

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH, PRAYAGRAJ**

**CP NO.194/ALD/2017**

*(An application under Sections 241, 242 & 244 of the Companies Act, 2013)*

**IN THE MATTER OF:**

**AKUL INFRAVENTURES PRIVATE LIMITED.**

**Having its Regd. Office at:**

3/253, Vijayant Khand, Gomti Nagar,  
Lucknow, Uttar Pradesh.

..... **Applicant**

**AND IN THE MATTER OF:**

**ABHINAV GUPTA,**

S/o Sh. Ashok Kumar Bardiya,  
Resident of B-3/155, Vibhav Khand,  
Gomti Nagar, Lucknow, Uttar Pradesh.

.....**Petitioner**

***Versus***

**1. AJAI PRATAP SINGH,**

S/O Hanuman Baksh Singh,  
R/O 3/253, Vijayant Khand,  
Gomti Nagar, Lucknow, Uttar Pradesh.

**2. AKUL INFRAVENTURES PRIVATE LIMITED.**

Registrar of Office,  
37/17, Westcott Building,  
The Mall, Kanpur.

.....**Respondents**

**Order pronounced on 04<sup>th</sup> June, 2024**

**Coram:**

Mr. Praveen Gupta. : Member (Judicial)  
Mr. Ashish Verma : Member (Technical)

**Appearances:**

Sh. Yash Tandon, Adv. : For the Petitioner  
Sh. Shiv Saran Singh, Adv. : For the Respondent No.1

**ORDER**

1. This Petition has been filed under Section 241/2 and 242 of the Companies Act, 2013 Relief sought.

- a) *Direct the Respondent No. 1 to make good the losses incurred on the Company.*
- b) *Pass an appropriate order for removal of Respondent No 1 as Director of the Company.*
- c) *Pass an order framing an appropriate scheme of management so that the interest of the Company and Petitioner be protected.*
- d) *Direct full and thorough investigation in regard to the affairs of the Company and upon receiving report/interim report of such investigation, pass such appropriate orders and/or issue such directions as this Hon'ble Board deems fit and proper in the facts and circumstances disclosed;*
- e) *Pass an order declaring the Respondent No.1 as acting contrary to the provisions of the Companies*

*Act and have conducted the affairs of the Company in a manner which has caused grave prejudice to the interest of the Petitioner as shareholder/member of the Company.*

- f) Pass an order directing the Respondent No. 1 to restore the amount siphoned off.*
- g) Pass an order declaring the Respondent No.1 as guilty of oppression and mismanagement of the affairs of the Company.*
- h) Pass such other and further orders or issue such directions as this Hon'ble Board may deem fit and proper in exercise of powers under said Act to bring to an end the matters complained in this Petition.*
- i) Such other order or directions be made or given affording necessary relief to the Petitioner as in the premises this Hon'ble Board may deem fit and proper.*

### **INTERIM RELIEF**

- a) Pass an order of injunction restraining the Respondent No.1 from holding himself as Director of the Company.*
- b) Pass an order or direction for payment received by the Respondent No. 1 amounting to Rs. 45 lacs to be paid by the Company to the Petitioner.*
- c) Pass an order or direction for fund flow/ cash flow audit by competent tax authorities into all the*

*accounts of the Directors of the Company and their family members from the date of incorporation.*

- d) Pass an order or direction for investigation of all properties purchased by all the Directors of the Company on or after 01.11.2017 and the sources of funds for such purchase.*
- e) Pass an order for maintaining status quo in regard to the property of the Company.*
- f) Pass such further orders or directions as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.*

**2.** The Respondent No. 2 – M/s Akul Infra Ventures Private Limited was incorporated on 12.05.2012 as a company limited by shares with registered office at 3/253, Vijay Khand, Gomtinagar, Lucknow. The authorized share capital of the company was Rs. 5,00,000 divided into 50,000 equity shares of Rs. 10 each. The paid up share capital of the company was Rs. 1,00,000 shares divided into 10,000 shares of Rs. 10 each. Both the directors held shares in the ratio of 50:50.

**3.** The Petitioner contends that Respondent No. 1 executed Builders Agreement with M/s Aditya Home City Pvt. Ltd. on 09.01.2023 fraudulently which is recorded at Bahi No.1, Zild

No. 13450, page No. 255 to 422 at serial No. 308 in the Office of Sub-Registrar-II, Lucknow for the land situated at Khasra No. 621, Fizabad Road, Lucknow. This agreement executed by the Respondent No. 1 is illegal as no resolution was passed for such execution of the agreement dated 09.01.2013 and 19.01.2013.

