

I.A.No.32/2017
In
TP No.01/397/398/GB/2016
(C P No.619/2010)

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C.P.No.619/2010 (corresponding to T.P.No.01/2016) on deleting the name of Asharam Leasing & Finance Pvt. Ltd. For ready reference, the relevant part of the reliefs claimed is reproduced below:

- a) *Condonation of delay in preferring this instant application for 102 days be condoned.*
- b) *An order be passed adding and/or substituting the applicant namely Prithvi Tea Company Private Limited as petitioner in CP 619 of 2010 (T.P.NO.1/397/398/GM/2016) by deleting the name of ASHARAM LEASING AND FINANCE COMPANY LTD as indicated in red ink in the Company Petition being Annexure "X" herein;*
- c) *The abatement of the rights of the substituted legal heirs of the original deceased respondent no.8 be set aside;*
- d) *The date of death of the original deceased respondent no.8 Sri Mangal Chakraborty be recorded and his legal heirs be substituted in place of original deceased respondent no.8 by amending the cause title as indicated in the red ink in the copy of the proposed amendment Company Petition being CP 619 of 2010 (T.P.NO.1/397/398/GM/2016);*
- e) *An order be passed deleting the prayer (f) in the said Company Petition by way of necessary amendment as indicated in red ink in the proposed amended Company Petition being CP 619 of 2010 (T.P.NO.1/397/398/GB/2016 being Annexure "X" herein.*
- f) *Such further order/orders, direction/directions as the learned Tribunal may deem fit and proper."*

3. Very briefly, the facts necessary for disposal of this proceeding are that one M/s Asharam Leasing & Finance Pvt. Ltd. who claimed itself to be the shareholder of Doloo Tea Company Pvt. Ltd., (referred to hereinafter as respondent No.1) had filed a petition under Section 397/398 of the Companies Act, 1956 against the respondents in C.P.No.619/2010 alleging mismanagement and oppression in running the affairs of the respondent No.1 company. Such a proceeding was preferred before the Company Law Board (for short, CLB), Kolkata and the same was registered as C.P.No.619/2010.

4. Learned CLB, on receipt of the proceeding, took cognizance and accordingly issued notices to the respondents. The respondents entered appearance and filed affidavit-in-opposition objecting the prayers made in the petition aforementioned. In due course, exchange of pleadings took place and the case was ready for hearing.

5. However, during the pendency of the proceeding, an arbitration was initiated and in the terms of the award in the arbitration proceeding, all the investments

made by M/s Asharam Leasing & Finance Pvt. Ltd., in the respondent No.1 company by way of loan as well as by way of the purchase of shares were assigned to M/S Prithvi Tea Company Pvt. Ltd. for Rs.1.14 crores for which the applicant's shareholding in the respondent No. 1 company rose to 88.8%.

6. After selling out all the interest of the M/s Asharam Leasing & Finance Pvt. Ltd., M/s Asharam Leasing & Finance Pvt. Ltd., original petitioner, decided to withdraw the petition stating that he was no longer interested in prosecuting the allegations made in the aforesaid proceeding. However, the present applicant intervened contending that since all the interest of Asharam Leasing & Finance Pvt. Ltd. in the respondent No.1 company stood assigned in favour of the applicant herein, the latter stepped into the shoes of the original petitioner and, therefore, the applicant may be allowed to continue the aforesaid proceeding so that the allegations made therein could be taken to their logical conclusions.

7. In support of such contention, Mr Medhi, learned Sr. Advocate has drawn my attention to Rule 10 (1) Order 22 of the CPC which states that on the assignment of interest during the pendency of a suit, the suit may, by the leave of the court, be continued by or against the person to or upon whom such interest has come or devolved. For ready reference Rule 10 (1) of Order 22 of the CPC is reproduced below:

"In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved."

8. Referring to the Rule 6 of the Companies (Court) Rules, 1959, it has been submitted that Civil Procedure Code and Rules framed thereunder are applicable to the proceeding initiated under Companies Act, 1956. In support of such contention, decision of Hon'ble Apex Court in **Sangramsinh P. Gaekwad & Ors. vs. Shantadevi P. Gaekwad (Dead) through LRS. and others, reported in (2005) 11 SCC 314** is also relied on. The relevant part of the judgment is reproduced below:

"The burden to prove oppression or mismanagement is upon the petitioner. The court, however, will have to consider the entire materials on record and may not insist upon the petitioner to prove the acts of oppression. An action in contravention of law may not per se be oppressive. Bhagwati, J. (as His Lordship then was) in Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. (AIR at p.103, para 49) stated the law, thus:

"It may be that a resolution may be passed by the Directors which is perfectly legal in the sense that it does not contravene any provision of law, and yet it may be oppressive to the minority shareholders or prejudicial to the

interests of the Company. Such a resolution can certainly be struck down by the Court under Section 397 or 398. Equally a converse case can happen. A resolution may be passed by the Board of Directors which may in the passing contravene a provision of law, but it may be very much in the interests of the Company and of the shareholders.”

9. It has further been submitted that a proceeding under Section 397/398 of the Companies Act, 1956, being in the nature of representative proceeding, does not get abated on the death of original petitioner. Nor does it get dismissed following the withdrawal of the petition by the original petitioner. Rather, the court has a duty to take the proceeding to its logical conclusion, if necessary, by allowing the original application to be substituted by the person/persons having similar interest in the proceeding with that of original petitioner.

