



**IN NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT-I
KOLKATA
I.A. No. 138/KB/2023**

IN

C.P. No. 113/KB/2022

An application under Section 241-242 of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016 and Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

In the matter of:

1. Bishnu Kedia, presently residing at 6, Chapel Road, Hastings, Mani Andaman Apartments, Flat No. 1 C, Kolkata- 700022, West Bengal
2. Asha Modi, residing at 68A, Maharani Indra Devi Road, Lakshman Vatika Apartment, 2nd Floor, Kolkata- 700060, West Bengal
3. Rama Salt (India) Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at 67/43, Strand Road, 8 Cross Road, Posta Marker, Kolkata-700006, West Bengal
4. Sigma Hirise Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at 362, Pratik Pally, Bosepukur, Kasba, Kolkata-700042, West Bengal

... Petitioners

Versus

1. GDB Construction & Developers Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at 42/2019, New Ballygunge Road, Ground Floor, Kolkata- 700039
2. Deepak Jain, residing at 45A, Buroshibtalla (Main Road, BL- Lily, 4th Floor, Flat No. 4A, Sahapur, Kolkata- 700038, West Bengal
3. Ganesh Prasad Kanu, residing at 9 Bakutala Lane, 2nd Floor, Kolkata- 700042 and working for gain at 42/219, New Ballygunge Road, Ground Floor, Kolkata- 700039.
4. Shri Bhairav Commotrade LLP, a Limited Liability Partnership within the meaning of the Limited Liability Partnership Act, 2008 having its registered address at 1, Portuguese Church Street, 3rd Floor, Kolkata 700001

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5. Krixi Multitrade Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at B/60/B, Station Plaza, Station Road, Bhandup, West Mumbai, Maharashtra – 400078.

... Respondents

I.A. No. 138/KB/2023

An application under rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of:

1. Shri Bhairav Commotrade LLP, a Limited Liability Partnership within the meaning of the Limited Liability Partnership Act, 2008 having its registered address at 1, Portuguese Church Street, 3rd Floor, Kolkata 700001
2. Krixi Multitrade Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at B/60/B, Station Plaza, Station Road, Bhandup, West Mumbai, Maharashtra – 400078.

... Applicants

Versus

1. Bishnu Kedia, presently residing at 6, Chapel Road, Hastings, Mani Andaman Apartments, Flat No. 1C, Kolkata-700022, West Bengal
2. Asha Modi, residing at 68A, Maharani Indra Devi Road, Lakshman Vatika Apartment, 2nd Floor, Kolkata- 700060, West Bengal
3. Rama Salt (India) Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at 67/43, Strand Road, 8 Cross Road, Posta Marker, Kolkata-700006, West Bengal
4. Sigma Hirise Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at 362, Pratik Pally, Bosepukur, Kasba, Kolkata-700042, West Bengal

... Respondents

Date of pronouncement: 18.03.2024

Coram:

Rohit Kapoor : Member (Judicial)
Balraj Joshi : Member (Technical)

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Appearances (through video conferencing):

For the Petitioner	:	1. Ms. Manju Bhuteria, Advocate 2. Ms. Meenakshi Manot, Advocate 3. Mr. Saubhik Chowdhury, Advocate
For the Respondent No. 2 in CP	:	1. Mr. Jishnu Choudhury, Advocate 2. Mr. Ishaan Saha, Advocate 3. Mr. Chitresh Saraogi, Advocate 4. Mr. Tanmay Agarwal, Advocate
For the Respondent No. 3 in CP	:	1. Mr. Shaunak Mitra, Advocate 2. Mr. Dripto Majumdar, Advocate
For Applicants in I.A. (CAA) No. 138/KB/2023	:	1. Mr. Rishav Banerjee, Advocate 2. Mr. Zeeshan Haque, Advocate 3. Ms. Akansha Mukherjee, Advocate

ORDER

Per : Coram

1. This Court convened through hybrid mode.

Brief facts of the case:

2. The order dated 06 March 2024 passed by the Hon'ble NCLAT was brought to our notice by the learned Counsel appearing on behalf of the Applicant on 11-03-2024, wherein this Tribunal has been directed to dispose of the subject IA within One Week. Hence, I.A. No. 138/KB/2023 was taken on board the very next day i.e. on 12 March 2024. Various parties were heard at length.
3. I.A. No. 138/KB/2023 is an application filed by Shri Bhairav Commotrade LLP, a Limited Liability Partnership within the meaning of the Limited Liability Partnership Act, 2008 having its registered address at 1, Portuguese Church Street, 3rd Floor, Kolkata 700001 and Krisi Multitrade Private Limited, a company within the meaning of the Companies Act, 2013 having its registered office at B/60/B, Station Plaza, Station Road, Bhandup, West Mumbai, Maharashtra – 400078, who are respectively R4 and R5 in the Company Petition No. 113 /KB/2022 (“CP”) seeking vacation of a stay order dated 25th May, 2022 which is an interim order *vide* which status quo on the shareholding and assets of the R1 company was ordered by this Tribunal in favour of the Petitioners Mr. Bishnu Kedia and others in the said Company Petition filed under Section 241 and 242 of the Companies Act, 2013, alleging the operation and mismanagement against the Respondents.

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4. The Applicant herein is seeking vacation of the order dated 25 May 2022 which is extracted hereinbelow for ease of reference:

ORDER

1. Ld. Counsel for the petitioner present. No representation for the respondents.
2. P1 and P2 are siblings, P3 and P4 are the companies controlled by P1. Total shareholding is 33.31% in R1 company. R2 and R3 hold the remaining shares. P1, R2 and R3 are the directors. Though intermittent increase in share capital has taken place, the ratio of shareholding has been maintained. P1 knew R2, and their friendship blossomed into a business relationship, and P4 was incorporated. The construction work for P4 was executed by R3. R1 was incorporated in 2009. P1, R2 and R3 became directors.
3. The work was divided. P1 looked after liaison work. R2 was looking after finance and compliances, and R3 looked after the construction work. R1 company owns three parcels of immovable properties. One of the properties is at 46, KM Sen Road. There is construction work going on in this property. Sanctioned plan was in 2016, and completion certificate has now been received. In 2020, P1 noticed that some loans were being taken not from banks, but from some third parties. Contracting work was also being given to R3's relatives. Relations started souring from end 2020 onwards.
4. Unregistered agreements were entered into on 14.03.2016 with R5 for the 2nd floor (2667 sq ft + three car parking spaces)(108-168); on 08.02.2018 with R4 for the 1st floor (2667 sq ft + four car parking spaces) (169-232) and 15.07.2019 for R4 for the ground floor (730 sq ft + three car parking spaces) (233-296). These parties were brought in by R2.
5. The petitioners then discovered that R4 is an LLP in which R2's wife and son were the parties. In R5, the father of R2 holds 95.56% (215000) along with another person. The remaining shares were held by two persons - Prasan Kumar Miniya and Ginni Devi Sharma 2.22% -5000 shares each.
6. Upon due diligence being undertaken, the petitioners found that the transactions are all undervalued. At page 357, is the comparative chart which shows the value at which the transactions took place, and the market values existing as on that date.
7. Service of the petition has been effected on R1 & R2, R3 and R4 on 08.04.2022, R5 on 11.04.2022, as per tracking information placed on record by the Ld counsel representing the petitioners. In spite of this, there is no representation today on behalf of the respondents.
8. Considering the circumstances, we are inclined to grant *ad interim ex parte* reliefs in terms of prayer (b) at page 31, (c) at page 31, (n) and (o) at page 33 and (q) of the petition at pages 33-34 of the petition. Status quo in respect of the board, shareholding and immovable properties of R1 company shall be maintained. These interim orders shall operate until further orders.
9. List the matter on 29.06.2022.