- 4.** The Petitioner also contends that the Respondent No. 1 had received Rs. 25 lakhs as Security via Builders Agreement dated 09.01.2023 which is reflected under the head “Trade Deposits and Advances” in the Balance Sheet of the Company. Respondent No.1 has also received Rs. 45 lakhs in cash vide same Builders Agreement dated 19.01.2013 which is not mentioned in the Company’s Cashbook. Being an authorized signatory of the company, the Respondent No. 1 committed fraud. The petitioner sent a notice dated 22.05.2017 when this fraud came into his knowledge.
- 5.** The Petitioner further contends that Respondent No. 1 is treating the Company as a proprietorship company just by looking at the Bank Statement for the Company account. It is claimed that Respondent No. 1 has performed multiple transactions in a day, each involving the transfer of money

from the Company account to his savings account which is in violation of Companies Law.

- 6.** Petitioner further contends that Respondent No. 1 has violated his fiduciary obligations by acting in a way that is against the company's interest. The actions of Respondent No. 1 show utter contempt for the Petitioner and their justifiable expectations. The Respondent No. 1 has engaged in document forgery in an effort to misappropriate company cash. In addition to the aforementioned instances of account manipulation, Respondent No. 1 has illegally withheld the access of the Company's books of accounts from the petitioner.
- 7.** Petitioner further contends that the Respondent No. 1 has siphoned of money of the Respondent Company to his own personal account and such transfers are completely unaccounted for. The acts/omissions of the Respondent No. 1 is totally illegal and he should be directed to bring back the said funds into the account of the company along with interest.
- 8.** The Respondent No. 1 is liable to be restrained forthwith from operating the said account of the company and transferring

any more funds which belong to the Respondent No. 2 Company. It is stated that security money of Rs. 45 lakhs received in cash against builder's agreement dated 19.01.2013 had not been shown in the cash book of the company and utilized fraudulently by the respondent no. 1 for his personal use.

- 9.** From the aforesaid stated facts, it is clear that Respondent No.1 is trying to oppress the Petitioner and therefore, prays to grant the relief prayed in the present Petition.
- 10.** This tribunal vide order dated 06.07.2018 proceeded ex-parte against the Respondent No. 1. On the next date of hearing, this tribunal vide order dated 08.8.2018 granted liberty to the Respondents to file an application for setting aside the *ex-parte* order dated 06.7.2018 which would be considered on merits and in accordance with law. This tribunal vide order dated 05.9.2018 allowed the Respondent No. 1 to file an application within the period of three days' subject to payment of cost of Rs. 10,000/- which shall be paid in the account of Chief Minister's Kerala Relief Fund.
- 11.** Further, Respondent No.1 filed an I.A. No. 250 of 2018 for setting aside the order dated 06.7.2018. This tribunal vide

order dated 15.10.2018 partly allowed the said application and disposed of.

**REPLY ON BEHALF OF RESPONDENT NO.1**

- 12.** Respondent No.1 vide dairy no. 778 dated 15.10.2018 filed reply in response to the present petition wherein he contends that there is no dispute with respect to the 1<sup>st</sup> builders' agreement executed between Respondent No.1 and M/s Aditya Homecity Private Limited for the development of Land bearing no. 621 measuring 1450 sq. mtr of land situated in village Anaura, Pargana Tehsil District, Lucknow.
- 13.** Respondent No.1 executed Builder's Agreement with Aditya Homecity Pvt. Ltd on 19.01.2023 for development of plot No. 627 for which respondent No.2 paid 40% of the stamp duty on the execution of Builder's Agreement amounting to Rs. 7,36,800.
- 14.** Respondent No.1 received a sum of Rs. 45,27,800 more than the amount invested of Rs. 45,00,000 against the Builder's Agreement. Copy of the ledger of the Respondent No.2 maintained by the M/s Aditya Homecity Private Limited, Lucknow has been annexed as **Annexure-CA-1** with this Reply.



