

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPLICATION (LODG.) NO. 636 OF 2017
IN
COMPANY PETITION NO. 1066 OF 2015**

1. Ajit Rasiklal Sanghvi & Anr. .. Applicants

In the matter between :

Action Barter Private Limited .. Petitioner
Vs.

1. Shree Ram Urban Infrastructure Limited &
Maharashtra Real Estate Regulatory Authority .. Respondents

Ms. Shehalata Paranjpe a/w. Ms. Virendra Pereria, Ms. Mini Rao and Ms. Miloni Nagodra i/b Divya Shah Associates for applicants.

Ms. Gauri Memon a/w. Mr. H.S. Khokhawala i/b Nankani Associates for original petitioner.

Ms. Nimisha Ghetla i/b Katariya and Associates for respondent-company.

Mr. Vinod Sharma, official liquidator present.

**CORAM : K.R.SHRIRAM, J.
DATE : 22ND DECEMBER 2017**

P.C.

1 At the outset, Ms. Paranjape seeks leave to amend the cause title to add against the name of respondent no.1 “through Provisional Liquidator” and consequently strike off respondent no.2.

Leave granted.

Amendment to be carried out forthwith. Re-verification dispensed with.

2 The application is taken out for leave to proceed with a complaint dated 31st October 2017/ 3rd November 2011 filed by applicant before the Maharashtra Real Estate Regulatory Authority at Bandra, Mumbai (the Authority) against respondent no.1 Shree Ram Urban Infrastructure Limited.

3 Ms. Paranjape appearing for applicant submitted that the order dated 18th December 2017 passed by this Court in Company Application No. 921 of 2015 in company petition No. 218 of 2014 would not be applicable in the present application because the facts in the present application are different. Ms. Paranjape submitted that the facts in Company Application No. 921 of 2015 was that applicant was seeking leave to continue the legal proceedings pending in the Court of Metropolitan Magistrate, 14th Court, Girgaon, Mumbai. Based on that, the Court came to a conclusion that the said proceedings as it could not be adjudicated by itself, will not come in the expression “*suit*” or “*other legal proceedings*” used in Section 446(1) of the Companies Act, 1956. Ms. Paranjape submitted that in the present case, any order passed by the Authority will certainly have a bearing on the winding up proceedings of the company and directly with the assets of the company. Ms. Paranjape submitted that if the Authority comes to a conclusion that respondent no.1-company has to refund the entire booking

amount with interest or without interest, it would certainly have a bearing on the winding up proceedings. The flat which is the subject matter of the application before the Authority is actually a stock in trade of the company and certainly an asset of the company.

4 In my view, submissions of Ms.Paranjape have to be accepted. This is because under the Real Estate (Regulation and Development) Act, 2016 (The Act), Section 18 provides for return of amount and compensation if the promoter is unable to give possession of an apartment in accordance with the terms of the agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of the registration under the Act. Section 40 of the Act provides that if on adjudication, a promoter is also liable to pay any interest or penalty or compensation, the same may be recovered as arrears of land revenue. Certainly, this will also have a bearing on the assets of the company in its winding up. In any event, it will certainly have relation that the issue of winding up.

5 In the circumstances, to maintain such an application before the authority, leave under 446 of the Companies Act, 1956 is required. Having considered the application and affidavit in support, leave under section 446 of the Companies Act, 1956 is granted.

6 Company Application allowed in terms of prayer clauses (a) and (b) which read as under :-

“(a) that this Hon'ble High Court be pleased to grant leave to the applicants to proceed with the Complaint No. CC000000001602 dated 31st October 2017/3rd November 2017 filed before the Hon'ble Office of The Maharashtra Real Estate Regulatory Authority at Bandra, Mumbai against the original Respondent Shree Ram Urban Infrastructure Limited.

(b) that the Hon'ble High Court be pleased to allow the Applicants to implead the Provisional Liquidator as Party Respondent to the said MahaRERA Proceedings under Complaint No. CC000000001602 dated 31st October 2017/3rd November 2017.”

7 Company Application accordingly disposed.

Notwithstanding disposal of the company application, all office objections to be removed and application to be numbered within two weeks.

(K.R. SHRIRAM, J.)