5. It is relevant to extract the prayers in IA No. 138/KB/2023, which is as under:

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- a. *An order be made vacating and/or setting aside the order dated 25th May, 2022 passed by this Hon'ble Tribunal*
 - b. *In the alternative an order be made vacating the order of this Hon'ble Tribunal dated 25th May 2022, in so far as the said order restrains the respondents from giving effect to the said agreements for sale annexed to the company petition being Annexures "F", "G" and "H".*
 - c. *An Order be made directing the Respondent no. 1 company to execute the registered deed of conveyances in respect of the units in the developed premises being the subject matter of the agreements for sale at annexures "F", "G" and "H" of the company petition and to hand over the possession of the said units to the Respondent Nos. 4 and 5.*
 - d. *Ad-interim Orders in terms of the prayers above*
 - e. *Such further or other order and/or orders be made and/or direction and/or directions be given as to this Hon'ble Tribunal may deem fit and proper.*
6. Ld. Counsel, Mr. Rishav Banerjee appearing for the Respondent no. 4 & 5 in the main CP and the applicants herein, submitted that this order must be recalled or stayed as their clients are seriously prejudiced due to the fact that even after making the requisite payments, the subject properties are not been conveyed to them. Ld. Counsel Mr. Jishnu Choudhary representing R2 (in CP) also vociferously advocated for vacation of the stay as stated that despite 66% shareholding in the company, his client is also severely prejudiced as R1 company is not able to carry on the business as usual.
7. The Applicants who are the Respondent nos. 4 and 5 in the main Company Petition have contended that the it is not correct that Respondent Nos. 4 and 5 are alter egos of the Respondent No. 2. This allegation is misconceived.
8. The learned Counsel appearing on behalf of the Applicants further contented that there is no material on record in the Company Petition to demonstrate that Dinesh Chandra Gupta is either a business associate of the Respondent No. 2 or a person acting at the dictates of the Respondent No. 2.
9. The learned Counsel further placed reliance on paragraphs "viii.-xi." Of the I.A. which are reproduced hereinbelow:
- "viii. On perusal of the agreement for sale dated 8th February, 2018 executed by and between the respondent No. 4 and the respondent No. 1 company, it shall*

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appear that the respondent No. 4 was to pay a sum of Rs.2,05,00,000/- as consideration for purchase of the entire first floor in the developed premises admeasuring about 2667 sq.ft. along with 4 covered car parking spaces as more fully and particularly described in the 2nd Schedule to the said agreement. A copy of the said agreement dated 8th February, 2018 is annexed hereto and marked “Annexure-A”.

ix. On a perusal of the agreement for sale dated 15th July, 2019 by and between the respondent No. 4 and the respondent No. 1 company, it shall appear that the respondent No. 4 was to pay a sum of Rs.92,95,000/- as consideration for purchasing three shop rooms on the ground floor of the developed premises, being Shop room No. 1, having a super built up area of 241 sq.ft, Shop room No. 2 having a super built up area of 248 sq. ft. and Shop room No. 3 having a super built up area of 241 sq. ft., situated on a part or portion of the south east side of the ground floor, aggregating to a total super built up area of 730 sq. ft. along with 3 open car parking spaces aggregating to an area of 405 sq. ft. more or less, more fully and particularly described in the 2nd Schedule to the said agreement. A copy of the said agreement dated 15th July, 2019 is annexed hereto and marked “Annexure-B”.

x. From a perusal of the agreement for sale dated 14th March, 2016 executed by and between the respondent No. 5 and the respondent No. 1 company, it shall appear that the respondent No. 5 was to pay a consideration of Rs.1,55,04,467/- for purchase of an office space in the developed premises admeasuring 2667 sq. ft. together with three covered/open car parking spaces on the ground floor aggregating 300 sq. ft. along with the proportionate share and interest in land and common areas more fully and particularly described in the second schedule to the said agreement for sale dated 14th March, 2016. A copy of the said agreement dated 14th March, 2016 is annexed hereto and marked “Annexure - C”.

xi. As has been admitted in paragraph 27 of the above company petition, both the respondent Nos. 4 and 5 have paid almost the entire sale consideration envisaged in the aforesaid sale agreement. Such fact shall further appear from the statement of accounts of the respondent Nos. 4 and 5, copies whereof are annexed hereto and marked ‘Annexure-D’ and ‘Annexure- E’ respectively.”

