

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**Company Appeal (AT) No.179 of 2018****IN THE MATTER OF:**

**D. Hymavathi Reddy
H.No.840, Road No.41,
Peddamma Temple,
Jubilee Hills, Hyderabad-500033**

...Appellant**Vs**

- 01.Prajay Engineers Syndicate Ltd
Represented by its Managing Director
Mr. Rohit Reddy Dantapalli,
8-2-293/82/A/1091-A, Road No.41,
Near Peddamma Temple,
Jubilee Hills,
Hyderabad-500033 Telangana.**
- 02.Mr. Vijay Sen Reddy Dantapalli
S/o Dantapalli Surya Prakash Reddy
1-1-380/11 Ashok Nagar,
Chikkadpally, Hyderabad-500020**
- 03.Mrs Sharmila Reddy,
W/o Vijay Sen Reddy,
1-1-380/11,Ashok Nagar,
Chikkadpally, Hyderabad-500020 Telangana**
- 04.Mr. Rohit Reddy Dantapalli
S/o Dantapalli Vijay Sen Reddy
1-1-380/11, Ashok Nagar.
Chikkadpally, Hyderabad-500020.**
- 05.Mr. Raghavender Reddy Marpadaga
Additional Director,
1-2-56/60,
Advocates Colony,
Domalguda, Himayath Nagar,
Hyderabad-500029.**
- 06.Nageshwar Rao Neelakantam
Plot No.40 and 41
Balaji Enclave Gunrock,
Secunderabad 500 009**
- 07.Mr. Vijay Kishore Mishra**

**5-5-1019, goshamahal,
Hindi Nagar,
Hyderabad-500 012**

- 08.Mr.Sumit Sen,
Whole Time Director,
6-3-1012/1 E3, Hidden Treasure Apts,
Somajiguda
Hyderabad 500 082.**
- 09.Mr.Sokke Kaliveerappa Rudresh,
Director,
H.No.7/8-1, 2nd MN Chakravarthy,
L/O Bangalore Palace Road Cross,
Bangalore-560020**
- 10.Mr Ravi Kumar Kutikalapudi,
Whole time Director
10-2-409/1, Street No.2,
West Marredpally,
Secunderabad-500 003.**
- 11.Mrs Padmaja Kota,
Director,
8-3-1112,
Flat No.501,
B.N. Residency,
Keshav Nagar Colony,
Yellareddyguda,
Hyderabad-500073.**
- 12.Mrs Deevi Madhavi Latha,
Company Secretary,
101 Krishna Balajit Apartments Balaji Nagar,
Mehdipatnam,
Hyderabad-500067.**
- 13.Mr Bhaskara Rao Patnana,
CFO
22-1-178/101 Bhagya Nagar Colony,
Kukatpally,
Hyderabad-500072.**
- 14.Prajay Velocity Developers Pvt Ltd,
Rep.by its Director Mr. Vijay Sen Reddy Dantapalli,
H.No.4-1-2/4, Eden Garden Road,
Ramkote,
Hyderabad-500001.**

- 15. Secunderabad Golf And Leisure Resorts Pvt Ltd,
Rep by its Director,
Mr. Vijay Sen Reddy Dantapalli,
H.No.4/1/2/4, Eden Gardens Road,
Ramkote,
Hyderabad 500001.**
- 16. Prajay Properties Pvt Ltd,
Rep by its Director
Mr. Vijay Sen Reddy Dantapalli
H.No.8-2-293/82/A/1091-A, Road No.41,
Near Peddamma Temple, Jubilee Hills
Hyderabad 500033.**
- 17. Prajay Lifestyle UPVC Windows Pvt Ltd,
Rep by its Director
Mr. Vijay Sen Reddy Dantapalli,
No.1091, Road No.41, Jubilee Hills,
Hyderabad 500033.**
- 18. Prajay Holdings Pvt Ltd.
Rep by its Director
Mr. Vijay Sen Reddy Dantapalli,
5th Floor, Prajay Corporate House,
1-10-63 & 64, Chikoti Gardens,
Begumpet, Hyderabad 500 016.**
- 19. M/s Prajay Kamanwala Developers,
Rep by Mr. Vijay Sen Reddy Dantapalli,
H.No.8-2-293/82/A/1091-A,
Road No.41,
Near Peddamma Temple,
Jubilee Hills,
Hyderabad 500 033.**
- 20. M.s Prajay Binjusaria Estates,
Rep By Mr Vijay Sen Reddy Dantapalli,
H.No.8-2-293/82/A/1091-A,
Road No.41,
Near Peddamma Temple,
Jubilee Hills,
Hyderabad 500 033.**
- 21. Prajay Developers Pvt Ltd,
Rep by its Director
Mr. Vijay Sen Reddy Dantapalli,
5th Floor, Prajay Corporate House,
1-10-63 & 64, Chikoti Gardens,
Begumpet, Hyderabad 500 016.**