- 15.** For the execution of Builder's Agreement dated 19.01.2013, Petitioner was not available to sign the sale deed and builder's agreement. After this, Respondent No.1 executed the said sale deed in the name of the company from the money received in advance from the builder.
- 16.** Respondent No. 1 alleges that Petitioner has siphoned off the money from the bank account of the Company. Respondent was even denied to access the details of the transaction of the Company's Bank Account. Petitioner has not filed annual returns of the company due to which Respondent Company has received notice on 10.05.2018 from the ROC under Section 248 of the Companies Act, 2013. Copy of notice has been annexed as **Annexure- No.2** with the Reply.
- 17.** Respondent No.1 also alleges that Petitioner has not disclosed the details of payments made to purchase the plot No. 627. Further, the entire money deposited in the bank account of the company has been siphoned off by the Petitioner to their personal accounts.

**REJOINDER ON BEHALF OF THE PETITIONER**

- 18.** Petitioner has filed rejoinder wherein he has denied all the averments made in the reply filed by the Respondent No. 1

and contends that neither any resolution was passed by the Respondent Company for the purpose of execution of the builder's Agreement nor any builder's agreement was signed by the Petitioner.

**19.** In respect of Property No. 627, it is contended by the Petitioner that Respondent had withdrawn a sum of Rs. 40,00,000 from the Company's bank account in the manner stated below: -

- a) Rs 30 Lakhs vide cheque no. 380902 on 29.10.2012 in favour of Respondent.*
- b) Rs 5 Lakhs vide cheque no 380903 on 30.10.2012 in favour of Respondent and*
- c) Rs. 5 Lakhs vide cheque no. 380904 in favour of Respondent relative Anita Singh on 31.10.2012.*

**20.** Further, Respondent has admitted that he has received Rs. 45 Lakhs in cash against the said builder agreement dated 19.01.2013. however, the contention of Respondent No. 1 regarding the purchase of property on 19.01.2013 situated at Khasra No. 627 by paying said sum of Rs. 45,00,000 is absolutely wrong, baseless, illegal Tripathi.

**21.** Further, Petitioner contends that Rs 32,50,000/- claimed by Respondent No.1 paid for the purchase of property at Khasra

No. 627 is not matching with the payment scheduled mentioned at Page-26 of sale deed which is annexed at Page-117 of the annexure of the petition. Payment scheduled for property purchased at Khasra No. 627 clearly mentioned that "विक्रेता ने क्रेता से पूर्व में नगद विभिन्न किश्तों में "which in itself established that Rs. 32,50,000/- was paid in instalments and in advance on different dates from the amount of Rs. 40 Lakhs withdrawn by the Respondent.

**SUPPLEMENTARY AFFIDAVIT FILED BY THE RESPONDENT No.1**

**22.** This Tribunal vide order dated 02.08.2023 directed the Respondent No. 1 to file an affidavit within the period of 10 days. The relevant portion of the order is reproduced below:-

*".... 2. During the course of arguments, Ld. Counsel representing the Respondent No. 1 seeks a short adjournment for filing an affidavit for placing on record facts concerning to the amount that he has withdrawn from the companies account and paid for the purpose of purchase of the assets in the name of the company as well as the transactions made by him. The details will include with respect to the two sale deeds as well as two builders agreement and the inflow and outflow of the amount from the accounts of the company shall be depicted in a tabular form alongwith the affidavit.*

*3. Let the needful be done within a period of 10 days with an advance copy to be supplied to the Ld. Counsel representing the petitioner. Counter affidavit, if any, be filed on behalf of the petitioner within a period of 3 days thereafter. ....”*

**23.** In compliance of the aforesaid order, Respondent No.1 has filed Supplementary Affidavit vide dairy no. 2299 dated 24.8.2023 wherein Respondent No.1 contends that he has acted in the best interest of the Company and for the purpose of releasing maximum benefits in favour of the Company. It is stated by the Respondent that 02 sale deeds and 02 builders Agreement was executed with consent and approval of the Petitioner. However, petitioner is only recognizing one sale deed amongst the 04 agreements. All the paperwork for the purchase of Plot No. 621 was signed by the Petitioner and Respondent No.1 for which neither the Board Meeting was held nor the resolution was passed.