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10. Learned Counsel has also questioned the circle rate prevailing at the relevant point of time while seeking vacation of the interim order dated 25 May 2022.
11. The Applicant further seeks handover of the possession and convey the said units in the developed premises being the subject matter of the aforesaid agreements for sale to the respondent Nos. 4 and 5 within the timeframe envisaged in the said agreements for sale.
12. The learned Counsel further submitted that the Respondent Nos. 4 and 5 are in no way concerned with the internecine dispute between the directors and shareholders of the Respondent No. 1 company and are entitled to obtain execution of the registered deeds of conveyance in respect of the units in the developed premises being the subject matter of the said agreements for sale and to obtain possession of the said units, along with interest owing to delay in handing over of possession of the said units in terms of the agreements for sale.
13. It is further submitted that the Company Petition has been instituted by the Petitioners, acting in league and concert with the Respondent No. 1, with the malafide motive of averting the obligations of the respondent No. 1 company to handover possession and execute registered deeds of conveyance of the developed units in the said premises being the subject matter of the agreements for sale.
14. It is further submitted that the allegations in the Company Petition of the Respondent Nos. 4 and 5 having acted in collusion with the Respondent No. 2 is merely an eyewash when it is in fact the Petitioner and the respondent No. 2 who have colluded and conspired to institute the Company Petition to deny and defeat the rights of the Respondent Nos. 4 and 5.
15. Further during the hearing the issue of shareholding was vehemently contested by the Ld. Counsel appearing for the Respondents in this IA, who are the petitioners in the main CP No.113/KB/2022. The shareholding is also vehemently contested by the Ld. Counsel appearing for the Respondent No.3 who asserts that all the three partners, namely, Petitioner, Respondent No.2 & Respondent No.3 are equal shareholders of the company and that he is also opposed to vacation of the stay order and that the order should continue and argued that litigant cannot be allowed to do something indirectly which he is not otherwise able to do directly.
16. Ld. Counsel appearing for the petitioner and Respondents in this IA, Ms. Manju Bhuteria, has contended that in an Appeal filed before Hon'ble NCLAT, the applicant

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herein has suppressed the fact that the IA No. 138/KB/2023, which is sought to be disposed, inter-alia is also to be treated as a reply by R4 & R5 in the main CP No. 113/KB/2022, which is reflected in the order dated 22nd Sept 2022. That being so it is essential that the CP is heard out completely, in absence of which the IA cannot be disposed. She also has submitted that this application is a delayed application for vacating the stay. She further asserted that vacation of the order of stay would de-facto give property rights to the Respondent No.2 who has already been called out in the petition as the main party behind the entire matter.

17. The Petitioners in CP have contended that he along with respondent Nos. 2 and 3 are original promoter shareholders and directors of the company and even presently are director. Respondent No. 2 and 3 are presently acting in collusion with each other to the interest of the petitioners of the company. Respondents are mismanaging the company's affairs. Respondent No. 2 and 3 are guilty of committing gross acts of oppression and mismanagement.
18. It is further submitted that the Respondent Nos. 4 and 5 are entities that are indirectly owned and controlled by respondent No. 2 through his family members. At present, shareholding of the company is equally divided amongst three groups.
19. Huge amount of money has been paid by the company to service loans at abnormal high rates of interest. The amounts flowing out of the company had become unbearably burdensome for the company.
20. The respondent No. 4 is a Limited Liability Partnership (LLP) in which the respondent No. 2 exercises control through his nominees and/or family members. As will appear from the Master Data of Shri Bhairav Commotrade LLP as appearing on the Ministry of Corporate Affairs' (MCA) Portal, the initial designated partners of the respondent No. 4 were Kiran Prakash Gupta and Ayush Gupta. The said Kiran Prakash Gupta and Ayush Gupta are the close relatives of one Dinesh Chandra Gupta and in fact, Ayush Gupta is Dinesh Chandra Gupta's son.
21. The respondent No. 2 has devised and engineered the agreement for sale with respondent Nos. 4 and 5 with a view to misappropriating the properties belonging to the Company for its own unjust enrichment. Respondents are guilty of indulging in self-dealing by setting up the purported transactions with respondent Nos. 4 and 5. It is imperative that necessary orders and directions be passed by this Tribunal to prevent wrongful deprivation of the Company's assets and properties for gross

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undervaluation of purported transactions which have been entered into with respondent Nos. 4 and 5. There are other allegations raised in para 27 to 45 of this petition while seeking the reliefs prayed for in this petition.

