

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION, UP
C-1 Vikrant Khand 1 (Near Shaheed Path), Gomti Nagar Lucknow-226010**

Appeal Execution Application No. AEA/1/2023

(Date of Filing : 12 Jan 2023)

(Arisen out of Order Dated 07/01/2023 in Case No. EA/08/2015 of District Gautam Buddha Nagar)

1. Greater Noida Industrial Development Authority

Gautam Budha Nagar

.....Appellant(s)

Versus

1. Mahesh Mitra

Delhi

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE ASHOK KUMAR PRESIDENT

HON'BLE MR. Vikas Saxena JUDICIAL MEMBER

PRESENT:

Dated : 25 Apr 2023

Final Order / Judgement

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

UTTAR PRADESH, LUCKNOW

EXECUTION APPEAL NO. AEA 01 OF 2023

(Against the order dated 07-01-2023 in Execution Case No. 8//2015 of the District Consumer Commission, Gautam Budh Nagar)

Greater Noida Industrial Development Authority

Plot No.1, Sector- Knowledge Park-IV

Greater Noida City

Gautam Budh Nagar

...Appellant

Vs.

Mahesh Mitra

Proprietor, M/s Mitra Master Maruti

E-86, Swam Dayanand Colony

Delhi 110007

...Respondent

BEFORE:

HON'BLE MR. JUSTICE ASHOK KUMAR, PRESIDENT

HON'BLE MR. VIKAS SAXENA, MEMBER

For the Appellant : Sri Prashant Chandra & Shri Rajesh Chadha,
Advocates.

For the Respondent : Sri Mahesh Mitra (in person.)

Dated : 22-06-2023

JUDGMENT

PER MR. VIKAS SAXENA, MEMBER

The instant Execution appeal has been filed under Section 73 of the Consumer Protection Act, 2019 by the Greater Noida Industrial Development Authority, District Gautam Budh Nagar against the order passed by the learned District Consumer Commission, Gautam Budh Nagar in Execution Case No. 8/2015 dated 07-01-2023 by which the learned District Consumer Commission adjudged the C.E.O. of Greater NOIDA Authority is guilty of non-compliance of the order Of Honourable NCDRC and sentenced her an imprisonment of one month and imposed a fine for Rs. 2000/-.

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Being aggrieved with the impugned order the appellant Greater NOIDA Industrial Development Authority has come up in appeal and has prayed for the following relief:-

“It is therefore most humbly prayed that Hon’ble Commission may be graciously pleased to call for the records of the case and allow the Appeal of the Appellant with cost throughout and set aside impugned Order under challenge of the learned District Forum and may pass such further orders as deem fit and proper in the circumstances of the case.”

Briefly stated the facts of the case are that the respondent/complainant instituted a complaint case No. 51/2005 against the appellant before the learned District Consumer Commission, Gautam Budh Nagar for allotment of plot admeasuring 2500 sq. mtr

and also prayed for compensation and cost of the case. The complaint was contested by the appellant and who submitted that the complainant vide application dated 06-01-2001 applied for allotment of industrial plot of 500 to 1000 mtr. for automobile workshop and deposited registration money for the same. The complainant was not allotted the said plot; hence he filed the time barred complaint before the District Consumer Commission, Gautam Budh Nagar. The complaint was allowed by the District Consumer Commission vide judgment and order dated 08-12-2006 and directed the Authority to allot a plot of 1000 sq. mtr. to 2500 sq. mtr. and also awarded Rs.1,500/- and Rs.2,000/- as compensation and cost of the case respectively.

The appellant preferred an Appeal against the impugned judgment and order before this Commission being Appeal No. 106/2007 which was allowed vide judgment and order dated 21-12-2010 by which the impugned judgment of learned District Consumer Commission was modified with a direction to the appellant for refund of deposited amount of Rs.20,000/- to the complainant along with interest at the rate of 6% from date 06-01-2001. The appellant in compliance of the said judgment vide its letter dated 01-04-2013 sent a cheque No. 229610 dated 22-03-2013 drawn on Bank of Baroda of Rs.34,696/- to the complainant.

