

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI**

I.A. NO. 07/2017

IN

T.C.P. NO. 18/58, 59/397, 398/NCLT/MB/2014

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 58, 59, 397 & 398 of the Companies Act, 1956 and 241, 242 of the Companies Act, 2013.

BETWEEN:

M/s. Emgee Homes Private Ltd. & Anr. ... Petitioner

AND

M/s. Sahanika Private Limited & Ors. ... Respondents

PETITIONER:

1. M/s. Emgee Homes Private Limited .. Petitioner No.1
2. Mr. Mudhit Gupta .. Petitioner No.2

RESPONDENTS

1. M/s. Sahanika Private Limited .. Respondent No.1
2. Mr. Hiren Visanji Shah .. Respondent No.2
3. Mr. Ashish Shridhar Chemburkar .. Respondent No.3
4. Mr. Harshit Deepak Shah .. Respondent No.4
5. Mrs. Jyoti Deepak Shah .. Respondent No.5
6. Mrs. Saloni Nirmal Shah .. Respondent No.6
7. Mfrs. Monali Nirmal Shah .. Respondent No.7
8. Mr. Karan Deepak Shah .. Respondent No.8

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONERS

1. Mr. Jairam Chandnani, Advocate
2. Ms. Sonali Salaskar, Advocate, i/b M/s. Lexim Associates.

FOR THE RESPONDENTS

1. Mr. Gaurav Mehta, Advocate

2. Mr. Lalan Gupta, Advocate
4. Ms. Pooja Kane, Advocate, i/b M/s. Dhruve Liladhar & Co.

ORDER

Reserved on : 24.02.2017

Pronounced on : 02.03.2017

1. This Application has been moved 22nd of February, 2017 consequent upon an Order passed by this Bench on 10th of February, 2017 (C.A. No. 119/2016 In TCP No.18/2014). In this Application, the only prayer is to stay the operation of the said Order.

2. From the side of the Applicant, Ld. Advocate has pleaded that in terms of the impugned Order it was directed to the Escrow Agents to send by speed post the photocopies of all documents lying in Escrow to the Bench Officer of NCLT, Mumbai Bench on or before 28th of February, 2017. The Ld. Representative has pleaded that the operation of the said Order be stayed for a period of four weeks so that the Petitioner / Applicant can adopt appropriate steps to challenge the said Order before the appropriate authority. In support of this contention, reliance was placed on the following judgements:-

- "1. Maharashtra State Road Transport Corporation vs. Satish Vasant Sobalkar, 2004(1) Mh.L.J, Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour practices Act, Section 44 and Schedule IV, Item (g) (Dr. D.Y. Chandrachud, J.)
2. Ramachandra Krushnarao Pitale vs. Scientific Co-operative Housing Society Ltd., Laxminagar, Nagpur and others, Maharashtra Co-operative Societies Act, Section 91 : Scope (C.L. Pangarkar, J.)
3. Rediff Communication Ltd. vs. Cyberbooth & another, 1999(4) Bom.C.R. 278 (O.O.C.J.) Before A.P. Shah, J."

3. For the sake of ready reference, the relevant para no.4 of the said Interim Order dated 10th February, 2017 is reproduced below:-

"4. On this short issue, heard both the sides. As far as the legal proposition addressed, there are no two opinions that a Judge must not leave a single stone unturned to unearth the truth. Every endeavour should be made to search the truth. The Courts are expected to check the veracity of the documents. Keeping these principles in mind, it is necessary to carefully peruse the impugned MoU, JVA and PoA as stated in this Application. Since the admitted factual position is that the said documents / agreements are in possession of the respected Escrow Agents, as named above, therefore, in the interest of justice they are directed to send by Speed Post the photocopies of all those documents, each page duly testified by them, on or before **28th of February, 2017** addressed to the **Bench Officer, NCLT, Mumbai Bench, 6th Floor, Fountain Telecom Building No.1, Next to Central Telegraph Office, M.G. Road, Mumbai 400 001**. Needless to mention, the said documents should again be kept safely in the bank locker. By this direction, prima facie, no prejudice is going to cause either to the Petitioner or to the Respondents. The clauses of the documents shall be perused in the open Court on the date of hearing, now enlisted for **8th of March, 2017**."

4. On the other hand, from the side of the Respondent, it is pleaded that no prejudice should have been caused to the Applicant because the basic reason for said direction to place the photocopies of the documents was to examine the terms and conditions of the Escrow Documents so that the Court can appreciate the true facts. The Hon'ble Court is aware about the importance of those documents; hence, directed that the original documents after photocopying be kept safely by the Escrow Agents in the bank locker. He has pleaded that the Petitioner is shying away so that the true facts may not see the light of the day.

5. Heard both the sides at some length. At the outset, I find no force in this Application because of the fundamental reason that no harm or prejudice is going to be caused, if the Bench is of the view that the Clauses of the agreements, MoU, etc. kept in the safe custody of the Escrow Agents be examined to decide the Petition fairly. This decision

of directing the Escrow Agents to send by speed post photocopies duly certified by them to the Bench Officer, NCLT, Mumbai Bench is based upon the logic that the Clauses of the impugned MoU / JVA / PoA are stated to be having a direct bearing on the issues raised in the main Petition. Therefore, to arrive at the right and fair conclusion, it was deemed fit to peruse those documents. I am not getting a satisfactory answer to the question that why the Applicant is shying away from placing those documents before this Bench? Why avoiding the reading of the Clauses of those agreements? Apparently no prejudice or harm is going to be caused to the Applicant if the truth is going to be revealed to this Bench. It is not a case where a permanent injunction or a final decree has been passed affecting the rights of the Applicant in perpetuity. Otherwise also, on perusal of the cited Case Laws, it is abundantly clear that the Hon'ble Courts have stayed the operation only under the circumstances when a final Order - may or may not be in the nature of decree - is passed. At that very moment when the Order is finally pronounced simultaneously liberty was granted to the aggrieved party to take appropriate recourse, if deemed fit. Meanwhile, the operation of the Order is stayed for a limited period, generally the period during which an Appeal can be filed. The distinction is that such judicial approach is not prevalent in Interim / Interlocutory Orders.

6. In the light of the above reasoning, I have examined the Case Laws cited from the side of the Applicant and have noticed that the final judgements have been passed which are not in the nature of interim / interlocutory or temporary injunctions. At the very moment when the final judgement / decree is pronounced, then generally a time is granted to the other side to take due legal redressal step if deemed fit that too as per law. Because of this distinction, the precedents cited have no judicial bearing on the controversy in hand.

7. I, therefore, hold that the impugned Application is not legally sustainable in the eyes of law; hence dismissed. The Application being disposed of, directed to be consigned to the Records. The main Petition is already enlisted for hearing on 8rd of March, 2017 vide the said Order.

Dated: 2nd March, 2017

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