**24.** Respondent No.1 also contends that he purchased a property bearing plot No. 621 measuring 1450 sq. mtr of land situated in Village-Anura, Tehsil-Pargana, Dist-Lucknow for a sum of Rs. 25,00,000. The details of expenses incurred in purchasing the said plot of land is given below in the table:-

<b>Date</b>	<b>Reasons for Expenditure</b>	<b>Expenditure</b>
21.12.2012	Sale Deed of Plot No. 621	Rs. 25,00,000/-
21.12.2012	Stamp Duty for Sale Deed	Rs. 2,63,000
21.12.2012	Court Fees along with Lawyers Fees	Rs. 1,00,000
<b>TOTAL</b>		<b>Rs. 28,63,000</b>

**25.** Respondent No.1 states that for this purpose, he withdrew a sum of Rs. 30,00,000 vide cheque no. 380902 and Rs. 5,00,000 vide cheque no. 380903 on 29.10.2012 and 30.10.2012 respectively.

**26.** It is further contended that Respondent No.1 executed Builder's Agreement with M/s Aditya Homes dated 09.01.2013 for which a sum of Rs. 18,42,0000 was paid towards stamp duty for registration of the said agreement and Rs. 200,000 was paid towards court fee. Total sum of Rs. 20,42,000 was paid for registration of the said agreement. The details of expenses incurred in purchasing the said plot of land is given below in the table: -

<b>Date</b>	<b>Reasons for Expenditure</b>	<b>Expenditure</b>
09.01.2013	Stamp Duty for Builder's Agreement of Plot No. 621	Rs. 18,42,000
09.01.2013	Court Fees along with Lawyers' Fees	Rs. 2,00,000
<b>TOTAL</b>		<b>Rs. 20,42,000</b>

**27.** Respondent No.1 further contends that for the purchase of Plot No. 627 measuring 2025 sq. mtr of land situated in Village-Anura, Tehsil-Pargana, Distt-Lucknow for which he executed Builder's Agreement with M/s Aditya Home City and paid a sum of Rs. 32,50,000 to Mr. Brij Mohan and Rs. 5,41,000 was paid towards stamp duty and Rs. 2,50,000 was paid towards the court fee. The details of expenses incurred in purchasing the said plot of land is given below in the table:-

<b>Date</b>	<b>Reasons for Expenditure</b>	<b>Expenditure</b>
19.01.2013	Sale Deed of Plot No. 627 (2025 Sq. Mtr.)	Rs. 32,50,000/-
19.01.2013	Stamp Duty for Sale Deed	Rs. 5,41,000/-
19.01.2013	Court Fees along with Lawyers Fees	Rs. 2,50,000
<b>TOTAL</b>		<b>Rs. 40,41,000/-</b>

**28.** Respondent No. 1 also paid a sum of Rs. 5,42,000 towards the stamp duty for developing a plot no. 627 and Rs. 1,00,000/- towards the Court Fee along with lawyer's Fee.

<b>Date</b>	<b>Reasons for Expenditure</b>	<b>Expenditure</b>
19.01.2013	Stamp Duty for Builder's Agreement of Plot No. 621	Rs. 5,42,000
19.01.2013	Court Fees along with Lawyers Fees	Rs. 1,00,000
<b>TOTAL</b>		<b>Rs. 6,42,000</b>

- 29.** Respondent No. 1 also paid a sum of Rs. 5,16,000 towards purchase of non-judicial stamp papers in the name of company on 14.01.2013 of the Plot No. 627 and is still in possession of the Respondent No. 1. Copies of the Non-Judicial Stamp papers purchased in the name of the company has been annexed as **Annexure-SA-1** of this Affidavit.
- 30.** Respondent No. 1 has denied the allegation of the Petitioner with respect to withdrawal of Rs 5,00,000/-via check no. 37904 in favor of a Miss Anita Singh because the Respondent No. 1 never received the aforementioned funds. In summary, the Respondent No. 1 has spent around Rs. 92,90,500 in the name of the Company, which is approximately Rs. 13,00,000 more than what the Petitioner claims the Respondent No. 1 has received to be amounting to Rs. 80,00,000. The Petitioner in the entire petition, has not mentioned the entries of deposits and withdrawals of money which are unaccounted.
- 31.** Respondent No.1 also craves liberty of this tribunal to file appropriate application under Section 213 of the Companies

Act, 2013 seeking Investigation into the Companies Affairs, as the account of the company is being run by the Petitioner simultaneously and number of irregular deposits have been received in the company which have not been accounted for till date.

- 32.** Respondent No. 1 further contends that the transaction in dispute raised by the Petitioner relates to year 2012 and 2013 after the delay of more than 5 years. The reason for the said delay has not been explained anywhere in the present petition. The present petition is wholly vexatious and is liable to be rejected on the sole ground of period of Limitation.

