

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, MUMBAI**

**C.A. NO. 119/2016**

**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. | Mr. Chirag Balsara, Advocate   |
| 3. | Ms. Sonali Salaskar, Advocate  |
| 2. | Mr. V.P. Verma, Advocate       |
- Instructed by M/s. Lexim Associates.

FOR THE RESPONDENTS

1. Mr. Sanjay Jain, Advocate
  2. Mr. Gaurav Mehta, Advocate
  3. Mr. Lalan Gupta, Advocate
  4. Ms. Pooja Kane, Advocate
- Instructed by M/s. Dhruve Liladhar & Co.

ORDER

**Reserved on : 21.12.2016**

**Pronounced on : 10.02.2017**

1. The Application under consideration was submitted before NCLT, Mumbai Bench on 26<sup>th</sup> October, 2016 by the Original Respondents of the Petition (C.P. No. 18 of 2014). The main request is as per para 1 of the Application, reproduced below for ready reference:-

"1. By the present Application, the respondents are seeking certain directions in the interest of justice and equity. The Applicants are the original Respondents in this petition. Mr. Mnoy Dedhia and Mr. Apoorva Agarwal, Advocates and the Escrow Agents are not parties to this petition but have been joined as parties to this application. The Escrow Agents were appointed by the Petitioners and the Respondents, to hold with them, certain documents that were executed between the parties. The Escrow Agents are in possession of these documents which are crucial to the present petition and are extremely relevant in order to determine the issues before this Hon'ble Tribunal. This application seeks an order from this Hon'ble Tribunal, directing the Escrow Agents to produce before this Hon'ble Tribunal the documents executed between the parties and kept with the Escrow Agents."

2. From the side of the Applicant, Ld. Representative has informed that in the Petition it is alleged that the Petitioner No.1 is the lawful owner of 2,600 shares of Respondent No.1 Company. On one hand the Petitioner is claiming the ownership of those shares, on the other hand the counter claim is that on 31<sup>st</sup> March, 2011 those shares were transferred in favour of Respondent Nos. 4 to 7. Ld.

Representative has also stated the background of the facts that the Company was in the process of acquiring a property situated at Parel, Mumbai, stated to be owned by a Public Charitable Trust. An approval of the Charity Commissioner was necessary. The Petitioners of the main Petition were keen to acquire rights to develop the said property. Pending the said approval, the Petitioner and the Respondents have decided to execute certain documents viz. Memorandum of Understanding (MoU), Joint Venture Development Agreement (JVA) and Power of Attorney (PoA). These documents are collectively referred as "Escrow Documents" under the control of Escrow Agents viz. Mr. Manoj Dedhia, Advocate and Mr. Apoorva Agarwal. Ld. Representative has pleaded that only on perusal of the said executed documents a true and correct fact shall emerge that whether those shares were sold to the Petitioner. Because of this reason, he has demanded that the Escrow Agents may be directed accordingly. For the legal proposition that "truth is a guiding star in the judicial process" and that the foundation of justice is based upon the discovery of the truth, he has placed reliance on the decision of Hon'ble Supreme Court pronounced in the case of Maria Margarida Sequeira Fernandes versus Erasmo Jack De Sequeira (Dead) through LRS, reported as (2012) 5 Supreme Court Cases 370.

3. From the other side, Ld. Representative has vehemently opposed the alleged transfer of the shares and pleaded that in the absence of any signing of "share transfer application", no such transfer of share was legally permissible. He has referred certain clauses of Article of Association of STPL wherein conditions are prescribed for transfer of shares, hence the argument is that in a situation when those prescribed conditions have not been complied with, therefore, the claim is bad in law.

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 **28<sup>th</sup> of February, 2017** addressed to the **Bench Officer, NCLT, Mumbai Bench, 6<sup>th</sup> 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 **8<sup>th</sup> of March, 2017**.

5. This Application is finally disposed on the terms directed above. Therefore, directed the Registry to consign to records.

Dated: 10<sup>th</sup> February, 2017

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