

In the National Company Law Tribunal,
Kolkata Bench, Kolkata

IA No.118/KB/2017

In the matter of:

Ashok Tibrewal

.....Petitioner

-Versus-

Salasar Stock Broking Ltd. & 8 others

.....Respondents

Order Delivered on 5th September 2017

Coram:

Vijai Pratap Singh, Member (J)

For the Petitioner : 1. Mr. Aniriddha Ray, Advocate
2. Mr. J. Patnaik, PCS

For the Respondent : 1. Mr. Ratnanko Banerjee, Advocate
2. Mr. Shaunak Mitra, Advocate
3. Ms. Neha Somani, PCS

ORDER

Per Vijai Pratap Singh, Member (J)

Petitioner has filed this application for amendment of the company petition No.21/2016 given certain subsequent events came to the knowledge of the petitioner/applicant in the course of hearing of the said company petition in the facts and circumstances stated from now on.

2. Petitioner has said that the company was incorporated on 30/12/1994 as Salasar Stock Broking Pvt. Ltd. and on 24/3/1998 converted into a Public Ltd. Co. The company at all material time is engaged in the business of broking and trading of stocks and shares. The company is a member and enlisted with diverse Stock Exchange and Securities dealing organizations viz. R-6 to R-9. Petitioner holds 5,00,010 number of equity shares which constitutes 10.20% of the total issued, paid-up and subscribed share capital of the company. Since the

incorporation of the company, petitioner is the founder, promoter director of the company.

3. Petitioner was instrumental in obtaining the membership of the Stock Exchange. The experience and qualification of the petitioner were one of the criteria to make eligible to be elected as a member of a Stock Exchange under the provisions of Securities Contracts (Regulation) Rules, 1957. Petitioner also has from time to time infused funds into the R-1 company by way of capital contribution. Given the requirement of the provisions of Securities Contracts (Regulation) Rules, 1957. Petitioner got designated as a whole-time director under Clause (v) of the Regulation 8(4A) of the Rules, 1957 among other things, representing controlling interest of the R-1 company. Petitioner at all material time discharged his obligations. There has been no allegation made against the petitioner by the respondents No.6 to 8 or any of them at any point of time in any manner whatsoever.

4. In the first week of October 2016 petitioner got a rumor that his name has sought to be replaced as a designated director or part of controlling interest before the respondents No.6 to 9. Despite repeated requests and inquiries made by the petitioner, the company failed and neglected to inform anything to the petitioner in this regard. Petitioner received notice on 14/10/2016 from the official website and notice board of the respondent no.6 and got confirmation of the information received by him.

5. Petitioner has alleged that notice dated 14/10/2016 is illegal, and void, among other things, on the ground mentioned in clause 6.18 of the application. Petitioner has stated that he is a minority shareholder but representing the controlling interest of the company. The said the illegal act is prejudicial to the interest of the company and its shareholders.

52/-

6. Given the fact stated above the petitioner has prayed for amendments indicated in the schedule of the proposed amendment as part of Annexure B be allowed within such period and on such terms and conditions as may be directed.

7. In reply to the above R-1 to R-5 has filed a reply against the amendment stated that by the proposed amendment, petitioner is seeking to introduce a new purported cause of action against the answering respondents.

8. Respondents have further alleged that the proposed amendment is an afterthought and are an attempt to justify the ex-facie frivolous complaint of the petitioner. Respondents have further alleged that the petitioner has not given any reasonable or believable explanation as to why the allegations about the proposed amendment were not included in the main company petition. The proposed amendment is an attempt by the petitioner to avoid dismissal of the company petition in the light of the apparent suppression of material facts in the CP as demonstrated in the reply affidavit filed by the answering respondents.

9. It is further contended that the amendment sought, if allowed would alter and change the nature and character of the company petition and will give undue advantage to the petitioner.

10. Petitioner further alleged that the proposed amendments are not necessary to adjudicate the disputes that have arisen and no explanation for the inordinate delay in applying for amendment application is given.

11. Heard the argument of the Ld. Counsel for the petitioner and Ld.counsel of the respondents. By the proposed amendment it cannot be told that it will change the very nature and character of the company petition and will give undue advantage to the petitioner.

12. It is true that application for amendment is belated but proposed amendment is necessary to arrive for adjudication of the dispute that has arisen. Though it has been filed at belated stage for which the respondents may be compensated by awarding cost.

13. It is thus clear that the amendment application, being IA No.118/2017 deserve to be allowed.

ORDER

I A No **118/KB/201** is allowed. The registrar is directed to carry out necessary amendment forthwith subject to payment of Rs.3000/- as cost. The cost shall be paid to the respondents. After incorporating the amendment respondents may file a counter affidavit with a copy in advance to the petitioner within 15 days, and after that rejoinder affidavit may be filed with a copy in advance to the respondents within 15 days.

List the matter on.....13/10/17.....

sd/-

**Vijai Pratap Singh,
Member (J)**

Signed on 5th September 2017