**SUPPLEMENTARY REJOINDER ON BEHALF OF THE PETITIONER**

- 33.** In response to the above supplementary affidavit, the Petitioner has filed supplementary rejoinder vide dairy no. 2574 dated 29.09.2023 wherein Petitioner contends that he had deposited a total sum of Rs. 48.59 lakhs on 3<sup>rd</sup>, 4<sup>th</sup> & 5<sup>th</sup> October in the bank account of the company as a part of his contribution on the other hand, Respondent No.1 had not deposited any amount while it was decided that each will contribute equal sum of money in the bank account of the



company. This is also evident from the bank statement of the company.

**13. According to the Petitioner, the actual sum of money withdrawn by the Respondent No.1 are as under:-**

<b>Date</b>	<b>Amount</b>	<b>Cheque No.</b>	<b>Source</b>	<b>Remarks</b>
29.10.2012	30.00 Lacs	380902	Drawn from the Company's Account by the Respondent No. 1	Drawn in Self
30.10.2012	5.00 Lacs	380903	Drawn from the Company's Account by the Respondent No. 1	Drawn in Self
31.10.2012	5.00 Lacs	380904	Drawn from the Company's Account by the Respondent No. 1	Amount received by the Respondent, though the cheque is in the name of the Anita Singh
14.01.2013	6.00 Lacs	380909	Drawn from the Company's Account by the Respondent No. 1	Drawn in Self
14.01.2013	6.00 Lacs	380910	Drawn from the Company's Account by the Respondent No. 1	Drawn in Self
19.01.2013	45.00 lacs	CASH	Received by the Respondent No.1 from the	Cash received by the

			Builder's Agreement Dated 19.01.2013	Respondent No.1 from Builder
<b>Total amount Available with Respondent No.1</b>	<b>97.00 Lacs</b>			

**34.** The Respondent No.1 has taken a total sum of Rs. 97.00 lacs from the account of the company. After this, Respondent No.1 also withdrew Rs. 8.15 lacs till 11.11.2013. Details of which are given below in the table:-

<b>Date</b>	<b>Amount</b>	<b>Cheque No.</b>	<b>Source</b>	<b>Remarks</b>
01.03.2013	8 Lacs	380918	Drawn from Company's Account by Respondent No. 1	Drawn in Self -Cash Payment
11.11.2013	0.15 Lacs	380925	Drawn from Company's Account by Respondent No. 1	Drawn in Self -Cash Payment
<b>Total</b>	<b>8.15 Lacs</b>			

**35.** The Petitioner had sought all those information from the Punjab National Bank, where the Company's account is maintained. The Bank has confirmed and given the above information, and it has also given the Petitioner a copy of the

pertinent checks and other documents, which are being entered into the record as evidence of the same. The reverse side of Cheque No. 380904 dated 31.10 for Rs. 5 Lacs, in the name of "Anita Singh", has the signature of Respondent No. 1, who is the one who received the money. It is claimed that the aforementioned cheque was intentionally drawn as a bearer check in the name of "Anita Singh," which Respondent No. 1 has encashed, along with the amount that Respondent No. 1 received from the bank.

- 36.** Further, Cheques No. 380909 and 380910 dated 14.01.2013 for sum of Rs 6 Lac each were drawn in self and money was received by the Respondent No.1 and the cheques bear signature of the Respondent No.1 which show that the money was received by him. Similarly, the Cheque No. 380918 dated 01.03.2013 was issued in the name of the Respondent no.1, by Respondent No.1 and the money was received in cash by the Respondent no.1. Copy of the letter/ information dated 18-8-2023 received from the Punjab National Bank and the copy of the relevant cheques including the copy of the reverse side of the said cheques showing the name of the person who received the money annexed in **Annexure No.SRA-1** with the

Rejoinder. Thus, Total amount of Rs 1,05,15,000/- was withdrawn and taken by the Respondent No.1.

**37.** Petitioner has denied the averments made in paragraph 3 of the supplementary affidavit and contends that after incorporation of the company in May, 2012, both the Directors (Petitioner and Respondent No.1) decided to purchase Plot No.621 and the sale deed was executed on 21.11.2012 in the presence of both the directors who signed this sale deed. Hence, the purchase of plot no. 621 is not disputed.