22. The Respondent No. 3 has also opposed this IA on the following grounds;-

- a. On perusal of the CP, it became evident to R-3 that R-2 who was at the helm of affairs of the company, took several actions prejudicial to the Company's interest. R-3 (whose role in the company was restricted to providing technical expertise regarding construction/development activities) made enquiries and ascertained that the statements made in the CP regarding R-2 being in de facto management and control of R-4 and R-5 are true and correct.
- b. R-4 and R-5 have after an inordinate delay mala fide filed the present application in order to prolong final hearing of the CP.
- c. Since R-4 and R-5 are well aware that the time to prefer an appeal from 25.2.2022 order has long lapsed, therefore this application has been filed, though it is evident that the application is an appeal in disguise. The timeline prescribed under Section 421 of the Companies Act, 2013 is mandatory and this application is liable to be dismissed on this ground only.
- d. R-4 and R-5 never demanded conveyance or filed any legal proceedings against the company seeking performance of the purported agreements for sale. Thus, the purported urgency of demanding conveyance (after passage of more than one year from the 25.5.2022 order) is false and meritless.
- e. Apart from bare denials, there is no answer regarding R-2 and his relatives' constant and overarching control and involvement in R-4 and R-5. R-4 and R-5 have on 22.9.2023 submitted that this application ought to be treated as their reply. R-4 and R-5 have miserably failed to dissociate themselves from R-2 (at whose behest this application has been filed).
- f. Subsequent to passing of interim order dated 25th of May, 2022 respondents have filed their reply affidavit. Since the respondents have filed their reply on merits, R4 and R-5 as is evident from the above extracted order shows that applicants who are R-4 and R-5 in the main petition chose IA No. 138/KB/2023 treated as its reply affidavit to the main CP as extracted from the order dated 22nd of September, 2023. Therefore, pleadings are complete.

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23. Therefore, while the petitioner is accusing the other two directors viz. R2 & R3 for collusion, the R3 is accusing R4 & R5 being alter ego of R2. In such a scenario, we feel it appropriate to deal with the main CP and respective contentions of parties in its entirety.
24. It is also considered useful to extract the said order of 22nd September 2022 which is as below:

ORDER

1. Ld. Counsel for the parties present.
2. IA(COMPANIES.ACT)/138(KB)2023- Mr. Rishav Banerjee, Ld. Counsel appearing for the Respondent Nos.4 and 5 has filed IA(Companies Act)/138(KB)2023. Reply-affidavit has not been filed by the Respondent Nos.4 & 5. Ld. Counsel appearing for the Respondent Nos. 4 & 5 state that this IA(Companies Act)/138(KB)2023 be treated as its reply-affidavit to the main CP. Reply-affidavit/rejoinder-affidavit, if any, to this IA be filed by the petitioner within two weeks.
3. Reply-affidavit has been filed by Ld. Counsel appearing for the Respondent No.2 & 3.
4. Despite opportunity, rejoinder-affidavit has not been filed by the petitioner. Last and final opportunity is granted to the petitioner for filing the rejoinder-affidavit within two weeks, failing which right to file the same stands closed.
5. Post this matter on **20.10.2023**.

25. Since the shareholding of the company has been vehemently contested by P1 and R3, coupled with various allegations of oppression and mismanagement against R2, who was a majority shareholder in R4 & R5, as contended in the petition, the matter in our considered view, requires in depth consideration. Therefore, we feel that the continuation of stay order dated 22-05-2022 shall be in the fitness of things, particularly when no new event is stated to have occurred after passing of order date 22-05-2022 and also when pleadings are complete and main CP is ripe for final hearing.
26. In view of the above position, we decline to grant any relief this IA No. 138/KB/2023. However, since by virtue of the fact that IA No. 138/KB/2023 is to be considered as

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a reply by R4 & R5, (the applicants herein) to CP No.113/KB/2022 as recorded in the order dated 22nd September 2023 (supra) , this IA *sans* the reliefs sought shall continue to be considered as a reply-affidavit by R4 & R5 to the main CP.

27. Post this CP for hearing on **21-03-2024**.

28. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.

29. Certified copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

This order is pronounced on the 18th Day of March 2024.