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The complainant against the judgment of this Commission preferred a Revision Petition No. 892/2011 before the Hon'ble National Commission. The Hon'ble National Commission vide its judgment dated 30-05-2014 set aside the judgment passed in appeal by this Commission and modified the judgment of the District Consumer Commission and passed the following order:-

“..... Based on the discussion above, it is held that the order passed by the State Commission is not based on correct appreciation of the facts and circumstances of the case on record and the same is ordered to be set aside. The District Forum, vide their order, gave direction to the Authority to make allotment of plot of area from 1000 sq. mtr. to 2500 sq. mtr. However, since the petitioner/complainant had stated in his application that he wanted allotment for 500 sq. mtr. to 1000 sq. mtr. The direction given by the District Forum is ordered to be modified to the extent that the Authority may make allotment of plot of area from 500 sq. mtr. to 2500 sq. mtr. The Authority should give due consideration to the Project Report and other documents submitted by the petitioner/complainant and then make allotment of a plot as directed above, depending upon the exact requirement, as per the previous terms and conditions.

In view of the discussion above, this petition is accepted, the order passed by the State Commission is set aside and the order passed by the District Forum is modified as stated above. The respondent is directed to take further action in the matter within a period of 3 months from today. There shall be no order as to costs.”

It is submitted by appellant that the complainant vide application dated 06-01-2001 had not tendered the required documents including Project Report, Liquidity Certificate etc. with the Authority for its examination as per procedure. The allotment of plot was subject to condition of submitting a detailed project-report and other documents with the Authority for their scrutiny and examination in order to arrive at a conclusion whether he is entitled for an allotment of industrial plot and fulfill its conditions. The appellant vide its letter dated 10-09-2014 informed the complainant that the appellant has decided and proposed to provisionally allot a plot of 1000 to 2500 sq. mtr. at the prevalent rate

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of industrial plot @ Rs.9, 810/- per sq. mtr. and requested to give his consent within 30 days for the same. The aforesaid letter was followed with another letter dated 07-11-2014.

Thereafter, the complainant filed the execution Case No. 8/2015 for compliance of judgment and seeking allotment of plot as directed by Hon'ble National Commission. The appellant filed its objection dated 19-10-2015 and submitted that vide letters dated 10-09-2014 and 07-11-2014 the appellant has already complied with directions of the Hon'ble National Commission *per contra* complainant is violating the same.

The appellant through its Counsel also filed another detailed reply in the form of objection vide reply/application dated 02-08-2017 vide which prayed for direction against the complainant to fulfil his obligations in pursuance to direction of Hon'ble National Commission passed in judgment in Revision Petition No. 892/2011

. The appellant also filed written arguments on 02-08-2017 clearly narrating that it is the decree holder who is flouting the orders of the Hon'ble National Commission in not complying the same has not submitted the project report and other documents for examination of the authority to evaluate and pursue the same for the purpose of taking decision in allotment of industrial plot.

It has been stated by the appellant that the learned District Consumer Commission on taking cognizance of the said fact of non-production of project report so far by the decree holder, passed an order dated 07-11-2017 directing the complainant to produce the copy of project report, of being provided to the authority. Against the aforesaid order dated 07-11-2017, the complainant preferred Revision Petition No. 152/2017 before this Commission which was dismissed vide judgment dated 11-12-2017. Vide said judgment it was observed and held as under:-

“In view of the direction given by Hon'ble National Commission in above judgment the District Consumer Forum has to see as to whether authority has given due consideration to the Project report and other documents submitted by the petitioner/complainant. In view of this aspect of the case the District Forum has directed Revisionist/Decree Holder vide impugned order to bring on record the copy of Project

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Report. The Order passed by District Forum cannot be said to be against law or direction given by the Hon'ble National Commission, I find no justification for interference in the impugned Order at this stage. Revision petition is dismissed."