**38.** Petitioner has denied the averments made in paragraph no. 4 of the supplementary affidavit and contends that apart from Rs 35 Lacs admittedly taken by the Respondent No.1, amount of Rs 5 lacs via Cheque No. 380904 dated 31-10-2012 in the name of Anita Singh, was also encashed and amount was received by the Respondent no.1, as is also clear from the reverse side of the concerned cheque. The details of amount taken by the Respondent no.1 for the purchase of the Plot No. 621 are given below in the table: -

<b>S.N.</b>	<b>Amount (LACS)</b>	<b>Cheque No.</b>	<b>Date</b>	<b>Remarks</b>
1.	30.00	380902	29/10/2012	Withdrawal by Respondent in self.
2.	5.00	380903	30/10/2012	Withdrawal by Respondent in self.
3.	5.00	380904	31/10/2012	Bearer Cheque in the name of Anita Singh but Amt. recd. by Respondent from bank. (copy of cheque enclosed) <b>Annexure-SRA-1</b>
<b>Total</b>	<b>Rs. 40 Lacs</b>			

**39.** With respect to payment of court fee, the Petitioner contends that the Respondent no.1 has stated that Rs 1,00,000/- was paid as Court Fee along with lawyers' fee, however no court fee is required to be paid as per law in execution of a sale deed. Registration fee is only Rs. 10,020 as mentioned in the sale deed as mentioned in page no. 15 of the sale deed and page no 86A of the petition. It clearly establishes that Respondent No. 1 has made false averments before this tribunal.

Sale Consideration	25,00,000	
Stamps	2,63,000	
Regn. Fee (in 2012)	10,020	As Mentioned on the back side of Page 15 of sale deed dated

		21.12.2012(Copy enclosed) <b>Annexure-4</b>
Lawyer's Fee for drafting submissions	5000	Even if best estimate is taken. Though it is submitted that the Respondent No.1 has not brought on record any document of invoice to show any payment towards Lawyer's fee and only made a bald statement, thus the same should not even be taken into consideration.
<b>TOTAL</b>	<b>Rs. 27,78,020</b>	

**40.** Petitioner further contends that Respondent No. 1 has made false statement on affidavit, As per him, at the best, Rs 27,78,020/- could have been spent in purchase of the Plot No. 621 whereas Respondent No.1 withdrew Rs 40,00,000/- from the bank account of the company for the same, thus a sum of Rs 12,21,980/- has been siphoned by the Respondent No. 1.

**41.** Petitioner has denied the averments made in paragraph 5 of the supplementary affidavit and contends that the Builder Agreement dated 09.01.2013 was executed by him without knowledge and consent of the Petitioner and Board Resolution or authorization, which is in violation of various provisions of the Articles of Association and the Companies Act 2013. Thus, such actions by the Respondent No.1

amounts to fraud and mismanagement on part of the Respondent No.1.

- 42.** The Builder Agreement dated 9-1-2013, which is in the name of the Builder i.e Aditya Homes City, paid the stamp duty instead of the Respondent No. 1 which is evident from each and every stamp of which is in name of the Builder- Aditya Homes City. Respondent No. 1 did not mention about the payment of stamp duty in execution of the Builder Agreement. The best maximum estimate for the Expenditure in execution of the Builder Agreement dated 9-1-2013 would be as follows:

**Maximum Expenditure for Execution of Builder Agreement dated 09.01.2013**

Stamps	Rs. 7,36,800	Total stamp Duty as mentioned in the Agreement at clause 34 is Rs.18,42,000/- (internal page 80 of the Agreement). As per clause 29 of the Agreement 40% of the duty was to be paid by the Company. Thus at best the amount paid by the Company would be 40% of the Total stamp duty which was Rs 18.42 Lacs, which would come out to be Rs 7.368 Lacs. Although the all the stamps annexed are in the name of the Builder, showing that the Builder has paid the same,
Regn. Fee	Rs. 10,040/-	As per Clause 29 of the Agreement (at internal page 74, stamp duty, registration charges, any other expenses were to be paid in the ration of

	40%= Rs.4,016/-	40:60. For evidence reference is made to reverse side of internal page 80 of the agreement is enclosed. Ann.-6
<b>Total</b>	<b>Rs 7,40,816/-</b>	

**43.** Petitioner states that expenditure for execution of the Builder's Agreement dated 09.01.2013 would be Rs. 7,40,816 and claim of the Respondent No.1 for the payment of legal fee of Rs. 1,00,000 is false as there is not evidence annexed with respect to it.