22.Prajay Land Capital Pvt Ltd.
 Rep by Mr.Vijay Sen Reddy Dantapalli,
 H.No.8-2-293/82/A/1091-A,
 Road No.41,
 Near Peddamma Temple,
 Jubilee Hills,
 Hyderabad 500 033.

23.Prajay Retail Properties Pvt Ltd.
 Rep by Mr.Vijay Sen Reddy Dantapalli,
 H.No.8-2-293/82/A/1091-A,
 Road No.41,
 Near Peddamma Temple,
 Jubilee Hills,
 Hyderabad 500 033.

24.M/s Vijaysena Construction Co
 H.No.4-1-2/5 Eden Garden Road,
 Ramkote, Hyderabad Telangana.

25.The Registrar of Companies,
 2nd Floor,
 Corporate Bhawan,
 GSI Post, Tattiannaram Nagole
 Bandlaguda,
 Hyderabad 500068.

Respondents.

For Appellants: Mr. Darpan Wadhwa, Senior Advocate, Mr.Ajay Bhargava, Mr. Aseem Chaturvedi and Mr.Sharangan. A, Ms Wamika Trehan, Advocates for appellants.

For Respondents:Mr. K. Datta, Advocate, Mr. Sridhar Potaraju, and Ms Sindoor VNL, Advocates for R1, R16, R18, R22. Mr. P. Nagesh, Mr Ishaan George, Advocates for Intervenor in IA No.1622-1623/2018. Mr. Yelamanchili Shiva Santosh Kumar, Advocate for Intervenor.

**And
 Contempt Case (AT) No.6 of 2018**

in

Company Appeal (AT) No.179 of 2018

IN THE MATTER OF:

Prajay Properties Pvt Ltd & Others

...Applicants

Vs

Smt D. Hymavathi Reddy,

...Contemnor

**And
Contempt Case No.8 of 2018**

in

Company Appeal (AT) No.179 of 2018

IN THE MATTER OF:

D. Hymavathi Reddy

...Applicant

Vs

**Prajay Engineers Syndicate Ltd & Ors
Syndicate Limited & Others**

...Respondents

ORAL JUDGEMENT

A.I.S.CHEEMA, J:

05.10.2018- The appellant (original petitioner) has filed this appeal against the impugned order dated 8.5.2018 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad (hereinafter referred to as the "NCLT") in I.A. No.81/2018. The grievance of the appellant is that while dealing with the IA No.81/2018 filed by Respondent No.1, 16, 18 and 22 requesting to vacate interim order of Status Quo which had been passed by the Tribunal in the petition at the time of filing on 6.3.2018, the NCLT decided the IA No.81/2018 but without considering the claims made by appellant in IA No.97/2018, the IA No.97/2018 was dismissed.

2. The appellant filed the company petition making various grievances that Respondent No.2 and associates, in the management of Respondent No.1 company committed acts of malfeasance and mismanagement such as acts of embezzlement, siphoning of funds and fraud in Respondent No.1 and other group companies. It is stated Respondent No.16 is associate company of Respondent No.1; Respondent No.18 is subsidiary of Respondent No.1 and Respondent No.22 is subsidiary of Respondent No.16 company. She filed petition against the respondent relating to oppression and mismanagement in Respondent No.1 company, M/s Prajay Engineers Syndicate Ltd. It is the case that the Respondent No.1 is in real estate business and Respondent No.16, 18 and 22 are also dealing in real estate business. Respondent No.1, a listed company has shares in Respondent No.16 and 18. The contention of the learned counsel for the appellant is that the Respondents were oppressing the appellant minority shareholder and thus the company petition was required to be filed, which is pending.

