(2024) 04 NCLT CK 0006

In the National Company Law Tribunal

Case No : T.C.P. 98 Of 2013

Pratima Arun Parekh & others — APPELLANT

Vs

AAP Realtors Limited & others — RESPONDENT

Date of Decision : 04-04-2024

Acts Referred:
Companies Act, 1956 — Section 391, 394

Citation : (2024) 04 NCLT CK 0006

Hon'ble Judges : V.G. Bisht, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Simil Purohit, Punit Damodar, Nikita Vardhan, Nidhi Pathak, Vishal Tiwari, Rohit Kapadia, Gaurav Joshi, Ankit Lohia, Shilpa Joshi, Tanisha Choudhary, Tejas Agarwal, Aman Agarwal, Hanishi Shas, Chetan Kapadia, Smriti Shahani, Ooshma Jain

Final Decision : Disposed Of

Judgement

V.G. Bisht, Member (Judicial)

1. This Company Petition No. 98/2013 was filed before the Company Law Board, Mumbai Regional Bench, by the legal heirs of Late Shri Amitabh Parekh, holding 34% equity shares of the Respondent No.1 Company i.e. AAP Realtors Limited u/s 397, 398 and 402 of the Companies Act, 1956 seeking following reliefs:

(a) That this Hon'ble Board be pleased to pass such orders and directions under Section 402 of the Companies Act as may be necessary for the purpose of regulating the affairs of the Respondent No.1 Company:

(b) That this Hon'ble Board be pleased to appoint an independent Director on the Board of Directors of the Respondent No.1 Company as the Chairman of the Board of Directors with such powers as this Hon'ble Board deems fit and proper;

(c) That this Hon'ble Board be pleased to order and direct that the Board of Directors of the Respondent No.1 Company shall be constituted in such manner that the Petitioners will have a 1/3rd representation thereon at all times;

(d) That this Hon'ble Board be pleased to remove Respondent No.6 as a Director and Respondent Nos.7 and 11 to 13 as an Additional Director of the Respondent No.1 Company

(e) That this Hon'ble Board be pleased to order and direct that the share capital of the Respondent No.1 Company shall not be increased in any manner whatsoever without the prior written consent of the Petitioners;

(f) that pending the hearing and final disposal of the Petition it is just convenient and necessary that this Hon'ble Board be pleased to: (1) appoint an Administrator of the Respondent No.1 Company with such powers as this Hon'ble Board may deem fit and proper;

(ii) appoint an independent Director on the Board of Directors of the Respondent No.1 Company as the Chairman of the Board of Directors with such powers as this Hon'ble Board deems fit and proper,

(iii) restrain the Respondent Nos. 1 to 7 and 11 to 13 from proposing, seconding, voting on or passing any Resolution in respect of Items of Business Nos. 1 (Ordinary Business), 3 to 6 (Special Business) of the Agenda in the Notice dated September 5, 2013 (at Exhibit "M" to the Petition) calling the General Body Meeting of the Company on September 30, 2013;

(iv) restrain Respondent Nos. 1 to 7 and 11 to 13 from holding any Board Meeting of the Company without first appointing an appropriate number of nominees/ representatives of the Petitioners as a Directors of the Company:

(v) restrain Respondent No.6 and Respondent Nos.7 and 11 to 13 from acting or holding themselves out in any manner as a Director and Additional Director respectively of the Respondent No. 1 Company:

(vi) restrain Respondent Nos. 1 to 7 and 11 to 13 from in any manner altering the share capital of the Respondent No.1 Company without the prior written consent of the Petitioners;

(vii) restrain Respondent Nos. 1 to 7 and 11 to 13 from issuing any allotment letters to flat/unit purchasers in the projects of the Company at Mulund and Bandra (copies of the Agreements whereof are at Exhibits "E" and "F" to this Petition) and at Goregaon (described in paragraph 6.15 of the petition) and Andheri (described in paragraph 6.18 of the petition) without the consent of the Petitioners;

