttar Pradesh- 208011.

Subject: Consent to act as Designated Partner

I, Rakesh Arora, hereby give my consent to act as Designated Partner of the **TDH REALTY LLP** pursuant to Section 7(3) of the Act.

Details	
01 Designated Partner Identification Number (DPIN)	01015587
02 Name	Rakesh Arora
03 Father's/Husband's Name	Sar Pal Arora
04 Present residential address	C-4/4 123, Vasant Kunj, Vasant Kunj, South West Delhi New Delhi 110070
05 e-mail ID	rakesh_arora_dixit@gmail.com

I hereby state that I satisfy the conditions and requirements for being eligible to be a designated partner and I have not been disqualified to act as designated partner.


Rakesh Arora
DPIN: 01015587

Date: 12/11/2020
Place: New Delhi

Form 9
(See rule 7 and 10(8))
Consent to act as Designated Partner

Date :12/11/2020

To
TDH REALTY LLP
House No. 179, K Block,
Yashoda Nagar, Kanpur,
Uttar Pradesh- 208011.

Subject: Consent to act as Designated Partner

I, Rajeev Raina, hereby give my consent to act as Designated Partner of the TDH REALTY LLP pursuant to Section 7(3) of the Act.

Particulars

01	Designated Partner Identification Number (DPIN)	00648969
02	Name	Rajeev Raina
03	Father's / Husband's Name	Radhey Krishan Raina
04	Present residential address	D-46, Anand Niketan, South West Delhi - 110021
05	e-mail ID	rajeevrajan1981@gmail.com

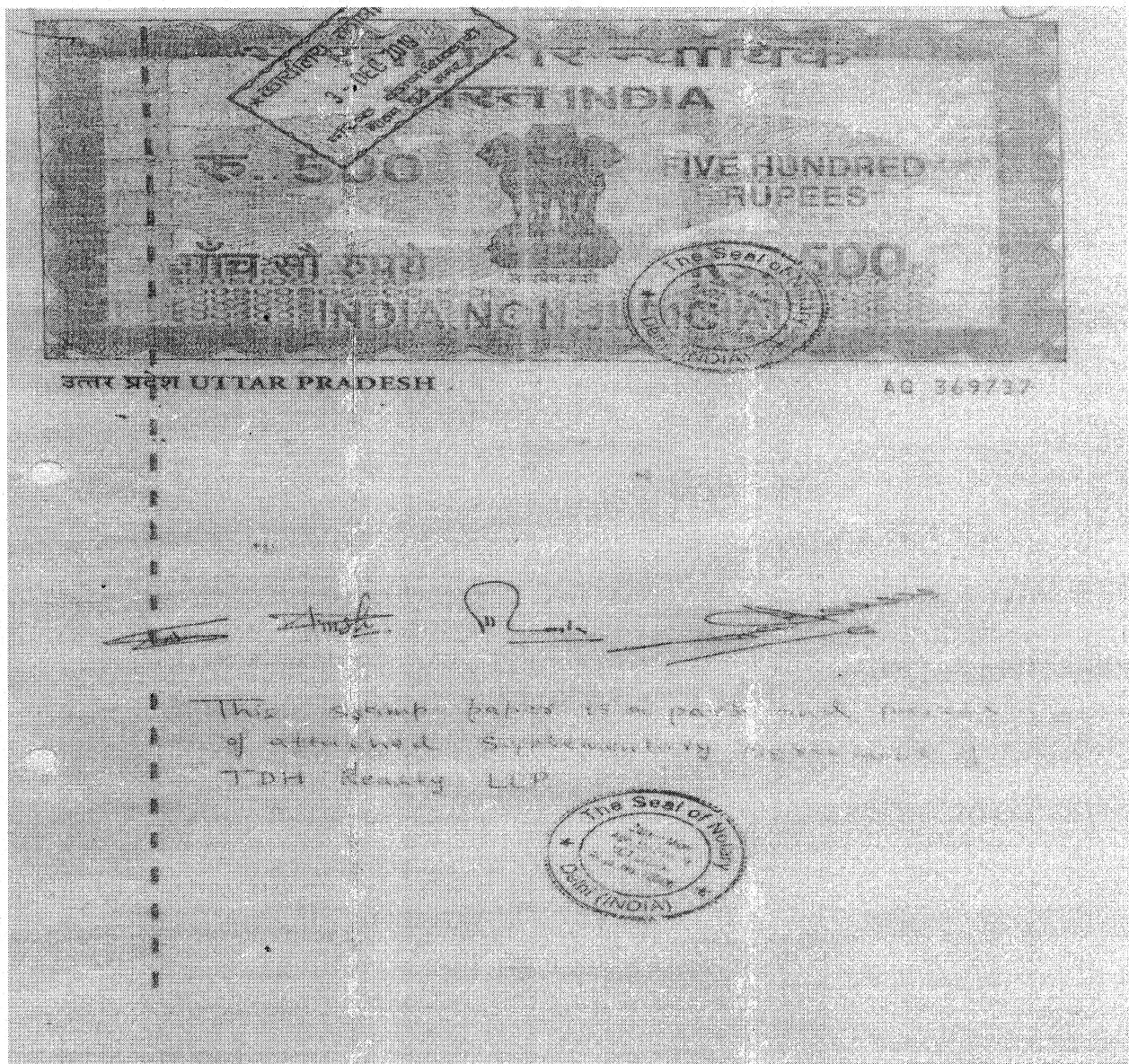
I hereby state that I satisfy the conditions and requirements for being eligible to be a designated partner and I have not been disqualified to act as designated partner.