3. When the company petition was filed, the NCLT passed Status Quo order on 6th March, 2018 as under:-

“Heard Mr S. Niranjan Reddy, Sr. Advocate along with Mr Satya Siv Darshan, Ms Alekya Tadasina and Mr Khamar Kantamaneni, Learned Counsels for the Petitioner. The Learned Sr.Counsel for the Petitioner submit that in pursuant to this Tribunal Order dated 26.2.2018 notices were served to all the Respondents and proof of services has been filed vide dated 6.3.2018. The Learned Counsel Mr. Bhupesh, and Mr. Naresh Sangam, Learned Counsel for R-1 company appeared and undertakes not to take any action to

alienate the subject properties till next date of hearing. Though notices served on all respondents except R-1, none appeared for the Respondents. Status Quo shall be maintained by Respondents to whom notices were served with respect to impugned properties. Mr. Bhupesh and Mr Naresh Kumar Sangam accepted notice for R-1 company and waives further notice and requested time. Case posted to 22.03.2018.”

4. Thereafter, the Respondent No.1, 16,18 and 22 filed IA No.81/2018 (Page 584) seeking vacation or modification of the orders passed. The grievance raised by these respondents was that the company is in the business of property development and real estate and, there are various projects in which various purchasers were there and the sale, purchase of the various flats had come to a halt (which was the stock in trade) because of the Status Quo order which has been passed. They pointed out that hundreds of flats were involved, funds had been raised which got stuck and how operation of business had got stuck. They denied the averments of company petition.

5. The appellant appears to have filed IA No.97/2018 and in the said IA the appellant questioned the basic right itself of the applicants who filed IA No.81/2018 claiming that they were not entitle to file the IA. Her claim is that she is legally elected Director in Respondent No.16 and 22 and the applicants who had come forward to file IA No.81/2018 were not the authorised person. She claimed Respondent No.4 and 5 were never validly appointed Directors in Respondent No.16, 18 and 22 and could not be authorized to act for

Respondent No.16, 18 and 22 companies in the litigation, or to appoint Advocates.

6. The Ld NCLT heard the parties and took note of the various allegations.

The observations in para 28 in the impugned order are as under:

“I have heard the Counsels for applicants and also for Respondents. When the matter was being heard, the Tribunal considers that interim order dated 6.3.2018 is causing serious hardships to the applicant companies in doing their business. The Applicant companies are primarily dealing with construction of flats, villas and selling them to prospective buyers. The interim order virtually prohibited the companies from doing its business, in which the stakeholders such as prospective buyers will be put to serious hardships.”

7. Thus the NCLT realised that the order dated 6th March, 2018 had caused serious hardships to the applicant companies in doing their business activities. Built on this the NCLT referred to the earlier orders which were passed on 2.5.2018 and 3.5.2018 and keeping in view the fact that the interim orders had resulted in stopping of the whole business activities of the applicant companies in paragraph 33 of the impugned order, referred to understanding reached between parties on 2.5.2018 that the applicant companies will let petitioner examine the sale agreements and furnish information regarding purchasers and sale price. The applicant companies had collected information containing details of the names of the buyers, amounts so far collected and amount yet to be collected from some of the purchasers. NCLT then in paragraphs 35 to 38 observed as under:

“35. The Counsel for applicant companies further undertakes, during the course of arguments that the applicant companies would file audited accounts in respect fo sales and amount realised there on before the Tribunal. So the Respondent will have an opportunity to look into the accounts if direction is given to the applicants to file the audited accounts of the above applicant companies, once in a month, so that she will be in a position to know what is the income realised as well as expenditure incurred and the purpose for which expenditure is incurred.