(viii) restrain Respondent Nos. 1 to 7 and 11 to 13 from transferring the benefit of the development rights of the projects of Company at Mulund and Bandra (copies of the Agreements whereof are at Exhibit "E" and "F" to this Petition) and at Goregaon (described in paragraph 6.15 of the petition) and Andheri (described in paragraph 6.18 of the petition) or from exercising any powers or authorities contained in any powers of attorney in respect of the Mulund, Bandra, Goregaon and Andheri properties of the Company or from alienating, encumbering, parting with possession or creating third party rights in respect of the Mulund, Bandra, Goregaon and Andheri properties of the Company; and

(ix) Order and direct the Respondents to forthwith furnish the following information to the Petitioners: -

A. Particulars of the total construction work involved in the Mulund, Bandra, Goregaon and Andheri Projects and all other development projects of the Company, the particulars of the saleable areas, sanctioned and potentially available Floor Space Index and plans, State Environmental Impact Assessment Authority Permissions, Intimation of Disapprovals (10Ds), Commencement Certificates and other Municipal Corporation Permissions,

B. Particulars of indemnities and undertakings furnished in the name of the Company to the Municipal Authorities or the Town Planning Authorities or the Fire Department or the Maharashtra Pollution Control Board or any other Central or State Government Authority or Officer

C. Projections of the Company to meet the cost of construction the Mulund, Bandra, Goregaon and Andheri Projects and all other development projects of the Company:

D. Particulars of encumbrances and tenancies and other third party claims, provisions made for rehabilitation of any tenants, occupants, dwellers including slum dwellers, if any, on the Mulund, Bandra, Goregaon and Andheri Projects and all other development projects of the Company:

E. Particulars of all mortgages, charges, rights in respect of the Mulund, Bandra, Goregaon and Andheri Projects and all other development projects of the Company:

F. Particulars of any powers of attorneys executed by the owners of the Mulund, Bandra, Goregaon and Andheri Projects and all other development projects of the Company and details of all acts done by the attorney holders in pursuance thereof in the name of the Company:

G. Particulars of all allotments, sales, leases, transfers or alienation of any nature whatsoever of the rights or properties of the Company in respect of the Mulund, Bandra, Goregaon and Andheri Projects and all other development projects of the Company:

H. Particulars of any liabilities, charges or other encumbrances or other dealings or transactions in the name of the Company or any other matter which may alter or affect the capital structure of the Company:

I. All Registers including Register of Members and Register of Charges of the Company, and

J. Books of Accounts, Journals, Vouchers and other documents of the Company relevant for the Profit and Loss Account and Balance Sheet of the Company and to which a shareholder of the Company is entitled to.

(g) For ad interim reliefs in terms of prayer (f) above;

(h) For the costs of the Petition.

2. The Petition was amended in terms of order dated 26.09.2013 impleading Indian Overseas Bank and Gorlas Techno Space Limited as Respondent No.14 and 15.

3. The Petitioners state that in or about the time of the incorporation of the Company in April, 2008 the late Amitabh Arun Parekh was a Director of the Company with effect from April 25, 2008 holding 49,400 (Forty- nine thousand four hundred) equity shares of the Company of Rs.10/- (Rupees Ten only) each. As stated above the name of the Company was changed on November 26, 2009.

4. During the financial year ended March 31, 2011 the Company made a further issue of share capital. The Company's present issued/allotted 60,03,000 (Sixty Lacs Three Thousand) equity shares of Rs. 10/- each at a premium of Rs.100/- each. Out of these 60,03,000 equity shares at a premium, 20,03,000 (Twenty Lacs Three Thousand) equity shares of Rs.10/- each were allotted to the late Mr. Amitabh Parekh and the balance 40,00,000 (Forty Lacs) equity shares were allotted to the respondent No.4. The list of the shareholders of the Company at this time pursuant to the said allotments is at Exhibit "B" to the petition. After the issuance of the aforesaid shares, the share capital of the Company was held as follows :-

i. Parekh Group (comprising of the petitioners and the approx. consenting persons at Sr. Nos. (i) to (vi) at paragraph 2.6 34% above)

ii. Kedia Group (through Respondent No.4) approx. 66%

5. The respondent Nos.2 and 3 joined the Board of Directors of the Company on or about April 30, 2010 as the nominees of the respondent no. 4. At the material time, the respondent nos. 2 and 3 were/ are in the business of development of immoveable properties.