Rajeev Raina
PIN: 00648969

Date: 12/11/2020
Place: New Delhi

48. We have also observed that supplemental agreement on admission - cum retirement of partners as supplement to the original LLP Agreement was entered into on 12.11.2020 between the Appellant/TDH Realty LLP and Mr. Rajeev Raina and Rakesh Arora an incoming partners and also Mr. Shashank Dixit and Mr. Dinesh Kumar as outgoing partners. This supplemental agreement was duly witnessed by two witnesses and attested by notary.



**Supplemental Agreement on Admission Cum Retirement of
Partners as supplement to the Original LLP Agreement**

THIS SUPPLEMENTAL LIMITED LIABILITY PARTNERSHIP AGREEMENT is dated 12th Day of November, 2020 between TDH REALTY LLP and

Incoming Partner:

1. Rajeev Raina, aged 60 years, residing at C-3 Diawan Deep Building Jantar Mantar Road New Delhi-110001 Designated Partner vide Consent Letter dated 12.11.2020 w.e.f. 12.11.2020 (hereinafter referred to as "Incoming Partner")
2. Rakesh Arora, aged 57 years, residing at C4/4123 Vasant Kunj New Delhi Designated Partner vide Consent Letter dated 12.11.2020 w.e.f. 12.11.2020 (hereinafter referred to as "Incoming Partner")

Outgoing Partner:

1. Shashank Dixit resign from the LLP as Designated Partner vide Resignation Letter dated 10.10.2020 w.e.f. 12.11.2020 (hereinafter referred to as "Outgoing Partner")
2. Dinesh Kumar resign from the LLP as Designated Partner vide Resignation Letter dated 10.10.2020 w.e.f. 12.11.2020 (hereinafter referred to as "Outgoing Partner")

The effective date of the deed is 12th November, 2020

WHEREAS

The Incoming Partner and the Outgoing Partner of TDH Realty LLP (hereinafter called LLP) mutually decided to amend the Original LLP Agreement dated 24th October, 2017 and Supplemental Agreement dated 23rd January 2020. The Outgoing Partners have expressed their unwillingness to continue as Partner and Designated Partner vide their resignation letter dated 12.11.2020. The Incoming Partners have consented to act as a Designated Partners in place of the Outgoing Partners w.e.f. 12.11.2020.

NOW IT IS HEREBY AGREED by and amongst Partners (Outgoing Partners and Incoming Partners) as follows:

1. The Agreement is supplemental to LLP Original Agreement dated 24th October, 2017 and Supplemental Agreement dated 23rd January 2020 and made between the Partners of the LLP on the terms of which the mutual rights and duties of the Partners and their rights and duties in relation to the LLP is determined.

2. Outgoing partner of the LLP unanimously consent to the conveyance, transfer, and assignment of the LLP Partnership Interest to the Continuing and Incoming Partner and agree that the Incoming Partner have become Designated Partner in the LLP having, to the extent assigned, the rights and the powers of a Partner, subject to the restrictions and liabilities of a Partner.
3. A copy of the LLP's LLP Agreement (Original LLP Agreement) dated 24th October, 2017 and Supplemental Agreement dated 23rd January, 2020 that is currently in full force acknowledges to and with the LLP that Incoming Partner:
 - a. has been provided with a copy of the LLP Agreement,
 - b. has been given an adequate amount of time to review the LLP Agreement,
 - c. has read the LLP Agreement and understands that and all of its terms and conditions;
 - d. knowingly and voluntarily executed this Agreement; and Outgoing Partners
 - e. agrees to cease to be a Partner and Designated Partner of the LLP and be bound by all the terms and conditions of the LLP Agreement.
4. The Contribution of the Contracting and the Incoming Partner may be tangible, intangible, moveable or immovable property. Initial Contribution of the Incoming Partner and the revised ratio of profit sharing has been given in this deed.
5. With effect from 12.11.2020 following shall be substituted in the said LLP Original Agreement thereby fixed with such modification as contained herein.