Thereafter in the said execution proceedings, the complainant without any application or affidavit in support filed generated/concocted documents as stated to be project report by putting signature on the same as 19-12-2017 before the District Consumer Commission. Even though the same was not the project report as being alleged to have been filed indicating any receipt on the same of the Authority and further there was no documents of Liquidity Certificate, Projected Balance Sheet, Lay out plan etc. as required and directed by the Hon'ble Commission.

The appellant inspite of making all compliances on its part, also vide its affidavit dated September, 2017 stated that the complainant has sent a letter dated 28-07-2017 stated that complainant must come out with 10% reservation money, liquidity certificate etc. in order to examine and evaluate whole lot of papers and documents while conducting the process of allotment of industrial plot, but complainant has not taken any adequate actions in this regard which clearly demonstrates that the complainant is defaulter and negligent, and this aspect of the matter has not been considered by the learned District Consumer Commission while passing the impugned order. The appellant also filed another affidavit dated 25-09-2017 before the District Consumer Commission to establish non compliance on the part of the complainant which further shows that the complainant is flouting the directions of the Hon'ble National Commission.

The learned District Consumer Commission without considering the said directions of Hon'ble National Commission and without following due procedure of law straight away without any basis, and in absence of any show cause notice, erred in passing orders for issuance of warrants of arrest against CEO who recently assumed the additional charge as CEO of appellant authority w.e.f. 01-10-2022 and no opportunity being granted, and held erroneously guilty amounts to

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denial of natural justice by not giving any opportunity, whereas all compliance required on the part of appellant authority was done.

We have heard learned Counsels for the appellant Sri Prashant Chandra, Sr. Advocate and Sri Rajesh Chadha, Advocate as well as respondent Sri Mahesh Mitra who is present in person, and perused the record.

The impugned order dated 07-01-2023 has been passed by the Id. District Commission by issuing an arrest warrant against judgement debtor i.e. Chief Executive Officer of the Greater Noida Authority, which has been passed in the following manner:-

निष्पादन वाद के तथ्यव परिस्थितियों को दृष्टिगत (करने) से यह स्पष्ट होता है कि आदेश का अनुपालन न किए जाने के लिए ग्रेटर नोएडा औद्योगिक विकास प्राधिकरण के सीईओ पूर्णता दोषी है। क्योंकि उनके द्वारा निष्पादन वाद को येन केन प्रकारेण लंबित किए जाने का प्रयास किया गया है जिसके लिए वह स्वयं दोषी है। इनके विरुद्ध उपभोक्ता संरक्षण अधिनियम, 1986 की धारा 27 के अंतर्गत कार्रवाई किए जाने के अतिरिक्त अन्य कोई विकल्प नहीं बचता है।

उपभोक्ता संरक्षण अधिनियम, 1986 की धारा 27 में प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य कार्यकारी अधिकारी ग्रेटर नोएडा औद्योगिक विकास प्राधिकरण को 1 माह के कारावास से दंडित किया जाता है तथा साथी ₹2000/- का अर्थ भी किया जाता है

Being aggrieved from the order the judgement debtor Greater Noida Authority has submitted this appeal. In the Memorandum of appeal mainly following these Grounds have been taken by the judgement debtor:

1. That the judgement letter has taken all the necessary measures to comply the order of Honorable National Consumer Redressal Commission dated 30-05-2014, per Contra, the component himself has not taken appropriate steps to comply the same and therefore the judgement debtor is not guilty of non-compliance of the order.

1. That the learning district Commission has not followed the appropriate procedure before convicting the J.D./appellant and has not afforded an opportunity to the judgement debtor to explain that it has
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complied the order of Honorable NCDRC. For this reason impugned order is illegal and defective and is liable to be set aside.

