

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI

MA 52/2018 in CP No.25/241-242/NCLT/MAH/2016

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

MA 52/2018 in C.P. No.25/241-242/NCLT/MAH/2016

Under Section 425 of the CA, 2013

In the matter of

Mrs. Chandrasena Vishwas Patil

... Petitioner

v/s

Shah & Jain Construction Pvt. Ltd. & Ors

....Respondents

Order delivered on 25.01.2018

Coram: Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner: Mr. Nauroz Seervai, Sr. Counsel a/w
Mr. Subir

For the Respondent: Mr. Nimay Dave a/w Ms. Aarohee Gursale i/b
Dhaval Vussonji & Associates

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Heard and pronounced on 24.1.2018.

1. The Petitioner filed this application stating that the Respondents, in violation of the directions of this Tribunal dated 09.09.2016 sold away the ground floor in the Shah Trade Centre, constructed by R1 company, to S.S. Enterprises without even putting it to the notice of the Petitioner and hollowed out the funds come from S.S. Enterprises to Shah Housecon Pvt. Ltd. within no time from the Bank Account of R1 company, whereby the Petitioner has sought reliefs directing the Respondents to furnish to the applicant the entire accounts for the financial year 2016-2017, that a forensic audit be conducted into the affairs of R1 company to investigate the acts and events of the gross financial mismanagement, to immediately furnish the sale deed for the sale of ground floor of Shah Trade Centre to M/s. S.S. Enterprises, to deposit the amount of 6,31,00,000/- received pursuant to sale of the ground floor of Shah Trade Centre, to furnish fortnightly report of accounts of the R1 company with this Bench and the

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same may be disclosed to the Applicant in the hearing before this Bench and also to direct the Respondents to take prior permission of this Bench before selling any property owned by R1.

2. The Petitioner's Counsel submits that on this Petition being mentioned, this Bench passed an order on 9.9.2016 stating that this Petitioner is one of the directors with 36% shareholding with a direction that since R1 company is in the business of real estate, in the interest of justice it has been mentioned that no major decision in respect of the properties of R1 Company shall take place unless duly communicated through notice to the Petitioner. Apart from this direction, there are other directions against the Respondents to provide Accounts for two Financial years and also to maintain shareholding pattern and for holding EOGM by giving a proper notice to the Petitioner.

3. Ever since this Petitioner filed this Company Petition, she has been filing various applications for stay of the decisions taken in the AGM dated 24.10.2016, for addition of Respondents, for amendments of the Company Petition and seeking impleadment of Shah Housecon Pvt. Ltd., all are pending for hearing. Today this application has been argued stating that this Petitioner, on supply of the bank entries of R1 company, ledgers and other documents, having realized that the Respondents sold out ground floor of Shah Trade Centre to S.S. Enterprises for an amount of ₹6,31,00,000 on 20.09.2016 by-passing the directions of this Bench given on 09.09.2016 and immediately siphoning off those funds come from that sale to a related party namely; Shah Housecon Pvt. Ltd., the Petitioner's Counsel has insisted upon for ad-interim reliefs to protect the Petitioner at least to the extent possible so that tomorrow the Petitioner is not left dry without any value to her 36% shareholding in R1 company.

4. The Petitioner's Counsel has further submitted that this company as of now not carrying any construction work, it has only been simply selling the flats constructed in the year 2010 with an occupation certificate given in the year 2011, whereby the Counsel submits that the Petitioner should not be put to prejudice in getting directions from this Bench under a cover of an argument that this company is carrying real estate business. What indeed happening is these Respondents selling the flats made ready in the year 2010 without even putting it to the notice of this Petitioner who has 36% shareholding in the company.

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5. To which, the Respondent's Counsel has argued that this Petitioner has already filed innumerable applications one after another asking for forensic investigation and other reliefs, when no interim relief has been passed in any of the applications so far filed, she has come out with this application to restrain the company from carrying its business.

6. When this Bench has put it to the Respondent side as to whether the Respondent's side has given notice to this Petitioner before taking a decision to sell this flat to S.S. Enterprises, to which the Respondent's Counsel has stated that notice has not been given to the Petitioner because this decision was taken far before executing sale deed to S.S. Enterprises.

7. On hearing the submissions of the either side, it is evident that these Respondents have not issued any notice to the Petitioner before selling the flat aforementioned to S.S. Enterprises, which is nothing but flouting the orders already passed by this Bench on 09.09.2016. When it is apparent on record that the order dated 09.09.2016 is flouted despite the Petitioner being 36% shareholding of the company, and director of the company, the Respondents ought not have sold the property without giving notice to the petitioner. In addition to it, on looking at the bank statement, it appears that as and when the money has come from SS Enterprises, immediately it has been passed on to Shah Housecon Pvt. Ltd., therefore, *prima facie* it appears that these transactions rising suspicion in respect to immediately passing on the sale consideration to Shah Housecon Pvt. Ltd.

8. In view of the reasons mentioned above, the Respondents are hereby directed to furnish the applicant the entire accounts of the F. Y. 2016-17, to furnish the sale deed for the sale of ground floor of Shah Trade Centre to SS enterprises and also to take prior permission of this Bench before selling any of the properties owned by R1 pending disposal of this case.

9. As to other reliefs, this application is listed to 09.02.2018 with a direction to the Respondents to file reply within 10 days hereof.

Sd/-

V. NALLASENAPATHY
Member(Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)