

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-(Court-I)
KOLKATA**

CP No. 143/KB/2024

In the matter of:

Sanjay Kumar Roy

...Petitioner

Versus

Broadways Realtors Private Limited & Others

...Respondents

Date of Hearing: 20/06/2024

Date of pronouncing the order: 11/07/2024

Appearances (through hybrid mode):

For the Petitioner : Mr. Shaunak Mitra, Advocate
: Mr. Rohit Kr.Keshri, Advocate
: Mr. Ankit Chaurasia, Advocate

For the Respondent Nos. 1 to 4 : Mrs. Manju Bhuteria, Advocate
: Ms. Bidisha Achari, Advocate

Coram:

Bidisha Banerjee : **Member (Judicial)**

Balraj Joshi : **Member (Technical)**

ORDER

Per: Balraj Joshi, Member (Technical)

1. The present Petition has been filed under Section 213, 241 and 242 of the Companies Act, 2013 alleging oppression and mismanagement by Respondents. The petitioner has also sought for some interim reliefs by way of such petition.
2. **Business of the company:** It is submitted by the Ld. Counsel appearing for the petitioner that Respondent No. 1 company is engaged in the business of real estate and primary business was to purchase the Parcel of Land,

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thereafter develop it and then sell the Plots in a small size to the allottees and small purchaser.

3. The Respondent No. 1 had taken huge funds from the Allotees, general public and purchased large parcels of Land in the name of the Company out of which most of the allottees are yet to receive the small plots of land after making part payment of the Company.
4. **The Dispute:** The Petitioner claims to be 50% Shareholder of the Company acquired on 2019-2020. (Pg – A-10, Pg – 213, 225) and also claims to be a Director of the company. Further the Petitioner was appointed as Managing Director of the Company in 2019-20 and requisite filing were made by the R1 company with the RoC.
5. The Petitioner on 11th January, 2024 received several emails from MCA on the registered email id of the petitioner wherein someone was trying to change the MCA password of the petitioner through illegal means.
6. On the very next day i.e. on 12th January, 2024 the petitioner filed a police complaint before Cyber Crime Bidhannagar Police Commissionerate being GDE No. 274.
7. The Petitioner vide letter dated 01.02.2024 filed a complaint before Bhowanipore Police Station, Joint Commissioner of Kolkata Police (Crime), Deputy Commissioner of Kolkata Police (South) and The Registrar of the Companies. (Placed at pg -282 – 288).
8. On 16.02.2024 the Petitioner wrote a detailed Complaint to the Registrar of Companies regarding the said fraud (**“A-18” pg- 289-312**)
9. The Registrar of the Companies on dated 08.03.2024 issued a Notice under section 206(1) of the Companies Act, 2013 seeking clarification of the allegations from the Respondent no. 2, 3 and 5. (**“A-19” pg -313 to 314**).

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10. The petitioner vide letter 25.04.2024 again filed a follow up complaint against the R2 to R4 to take action against the Respondent. (“A-22” pg- 326-338).

Charges of Oppression

11. Siphoning of Funds

- a. R3 had already sold 3 substantial portion the land owned by the R1 Company misrepresenting himself as the Director of the R1 Company, copies of the 3 Deed of conveyances are marked as (“A-23”, pg – 339,351), “A-24” pg- 363,374 and “A-25” pg – 386, 401).
- b. It is pertinent to Note that in all the 3 deeds has the Board Resolution showing the Signature of R5, wherein R5 admits that he does not have any information of his appointment.(Pg. 354,378,401 of the petition)
- c. The R2 had also sold large portions of the land unauthorizedly vide 2 Deed of Conveyances which is placed as Annexure “A-26”,pg- 408,417,435 and “A-27”, pg-437,445,463). It is pertinent to note that the R2 had resigned from the Company which effect from 14.12.2018 despite the resignation R2 without any Board Resolution or power to sale, sold large portions of land.
- d. It is to be noted that the official Bank Account of the R1 Company is with ICICI Bank however the Respondent fraudulently opened another Bank Account with Union Bank of India the copies of both the Bank Accounts are marked as “A-29” and A-30” respectively with the Supplementary Affidavit filed by the Petitioner in Page 6 and 7 of the Supplementary Affidavit, wherein it is evident that the Money which was deposited was siphoned away.
- a. The Petitioner came to know that the Respondent No. 2 had siphoned huge fund amounting to Rs. 21,581,480/- from the Respondent No.1

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Company to Respondent No. 6 Company which can be evident from the Financial Statement annexed as “A-12” in the petition and stated in page 256 (typed copy in Page 256A).

