

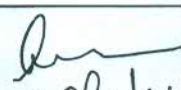
**NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**C.P. No. 07 /2016**

**Present: Hon'ble Member (J) Shri Vijai Pratap Singh  
Hon'ble Member (T) Shri S.Vijayaraghavan**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 07<sup>th</sup> November, 2016, 10.30 A.M**

Name of the Company		Anup Chakraborty. -Vs- Richbirds Properties Pvt.Ltd. & Ors.	
Under Section		<b>241/242</b>	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1.	Rupak Ghose Adv.	}	petitioner	
2.	Syumanlak Banerjee Adv.	}		 07/11/16
3.	Ballari Banerjee Adv.	}		

**ORDER**

Heard and Admit. Affidavit has been filed by the petitioner regarding the service of notice on the respondents. Service is sufficient. Respondents may file reply within 15 days. Thereafter, Rejoinder, if any, may be filed within two weeks. Matter be listed on 7<sup>th</sup> December, 2016.

This petition has been filed by the petitioner, Shri Anup Chakraborty contending that he is the Director and the shareholder of the respondent no.1 company and he holds 12,500 equity shares of Rs.10/- each comprising 2% of the total issued, subscribed and paid up capital of this Company. There being 5 shareholders in the said company and the petitioner being 1/10<sup>th</sup> of the shareholders, is entitled to file the instant petition, .The petitioner has filed the list of shareholders. The authorised share capital of the company is two crores divided into 20,00,000 equity shares of Rs.10/- each. Issued, subscribed and paid up share capital of the company is Rs.62,50,000/- divided into 6,25,000 equity shares of Rs.10/- each.

The petitioner has alleged that the respondent no.1 company is engaged in the business of real estate at the time of its incorporation and carries on business as builders, promoters and developers of land, buildings sites, townships and other objects as described in their memorandum of

S. S. Jyoti





association. Before the appointment of petitioner sometime in 2010, a joint venture agreement was executed between the owner of the property at 1B, Gariahat Road (Leela Roy Sarani), Kolkata 700019 and the respondent no.1 company. At the point of time petitioner was a signatory to the said agreement as a witness but in fact was the main person in forging the deal between the respondent no.1 and the landlord and was present since the inception of the project. The petitioner states that it was at the sole initiative of the petitioner that the said landlord has agreed to develop the said property in a joint venture with the respondent no.1 company. It was from such negotiation that the association of the petitioner and the respondent no.2 had started which later culminated into the induction of the petitioner into the respondent no.1 company as a Director. Thereafter, the landlord of the property had executed registered power of attorney in favour of the petitioner on 12.12.2012 and after that the respondent no.1 as developer, started the project with four storied building at the said site after obtaining a sanction plan from the concerned authorities. During the progress of the construction of the said building, the respondent no.2 resigned from the directorship of respondent no.1 board and inducted his own man, namely the respondent no.3 with effect from 21.09.2012. During the progress of construction, the respondent no.2 arranged to execute seven different and diverse agreements for sale out of which five agreements in respect of residential flats, one for shop room and one for commercial space out of

S. S. Jeyaraj



allocation of respondent no.1 in the aforesaid project. The respondent no.1 received a payment of about Rs.7.30 crores on the basis of this agreement with the buyers which was credited to the bank account of the respondent no.1. All the cheques were signed by two directors and as instructed by the respondent no.2, the petitioner used to sign on several blank cheques as one of the directors along with respondent no.3. All the cheques were under the custody of respondent no.3. The registered office of the respondent no.1 company was also shifted at the residential address of the petitioner for the reasons best known to respondent no.2. This was objected to by the petitioner. The affairs of the company was however operated from various places as per instruction of the respondent no.2. The project work was started on and from 19<sup>th</sup> May, 2010 and the petitioner was appointed Director w.e.f. 12.01.2012. The petitioner used to negotiate with the tenants in the said property and also made cash contribution into the company sometime in or about September, 2012. The petitioner came to know that the respondents are conspiring and colluding against the petitioner and also started apprehending that the said respondents are upto some bigger sinister plan of mismanaging the affairs of the said company by trying to siphon off funds, rendering the said projects unworkable. The respondent no.2 is only interested in siphoning off the entire funds deposited with the bank account of the respondent no.1 company paid by the prospective purchasers and has no intention of completing the said projects in terms of

S. V. Jeyarathnam



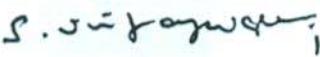



the obligation undertaken by the respondent no.1. The petitioner has also stated that when he realised that there is a plan of the respondents and the respondents may try to make the petitioner as a scapegoat in the alter of the sinister plan and try to scuttle all financial liability or the responsibility under the agreement executed by the respondent no.1 company.

In or about January, 2016, the petitioner came to know that he is no longer a director of the company. Immediately on getting the news, the petitioner applied before the Registrar of Companies in February, 2016 when the petitioner came to know that by way of a forged and fabricated letter of resignation containing the purported signature of the petitioner, the petitioner has been removed from the directorship with effect from 10<sup>th</sup> January, 2016. The said letter of resignation is dated 10<sup>th</sup> of January, 2016 and it was approved by the Board of Directors on the same day. No notice of the meeting of the Board of Directors was ever issued by the respondent no.1 company and the alleged letter purported to be signed by the petitioner is forged. On this basis, the petitioner has filed this petition with the allegation of oppression and mismanagement and made interim prayer. Notice has been served on the respondents but no reply has been filed till date.

On perusal of records, it appears that the petitioner was a shareholder/director of the respondent no.1 company and he holds 12500

equity shares which was about 2% of the total issued, subscribed and paid up capital. It also appears that alleged resignation letter is dated 10<sup>th</sup> January, 2016 and it also appears that the resignation letter has been accepted by the Board of Directors on the same day. The petitioner also filed the copy of DIR-12 document which shows that the petitioner has been removed from the directorship on the basis of his resignation under section 168 of Companies Act with effect from 10<sup>th</sup> of January, 2016. How the resignation letter dated 10<sup>th</sup> of January, 2016 was accepted by the Board of Directors on the same day, appears to be doubtful. This also makes a *prima facie* case of oppression and mismanagement. The respondents have not filed any objection in respect of service of notice. In the circumstances, we think it proper to stay the operation of the purported resolution of the Board of Directors regarding removal of petitioner from directorship dated 10<sup>th</sup> of January, 2016 till the next date of hearing.

  
(S. Vijayaraghavan)  
Member(T)

  
(Vijay Pratap Singh)  
Member(J)