**44.** Petitioner has denied the averments made in paragraph 6 of the supplementary affidavit. The company had received Rs.12.00 Lacs on 26.12.2012 and Rs. 13.00 Lacs on 28.02.2013 totaling to Rs. 25.00 Lacs, in lieu of builder agreement dated 09.01.2013 as security. Amount deposited by the builder as above, has been totally withdrawn by Respondent No.1 in following way-

**Money again Clandestinely withdrawn by the Respondent No.1**

<b>Date</b>	<b>Amount (in Lacs)</b>	<b>Cheque No.</b>	<b>Remark</b>



14/01/2013	6.00	380909	Cash Withdrawn/received. in self by Respondent No.1 (copy of cheque enclosed at Annexure SRA-1)
14/01/2013	6.00	380910	Cash Withdrawn/received. in self by Respondent No.1 (copy of cheque enclosed at Annexure SRA-1)
21/01/2013	5.00	380911	RTGS to Bharat Setty by Respondent No1 (Copy of RTGS form is being filed herewith and marked as Annexure No. SRA-2)
08/03/2013	8.00	380918	Cash Withdrawn by Respondent No.1 in self (copy of cheque enclosed at Annexure SRA-1)
	<b>Total 25.00 LACS</b>		

- 45.** Petitioner further contends that “Bharat Setty” has no nexus with the petitioner or any business activity, and the company was under no obligation to reimburse him for any acts. Respondent No. 1 completed the RTGS for the reason that is known to him, thus, Respondent No. 1 is solely responsible for Rs. 5.00 Lacs shown to have been paid to Bharat Shetty.
- 46.** Therefore, the above table makes it clear that Respondent No. 1 has taken or siphoned the entire sum of Rs. 25.00 Lacs that the firm received from the builder. Despite Respondent No. 1's false claims, this money is now not available with the

Company in its account. The account statement makes it clear that as of 04.04.2017, the only balance in the account of the company was Rs. 17,528.74. When Respondent No. 1 made unauthorized or suspicious transactions in the said account while this petition was pending, the bank froze the transactions in this account at the petitioner's request in July 2018.

**47.** Petitioner has denied the contents of paragraph 7 of the Supplementary Counter Affidavit and contends that Respondent No. 1 withdrew a total sum of Rs. 40,00,000 from the Company's Account on October 29th, 30th, and 31st, 2012. It is estimated that they might have spent approximately Rs. 27,78,020 on the sale deed dated 21.12.2012 and Rs. 7,40,816 on the Builder Agreement dated 09.01.2013, totaling to Rs. 35,18,836. A surplus of Rs. 4,81,164 was still left with him. Additionally, Respondent No. 1 also secretly withdrew Rs. 25,00,000, which was deposited in the Company's Account as security under the Builder Agreement dated 09.01.201. Respondent No. 1 has not contributed any funds to the company's account. The funds

deposited in the company's account belong either to the Petitioner or the builder, as evident from the records.

**48.** The contents of paragraph 8 of the Supplementary Counter Affidavit are vehemently denied. It is submitted that the Respondent No.1 has made a bald averment about expenditure of Rs 2,50,000/- towards Court Fee along with Lawyers Fee, but it is submitted that no court fee is payable on execution of a sale deed under law, that the Respondent No.1 also has not brought on record any invoice or proof of any payment towards any lawyer Fee, and thus the same cannot be claimed and is totally bogus and false. The Respondent No.1 has submitted false and inflated figures without any documentary proof.

**Maximum expenditure for execution of sale deed dated 19-1-2013 for Plot No. 627 is as follows:**

**Maximum Expenditure for Sale deed dated 19-1-2013 for Plot No. 627.**

Sale Consideration	Rs.32,50,000/-	As mentioned at internal page 1 of the Sale deed
Stamp	Rs.5,41,500/-	
Registration Fee	Rs. 10,020/-	Copy of the internal page 25 (back side) of sale deed enclosed for evidence. (Annexure No. 5)

Lawyer Fee for deed drafting/submission	Rs.5,000/-	Even if best estimate is taken. Though it is submitted that the Respondent No.1 has not brought on record any document of invoice to show any payment towards Lawyer Fee, and only made a bald statement, thus the same should not even be taken into account.
<b>Total</b>	<b>Rs.38,06,020/-</b>	

**49.** Respondent No.1 has not paid any stamp duty for execution of the Builder's Agreement dated 19.01.2023 as same was paid by the Builder namely, Aditya Homes City. The total expenditure for execution of the Builders Agreement dated 19.01.2013 is Rs. 2,22,816. The Petitioner has denied the averments made in para 10,11 and 12 and contends that Respondent No.1 withdrew total sum of Rs. 1,05,15,000 and incurred expenses of Rs. 75,47,672 which clearly establishes that he has siphoned off sum of Rs. 29 lacs.

