

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI**

CA/223 /2017 & CA/224/2017

in
CP/51/2017

Under Sections 59, 241 and 242 of the Companies Act, 2013

In the matter

Mr. Radhakrishnan Babunirmala.

...Applicant/Petitioner

Vs

M/s. Precise Limbus Eye Care Private Limited & Another.

...Respondents/Respondents

Order delivered on 15th of February, 2018

CORAM


CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Applicant(s) : Ms. M.K.Preetha for K S R & Co

For Respondent(s) : Mr. Rahul Unnikrishnan

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

1. Under consideration are two Company Applications No. 223/2017 and 224/2017 filed in CP/51/2017. Both the Applications are taken up together for disposal by way of a common order. 

2. Company Petition No. 51/2017 has been filed on 13.10.2017 under Sections 59, 241 and 242 of the Companies Act, 2013, alleging oppression and mismanagement against the Respondents.

3. The Applicant/Petitioner has filed the Company Application No.223/2017 to implead Mr. Vishnula Murali Mohanlal and Mrs.Aswathy Chandranath, who have been appointed as Directors of the 1st Respondent Company on 05.08.2017 in the purported AGM unilaterally conducted by the 2nd Respondent without the presence of the Applicant/Petitioner. It is on record that prior to said appointment, there have been two Directors and Promoters in the 1st Respondent Company and one of the Promoters/Directors is the Petitioner. It is alleged that the said appointment had been made by the 2nd Respondent without following the due procedure and for the purpose of sidelining the Applicant/Petitioner. Therefore, the said event that took place subsequent to the filing of the Company Petition is oppressive in nature, which violates the

rights of the Applicant/Petitioner being shareholder. It has also been alleged that the registered office of the 1st Respondent company has been shifted which is also an act of oppression, fraud, illegality and invalid in law. Therefore, it is averred in the applications that the said actions are liable to be set aside, being oppressive in nature. Hence, it has been prayed that the Applicant/Petitioner may be permitted to amend the Petition to include the said subsequent events and consequently to implead Mr. Vishnulal Murali Mohanlal and Mrs. Aswathy Chandranath in the main Company Petition, as Respondents.

4. The Respondents have filed a Counter to the said Applications stating therein that the Applications are not maintainable. The appointment of the Directors mentioned in the Applications of the Applicant/Petitioner is in accordance with the law and cannot be questioned in any manner. It has further been alleged that the Applicant/Petitioner has been acting against the interests of the 1st Respondent

Company and taking oppressive and coercive actions against the Respondents, which is being done with *mala fide* intention thereby creating a deadlock in the affairs of the 1st Respondent Company.


5. The Counsel for the Respondents referred to the ruling of Hon'ble NCLAT given in "**Aurosagar Estates P. Ltd. & Ors. Vs. M.C.Davar Holdings P. Ltd.**", reported in [2017] 205 C-C 566 (NCLAT-Del)], wherein their Lordships have laid down that "*in any case, the Tribunal cannot allow any Petition for amendment with regard to a fresh cause of action other than the cause of action for which the Petition under Section 241 of the Companies Act, 2013 has been preferred*". If we refer to the facts involved in the case mentioned above, it becomes clear that an amendment was sought for an action that had happened prior to filing of the Petition which was considered as fresh cause of action. But, in this case, the alleged events took place after filing of the Petition. Therefore, the facts involved in the case referred to by the Respondents in support of their

arguments are containing the facts which are different from the facts involved in the case on hand. Therefore, the facts of this case are distinguishable to which the said ruling cannot be made applicable.


6. Counsel for the Applicant/Petitioner in reply to the argument submitted by the Counsel for the Respondents/Respondents referred to the decision of Hon'ble High Court of Bombay given in **Jer Rutton Kavasmaneck & Others Vs. Gharda Chemicals Limited and others.**, reported in (2001) 106 Comp Cas 25 (Bom), wherein, it has been laid down that *"the subsequent events will amount to pieces of additional evidence to support the Petition laid under Sections 397 and 398 of the Act. If such subsequent evidence were not taken into account at the time when the Application under Sections 397 and 398 of the Act was taken up for disposal, it is not unlikely that the Court would be flooded with as many Applications under the said provisions as there are subsequent conducts on the part of the company. Above all, it causes no prejudice to the*

Respondents as long as the Respondents are given all opportunities to adduce rebuttal evidence regarding those subsequent events or transactions”.

7. Counsel for the Applicant/Petitioner has also referred to the ruling of Hon’ble Apex Court given in **State of Andhra Pradesh & Ors Vs. Pioneer Builders, A.P.**, reported in AIR 2007 SC 113, wherein it has been laid down that *“the principles governing amendment of pleadings are well-settled. Order VI Rule 17 of CPC deals with the amendment of pleadings and provides that the Court may at any stage of the proceedings allow either party to alter or amend pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties”.*

8. Counsel for the Applicant/Petitioner further relied upon of the ruling of Hon’ble Apex Court given in **Rajesh Kumar Aggarwal & Ors Vs. K.K.Modi & Ors.,** 

reported in AIR 2006 SC 1647, wherein under para 12, it has been laid down by their Lordships that *“in cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safeguard rights of both parties and to sub-serve the ends of justice. The Court further laid down that it is settled by catena of decisions of the Hon’ble Supreme Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court.”*

9. The above stated decision is given in the light of the provisions of Civil Procedure Code (CPC). Although this Tribunal is not bound by the procedure laid down in the Civil Procedure Code, yet, the settled principles of law have to be followed by this Tribunal. Therefore, grounds raised by the Counsel for the Respondents/Respondents are devoid of merits and stand rejected. 

10. In the light of the facts and circumstances and the legal positions stated above, the Applications for amendment of the Company Petition and for impleading the Directors of the 1st Respondent Company, whose names have been mentioned hereinabove, are allowed.

11. Accordingly, the Applicant/Petitioner is directed to carryout amendment in the Company Petition and to file an amended Company Petition by providing a copy of the amended Petition to the Respondents for filing a detailed reply. There is no order as to costs. Registry is directed to post the matter for pronouncement of order on 13.02.2018.

P. ATHISTAMANI


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)