

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI

PRINCIPAL BENCH

C.P. No. 261(ND)/2017

IN THE MATTER OF:

India Horizon Fund Ltd.

.....Petitioner

v.

Religare Enterprises Ltd. & Ors.

.....Respondents

SECTION : UNDER SECTION 241, 242 & 244

Order delivered on 15.09.2017

Coram:

CHIEF JUSTICE M.M. KUMAR

Hon'ble President

R. VARADHARAJAN

Hon'ble Member (J)

For the Petitioner(s) : Mr. Sudipto Sarkar, Senior Advocate
Mr. Arun Kathpalia, Senior Advocate
Mr. Srinivas Parthasarthy, Ms. Padmaja Kaul, Mr. Udit
Mendiratta & Mr. Vishal Binod, Advocates

For the Respondent(s) : Dr. A.M. Singhvi, Senior Advocate
Mr. A.S. Chadda, Senior Advocate
Mr. Dheeraj Nair, Mr. Lalit Kumar, Mr. Kunal Mimani, Mr.
Mayank Mishra & Mr. Kunal Chaturvedi, Advocates for
Respondent No. 1

Mr. Abhinav Vashist, Senior Advocate
Mr. Vikas Mehta & Mr. Rajat Sehgal, Advocates

Mr. Kunal Sinha, Advocate for Respondent Nos. 4 & 5

ORDER

Petition mentioned. Notice issued. On interim relief arguments
heard.

Mr. Sarkar, learned Senior counsel for the petitioner has
prayed for interim order as stated in para 49 of the petition by

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contd.

arguing that there is sufficient evidence on record to show that the RCML which is a subsidiary of the holding company-Respondent No. 1 is being supported by infusing capital of Rs. 500 crores in the teeth of heavy losses suffered by the subsidiary already. The aforesaid support is being extended to the subsidiary company on the strength of resolution passed by the holding company-respondent No. 1 on 11.09.2017. At this stage, we are not entering into the figure which have been quoted in the petition or the documents attached with the petition.

The interim prayer has been opposed on various grounds including the locus standi of the petitioner to file the petition and that of suppression of material facts. On the issue of locus standi Mr. Sarkar, learned Senior counsel has argued that there is a consent letter issued by the IDBI (Annexure P/3) on 14.09.2017 and if the shareholding of the petitioner is clubbed with the shareholding of IDBI Trusteeship Services Limited then the total percentage of shareholding works to be 11.12 as stated in para 13 (Mr. Sarkar states that this figure needs to be corrected and the total work out to be 19.78).

The argument of Mr. Sarkar is opposed. Dr. Singhvi and Mr. Chaddha learned Senior Counsels for the respondents have argued

that the IDBI Trusteeship Services Limited who has accorded consent for filing the instant petition has actually filed a Commercial Suit (L) No. 486/2017 in the Ordinary Original Civil Jurisdiction of the Hon'ble Bombay High Court. The fact of filing the suit has not been disclosed which is an active suppression of a material facts. It has also been argued that the IDBI Trusteeship Services Limited could not have consented to file this petition in view of the pendency of the suit and there is an attempt to forum shopping. A further argument has been raised that the petitioner India Horizon Fund Limited on its own would not be able to satisfy the test of 10% as postulated by Section 244 of the Companies Act 2013 and therefore there is a serious doubt with regard to the locus standi of the petitioner if it is to stand alone.

Having heard the learned counsel for the parties on the grant of interim relief we are of the considered view that no interim relief could be granted at this stage because firstly there is active and deliberate suppression of material facts from this Court by the consenting IDBI Trusteeship Services Limited as no disclosure of the suit has been made particularly when vide order dated 13.09.2017 passed in their own suit (IDBI Trusteeship Services Limited v. SGGD Projects Development Pvt. Ltd. & Ors, Commercial Suit (L) No. 486/2017) the interim relief has been declined by the Hon'ble Bombay High Court in a detailed order which has been placed on record by the respondents. Moreover, at this stage the

locus standi of the petitioner, if it is left alone without the consenting party would be only 5.59% and therefore, there would be valid doubt for its locus standi.

In view of the above, we decline to exercise our equitable discretion of granting any interim relief.

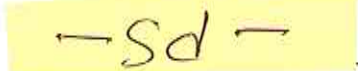
However, learned counsel for the respondents accept notice and pray for four weeks' time to file reply.

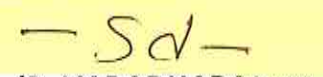
Let the reply be filed within four weeks with a copy in advance to the learned counsel for the petitioner. Rejoinder, if any, be filed within two weeks thereafter with a copy in advance to the learned counsel for the respondents.

A certified copy of the order be given today itself.

List for further consideration on 08.11.2017.

Leave granted to the learned counsel for the petitioner to file supplementary affidavit to correct the figures regarding shareholding.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT


(R. VARADHARAJAN)
MEMBER JUDICIAL

15.09.2017
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