

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

IA No.122 of 2017 in
Company Petition No.46/2006

In the matter of:

An application under Section 397 and 398 of the Companies Act, 1956.

In the matter of:

Ashok Mittal & Anr.

.....Petitioners

Versus

Uniworth Resorts Limited & Ors.

.... Respondents

Order Delivered on 15th January 2018

Coram:

V. P. Singh, Member (J)

Jinan K.R., Member (J)

For the Petitioners

- : 1. Mr. Sidharta Mitra, Advocate
2. M. Hossain, Advocate
3. Mr. Swaraj Shaw, Advocate
4. Mr. Titash Mukherjee, Advocate
5. Ms. Suruchi Khuntata, Advocate

ORDER

Per Jinan K.R., Member (J)

The Company Petition No.46/2006 has been filed by the petitioners alleging oppression and mismanagement in the respondent No.1 Company and the said petition is pending before this Tribunal for adjudication. The present application has been filed for impleadment of Mr. Mahesh Sharma, Mr. Piyush Lavjibhai Patel, Mr. Rajesh Patel and M/s Indoworth (India) Ltd.

2. Originally this company petition has been filed by the applicants herein before the Company Law Board(In short (CLB), Principal Bench, Delhi in the month of June 2006 and got an ex-parte order of status quo with regard to the movable properties of R 1 Company. The applicants alleged that in order to circumvent the orders passed by the CLB, the constitution of board of directors changed at instance of R 7 and also effected transfer of shares so as to reduce the applicants as minority shareholders and to defeat the valuable right hold by the applicants in the R 1 Company. During the pendency of the company petition, various amendment has been carried out in the company petition upon getting orders from the CLB and from the Hon'ble High Court of Culcutta. So also the company petition has been transferred to CLB, Culcutta and while it was pending before the CLB, Culcutta Bench it was transferred to this Tribunal consequent upon the formation of the NCLT and dissolution of CLB.

3. The applicants alleged that because of the fraudulent conduct of the respondent No.7, valuable right of the petitioners are infringed and in order to have a just and equitable decision the presence of the above referred persons are necessary and hence, this application was filed.

4. Ld. Predecessor of this Tribunal, vide order dated 5/5/2017 dismissed this application holding that there is undue delay in pursuing the interim application filed by the petitioner.

5. Aggrieved by the order of rejection, the petitioner approached before the Hon'ble National Company Law Appellate Tribunal. Hon'ble National Company Law Appellate Tribunal in Company Appeal No.268/2017 set aside the order and remitted the application back to this Tribunal for consideration of this application on merits.

6. The applicants alleged that the above referred persons were inducted in the company illegally at the behest of respondent No.7 and the respondent No.3 were removed from the directorship of the company with effect from 4/9/2006 illegally at the instance of the respondent No.7 and that Mr. Mahesh Sharma who is acting as a proxy of respondent No.7 is made a director with effect from 3/4/200, Mr. Piyush Patel who is also a proxy of respondent No.7 is a director with effect from 15/5/2006. Mr. Rajesh Patel who is the brother of Piyush Patel and is a proxy of respondent No.7 is made director from 19/9/2006.

7. The applicants further contends that 17,57,000 equity shares of Rs.10 each has been illegally allotted to M/s Indoworth (India) Ltd and thus M/s Indoworth (India) Ltd to be added as an additional respondent in the company petition. The petitioner came to know the acquisition of shares by M/s Indoworth (India) Ltd upon reading the counter filed by the respondent. The above said transfer of shares has been done at the behest of the respondent No.7.

8. To strengthen the above contentions, the applicants produced downloaded copy of Form No.32 dated 7/7/2006, 15/6/2006. The applicants further alleged that the only assets the respondent No.1 company is the immovable property in Goa measuring 205400 square meter and that at the behest of respondent No.7 despite status quo order of the Company Law Board continuing construction activity in the property which would ultimately change the nature of the property and would cause irreparable loss to the right of the petitioner.

9. Upon the above said contentions the applicants prays for impleading all the above referred persons and to pass such other orders which this Tribunal deemed fit and proper.

10. In the company petition at present there are 9 respondents. The company petition was originally instituted as against the 8 respondents named in the instant application. Vide order dated 10/1/2017 our predecessor allowed the

impleading application i.e. IA/272/2014 adding the 9th respondent Mr. Prashant Chinappa Suvarna.