12. Illegal and wrongful acts of Respondents

- a. On 14.01.2024 Respondent No. 5 got themselves appointed as Additional Directors of the company with effect from 12.01.2024.
- b. On 20.01.2024 Respondent no. 3 was illegally appointed as the Director of the Company with effect from 18.01.2024.
- c. Further on, the Petitioner and another Director Mr. Uday Shankar Saha Mondal were fraudulently removed from the Company by the Respondents by filing Form DIR – 12.
- d. The Respondent No. 5 vide his reply letter dated 30.03.2024 duly filed on 02.04.2024 stated the Respondent No. 2 and 3 along with an ex-director of the company fraudulently made the Respondent no. 5 a Director of the Company by forging his signature, without his knowledge and consent. Further the R5 stated that the R2-R4 approached R5 for office work and took the KYC of the R5, wherein his KYC was misused and R5 illegally got appointed as the Director. (**“A- 20” pg- 315-320**).
- e. The R5 further filed a Complaint before the Ld. Chief Judicial Magistrate against the R4 and the Ld. Court was pleased to take cognizance of the complaint. (**“A-21”, pg – 317-325**).
- f. Finally it has been alleged that the instant matter is a clear case of Fraud and Forgery accordingly prays for Interim order of 1, 2, 4 and 5 and further the Hon’ble Tribunal think fit for regulating the affairs of the Company.

13. Submissions by the respondent no 2: The respondents have denied all the allegations during the hearing and the Ld. Counsel for the respondents have stated that it is in fact the Petitioner who had wrongfully usurped the control of the company by illegally removing R2 as Director of the company.

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14. The respondent has also disputed the shareholding contending that the original promoter Mr. Arun Kumar Sarkar could not have sold the shares to outside parties in derogation of article 7 clause (a) of the Articles of Association of the company. Further, the petitioner has suppressed the fact that the said Mr. Arun Kumar Sarkar passed away on February 2020 and such alleged transfer of share was recorded in the annual return of the Company for the financial year 2019-20 filed belatedly on 3rd September, 2023 as an afterthought and to take advantage of his death. Hence, the prayer for maintaining status quo on the shareholding of the Company should not be allowed.
15. It has been further submitted that the Petitioner is having access to the MCA portal as the email address used by him is the same as that being shown in the MCA records viz , zetasoft.edu@gmail.com . It was further submitted that the petitioner is also having access to all bank accounts.
16. There are counter allegations of siphoning of money by the petitioner in the written notes of arguments submitted by the Respondent no 2.
17. We have heard the parties on preliminary contentions and feel that considering the acrimony and mistrust between the shareholders/ Directors of the company the functioning of the company is going to be affected adversely particularly when the company is developing the plots from land parcels by taking public deposits. There are also allegations and counter-allegation of sale of properties by various directors on their own, which prima facie shows that the internal controls of the company are not robust enough to ward off such misappropriations. For the present our concern is to see that the existing land parcels are not sold at the whims and fancies of the individuals and the business is carried out in an orderly manner.

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18. Thus, in order to protect the interest of the company and also the public at large, it is essential that following interim orders are made and accordingly in exercise of the powers vested on this Tribunal under section 242(2) we do order:

- a. That existing shareholding pattern of the company shall not be altered/changed till disposal of this petition.
- b. That **Ms Neha Somani PCS** is appointed as a Special officer to examine the **issue of shareholding & Directorship** with reference to the allegation in the Petition vis-à-vis filings made with the RoC including the recommendations thereon. The Special officers shall submit a report to this Tribunal within One month.
- c. The shareholders shall be jointly responsible for making an inventory of the **'area wise land parcels'** owned by the company based on the record/books of the company under the supervision of the Special officer. A report regarding the current inventory of land parcels as recorded in the books of the company shall be submitted to this Tribunal by the Special officer.
- d. The Special officer shall be paid **Rs.1,50,000/- [Rupees One Lakh Fifty Thousand Only]** for the above exercise and report thereon. Any incidental charges that would be reasonably required to be incurred by the Special officer shall be reimbursed by R-1 company.
- e. Meanwhile the business of the company shall be carried on under joint signatures of the Shareholders who are hereby appointed as interim Directors on the board of the company. Other directors namely R3, R4 and R5 shall not interfere in such decision making till the disposal of this Petition All administrative and business decisions shall be taken jointly and shall be properly documented, including maintaining the

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books of accounts showing the details of the operation of the Bank Accounts henceforth.

f. For removal of difficulties, if any, in implementing the above arrangement, the parties shall be at liberty to approach this Tribunal for necessary orders that may be required to ensure smooth functioning of the company.

19. RoC, West Bengal is directed to file a report on the outcome in the matter of investigation for which a notice under Section 206 has already been issued by it.

20. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

21. List the matter on **7th August 2024**,

(Balraj Joshi)
Member (Technical)

(Bidisha Banerjee)
Member (Judicial)

This order is pronounced on 11th day of July, 2024.

FA_LRA