

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI

C.P.NO.153/241, 242, 59/NCLT/MB/MAH/2017

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.NO.153/241, 242, 59/NCLT/MB/MAH/2017

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

MR. DNYANESHWAR SHANKAR MALVANKAR & 6 ORS).....Petitioners.

Versus

AKSHAY DEVELOPERS(SION)PRIVATE LIMITED & 6 ORS.).....Respondents.

PRESENT ON BEHALF OF THE PARTIES

FOR THE PETITIONER

Mr. Ajay Kumar, Practicing Company Secretary).....Petitioners

FOR RESPONDENT

1. Mr. Somasekhar Sundaresan, Advocate)
2. Mr. Shrivardhan Deshpande, Advocate)
3. Mr. Yuvraj K. Singh, Advocate)... Respondent No.2

1. Mr. Saheeruddin Shaikh, Practising Company Secretary)
-Respondent No.6

INTERIM ORDER

Date of Hearing : 28th April, 2017

Date of Pronouncement: 01st May, 2017.

1. This Petition has been filed on 24th April, 2017. The Petitioner has mentioned this case seeking few Interim Reliefs as contested by the Learned Representative of the Petitioner. Out of the series of Interim Relief the Learned Representative has confined the arguments in respect of the following Interim- Relief only :-

- 1) *To pass an order for maintaining the status Quo of Shareholding and directorship of the Company as on the date of Petition till the disposal of the Petition.*
- 2) *Restraining Respondents, their servants and agents from alienating, encumbering or disposing of or creating any third party rights or interests in any property of the Respondent Company.*

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3)

4) *An injunction restraining the Respondent Directors from transferring any funds of the company or from applying any money of the company for purposes of repaying any liability relating to any charge on any assets of the company and restraining them from incurring or creating any further liability for and in the name of the Respondent No. 1 the company, without prior permission of Hon'ble Tribunal.*

2. That Ld. AR has drawn the attention on the following purported action stated to be prejudicial to the petitioner, reproduced below from the Petition:-

(i) *" The Respondent Directors have illegally made further issue and allotment of shares on 08.03.2013 as explained in paragraphs VI (D) (2) & (3) hereinabove without making any offer of shares to the Petitioners & thereby reducing their shareholding from 50% to 16.66% which is also an act of oppression and having continuing effect.*

(ii) *The Respondent Directors have increased Authorised Capital without giving any notice of purported to be EOGM held on 07-03-2013 to the Petitioners as explained in paragraph VI (D) (4) this Petition which is also an act of oppression.*

(iii) *The Respondent Directors have obtained secured loan of Rs.28 Crores from India Infoline Finance Limited (IIFL) on 08-03-2013 without knowledge and consent of the Petitioner Directors as explained in paragraphs VI(d) (5) & (6) of this Petition which is also an act of oppression and mismanagement.*

(iv) *The Respondent Directors have also not provided inspection of Statutory Records to which the Petitioner Directors are entitled as director and shareholder as explained in para VI (C) (9) which also constitute an act of oppression & mismanagement."*

3. The Company was incorporated on 16 January 2013 wherein the Petitioner is holding 5000 Equity Shares which constitute 50% of the Total Paid Up Capital. The Company was incorporated to undertake Development Projects. The Petitioner has alleged Oppression and Mismanagement, hence this Petition is moved under Section 241-242 of the Companies Act. The main object as stated by the Learned Representative was to carry on one ongoing Project in the Partnership of M/s Akshay Developers. The allegation is that the Respondent is not issuing proper

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Notices of several meetings and not giving other information for which the Petitioner is legally entitled. There is an apprehension that the Respondents may dilute the Share Holding and also change the Constitution of the Board. There is one more apprehension that the Property of the Company may also be transferred or alienated. The Petitioner is demanding restrain Order so that his rights can be protected.

4. On the other hand from the side of the Respondent, the Learned Representative has pleaded that, the Petition has been served recently and a Reply is yet to be filed, hence till then no Interim Relief be granted. It has also been pleaded that, the apprehension of the Petitioner is ill-founded. The Petitioner had not come with clean hands hence legally not entitled for any interim -relief.
5. At the outset it is worth mentioning that any of the observation made in this Preliminary Order shall not be considered as an opinion on the issues raised in the Petition. Rather both the sides shall also not pre-judge the decision on the Petition yet to take place after completion of due process of law. While considering a request of injunction, generally few principles are observed by the Courts i.e. the injury if caused during the pendency of the suit may result into an irreparable loss to the party seeking injunction or there is apprehension of future mischief by the other side which may damage the rights of the Petitioner, etc. Further it is also to be examined that the party seeking injunction should have a legal right of restraining the other side, as well as judicially entitled for the interim-relief. Overall impact of these legal requirement is that the balance of convenience should be favourable to the injunction seeker.
6. Having heard the submissions of both the sides, inter-alia considering the factual and legal aspects prima facie it appears that the Petitioner deserves a temporary protection against any prejudicial action by the Respondents, which may impede his rights during the pendency of Petition. Interim directions are given as under :-
 - i) The Respondent No.1 Company is directed to maintain status quo till further Orders in respect of the Share Holding Pattern and the Constitution of the Board as existed on the date of filing of the Petition, now under consideration.

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- ii) The Respondent No. 1 Company shall not transfer funds of the Company for repayment of any alleged liability. However, day to day expenses to be incurred to run the business of the Company shall not be effected by this Judgement. The business activity of the Company should not be hampered, hence the legally admissible expenditure can be incurred. The Petitioner shall co-operate in running the business of the Company.
 - iii) The Respondents should intimate the Dates of Meeting of the Company and ascertain the presence of the Petitioner on such meetings to be held in future to conduct the business activity of the Company.
 - iv) The Respondents shall not alienate or deal in any manner the immoveable property of the Company as listed in the Balance Sheet as on 31st March, 2017 or any other date recommended by the concerned Officers of the Company. Any major decision for the alienation of the property shall not be carried out unless reported to and consented by the NCLT.
 - v) The funds of the Company shall be managed in most methodical manner and no part shall be invested, transferred or alienated in favour of any person unless and until permission is obtained from the NCLT. The existence of *bona-fide* of each transaction along with the business exigency shall be considered, if prayed for hereafter by the Respondents. The Company shall not create any Charge on the assets of the Company.
 - vi) The Parties are directed to adhere to these directions till further Order.
- 7) Interim Injunction is granted accordingly. The Petition is Admitted. Parties are directed to finalise the pleadings without uncalled for delay. A schedule is hereby given as consented by both the sides. A reply by the Responded shall be filed on or before 15th of June, 2017. A Re-joinder if any, to be filed on or before 30th June, 2017. The matter is now listed for hearing on 10th of July, 2017.

Date: 1st May, 2017.

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)