

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT NEW DELHI**

Reserved on: 11th July, 2016
Date of Decision: July, 2016

Company Appeal No. 01/2016
IN
Company Application No.5 (MB) 2016
IN
Company Petition No. 74 (MB) 2015

In the matter of
The Companies Act, 2013 Section 421

Mr. Vinod Muktinath SharmaAppellant

Versus

M/s Sharma Realty Pvt. Ltd. & Ors ...Respondents

CORAM:

HON'BLE MR. JUTICE S.J.MUKOPADHYAY
HON'BLE MR. BALVINDER SINGH, MEMBER (TECHNICAL)

For Appellant (s) **Mr. U.K.Chaudhary, Senior Advocate.**
Mr. Gaurav Nair, Advocate
Mr. Himanshu Vij, Advocate
Ms. Manisha Chaudhary, Advocate
Mr. Akshay B. Udeshi, Advocate
Mr. Sanjay Udeshi, Advocate

For Respondent(s) **Mr. Rahul Sahasrabuddhe, Company Secretary**
Mr. Shyamal Anand, Advocate for R1 to R3

Judgment

The Appellant- Mr. Vinod Muktinath Sharma has preferred this Company Appeal under section 421 of the Companies Act, 2013 against the order dated 15th June, 2016 passed by learned Member (Judicial), National Company Law Tribunal (**hereinafter referred to as 'Tribunal'**) in CA No. 05(MB)2016. In the impugned order, Learned

Member (Judicial) directed the Respondents to maintain status quo over the development rights and money if any comes out of the settlement likely to take place in the suits mentioned in the said order.

2. Respondent No.1-M/s. Sharma Realty Pvt. Ltd. is a family company comprising of two brothers and father, the Appellant is one among the brothers with 33.5% shareholding. Another brother and the father of him are other shareholders managing the affairs of the company.

3. Because of the disputes between the shareholders, that is Appellant in one side and one brother and his father on the other side, the Appellant had filed CP No. 74/2015 alleging that the conduct of the answering respondents is oppressive against his interest and thereby sought restraint orders against the answering respondents from dealing with two major properties of Respondent No.1-Company, one is Khandelwal Herman Property and other is M/s. National Industrial Corporation Property (**in short NIC property**).

4. Company Law Board (**for short CLB**), had already restrained the Respondents from alienating Khandelwal Herman Property. After the constitution of the Tribunal, the Appellant has sought restraint orders against NIC Property alleging that the answering Respondents trying to create third party rights over the said property under the garb of arriving at a settlement with one 'Ackruti City Limited' in suits bearing numbers 1985/2009 & 2392/2009 pending before High Court of Bombay.

5. The grievance of the Appellant is that the proposed action of the settlement in the said suits is detrimental to the interest of the Appellant because he has already challenged the acts of the Respondents in relation to the affairs of the Respondent No.1 Company as prejudicial to the interest of him. In the Company Application before the Tribunal, the Appellant prayed as follows:

(a) "Pending the hearing the final disposal of the Company petition No. 74(MB) 2015 the Respondents through their officers, agents and servants be restrained in any manner from alienating the suit property

being situated at L.B.S. Marg, besides S ward near Mangatram Petrol Pump, C.T.S. No. 350, 350/1 to 11 area equal to 21,750 sq. mtrs, Village Kanjur, Tal. Kurla, Mumbai as more particularly described in Exhibit "J".

(b) Pending the hearing and final disposal of this Petition this Hon'ble Board be pleased to issue such further order or other orders to be made and/or direction or directions be given as this Hon'ble Board may deem fit and proper."

6. It appears that Ackruti City Limited filed a suit bearing number 1985/2009 against Respondent No.1 Company, NIC, Mumbai Municipal Corporation, Respondents 2 & 3 and the Appellant for declaration that the title of NIC property is vested with Ackruti City Limited, whereas Respondent No.1 Company moved another cross suit 2392/2009 against NIC, one Smt. Ram Murli Lal Chand Goyal, One Mr. Rajeev Goyal and Ackruti for declaration that Respondent No.1 Company has 100% development rights over the same property. That means while 'Ackruti City Limited' has sought title over the property, the Respondent No.1 company has in its cross suits sought for 100% development rights over the same NIC property.