The LLP agreement shall be amended as follows:

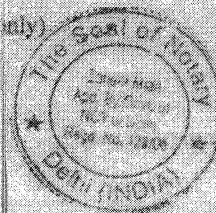
The name of the FIRST PARTY, 'MR. Shashank Dixit' be substituted with Mr. Rejeev Raina.

The name of the SECOND PARTY, 'MR. Dinesh Kumar' be substituted with Mr. Rakesh Arora.

The initial contribution of TDH REALTY LLP shall remain Rs. 1,00,000/- (Rupees one Lakh only) which shall be contributed by the Partners in the following proportions (Article 7.1 and Schedule 2 of the initial LLP Agreement)

First Party : 99% i.e. Rs. 99,000/- (Rupees Ninety-Nine Thousand only).

Second Party : 1% i.e. Rs. 1,000/- (Rupees One Thousand only)



Any further contributions, if required by the LLP shall be brought by the Partners in such ratio as may be decided with the consent of all the Partners from time to time.

The new profit and loss sharing ratio of all the partners shall be as follows:

(Article 13.2 and Schedule 3 of the Initial LLP Agreement read with para 5 of supplementary agreement)

Sr. No.	Name of Partner	Profit Sharing Ratio
1.	Rajeev Raina	99%
2.	Rakesh Arora	1%
	TOTAL	100%

IN WITNESS WHEREOF THIS SUPPLEMENTAL AGREEMENT IS SIGNED BY THE PARTIES HERETO THE DAY MONTH AND YEAR FIRST ABOVE WRITTEN

Signed and delivered by the Partners of:

TDH REALTY LLP*

1. Rajeev Raina (Incoming Partner)



2. Rakesh Arora (Incoming Partner)

3. Shashank Dixit (Outgoing Partner)

ATTESTED
NOTARY PUBLIC
DELHI INDIA

4. Dinesh Kumar (Outgoing Partner)

18 NOV 2021

Witness:

Witness:

A. Name: PUNJABI JK

B. Name: KISHOR K

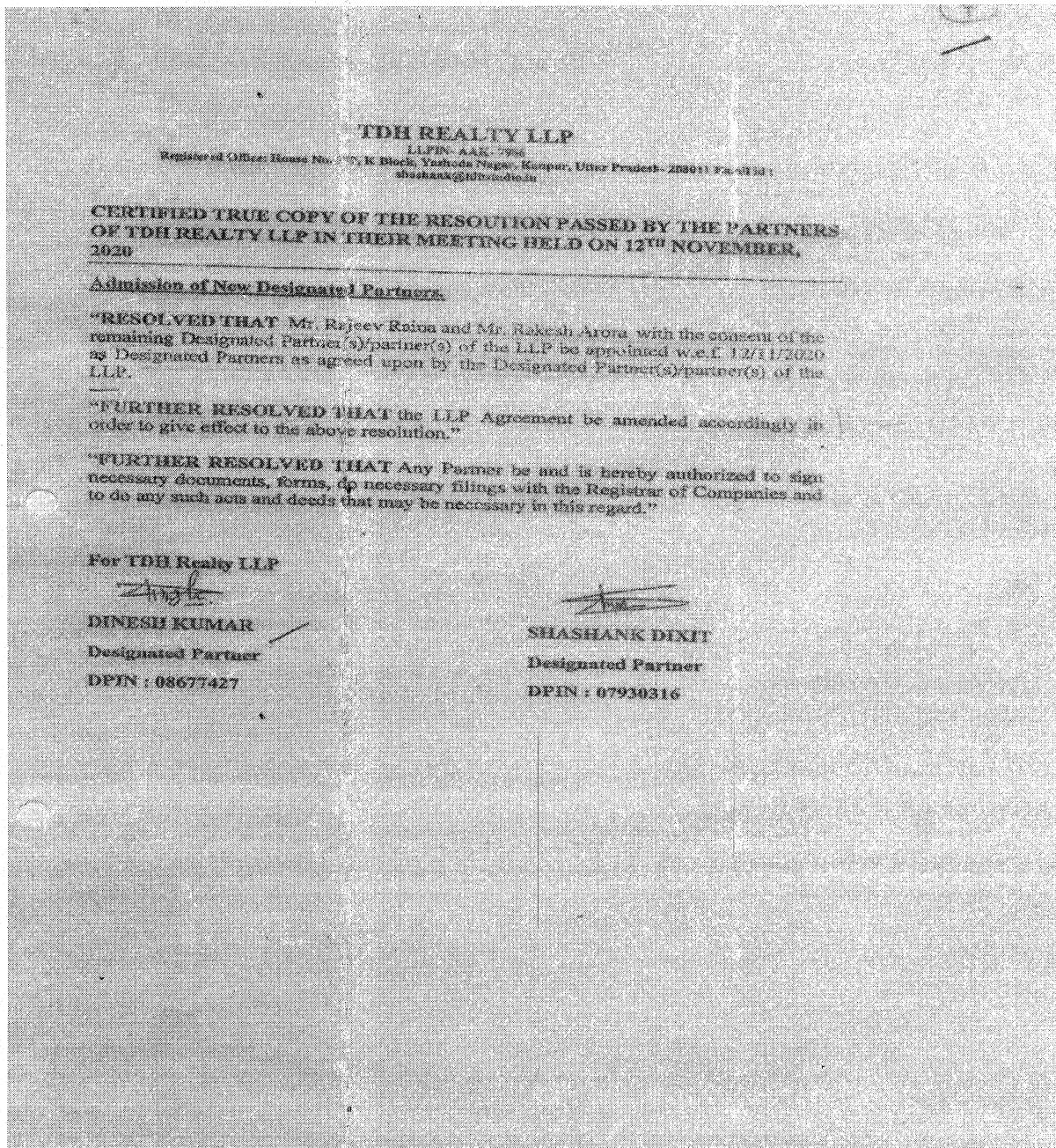
Address: 11 NO. 36 GND (A) NO. 7
Address: 11 NO. 36 GND (A) NO. 7
11 NO. 24

Address: 11 NO. 36 GND (A) NO. 7
Address: 11 NO. 36 GND (A) NO. 7
11 NO. 24

Signature:

Signature:

49. We take into account that suitable resolution was passed by the Appellant/ TDH Realty LLP noting the cessation of Mr. Dinesh Kumar and Mr. Shashank Dixit as designated partner w.e.f. 12.11.2020 and the said resolution was signed by Mr. Rajeev Raina and Mr. Rakesh Arora as designated partners.



TDH REALTY LLP

LLP-AAC-796
Registered Office House No. 179, K Block, Yamuna Nagar, Gurugram, Haryana- 122001 Email id :
shashank@tdhrealtyllp.com

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE PARTNERS
OF TDH REALTY LLP IN THEIR MEETING HELD ON 17TH NOVEMBER,
2020**

Cessation of Designated Partners

"RESOLVED THAT the resignation of Mr. DINESH KUMAR and SHASHANK DIXIT (Designated Partners) be and is hereby noted with immediate effect."

"RESOLVED FURTHER THAT the Partners places on record its appreciation for the assistance and guidance provided by Mr. DINESH KUMAR and SHASHANK DIXIT during their tenure as Designated Partner of the LLP".

"FURTHER RESOLVED THAT Any Partner be and is hereby authorized to sign necessary documents, forms, do necessary filings with the Registrar of Companies and to do any such acts and deeds that may be necessary in this regard."

For TDH Realty LLP

Rajeev Raina

Designated Partner

Rakesh Arora

Designated Partner

50. We note that form 13 in accordance with Rule Section 24(1) of the LLP Act, 2008 was signed by Mr. Dinesh Kumar and Mr. Shashank Dixit as notices of their intention to resign as Designated Partners w.e.f. 12.11.2020. In terms of Section 24(1) of LLP Act, 2008 a person who intent to resign from the LLP is required to give notice in writing of not less than 30 days and then only he cease to be partner of LLP. In the present case, the notice period of 40 days was clearly followed.

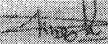
Form 13
(Refer section 24(1) of the Act)
Notice of cessation by a Designated Partner to other Partners.

Date: 10th October, 2020

To
TDH REALTY LLP*
House No. 179, B Block,
Yashoda Nagar, Kanpur
Uttar Pradesh- 208011.

In accordance with the provisions of section 24(1) of the Limited Liability Partnership Act, 2008, I, Dinesh Kumar, do hereby give notice of my intention to resign as a Designated partner of the TDH REALTY LLP with effect from 12th November, 2020.

