

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. No. 85/(MAH)/2017
CA No.

CORAM:

Present:

SHRI M.K. SHRAWAT
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.04.2017


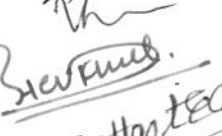



NAME OF THE PARTIES:

Shankar Ashanna Gaddam

V/s.

Achanak Associates Realtors Pvt.Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 241-242 of the Companies Act, 2013

S. No.	NAME	DESIGNATION	SIGNATURE
1.	Abhijeet A. Desai	Adv for R-4	
2.	Veushali L. Maibadal	Adv for R-4	
3.)	Abhijit A. Deukhile	Adv for - 4	
4.)	D. B. Dixit Adv	for Respondents 1 to 3	
5.	Ram Upadhyay	for Petitioner Adv.	

ORDER

C.P. No. 85/241-242/NCLT/MB/MAH/2017

1. The Petition under consideration (C.P. No. 85/2017) was filed before NCLT, Mumbai, on 7th March, 2017. Thereafter, a "Notice of Motion" moved by the Petitioner seeking Injunction, in short, as under :-
 - "(i) Pass an injunction restraining Respondent Nos. 2 & 3 from acting as Directors of Respondent No.1 Company.
 - (ii) Order and direct that an administrator and/or any other fit and proper person/persons take charge of the affairs of the Respondent No.1 Company.

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- (iii) *Pass an injunction restraining Respondent Nos. 2 and 3 from exercising any rights as shareholders of the Respondent No. 1 Company.*
- (iv) *Appoint an independent auditor to audit the accounts of Respondent No. 1 Company to ascertain misappropriation.*
- (v) *This Hon'ble Tribunal be pleased to Restrain Respondent No. 4 and its agents, officers or any person deriving rights through them, to deal with property being land located at Post Kumathe, Solapur from M/s. Orchid Reality for Rs. 300,11,000/-, Survey No. 170, gut no. 349/3 to 349/8, (hec.10-r-20), till this company petition is finally decided."*
2. Side by side Respondent No. 4 vide a Reply has challenged the maintainability of the Petition, paras 7 and 15 of the Reply is referred for this purpose, reproduced below :-
- " (7) *I say that, the property had been purchased by the Respondent No. 4 on 30.06.2014 and the challenge against the said sale of the property to the 4th Respondent, is barred by limitation and hit by section 242(2)(g) of the Companies Act 2013. The Respondent No. 4 is a bonafide third party purchaser for a valuable consideration and rights has been crystallized in favour of the Respondent No. 4. The attempt of the instant Petitioners is to get conflict between the directors and harass the Respondent No.4 by foisting a false case.*
- (15) *I further say that, the instant Petition had already resigned as Director of the Respondent No. 1 Company on 31.01.2014 and has no locus to file the instant petition against the Respondent No. 4 Company. Hereto marked and annexed as Exhibit "F" is the copy of Resignation letter of the instant Petitioner dated 31.01.2014, pursuant to which the Petitioner is ceased to be director & and consequently indulge into internal affair of the company."*
3. The question of maintainability, being a preliminary legal issue is heard and hereinbelow decided in the light of the arguments of Learned Representatives of both the sides and after due appreciation of pleadings on record annexed with evidences. As far as the question of

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Resignation of the Petitioner is concerned, attention drawn on a Letter of 31st January 2014. The said issue is subjudice and to be decided on hearing the Petition in question. The Petitioner has challenged the connected Board Resolutions through which the process of impugned Resignation was recorded. One more intricately connected issue is Transfer of 1670 Equity Shares by the Petitioner yet to be examined and to be decided while disposing of the Petition. An accepted legal position is that if the maintainability is questioned on those very issues which are otherwise subject to controversy yet to be settled after due process of law, then such litigant/petitioner must not be thrown out of the litigation at the very threshold without providing opportunity of hearing on merits. These two vital reasons are basically the bone of contention of this Petition. Therefore, it is not a case that the non-holding of requisite number of shares, as prescribed under section 244 of the Companies Act, is an admitted position of facts. When the Transfer of Share or the Ownership of the Shares itself is under dispute and challenged by the parties, such the question is to be decided on due appreciation of merits of the case. Without appreciating the facts and the connected evidence it is unjustifiable to hold that the Petition is not maintainable. The correct approach is to first examine the corroborative evidence and then arrive at a justifiable conclusion. In my humble opinion, it is reasonable not to throw the Petitioner out of the litigation without hearing him on merits. Consequently, the Petition is hereby "Admitted" to be decided on merits as per Law.

4. Respondent No. 4 is basically aggrieved being made one of the party of the litigation, hence pleaded that misjoinder is a good reason not to admit this Petition. According to the objector the misjoinder has fatal consequences therefore this Petition should be considered as "non maintainable". I am of the view that Respondent No. 4 being Purchaser of the Property, which is a subject matter of dispute, must not be held as

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misjoinder in the array of parties. I am taking this view specially under the circumstances when the bonafides of the impugned transaction executed on 30th June, 2014 is subjudice in this Petition. Respondent No. 4 under such circumstances cannot be obliterated from the array of the Respondents.

5. The Interim Relief as per the Notice of Motion is considered and decided as follows :-
- (i) At this stage when the merits are under consideration it is justifiable not to interfere in the Constitution of the Board of Directors, hence Respondent Nos. 2 and 3 are not restrained from Directorship. However, they are duty bound to act honestly for the welfare of the Company as well as for the benefit of all the stake holders.
 - (ii) No interference in the functioning of the Company is justifiable, hence need not to appoint any Administrator. It is hereby made clear that in case of any instance of mismanagement henceforth can be put to notice to NCLT for appropriate action, if any.
 - (iii) Respondent Nos. 2 and 3 cannot be restrained in exercising their rights as Shareholders but directed to maintain a status quo in the pattern of Shareholding as already existed. No party is allowed to dilute the position of the other side henceforth as long as the Petition is pending for disposal.
 - (iv) The Auditor of the Company shall be appointed by the mutual consent of all the concerned Parties.
 - (v) The Interim Relief as sought in respect of the property mentioned is not justifiable due to the reason that the transaction was admittedly concluded vide a "Sale Deed" dated 30th June 2014. Settled position of law is that an Injunction can be granted in respect of an event going to take place which may cause irreparable loss to the party seeking injunction. An event which had already happened cannot be undone. If the transaction in question is going to be held ultra vires while deposing

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this Petition, then the consequential legal remedy is always available to the Petitioner.

6. Having held that the Petition is maintainable, hence to be listed for hearing on 20th July, 2017. Issue Notice.

Sd/-

**M.K. SHRAWAT
MEMBER (JUDICIAL)**

Date: 12th June,2017.