

COURT-I

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. No. 73 /2015

CORAM: 1. Hon'ble Member (J) Ms. Manorama Kumari

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 25th November, 2016, 10.30 A.M

Name of the Company		Kajal Das. -Versus- Shivam Infrastate Pvt. Ltd. & Ors.	
Under Section		397/398	
Sl. No.	Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date

1) Roshitabnata Mitra
Advocate

2) Bratin Kumar Dey
Advocate

3) Anyana Banerjee
Advocate

4) Tridib Bose
Advocate

petitioners.

AB

25.11.16.

1. JISHNU CHAKRABORTY, ADV
2. PATITA PABAN BISWAL, ADV }

R. 1 to 4

[Signature]
25/11/16

BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CP No. 73/2015
CA NO. 201/2016

Ms. Manorama Kumari
Hon'ble Member (J)

In the matter of the Companies Act, 1956 Section 397,398,399, 402, 403 AND 407

And

In the matter of Kajal Das

And

In the matter of

M/s. Shivam Infraestate Pvt. Ltd & Ors.

Parties on Record :

Mr. Rwitabrata Mitra, Advocate		Petitioner
Mr. Bratin Kumar Dey, Advocate		
Ms. Anjana Banerjee, Advocate		
Mr. Tridib Bose, Advocate		

Mr. Jishnu Chowdhury, Advocate		Respondents 1 to 4
Mr. Patita Paban Bishwal, Advocate		

Dates of Hearing : 25th November, 2016

Date of Order : 25th November, 2016

G. K. Sanyal

ORDER

The Ld. Lawyer on behalf of the petitioner as well as on behalf of the respondents Nos. 1 to 4 are present. The other respondents are absent without any steps. Let the matter proceed ex parte against the absenting respondents.

On perusal of the record, it appears that CA bearing No. 201/2016 is pending for hearing.

The CA No. 201/2016 is filed by the Petitioner with prayers for necessary interim order in respect of various moveable and immovable properties as also in respect of the Bank accounts of the Respondent Company, Shivam Infra Estate Pvt. Ltd.

The CA is arising out of Company Petition filed under Section 397, 398, 399, 402, 403 and 407 of the Companies Act, 1956 read with provisions of Companies Act, 2013, inter alia, alleging mismanagement and oppression against the respondents and other consequential reliefs thereof.

The petitioner stated that he is the share holder and a Director of the Company, Shivam Infra Estate Pvt. Ltd. having its registered Office at Hridaypur Station Road, Barasat, North24-Parganas, West Bengal -700127.

It is alleged by the petitioner that during the pendency of the Company petition bearing No. 73 of 2015, the respondents allegedly entered into two deeds of conveyance executed by or on behalf of respondent No.1 behind the back of the petitioner which fact has come to the knowledge of the petitioner while making search with the concerned authority.

To support this contention, the petitioner has also annexed two sale deeds bearing Deed No. 10921/2015 and No. I-01881/16 and according to the petitioner, the proceeds against those sale deeds were also not reflected in the Bank Account of the Company, namely, Bank of India, Kasimpur Branch as also in the Bank account with Bank of Baroda, Barasat Branch, which is a newly opened account.

The petitioner has also enclosed the Bank accounts pertaining to the Company to justify the statement.



The petitioner further submitted that the properties were transferred by the respondent without holding any Board meeting and/or serving any notice to the petitioner before transferring the same to third party, despite the fact that the petitioner is the share holder and still now is the Director of the said Respondent No. 1 Company.

He further submitted that the purported transfer of the properties by the respondent during the pendency of the instant proceeding in favour of any third party is bad and fraudulent and void ab initio and the same is liable to be set aside.

The petitioner also enquired into the new Bank account and by applying under Section 6 of RTI Act, 2005 to the Bank of Baroda, inter alia, seeking necessary information as to the said Bank account of the Respondent No.1 Company, the petitioner got certain information wherefrom he has gathered that the Company held their purported Board meeting on 18-10-2014. The petitioner has also annexed the minutes of the said meeting allegedly held on 18-10-2014.

From the minutes of the meeting it is clear that the respondent Nos. 2 and 3 had unilaterally and arbitrarily conducted such purported Board meeting and without serving any notice thereof upon the petitioner and it was purportedly decided to open a Bank account with the Bank of Baroda, Barasat Branch. The said fact had recently come to the knowledge of the petitioner only after receiving replies to the application under Section 6 of RTI Act, 2005 by Bank of Baroda.

This fact was not in the knowledge of the petitioner while filing the main Company Petition.

The petitioner submitted that the respondent, despite having the knowledge of the matter being sub judice before the Company Law Board and orders are being passed from time to time by the then Company Law Board in presence of the parties, the respondents have wrongfully indulged themselves in dealing with the valuable properties of the said company and by not crediting the proceeds in the account of the Company, consequent to which, the Company has to suffer the loss.

As such, the petitioner prayed for setting aside the above said two sale deeds and for reverting back the properties to the Company till the final disposal of the case

Chakraborty

and hence prayed for injunction for restraining the respondents and/or their men, servants, agents, assigns and/or representatives from dealing with an/or transferring, disposing of, encumbering, alienating and /or creating any third party right, title and/or interest in respect of the properties of Respondent No.1 Company, whether moveable and immovable in any manner whatsoever.

On the other hand , the respondents submitted that their acts are not prejudicial to the interest of the Company or its share holders as alleged in the application.

They have submitted that intimations of the Board meetings are always given and no Board meeting is required to be held before parting with the inventories of the Company.

They have also denied that the consideration for such sale is not being credited or is being siphoned away by the respondents or that the respondents have indulged in any act of mismanagement or suppression as alleged or at all as alleged in the petition and as such, the Company is not suffering any loss.

Perused the records of the case and documents annexed therein and the pleadings of both side.

From the reply, admittedly, the respondent has sold two properties during the pendency of the Company Petition. It is also admitted in their reply by the respondents that the entire transaction is in cash and the same has been utilised in the construction business, as such, the question of crediting the proceeds into the Bank account of the Company does not arise.

The respondents have also failed to account for the amount received against those two sale deeds by any supporting documents to justify their contentions where they have utilised the same for the benefit of the Company or for any other purpose.

If such acts of the respondent(s) is allowed to be continued during the pendency of the Company Petition, then it will attract multiplicity of the suit/case that may cause irreparable loss not only to the Company but also to the petitioner who is also a share holder of the Company.

Chakraborty

Under such circumstances, I find there is prima facie case and as the balance of convenience is in favour the petitioner, it is expedient to pass orders restraining the respondents and/or their men, servants, agents, assigns and/or representatives from dealing with an/or transferring, disposing of, encumbering, alienating and /or creating any third party right, title and/or interest in respect of the properties of Respondent No.1 Company.

It is also directed that while dealing with the sale/disposal of the property of the Company, transactions should be transparent.

However, the Ld. Lawyer of the respondents conceded that hence forth the respondent(s) will give prior notice of 15 days to the petitioner before any transfer or alienation of the property.

The CA No. 201/2016 is disposed without cost.

MANORAMA KUMARI
MEMBER(J)