7. The Division Bench of High Court of Bombay in an appeal has passed an order on 15th April, 2010 directing the parties to maintain status quo over the aforesaid property asset.

8. Learned counsel appearing on behalf of the Appellant submitted that during pendency of the aforesaid suits before the High Court of Bombay, Respondent No.1 company, the other Respondents brother and father colluded with Ackruti City Limited to ensure a consent decree is passed by the High Court of Bombay in the aforesaid two suits altering 100% development rights vested with Respondent No.1 company. It was contended that the Appellant apprehends that any alteration of interest in development rights in NIC property would directly have bearing on the interest of Appellant in the family company solely developed on the foundation of earlier partnership firm run by the family.

9. According to counsel for the Appellant, the Respondent side is going to file consent terms reflecting 50% development rights of NIC property would go to Ackruti City Limited without any consideration amount and remaining 50% development rights would remain with Respondent No.1 Company. Out of remaining 50% left with Respondent No.1 Company, the consent terms set out another clause to alienate 10% of Respondent No.1's 50% rights to Ackruti City Limited on consideration and to have joint venture agreement with Ackruti City Limited to develop the entire property. Even the consideration amount has not been mentioned in the terms of agreement; the Respondents intend to collude with Ackruti City Limited.

10. It was submitted that the Learned Member (Judicial) has failed to apprehend this situation and not granted status quo with regard to development over the NIC property.

11. Learned counsel appearing on behalf of the Respondent No.1 Company, opposed the prayer. It was contended that the Appellant has only 2.5% shareholding and not 33.5% as claimed. However, from the record we find that such submissions made on behalf of the Respondents was not accepted by Learned Member (Judicial), CLB in its order dated 29th October, 2015 passed in CP No. 74(MB) 2015.

12. This court wanted to know from the counsel for the Respondent No.1, as to what is the consideration amount the Respondent No.1 Company will get, if 50% shares of development rights of Respondent No.1 Company are transferred in favour of M/s. Ackruti City Limited. No specific reply was given and it appears that if the Respondents transfer 50% of these shares of development in favour of M/s. Ackruti City Limited, there may be a possibility of such transfer without any consideration amount. However, no specific answer could be given at this stage, as no agreement reached between the parties nor any petition for compromise decree has been filed before the High Court of Bombay.

13. So far as NIC suit property is concerned and an order of status quo has already been granted by The High Court of Bombay in the aforesaid background, no further direction is required to be given in terms of prayer as sought before Tribunal.

14. In so far as the development rights are concerned, the Learned Member (Judicial) of Tribunal by impugned order dated 15th June, 2016 made following observations and directions.

"Para 10- However, since the respondents counsel has already conceded to obtain the approval of this Bench to deal with either the produce coming out of sale of 10% development rights or over the development rights of 40% of R1 company, this Bench, without prejudice to the rights of the applicant and the respondents in respect to that property, directs the answering respondents to maintain status quo over the development rights and money if any comes out of the settlement likely to take place in the suits mentioned above until further orders. The Respondents are also directed to communicate the transactions proposed to be taken place to the applicant in regard to NIC property."

15. In view of the fact that the Tribunal has already directed the answering Respondents to maintain status quo over the development rights and money if any comes out of settlement likely to take place in the suit mentioned above, until further orders, and the Company Petition is likely to be taken up on 20th July, 2016, as informed by the parties, we find no reason to modify the interim order passed by Learned Tribunal. The direction for Respondents to maintain status quo over the development rights will take care of the interest of all the parties including the Appellant.

16. The Company Appeal stands disposed of. However, on the facts and circumstances there shall be no order as to cost.

**(Justice S.J.Mukhopadhaya)
Chairperson**

**(Balvinder Singh)
Member (Technical)**