10. It is also his case that the moment, the original petitioner is allowed to be substituted by the applicant, such substitution by the applicant dates back to the time of filing of the proceeding by the original petitioner. Being so, the applicant gets invested with all the rights to prosecute all the allegations which were incorporated in the original petition against the respondents therein.

11. However, if the applicant is not allowed to substitute the original petitioner, then, all the allegations in the petition aforementioned could never be adjudicated upon. In that event, the respondents who are responsible for doing all the misdeeds, incorporated in the petition, could not be brought to book. However, no law could ever visualize such a situation. On this count also, the present application filed by applicant seeking substitution in place of original petitioner is required to be allowed.

12. Mr S.K. Medhi, learned Sr. Advocate for the applicant, referring to prayer (e) of the present application, also submits that if the Tribunal is at all pleased to allow the substitution of the applicant in place of the original petitioner in the company petition, then prayer (f) of the company petition becomes redundant and, therefore, same needs to be deleted. In that connection, my attention has been drawn to prayer (f) of the company petition which runs as follows:

“f) Declaration that the appointment of the respondent Nos.11, 12 and 13 as Directors in the Board of the Company who were the nominees of the petitioner with effect from 18.01.2010 are valid and binding upon the respondents and the management of the Company be vested in hands of them.”

13. In that connection, I have also heard Mr N. Sharma, learned Advocate for the original petitioner, namely, M/s Asharam Leasing & Finance Pvt. Ltd. who submits that the original petitioner has no objection if the original petitioner is allowed to be substituted by the applicant in order to continue the connected company petition in the name of the present applicant. In that connection, I have also heard Mr A. Banerjee and Mr R. Mullick, learned Advocates for respondent No.1 company.

14. I have considered the arguments advanced by Mr S.K. Medhi, learned Advocate for the applicant herein having regard to the submissions advanced by Mr N. Sharma, learned Advocate for Asharam Leasing & Finance Pvt. Ltd as well as Mr A. Banerjee and Mr R. Mullick, learned Advocates for respondent No.1 company

15. On a perusal of the pleadings as well as the documents attached therewith, I have found that all the shareholdings along with other interests of the original petitioner, namely Asharam Leasing & Finance Pvt. Ltd., in the respondent No.1 company was assigned to the applicant herein, namely Prithvi Tea Company Pvt. Ltd. and same was done during the pendency of connected company petition. It may be stated that due to such assignment the shareholding of applicant in the respondent No.1 company stood at 88.8%.

16. It is also found that Rule 10 (1) Order 22 of the CPC, amongst other things, has made provisions for continuation of a proceeding by the assignee in place of the original plaintiff provided such assignment took place during the pendency of suits. Rule 6 of the Companies (Court) Rules, 1959 speaks that the CPC and the Rules framed thereunder are applicable to the proceeding under Section 397/398 of the Companies Act, 1956. Such a position stands reinforced by the decision of Hon'ble Apex Court in **Sangramsinh P. Gaekwad's** case (supra).

16. I have also found that a proceeding under Section 397/398 of the Companies Act, 1956 is in the nature of representative proceeding and, therefore, in the event of withdrawal of the petition by the original petitioner, the original petitioner may be allowed to be substituted by person/persons having interest very similar to the original petitioner so that the allegations made in the petition could be brought to their logical conclusions.

17. In fine, on hearing the learned Advocate for the applicant and the learned Advocate for the original petitioner as well as the learned Advocates for respondent

No.1 company, I am of the opinion that the prayer made in the present proceeding is required to be allowed and the applicant herein be allowed to be impleaded as petitioner in place of M/s Asharam Leasing & Finance Pvt. Ltd.

18. Since the original petitioner in the connected company petition is allowed to be substituted by the applicant herein, in my opinion, the relief claimed at para 8 (f) of the company petition becomes redundant as submitted by Mr Medhi and, therefore, same needs to be deleted, as prayed for by the learned Advocate.

19. Registry is accordingly directed to amend the Cause Title of the company petition by impleading the applicant herein as petitioner in place of Asharam Leasing & Finance Pvt. Ltd. in the company petition and also by deleting the reliefs, so prayed for in relief No.(f).

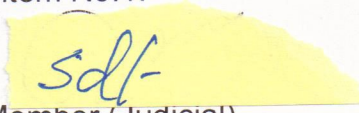
20. Resultantly, present I.A. is allowed and is accordingly disposed of.

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21. Mr S.K. Medhi, learned Sr. Advocate, assisted by Ms J. Tripathi & Mr S.G. Bhattacharjee, learned Advocates, is present on behalf of the petitioner. On the other hand, Mr A.K. Banerjee, Mr R. Mullick and Mr G. Khandalya, learned Advocates are present representing respondent No.1.

22. Since respondent No.8 died in the meantime, the newly impleaded petitioner may file application, if so advised, seeking substitution of the legal heirs of respondent No.8 subject to prescription of law and law of limitation.

23. Let this matter be listed on 15.09.2017 as item No.1.


Member (Judicial)
National Company Law Tribunal,
Guwahati Bench,
Guwahati

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