36. In the light of undertaking and basing on the above discussion, IA No.81/2018 is disposed off by vacating the interim order dated 06.03.2018 but imposing direction on the applicants that the applicant companies shall allow the Petitioner and her daughters accompanied by her lawyer to inspect the sale agreements entered from time to time without any obstructions. The Respondent to intimate the applicant companies in advance prior to inspection. Applicant companies shall furnish the required information to the Respondent.

37. Further applicant companies are directed to file in this tribunal, the audited accounts once in a month showing the details of income received and expenditure incurred, etc, until further orders.

38. Since IA 81/2018 is allowed, IA 97/2018 stands dismissed.”

8. Learned counsel for the appellant is submitting that although these paragraphs 35, 36 and 37 of the impugned order are in the nature of

protecting the interest of the appellant also but according to the counsel his instructions are that the accounts were not being filed as directed by the NCLT. Against this the learned counsel for respondents in appeal are submitting that the accounts are being filed in the Tribunal. We will leave this for the NCLT to look into.

9. When the appeal was filed before this Tribunal and while Notice was issued and the appeal was being posted for admission, this Tribunal had given certain directions on 31.5.2018 which are as under:

“In the meantime, if the company sell flats or shops to any person, deal be made in the presence of the appellant or her representative, who will also sign the same as a witness to the ‘Agreement for Sale’ or ‘Sale Deed’. For sale or ‘Agreement to Sale’, the company will give advance notice to the appellant for her presence or presence of her representative. On receipt of such notice, the appellant or her representative will co-operate and sign the documents within three days from the receipt of the notice.”

10. Subsequent to such orders, intervention applications I.A.No.842 and 843/2018 came to be filed by persons with whom the agreement of sale were entered into, making grievances.

11. The order dated 26.06.2018 passed by this Tribunal is as under:-

“The Intervention Applications have been filed by Mr. Abhijeet Gupta, one of the home buyers are taken up on record. Taking into consideration, intervener, Mr. Abhijeet Gupta is ordered to be impleaded as Proforma Respondent.

2. Taking into consideration the grievance made by Mr. Abhijeet Gupta, one of the home buyer, we are of the view that the competent representatives of Respondent No.1-‘M/s Prajay Engineers Syndicate Limited’, Respondent No.16-M/s Prajay Properties Pvt Ltd’, Respondent No.18-‘M/s Prajay Holdings Pvt Ltd’. Respondent No.22-‘M/s Prajay Land Capital Pvt Ltd’ and the Appellant-‘Smt D. Hymavathi Reddy’ should assemble in the office of the Builder between 2nd July, 2018 to 12th July, 2018 from 11.00 AM to 01.00 PM to take step for ‘Execution of Agreement’ or ‘Sale deed’ in the light of order of this Appellate Tribunal dated 31st May, 2018. If the order is not followed in its letter and spirit and home buyers suffer or make grievance, the Appellate Tribunal may view it seriously and may pass appropriate orders against the concerned person/party (Appellant or Representatives of Respondent(s)).

3. It is made clear that if the appellant refuse to cooperate with the concerned respondent(s) and the home buyers suffers from ‘Execution of Agreement’ or ‘sale Deed’, this Appellate tribunal may allow the concern Respondent to sign such instrument even in absence of the Appellant. Both the IA No.842 and 843 stands disposed of.”

12. The learned counsel for the appellant is accepting that the companies are dealing in real estate where agreements are required to be executed and sale deeds are also required to be executed and there cannot be blanket Status Quo to the transactions. The submission, however, is that inspite of this, it was necessary that the rights of the appellant should be protected. The

learned counsel for the appellant submitted that the appellant needs to know, whenever whatever agreements are executed and she deserves to be present by herself or representative, at the time of execution of agreements, sale deeds and with this object the appellant had sought the interim orders when this appeal was filed and which were passed in her favour on 31.5.2018. The learned counsel for the appellant states that the interim orders as passed on 31.5.2018 may be continued even when this appeal is disposed.

13. After filing of this appeal following applications have got filed:-

i) IA No.842/2018- Mr. Abhijeet Gupta for clarification.

ii) IA No.843/2018,-Mr. Abhijeet Gupta for Intervention.

iii) IA No.1509/2018- Sunit Parsad & Others for intervention

iv)IA No.1622/2018-Mr. MVS Parsad & Anr for intervention

v) IA No.1623/2018- Mr. MVS Parsad & Anr for clarification.