Name of the designated partners: Dinesh Kumar
Address: R/o Village Kota Khas, Bairadpur, Kota, Rajasthan, Aligarh- 202471, Uttar Pradesh


Dinesh Kumar

Date: 10th October, 2020
Place: Noida

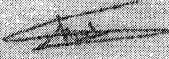
Form 13
(Refer section 24(1) of the Act)
Notice of cessation by a ceasing partner to other Partners.

Date: 10th October, 2020

To
TDH REALTY LLP
House No. 179, K Block,
Yashoda Nagar, Kanpur,
Uttar Pradesh- 208011.

In accordance with the provisions of section 24(1) of the Limited Liability Partnership Act, 2008, I, Shashank Dixit, do hereby give notice of my intention to resign as a designated partner of the TDH REALTY LLP with effect from 1st November, 2020.

Name of the designated partner: Shashank Dixit
Address: G-243, Jalvayu Villr, Sector P4, Kusana, Gautam Buddha Nagar, Uttar Pradesh- 201310


Shashank Dixit

Date: 10th October, 2020
Place: Noida

51. We have noted from Form 8 which has been placed before us for filing annual returns of the Appellant i.e., Part A- Statement of Solvency and Part B- Statement of Accounts which indicate that the partners fund as on 31.03.2020 consisted of Rs. 1,00,000/- as contribution receipt from partners and Rs. 1,63,781/- as reserve surplus. Thus, the total partners fund was Rs. 2,63,781/- as on 31.03.2020. Whereas, the assets & liabilities of the Appellant/ TDH Realty LLP were Rs. 17,582,234,047/- (Rupees 1,758 Crores). Similarly, the profit after tax (PAT) was merely Rs. 1,57,483/- These financial facts hide more than reveal the true and fair financial position of the Appellant . Perhaps in this context, Para 15 of the Impugned Order has been recorded by the Adjudicating Authority, which has been challenged by the Appellant in the Appeal filed before us . The Para 150 of the Impugned Order dated 26.03.2021 reads as under :-

"150. Further upon analysis of the balance sheet of the Applicant TDH Reality LLP it is observed the paid-up capital of the Applicant is only Rupees One Lakh and the Company was incorporated recently. Ltd. Senior Counsel Mr. Joshi, submitted that the purported claim/the transaction of the Applicant having made an investment of approximately Rupees One Thousand Five Hundred Forty-Eight Crores and taking over the liability of approx.. Rupees Seventeen Hundred Crores is without any financial backing of the Applicant. After perusal of the balance sheet of the Applicant the Adjudicating Authority also concurs with the submissions of the Ld. Senior Counsel and this transaction of having invested more than Rupees One Thousand Five Hundred Crores in the CCDS is not convincing, satisfying without any financial backup,

capability and appears to be only book entry and not supported with any financials."

(Emphasis Supplied)

LLP FORM NO. 8		Statement of Account & Solvency
(Pursuant to rule 24 of Limited Liability Partnership Rules, 2008)		
Note - All fields marked in * are to be mandatorily filled.		
<input checked="" type="radio"/> Annual or Interim <input type="radio"/> Annual <input type="radio"/> Interim		
*Statement of Account and Solvency as at 31/March/ 2020		
*Limited Liability Partnership identification number (LLPIN) / Foreign Limited Liability Partnership identification number(FLLPIN) AAVK-980		
Name of Limited Liability Partnership(LLP)/ Foreign Limited Liability Partnership(FLLP) TDH REALTY LLP		
Address of registered office of the LLP or principal place of business in India of the FLLP HOUSE NO. 178, KB BLOCK YASHODA NAGAR KANPUR UTTAR PRADESH 2080011		
*e-mail ID of the LLP architectcs42@gmail.com		
Total monetary value of obligation of contribution as on above date (in Ru.) 100,000		
Part A: Statement of Solvency		
<input checked="" type="checkbox"/> We being the designated partners or authorized representatives of TDH REALTY LLP do solemnly affirm and sincerely declare that we have made a full inquiry into the affairs of this Limited Liability Partnership/ Foreign Limited Liability Partnership, and that, having done so, have formed the opinion that the LLP/ FLLP, <input checked="" type="radio"/> is <input type="radio"/> is not able to pay its debts in full as they become due in the normal course of business.		
<input checked="" type="checkbox"/> We append a Statement of the Assets and Liabilities as at 31/03/2020 (DD/MM/YYYY) and Income and Expenditure for the period ended on 31/03/2020 (DD/MM/YYYY) being the latest practicable date before the making of this declaration.		
<input checked="" type="checkbox"/> We have already filed a statement indicating creation of charges or modification or satisfaction thereof till the present financial year.		
We declare that the turnover <input checked="" type="radio"/> does not exceed <input type="radio"/> exceeds 40 lakh.		
<input checked="" type="checkbox"/> We declare that the obligation of contribution <input checked="" type="radio"/> does not exceed <input type="radio"/> exceeds 10 lakh rupees.		
<input checked="" type="checkbox"/> The partner/authorized representatives have taken proper care and responsibility for maintenance of adequate accounting records and preparation of accounts in accordance with the provisions of the LLP Act and the Rules made thereunder.		
<input checked="" type="checkbox"/> We make this statement conscientiously believing it to be true, and by virtue of the provisions of the Limited Liability Partnership Act, 2008, the rules made thereunder.		