Regarding the first point and to show that the authority has complied the order dated 30-05-14 of Honourable NCDRC, it is explained by the appellant that it has provisionally allotted the required plot initially vide its letter dated 30-05-2014 followed with other letters including later dated 10-09-2014 and letter dated 07-11-2014, but the complainant/decree holder did not come forward by depositing the material document of a detailed report with the authority so that the new consideration upon the same may be given by the authority in terms of direction of Honorable National Commission. In light of the aforesaid explanation of the judgement debtor, we have seen the order of Honorable NCDRC which is executable in the execution proceedings in question. The order is being produced here under which is as following —

"The district forum, white their order, gave direction to the authority to make allotment of plot of area from 1000 square metre to 2500 square meter. Over, says that petitioner/complaint had started in his application that he wanted allotment of 500 square meters to 1000 square meter, the direction given by the district forum is order to be modified to the extent that the authority may make allotment of plot of area from 500 square meters to 2500 square meter. The authority should give due consideration to the project report and other documents submitted by the petitioner/complaint and then make allotment of the plot as directed about, depending upon the exact requirement, as per previous terms and conditions. "

The appellant has pointed out some lacunas in the project report submitted by the decree holder and insisted that unless a detailed project report is submitted by the decree holder, an effective compliance by him of the order dated 30-05-2014 of Honorable NCDRC cannot be assumed. In our view this argument raised by the appellant has no force as nowhere in the order of Honorable NCDRC, these conditions are imposed for the project report submitted by that decree holder/complainant. The project report is meant for determining the exact requirement of the decree holder himself so that a plot of area ranging from 500 m to 2500 m (depending upon the requirement of DH) may be allotted by the judgement-debtor/

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authority. A project report has already been submitted by the decree holder as stated by the appellant in this memorandum and thus the decree holder has taken the required steps for the compliance of the order of Honorable NCDRC.

As far as, the compliance of the order by the appellant authority itself is concerned, it has placed a heavy reliance upon its letter dated 10 September 2014 and the letter dated 7th November 2014 communicating the decree holder that an Industrial plot has been allotted to him. The letter dated 10 September 2014 inter alia communicates as following : —

"A plot of 1000 to 2500 square meter is proposed to be allotted to you at the prevalent rate of allotment of Industrial plot @Rs. 9810. 00 per square meter.

You are required to give your consent regarding above within 30 days from the issuance of the date of this letter."

The decree holder/complainant objected on this proposal that as per the order of Honorable NCDRC he is entitled the plot in question at the rate initially agreed upon by both the parties, therefore, he did not give consent for the same i.e. the plot on new/current rate. We totally agree with the argument of the decree holder because the Honorable NCDRC has categorically directed in the order that the authority shall make allotment of the plot as per 'previous terms and conditions'. Therefore in light of the order of Honorable NCDRC, the judgement debtor is bound to provide the plot as per previous terms and conditions, and not on new conditions. We find that in compliance of the order of Honourable NCDRC, the judgement debtor should give the plot at the rate agreed upon by the parties initially, which can be considered as per previous terms and conditions in compliance of the order of Honorable NCDRC and so far no effective compliance of the order has been initiated by the judgement Debtor/ authority and by offering the plot on new rates, cannot be considered an effective compliance of the order.

The second point raised by the appellant against impugned order of learned district Commission is that, it has not followed the appropriate procedure before convicting the judgement debtor. We have considered the point and found that the learned district Commission has initiated

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proceedings under section 27 of the consumer protection act, 1986. The relevant Section is reproduced here under : —

27. *Penalties. — (1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:*

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.