6. In this manner the Company was constituted as a quasi-partnership / vehicle for business of development of immoveable properties inter alia in Mumbai. The Company is a quasi-partnership of the Parekh Group and the Kedia Group. Even if the shareholdings of the Chamdias and the Rathis to the extent of 400 shares held by them is excluded, the Parekhs still hold virtually 34% of the share capital of the Company and the Company still constitutes a quasi-partnership of the Parekh Group and the Kedia Group. Mulund property.

7. On perusal of the order dated 26.09.2013 passed by the Company Law Board, we further find that the Counsel for interveners stated that the none of the petitioners hold even a single share on the date of presentation of this Petition as the shares were sold by Late Shri Amitabh Arun Parekh on payment of valuable consideration to their client and the shares in physical forms are in their physical

possession of their client. On perusal of this order, we note that the Company Law Board had held that “It is therefore prima facie established that the Petitioners have locus standi to file the Petition being the natural heirs of the deceased”. Accordingly, this Petition was held to be maintainable on that ground.

8. Upon constitution of this Tribunal, this matter was transferred from Company Law Board to this Tribunal and was registered as T.C.P. 98 of 2013.

9. Heard learned counsel and perused the material on record.

10. During the Course of the hearing before this Bench, the Petitioners filed an affidavit dated 22.02.2024 enclosing thereto an email dated 21.01.2024 whereby a letter dated 20.01.2024 written by M/s Kanga & Co. on their behalf was sent to the Chief Manager, Indian Overseas Bank. This Letter reads as under:

“We address this letter to you, on behalf of our clients Mrs. Pratima Arun Parekh and Mrs. Julie Amitabh Parekh, who have instructed us to write to you as under.

As you are aware, our clients, Mrs. Pratima Arun Parekh and Mrs. Julie Amitabh Parekh, the mother and wife of the Late Amitabh Parekh, had filed the captioned Company Petition against AAP Realtors Limited and their shareholders, directors etc. under the provisions of Section 391 and 394 of the Companies Act, 1956 before Hon'ble Company Law Board, Mumbai in respect of various acts of oppression and mismanagement carried on by the management of AAP Realtors Limited and others for grant of reliefs, as more particularly set out therein.

The Late Amitabh Parekh was, during his lifetime, entitled to and was the owner of 34% (thirty four percent) shareholding in AAP Realtors Limited ("the Company").

Pursuant to an Order dated 26th September 2013 passed by the Company Law Board, Mumbai Bench, you were impleaded as a party respondent in the captioned Petition. The matter had thereafter come up on Board before the Hon'ble NCLT from time to time.

At your request, our clients had, attended the office of your Advocates, Messrs. M.V. Kini & Company, and had executed a Deed of Assignment by which the entire shareholding of Late Amitabh Arun Parekh in the Company was assigned to you at a valuation of Rs.600 Crores.

As stated hereinabove, our clients have assigned the said shares to you. Since you are entitled to the said shares, you are therefore requested to take such steps as you may deem fit, or as you may be legally advised, to pursue the captioned Petition before the Hon'ble Tribunal.

The next date of the matter is 24th January 2024. You are requested to kindly ensure that your Advocates appear on your behalf at the time when the matter is called out and take adequate steps in the matter, as you may deem fit or as you may be advised. A copy of the Order dated 21st December 2023 passed by the Hon'ble NCLT-I is enclosed herewith.”

11. This matter was listed on 14.01.2024 and Respondent No.14 i.e. Indian Overseas Bank, the assignee of Shares appeared. There was no request from the assignee for impediment as the petitioner in place of the original petitioner parties after assignment of their shareholding in favour of Respondent No.14. The Petitioners by their own admissions have ceased to be the members of the Respondent No.1 Company after having assigned the entire shareholding to the Respondent No.14 and the Respondent No.14, who has stepped into the shoes of the petitioners is not willing to prosecute this matter as petitioners. We further find that the main grievance of the Petitioners was non-transmission of shares initially in their favour as legal heirs after the death of member on record, which were subsequently transmitted in their names. Accordingly, we consider it appropriate to dismiss this matter as not maintainable any longer and dispose of accordingly.