14. The learned counsel for the respondents as well as the counsel who have filed intervention/clarification applications are opposing the request of the appellant regarding the continuation of the order dated 31.5.2018. According to them they have filed intervention applications as inspite of various requests the appellant was not responding to attend to let transactions of sale get completed.

15. There is already Contempt Case No.6/2018 filed by the Respondent and it is stated they are making grievance that the appellant is not cooperating in execution of the sale deeds. Against this there is a Contempt Case No.8/2018 filed by the appellant and it is stated she is claiming that the appellant wanted to know when the sale deeds are being executed and details of advances and in absence of being informed she has filed the contempt application.

15 This Tribunal directed on 13.7.2018 that the contempt applications will be taken up after the disposal of the Company Appeal (AT) no.179/2018.

16. Although the learned counsel for the appellant vehemently argued and submitted that the appellant should be informed of every transaction which is taking place in these respondent companies No.16, 18 and 22 with regard to the sale of flats and also submitted that the appellant would cooperate, we find that it would not be a practical approach. In the company petition making grievance of oppression and mismanagement if the petitioner who is one of the shareholder is to be called and allowed to be present at all times in what is basically the business of these companies it would not be a proper thing. The appellant where shareholder has a right to have inspection of accounts and should be entitled to look into the transactions of sale but according to us the request of the appellant that she should be given prior notice and while doing the dealings of the real estate, the transactions should wait for her and take her signatures is not required to be accepted. Individual shareholder cannot claim right of presence in what essentially is business of these companies Respondent No.1, 16, 18 and 22. In such multiple companies, with multiple transactions of sale of flats taking place which go through multiple stages, accepting right of claimant to be present, only on apprehensions, will make the business impossible. Direction of Status Quo to what is business of the companies can not be allowed. It amounts to putting brakes to business when it is going concern. Allegations of oppression and mismanagement claimed in Respondent No.1 will have to be decided in the Company Petition. The allegations are yet to be established. Individual shareholder cannot claim right of presence in all business dealings of the

company and also in business dealings of group companies. We find that the impugned order still takes care of the interest of the appellant also as can be seen from paragraphs 35 to 38 which have been reproduced above and that should be enough.

17. In IA No.97/2018, the grievance of the appellant is that she had questioned the right of applicants to file IA No.81/2018 regarding their authorisation to file the same. She also questioned authority under which limited counter was filed by Respondent No.1 and Memo dated 31.3.2018 filed by counsel for Respondent Nos 16, 18 and 22. In the circumstances, it would have been more appropriate that IA No.97/2018 should not have been dismissed as such but averments regarding authorisation of applicants to file the same could be left to be considered and decided with the company petition.

18(A). For the above reasons, the appeal is partly allowed. The impugned order where it dismisses IA No.97/2018 is quashed and set aside. It is maintained as regards its decision of IA No.81/18.

(B) IA No.97/2018 is restored. NCLT may decide the averments made in the same by appellant regarding authorisation of applicants, while disposing the company petition finally. The rest of the claims made by appellant as regards IA No.81/2018 are rejected.

(C) The pending interim applications for intervention/clarification stand disposed off. We do not wish to entertain Contempt Petition No.6/2018 and Contempt Petition No.8/2018 where the parties have made allegations of contempt against each other as it would involve entering into disputed questions of facts which are not possible and necessary to decide now. We do

not also find them fit to invoke Contempt Jurisdiction. Both Contempt Petitions are disposed off alongwith pending intervention/clarification and other applications.

(D) Interim orders dated 31.5.2018 and 26.6.2018 passed by us during pendency of this Appeal no more survive, as we are disposing this appeal as above.

(E) NCLT is directed to expedite hearing of the company petition in terms of Section 422 of the Companies Act, 2013 and dispose off the same as early as possible.

(F). Appeal is disposed accordingly. No order as to costs.

(Justice A.I.S. Cheema)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

Bm