Page 1 of 5

Part B: Statement of Account

Statement of Assets and Liabilities as at 31/03/2020 (DD/MM/YYYY)

Particulars	Figures as at the end of the current reporting period	Figures as at the end of the previous reporting period (in Rs.)
I. CONTRIBUTION AND LIABILITIES		
1. Partner's Funds		
Contribution received	100,000	100,000
Reserves & surplus (including surplus being the profit/loss made during year)	163,781	6,200
2. Liabilities		
Secured loans	0	0
Unsecured loans	181,344	36,000
Short term borrowing	0	0
Creditors/trade payables - Advance from customers	75,000	0
Other liabilities (to specify)	17,562,000,000	0
LOAN TAKEOVER		
Provisions		
for taxation	71,410	6,820
for contingencies	0	0
for insurance	0	0
Other provisions (if any)	5,200	0
Total	17,562,234,047	147,119
II ASSETS		
Gross Fixed assets (including Intangible assets)	0	0
Less: depreciation and amortization	0	0
Net fixed assets	0	0
Investments	15,633,000,000	0
Loans and advances	1,043,000,000	0
Inventories	0	0
Debtors/trade receivables	0	0
Cash and cash equivalents	162,505	147,119
Other assets (to specify)	71,442	0
TDS RECEIVABLE AND OTHER		
TOTAL	17,562,234,047	147,119

Note: Please attach statement of contingent liabilities not provided for, as an attachment.

***Statement of Income and Expenditure**

Particulars	Figures for the period (Current reporting period)		Figures for the period (Previous reporting period) (in Rs.)	
	From 01/04/2019 To 31/03/2020	[DD/MM/YYYY]	From 01/04/2018 To 31/03/2019	[DD/MM/YYYY]
Income				
Gross turnover		730,450		202,350
Less: Excise duty or service tax		0		0
Net Turnover details				
Domestic turnover				
(i) Sale of goods manufactured		0		0
(ii) Sale of goods traded		0		0
(iii) Sale or supply of services		730,450		202,350
Export turnover				
(i) Sale of goods manufactured		0		0
(ii) Sale of goods traded		0		0
(iii) Sale or supply of services		0		0
Other income		28		0
Increase/(decrease) in stocks (including for raw materials, work in progress and finished goods)		0		0
Total income		730,478		202,380
Expenses				
Raw material consumed		0		0
Purchases made for re-sale		0		0
Consumption of stores and spares parts		0		0
Power and fuel		0		0
Personnel Expenses		180,000		65,000
Administrative expenses		321,585		98,686
Payment to auditors		0		0
Selling expenses		0		0
Insurance expenses		0		0
Depreciation and amortization		0		0
Interest		0		0
Other expenses		0		0
Total expenditure		501,585		163,686
Net Profit or Net Loss (before taxes)		228,893		38,694
Provision for Tax		71,410		5,820
Profit after Tax		157,483		32,874
Profit transferred to Partners' account		157,483		0
Profit transferred to Reserves and surplus		0		12,874

Page 3 of 5

Attachments

1. Disclosures under Micro, Small and Medium Enterprises Development Act, 2006
2. Statement of contingent liabilities not provided for, if any
3. Optional attachment(s) - if any

 Attach Attach Attach**List of attachments**

TDH DECLARATION LETTER

 Remove attachment

Signature of Designated Partners of LLP or authorized representatives (AR) of a Foreign LLP

SHASHANK DIXIT
MK DIXIT 22/2/2020

*DPIN/ Income-tax PAN

07930316

Signature of Designated Partners of LLP or authorized representatives (AR) of a Foreign LLP

DILIP KUMAR
KUMAR 22/2/2020

*DPIN/ Income-tax PAN

03677437

Certificate by Designated partner or Authorized representative or Auditor

I hereby certify that I have verified the particulars contained in the Statement of Account and Solvency including the Statement of assets and liabilities as at [REDACTED] (DD/MM/YYYY) and the income and expenditure for the period ending [REDACTED] (DD/MM/YYYY) from the accounting records and other books and papers of

TDH REALTY LLP

and found them to be true and fair.