On perusal of the afore said provision of the statute it is clear that a Consumer Commission while imposing penalties under section 27 of the consumer protection act, 1986, shall exercise powers of a magistrate of first class as per “Code of Criminal Procedure, 1973” and shall try the offence (defined in the statute) in summary manner. Which unambiguously gives an inference that for penalizing the erring party u/s 27 of the Consumer protection Act, the Summary procedure, given in the “Code of Criminal Procedure”, should be adopted? We draw this conclusion from the judgement of Honorable Apex Court In *KAMLESH AGGARWAL versus NARAIN SINGH DABBAS & ANR reported in IV (2015) CPJ 1 (SC)*, the Honourable Court while scrutinizing various provisions of consumer protection act, 1986

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Expressed its view that in exercise of powers under section 27 of the act, a consumer Commission should follow the provisions of Criminal Procedure Code. The Honorable Apex Court held: —

14. It was further contended by him that the District Forum should have followed the provisions of Criminal Procedure Code while dealing with the application filed by the appellant under Section 27 of the Act and passed the order and therefore he submits that the impugned order does not warrant interference by this Court.

15. We have heard both the learned Counsel on behalf of the parties. In the facts and circumstances of the case, we are of the view that the State Commission should have remanded the matter to District Forum after setting aside its order dated 26.11.2010 with a direction to proceed with the matter in accordance with the procedure contemplated under the Code of Criminal Procedure referred to supra for taking penal action against the respondents who are the concerned officers of Navchetna Sahkari Awas Samiti Ltd. for non-compliance of the order.

Therefore, this Court in exercise of power of this Court under Article 142 of the Constitution of India, the order of the State Commission is modified to the extent of remanding the case to the District Forum to execute the decree and take penal action against the respondents by following the procedure under Section 262 read with Chapter XX and Section 251 of the Code of Criminal Procedure in accordance with law.

The National Consumer Disputes Redressal Commission, NEW DELHI in case of *RAJESH GADE Versus MINAXI BANODKAR & ORS* reported in I (2019) CPJ 378 (NC) refused Bail of the erring Judgement debtor in Execution u/s Section 27 on Non-compliance of final order. Imprisonment was ordered and the J.D. sought Release from custody. Failure and omission to comply with directions contained in final order were clearly admitted by him. The Honourable NCDRC pronounced that there is no denial of due opportunity therefore, no infirmity on Court of due procedure and the State Commission has clearly directed that in case compliance is made of final order, convict shall be released forthwith. The Honourable Commission found no jurisdictional error, or infringement of any provision of Act, 1986 or of any **procedure under Cr.P.C.** or

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material irregularity, or any element of miscarriage of justice, in State Commission's impugned Order.

Thus in this case also the Honourable NCDRC considered and opined that in a matter of penal provision of Section 27 of the Consumer Protection Act, the procedure prescribed under Code of Criminal Procedure should be followed.

We also considered the Judgement of Honourable NCDRC in *Ramesh G. Kohali vs Shivanand Shanbag* reported in [2020 NCJ 640(NC)] In this matter an appeal was directed against the order of the State Commission, whereby the appellant was sentenced to undergo imprisonment for three years under [Section 27](#) of the Consumer Protection Act, 1986, he having failed to comply with the order of the State Commission. The procedure to be followed by a Consumer Forum under [Section 27](#) of the Consumer Protection Act, 1986 came for consideration by the honourable Commission. The Honourable NCDRC followed the judgement of its three bench passed in ([Rajnish Kumar Rohtagi & Anr. vs. Unitech Ltd. & Anr.](#)) EA No.80/2019 Consumer Complaint No.14/2015, wherein the following view was taken:-

31. On a conjoint reading of the aforesaid provisions contained in Cr. P.C., we are of the considered view that when a person accused of having committed an offence punishable under Section 27 of the CP Act appears or is brought before a District Forum, State

Commission or the National Commission as the case may be, a notice stating the particulars of the offence alleged to have been committed by him, is required to be given to him. If he pleads guilty, he can be convicted and punished in terms of Section 27 of the CP Act. If he does not plead guilty or claims that he has any defense to make, the District Forum, State Commission or National Commission, as the case may be, shall record the substance of such evidence as may be produced by the complainant. The evidence may be oral and / or documentary. In his discretion, the complainant may seek to rely solely upon the order passed by the District Forum, State Commission or the National Commission, as the case may be, and in such a case, the aforesaid order would constitute an evidence produced by the complainant in support of his case. Of course, if he wants to produce other evidence as well, he will be entitled to produce the same so long as

