ocd-20 ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

AP-COM/699/2025
PARK CHAMBERS LIMITED
VS
WEST BENGAL HOUSING BOARD AND ANR

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date : 18th September, 2025

Appearance :-
Mr. S. N. Mitra, Sr. Adv.
Mr. Shounak Mukhopadhyay, Adv. …for petitioner.

Mr. Arijit Bhowmick, Adv. …for respondent no.1.

Mr. Sayantan Bose, Adv.
Ms. Priyanka Gope, Adv. …for respondent no.2.

1. This is an application for interim injunction to restrain the respondent no.1, its men, agents and assigns, from acting contrary to the Memorandum of Understanding [hereinafter referred to as 'MoU'] dated October 17, 2003, read with the development agreement dated March 8, 2011. Further mandatory injunction in temporary form is prayed for, seeking a direction upon the respondent no.1, to act in terms of the MoU dated October 17, 2003, read with the development agreement dated March 8, 2011 and the amended development agreement dated July 31, 2020.
2. Mr. Mitra, learned senior advocate appears on behalf of the petitioner and submits that the petitioner has 49.50% shareholding in the respondent no.2 company. The respondent no. 2/company was jointly promoted by the petitioner and the respondent no.1. The purpose behind the formation of the said company in terms of MoU dated October 17, 2003 was for the purpose of development of properties as

per the scheme of the West Bengal Housing Board. Mr. Mitra further submits that the respondent no.2 was a body corporate with the overall responsibility for construction and implementation of projects bound by the policy framework of the Government of West Bengal and was to execute housing schemes as defined in the West Bengal Housing Board Act, keeping in view the provision of section 18 thereof.

3. Mr. Mitra prays for an injunction on an apprehension that the exit plan in terms of the letter dated February 12, 2025 issued by the West Bengal Housing Board to the Managing Director of the respondent no.2, may be implemented very soon. Such action would result in stoppage of the projects of the respondent no.2. The petitioner had invested huge amount of money in the projects. Mr. Mitra, has relied upon several documents in support of the contention that lands had been purchased by the respondent no.2 and the money had to be procured by the petitioner, as the promoter of the respondent no. 2. The Housing Board had not invested a single farthing for acquisition of the lands from private land owners, but got those lands transferred in its favour. The entire investment was that of the petitioner.

4. The Housing Board had several obligations under the MoU and also under the first development agreement of 2011. Although the Housing Board had raised an issue as to non-performance, by the respondent No. 2, Mr.Mitra submits that upto 2017, the process of purchase of land from private land owners continued. Being aware of such a situation, a fresh development agreement was entered into between the respondent no.1 and respondent no.2 in 2020. Upto 2020, the parties were co-operating with each other, and there were no differences.

Sometime in 2024, a Board Meeting was held and a decision was taken by the respondent no.1 to exit from the respondent no. 2 and other similar companies. It was resolved that, mere possession of the land by the companies would not be treated as a running project. As the lands had already been transferred to the respondent no.1, the same would be re-conveyed to the companies, at the cost of consideration reached upon subtracting the cost of acquisition, from the current market price to be ascertained by the finance department.

5. In this case, the respondent no.2 bore the expenses of acquisition and, according to Mr. Mitra, such money was mobilised by the petitioner, who had 49.50% shareholding in the respondent no.2. If the respondent no.2 was to continue with the project, the respondent no.1 would have to be paid the entire market price to be assessed by the finance department, without any credit for the amount that was already invested by the respondent no.2 in the process of acquiring the land. The market price at the present rate, would determine the valuation of the shares in the company. The value of the shares would automatically escalate. If the petitioner or its associate wanted to take over 49.50% shareholding of the respondent no.1, in the respondent No. 2, upon exit of the respondent no.1, they would have to pay the escalated amount. Hence, a prayer for interim protection is made.

6. Mr. Bhowmick, learned advocate for the respondent no.1, submits that the project had not progressed at all. The respondent no.2 had not complied with any of its obligations. The requisite authorisation from the statutory bodies had not been taken. Under such circumstances, as the project was no longer viable, the Housing Board wanted to exit

from the same. The exit plan was in accordance with the decisions already taken and the road map for the exit plan was based on various memorandum and notifications, one of which was dated June 4, 2015. The decision in the 574th Board meeting held on December 16, 2024, was communicated to the respondent no.2 with reasons. Moreover, according to Mr. Bhowmick, the petitioner was not a party to the development agreement and the disputes, if any, arose from the development agreement between the respondent no.1 and the respondent no.2 and not between the petitioner and the respondent no.1. The disputes do not cover the terms and conditions of the MoU. The exit plan had nothing to do with the MOU. Mr. Bhowmick submits that the minutes of 574th Board meeting held on December 16, 2024, was yet to be implemented and the decision to exit applies to all projects under the Housing Board. The petitioner had not been singularly picked out. There was no question of discrimination at all.