*DPIN/ income-tax PAN/ Membership number 07930316

 Pre-filled

Name of the designated partner/ authorized representative/ auditor SHASHANK DIXIT

*Address *Line I G-243

Line II JAL VAYU VIHAR SECTOR P4 KASANA

*City GAI TAM BUDDHA NAGAR

*District

State UTTAR PRADESH-UP

*Pin code 201310

*Country IN

Phone 7086367773

Fax

ISO country code IN

*e-mail ID arul.dixit804@gmail.com

To be digitally signed by

Designated Partner/ Authorized representative/ Auditor

Certificate

It is hereby certified that I have verified the above particulars (including attachment(s)) from the records of

TIDH REALTY LLP

and found them to be true and correct. I further certify that all the required attachment(s) have been completely attached to this form.

- Chartered accountant (in whole-time practice) or Cost accountant (in whole-time practice) or
 Company secretary (in whole-time practice)

Whether associate or fellow Associate Fellow

Membership number or certificate of practice number

088598

Presented by

This eForm has been taken on file maintained by the registrar of companies through electronic mode and on the basis of statement of correctness given by the filing LLP.

Auto-approved By

DS DIN
CELL 1

Page 5 of 5

52. On a pointed query to the Proposed Intervenors by us regarding payment made as consideration to outgoing Designated Partners of the Appellant i.e., TDH Realty LLP, Learned Counsel for the Proposed Intervenors clarified that there was an understanding on the sum between incoming partner and outgoing partners at value of Rs. 1,00,000/-. On a further query by this bench, regarding confirmation of such payment having made by the Proposed Intervenors, Learned Counsel for the Proposed Intervenors conceded that the payment could not be made but all other paper work were completed.

53. On a similar query regarding settlement agreement, the Learned Counsel for the Appellant stated that the settlement agreement was signed on 30.06.2023 and various formalities as per the said settlement agreement have been completed by all the concerned parties. It is the case of the Appellant that in pursuant to same settlement agreement, the present I.A. No. 3865 of 2023 in Company Appeal (AT) (Ins.) No. 361 of 2021 and I.A No. 3864 of 2023 in Company Appeal (AT) (Ins.) No. 476 of 2021 were filed to withdraw both the appeals as one of the responsibility of the Appellant, in terms of settlement agreement is to withdraw all such appeals. As regard specific amount of the settlement, it was submitted by the Appellant that the Settlement Agreement has been signed at zero (0) rupees, since claims and counter claims are claimed to be squared off.

54. From these facts, it appears that the partners fund of the Appellant/ TDH Realty LLP is only Rs. 2.64 Lakhs (approx.) and the assets & liabilities of the Appellant/TDH Realty LLP is Rs. 1758 Crores and consideration for

change in ownership between incoming partners and outgoing partners was barely for Rs. 1 Lakh. It is also noted from the submissions that the Settlement Agreement between Appellant/TDH Realty LLP and other signatories to the settlement agreement including SRA, NCDs was in effect settled at zero rupees (whereas, TDH Realty LLP had claims over their holding of 10,605 NCDs of Rs. 10 Lakh for one i.e., Rs. 1060.5 Crores along with predetermine interest rate).

55. The figures as noted in the previous paragraphs, do not indicate the true transactions and the intentions. However, the Appellant submitted that the at this stage, they have prayed only to be allowed to withdraw applications in terms of Rule 11 of NCLAT Rules, 2016 and this Appellate Tribunal should allow the same which is in accordance with Settlement Agreement.

56. Hence, to come back the questions as whether the Appellant is rightful party who is entitled to withdraw these appeals or the Proposed Intervenors became entitled to be allowed to act as Intervenors to oppose such withdrawals of appeals and in effect should be allowed to continue with the Appeal.

57. It is observed that none of the parties have denied the existence of various documents submitted by the Proposed Intervenors, albeit the Appellant's statement that these have not been executed. The stark fact remains that the Proposed Intervenors have also conceded that no amount was transferred as contribution regarding their joining as partners/ designated partner of the Appellant/ TDH Realty LLP and we wonder in

absence of any consideration how ownership of LLP get transferred from one set of partners to new set of partners.