11. Respondent No.5 M/s Touchstone Housing Projects Pvt. Ltd. filed objection challenging the maintainability of the application. No other respondents turned up for objecting this application. 5th respondent in the reply raised a contention mainly against adding Indoworth India Ltd as an additional party contending that Indoworth India Ltd. does not hold any shares of respondent No.1 on the date of filing of this application. This respondent contends that Indoworth India Ltd. had sold its equity shares way back in the year 2006. That being so, adding Indoworth India Ltd who is not a shareholder of the respondent No.1 company will not serve any purpose and its presence is not at all required for proper adjudication of issues involved in the company petition contented by the 5th respondent.

12. To strengthen the said contention on the side of the respondent No.5 produced copy of Annual Return of the R-1 company in the year ending 31/3/2006, 2007, 2012 and marked as Annexure A, B and C respectively. This respondent also contends that Mr. Mahesh Sharma was appointed as director on 3/4/2006 whereas the petition was filed on 13/06/2006, as such, Mr. Mahesh Sharma was also existing director when the petition was filed but he was not impleaded as a party. Upon such contentions the 5th respondent prays for dismissal of the application.

13. Heard Ld. Counsel for the applicants. No one represented on the side of the respondents.

14. The applicants are shareholders of R-1 Company. Annexure A, contains a statement showing number of shares hold by the existing shareholders of R 1 Company. It shows that first and second applicants in the instant application are holding 300 shares each. Majority of the shares as per Annexure A now hold by Piyush Lavjibhai Patel, Rajesh Lavjibhai Patel and Sanika Investments Pvt. Ltd.

The remaining shareholders are holding 100 number of shares each. The applicant's main contention in the application is that there were illegal allotment of shares in favour of the above referred persons to be impleaded as parties and illegal appointment of new directors. That being the main contention on the side of the petitioner, the issue german for consideration is whether there is any illegal allotment of share as alleged at the behest of respondent No.7, and whether there is any illegal appointment of directors in the constitution of the Board of R-1 company as alleged. The persons to be added as additional party to the application are allegedly shareholders and directors of the R-1 company.

15. On perusal of the annual return produced by R-5, as Annexure A of the R-1 company filed in the year 2006 shows that Indoworth India Ltd. transferred its shares to the tune of 80500 shares to Piyush Lavjibhai Patel. The date of registration of transfer of shares as shown in the return is 14/4/2006. That shows that on the date of filing the company petition 46/2006, Indoworth India Ltd. transferred 80500 shares out of 1757000 shares allegedly holding by it to Piyush Lavjibhai Patel. Therefore, the objection of R-5 that the presence of Indoworth (India) Ltd. is not at all necessary for adjudication of the issue german for consideration in the instant case is found not sustainable. Because the total share allegedly hold by it not at all found transferred as per the document referred by R-5.

16. As per Order 1 Rule 1 and 3 of Civil Procedure Code, a Civil Court can add new parties to the suit either as additional plaintiff and defendants if the Court is satisfied that additional parties to be added are either necessary parties or proper parties. A necessary party is a person who ought to have joined as a party and in whose absence no effective order could be passed at all by this Tribunal. A proper party is a party who, though not a necessary party, is a person whose presence would enable the Tribunal to completely, effectively, and adequately

adjudicate upon all matters in dispute in the petition, though he need not be a person in favour of or against whom a decree is passed. In the case in hand according to the Ld. Counsel for the applicants their presence is necessary for the determination of real matter in dispute.

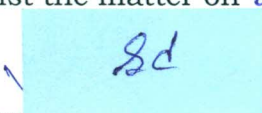
17. Upon hearing the argument and perusal of the documents produced along with the application and in the reply filed by R 5 it appears to us that the presence of above named persons certainly helpful to adjudicate upon and settle all the questions involved in the main company petition though their presence not at all necessary but is proper and just. Their presence certainly enable this Tribunal to have a complete and to have a final decision on the questions involved in this case. Accordingly, to have a decision on merits and to avoid multiplicity of decision adding Mr. Mahesh Sharma, Mr. Piyush Lavjibhai Patel, Rajesh Patel and M/s. Indoworth (India) Ltd is found liable to be allowed. Accordingly, we are inclined to allow the application as follows:-

a. Mr. Mahesh Sharma, Mr. Piyush Lavjibhai Patel, Rajesh Patel and M/s. Indoworth (India) Ltd, are to be imp~~le~~aded as additional respondents No.10 to 13.

b. Necessary amendment to be carried out in the cause title of the company petition within two weeks of date of this order and amended copies of the company petition is to be filed in the Tribunal by giving copies to the respondents within 3 weeks.

c. No order as to costs.

List the matter on 20-2-18


V. P Singh,
Member (J)


Jinan K.R.
Member (J)

Signed on 15th January 2018