7. Heard learned advocates for the respective parties. The existence of the Memorandum of Understanding dated October 17, 2023 is not in dispute. The existence of an arbitration clause in the said agreement is not in dispute. It is also not in dispute that both the petitioner and the respondent no.1 decided to promote the respondent no.2 as a joint sector company, by executing the MOU. The aggregate share capital of the company was fixed at Rs.2 crores, consisting of equity shares of Rs.10/- each and the paid up capital was Rs.20 crores, at the relevant point of time.49.50% of the paid up capital was held by the Housing Board. 49.50% was held by the petitioner no.1 and balance 1% was to be issued to the public as the joint sector company would decide.

8. Clause 11[i] provided that the petitioner and the respondent no.1 agreed that each of them would be entitled to bring down the equity participation upto 26% and 25% respectively, of the subscribed share capital of the respondent No. 2. Such disinvestments could be made by the respondent No. 1 and the petitioner, after such period and in such manner as the Board of Directors of the respondent No. 2 would decide. The respondent No. 1 was not entitled to sell its shares in the respondent No. 2, without first offering them to the petitioner and vice versa. The consideration of the shares would be agreed to, as per clauses [a] and [b] of clause 11[i].

9. Clause 12 provided that the parties would undertake to preserve the capital structure of the company and any further issue of capital by the respondent No. 2, would be made in such manner that, participation by the parties in the increased equity share capital of the respondent No. 2, would at all times be and remain in the same proportion as provided in clause 10.

10. Clause 16 provided the obligations of the petitioner and clause 17 provided that similar obligations were also to be discharged by the respondent no.1. Clause 21 provided that unless mutually agreed, the agreement would continue to remain in force as long as the parties continued to hold share in the joint sector company in the proportion prescribed by clause 10, that is, 49.50% each. Clause 22 required cooperation between the parties and also provided that the parties would prevent anything from being done by the respondent No. 2 or any resolution being passed, which would prejudice the terms of the agreement. Clause 23 provided that neither party would be liable in

damages for any breach, for non observation or non performance of the provisions of the agreement which would result from or would be caused by reason of or on account of any circumstances out of its control.

11. Thus, on a prima facie analysis of the said MoU, it appears that the parties agreed to cooperate and promote the joint sector and to continue with the obligations under the MoU. The MoU was to remain in force as long as the parties continued to hold shares in the respondent No. 2, in the proportion prescribed under clause 10. The said MoU did not provide either for termination or exit. Although Mr. Bhowmick submits that the decision of the 574th Board meeting of the respondent no.1, does not have any relation to the MoU of 2003, this court finds on a prima facie analysis of the development agreement of 2011 and 2020 that, the very existence of the respondent no.2 and the obligations under the development agreement emanated from the MoU of 2003. The investment made by the respondent no.2, has been categorically mentioned in the development agreement of 2011. Such investments were made, as per the obligations under the MOU. Moreover, the decision to exist has not yet been finalized, and it prima facie appears that, the decision is contrary to the obligations of the respondent No. 1 in the MOU.

12. Under such circumstances, this court deems it fit to grant an interim order, restraining the respondent no.1 from implementing the decision of the 574th board meeting held on 10th December, 2024, insofar as, it relates to the respondent no. 2.

13. The prima facie case, balance of convenience and inconvenience and irreparable loss and injury, are in favour of granting an order of stay of implementation of the decision of the 574th board meeting which was adopted on December 16, 2024, in respect of respondent no.2. The exit plan shall not be implemented against the respondent No. 2, upto December 15, 2025. This order will not be applicable to any other company, apart from the respondent No. 2.

14. Let affidavit in opposition be filed within two weeks after reopening; reply thereto, if any, be filed within two weeks thereafter. Let the matter be listed on 2nd December, 2025.

(SHAMPA SARKAR, J.)

Pkd/sd.