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the said evidence is relevant for the purpose of the proceedings initiated under Section 27 of CP Act. Considering the nature of the evidence, which would be relevant for the purpose of the proceedings instituted under Section 27 of the CP Act, such evidence, in our opinion, can be given on affidavits, as provided in Section 296 of the CP Act. The choice will rest with the complainant to decide whether he wants to give oral evidence or evidence on affidavit (s) or both, oral as well as on affidavit(s). If oral evidence or evidence on affidavit is given by the complainant, the accused would be entitled to cross-examine the deponent / witness since, evidence, as defined in [Section 3](#) read with [Section 138, 139](#) of the Evidence Act comprises not only the Examination-in-Chief but also cross-examination and re-examination if any, permitted by the Court. An evidence in a criminal trial, without an opportunity to the opposite party to cross-examine the witness will not constitute legally admissible evidence, the cross-examination of the witnesses being a fundamental and indefeasible right of the accused. In view of the provisions contained in [Section 264](#) of the Cr. P.C. it will be sufficient for the District Forum, State Commission or the National Commission, as the case may be, to record the substance of the evidence, instead of recording a verbatim examination of the witness. In view of the mandate of the sub-section (3) of [Section 27](#), it will be competent for the District Forum, State Commission or the National Commission, as the case may be, to record only the substance of the evidence.

Considering the aforesaid observations of its own full bench, the Honourable NCDRC in [Ramesh G. Kohali vs Shivanand Shanbag \(supra\)](#) gave the following conclusions —

- 2. Admittedly, the procedure as approved by the larger Bench of this Commission has not been followed in this matter. Admittedly, no notice under [Section 251](#) of the Code of Criminal Procedure was given to the Appellant. No opportunity to cross-examine the complainant was given to him. Admittedly, no opportunity to lead defense was given to him. Admittedly, his statement under [Section 313](#) read with [section 281](#) of the Code of Criminal Procedure was not recorded. The impugned order, therefore, cannot be sustained and is set-aside. The matter is remitted*

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back to the State Commission to decide the same afresh, following the above referred procedure approved by the larger Bench of this Commission.

Taking into consideration the above mentioned judgements of Honourable Supreme Court and Honorable National Commission we conclude that to proceed under section 27 of the Consumer Protection Act, 1986, the Consumer Commission should adopt the procedure prescribed for "Summary trials" under chapter xxi Code of Criminal Procedure by initiating a notice for the offence u/s 251 of Cr.P.C. In this particular matter, the Id. District Commission has straightaway sentenced the Chief Executive Officer of the Greater Noida Authority on arriving at conclusion that he/she has not complied the order of Honorable NCDRC without giving any notice under section 251 of Cr.P.C. To the appellant and has not followed the procedure prescribed in Code of Criminal Procedure as envisaged by the Honorable Apex Court and Honorable NCDRC. The impugned order is defective and irregular in that respect and is liable to be set aside, and the appeal is fit to be allowed.

ORDER

The appeal is allowed. The impugned order dated 07-01-2023 is set aside. The matter is remanded back to the District Commission to proceed with the matter in accordance with the procedure contemplated under the Code of Criminal Procedure for taking penal action against the appellants who are the concerned officers of Greater NOIDA Authority, for non-compliance of the order of honorable NCDRC.

Let copy of this order be made available to the parties as per rules.

The Stenographer is requested to upload this order on the website of this Commission at the earliest.

(JUSTICE ASHOK KUMAR)

(VIKAS SAXENA)

PRESIDENT

MEMBER

Pnt.

**[HON'BLE MR. JUSTICE ASHOK KUMAR]
PRESIDENT**

**[HON'BLE MR. Vikas Saxena]
JUDICIAL MEMBER**