### **FINDING AND ORDER**

**50.** We have heard the submissions made by both the parties and perused the materials submitted on record.

**51.** Ld. Counsel of the Petitioner submitted that without the consent and knowledge of the Petitioner, Respondent No.1 executed Builder's Agreement dated 19.01.2023 for Plot No. 627 and in pursuance of which, he received Rs. 45 Lakhs in cash which was never shown in the books of Accounts of the Company. Further, Ld. Counsel of the Petitioner submitted that there is violation of clause 60 of the AOA and provisions of Companies Act, 2013 in view of the fact that there was no resolution passed by the Board of the Respondent Company. Respondent has also violated Clause 71(c) of the AoA as document was executed without the resolution of the Board passed by the Respondent company. By executing such instruments, Respondent No. 1 has violated Section 173(3) of the Companies Act, 2013, which amounts to fraud as held in various judgements such as ***Parmeshwari Gupta v UOI AIR 1973 SC 2389 and Dr. T.M Paul vs City Hospital (1999) 97 Compas 216 (Ker)***. Such actions of the Respondent No.1 amounts to fraud.

**52.** From the perusal of the documents, we find that there are serious allegations raised against the Respondent No.1 by the Petitioner, some of which relates to siphoning of funds for a

sum of Rs. 97 Lakhs by entering into Builders' Agreement and executing Sale Deeds. This needs to be further investigated and probed.

**53.** On perusal of the record and our above observations, we are of the definite opinion that there are in existence several transactions which have been undertaken by the parties from the account of the Respondent-Company which need to be gone into further details. The Tribunal per se, would have to therefore rely upon some expert opinion with respect to the veracity of the transactions and effective impact which has adversely affected the functioning as well as the finances of the Respondent-Company. Therefore, there is a need to carry out the audits in the nature of forensic audit by an expert/Chartered Accountant under the given circumstances.

**54.** We find that Section 242(2) (m) of the Companies Act, 2013 provides for Powers of the Tribunal, which is reproduced as under:

**242 (2)**

*“(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.”*

- 55.** As per Section 242(2) (m) this, Tribunal is vested with powers to pass any such order which in the opinion of the Tribunal is just and equitable under the given facts and circumstances of the particular case.
- 56.** In view of the overwhelming circumstances, which have been discussed herein above based upon the pleadings by the respective parties, we therefore, deem it appropriate to carry out forensic audits to look into the financial transactions and affairs of the Company.
- 57.** The scope of the forensic audit would include though not limited to the financial transactions which have been recorded in the present order. The Forensic Auditor would be at liberty to carry out the audits with respect to these financial transactions involving sale and purchase of any assets by the Directors of the Respondent-Company or for withdrawals or transfer of amount from the account of the Respondent-Company, the period for which the Forensic Auditor would look into for the forensic audit would commence from 2012 onward i.e. the time when the first alleged transactions have been reported by the concerned parties.

- 58.** We therefore appoint M/s Sumit K.B Agrawal and Co. Chartered Accountants, Mobile No. 9415348986, email agrsumit@yahoo.co.in, located at 6/7, Chak, Zero Road Prayagraj-211003 as a Forensic Auditor who will be paid an amount of Rs. 50,000/- and out of pocket expenses on actual basis. The aforesaid amount shall be paid by the Respondent- No.2 Company and the Forensic Auditor would submit its report to NCLT, Allahabad in sealed cover within a period of 06 weeks from the date of passing of this order.
- 59.** Registry is directed to send the certified copy of this order to all the parties if applied for, subject to compliance with all necessary formalities. Registry is also directed to supply a certified copy of this order to M/s Sumit K.B Agrawal and Co. Chartered Accountants as per the details given in the previous paragraph.
- 60.** Ordered Accordingly.

*-Sd-*

**(Ashish Verma)  
Member (Technical)**

*-Sd-*

**(Praveen Gupta)  
Member (Judicial)**

**Date: 04<sup>th</sup> June, 2024**