58. We are perplexed and intrigued by the fact that when the Proposed Intervenors have signed various documents including consent to act as designated partners and signed supplemental agreement as discussed in detailed discussion earlier, why these were not executed and implemented and why the master data of MCA continues to reflect the names of Mr. Shashank Dixit and Mr. Dinesh Kumar as designated partners of the Appellant. Similarly, it could not be explained as why various income tax returns including for the assessment year 2022-23, filed on 30.10.2022 by the Appellant was signed by Mr. Shashank Dixit as designated partner of the Appellant/ TDH Realty LLP and not by any one of the Proposed Intervenors.

59. Similarly, it is surprising to note that Mr. Rajeev Raina who was appointed on 12.11.2020 to act as authorised signatory of the Appellant to represent the Appellant in various legal fora, continued to act only as authorized signatory of the Appellant/ TDH Realty LLP and not as designated partner despite their claim to have become Designated Partners of the Appellant w.e.f. 12.11.2020.

60. On other hand, the things are not very clear as why the alleged outgoing Designated Partners of the Appellants/ TDH Realty LLP signed various documents of their intent to resign way back on 10.10.2020 w.e.f. 12.11.2020 and also signed various documents inter-alia including, resolutions as outgoing designated partners on 12.10.2020 and yet they

continued to act as designated partners including signing the annual financial statements. No one could explain as why these documents , if not right and valid, could not be annulled, or cancelled by concerned parties.

61. We also take note of the fact that Mr. Rajeev Raina was authorized as legal representative of the Appellant on 12.11.2020 and was removed by the alleged outgoing Designated Partners of the Appellant on 02.07.2023, after gap of almost three years and after signing all such documents resigning their position as designated partners and recognising the Proposed Intervenors as incoming partners. No palpable and convincing reasoning have been brought out to explain this phenomenon.

62. Be that as it may, despite all vagueness and not convincing reasons from both parties i.e., the Appellant and the Proposed Intervenors regarding several unanswered issues discussed in preceding paragraphs, the contention of the Appellant seems to be more appropriate as they still continue to be shown as designated partner in the master data of MCA Portal and the Appellant through the designated partners Mr. Shashank Dixit and Mr. Dinesh Kumar continued to sign various documents including Income Tax Returns and Annual Financial Statements. Looking to these facts, it appears that the Appellant is rightful party to withdraw the Appeals and the same is allowed.

As regard, the claims of the Proposed Intervenors to be allowed as Intervenors in order to pursue the Appeals, since their dispute is mainly regarding their rights as Designated Partners of the Appellant, we feel that this Appellate Tribunal is not the right forum to decide such interse disputes

which seems to be contractual dispute between the parties. It is for the Proposed Intervenors to take legal remedy in accordance with the law for disputes with the Designated Partners of the Appellant, if so required by them. In this background, the Proposed Intervenor cannot be allowed to be admitted as Intervenors.

63. Before parting, we will like to mention that after hearing all the averments from the representatives of the parties including the Proposed Intervenors, the Judgment was reserved in open court on 28.08.2023.

Subsequently, Mr. Sumesh Dhawan advocate appeared on behalf of the Proposed Intervenors and made a mention, in presence of Advocates of the Appellant that he wants to file Written Submission in support of his arguments, which was not opposed by Advocate of the Appellant and they also sought liberty to file their Reply to the Written Submission of the Proposed Intervenors. Accordingly, the same was allowed in open court. The Proposed Intervenors accordingly submitted their Written Submission on 29.08.2023 and the Appellant submitted Written Submissions in response to the Written Submissions filed on behalf of the Proposed Intervenors vide Diary No. 47348 on 06.09.2023. These Written Submissions have been considered in this judgment. This is being recorded for sake of clarity and integrity of records.

64. In fine, the withdrawal applications I.A. No. 3865 of 2023 in Company Appeal (AT) (Ins.) No. 361 of 2021 and I.A No. 3864 of 2023 in Company Appeal (AT) (Ins.) No. 476 of 2021 are allowed. Since, the appeals have been withdrawn by the Appellant, the Impugned Orders continues including Para

150 in Impugned Order dated 26.03.2023 discussed earlier which were challenged by the Appellant to be unfounded and unwanted comments by the Adjudicating Authority. No Costs. The 'Interlocutory Application(s)', if any, are closed.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Naresh Salecha]
Member (Technical)**

Simran