

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P No.221/(MAH)/2017
M.A. No. 273/2017

CORAM:

Present:

SHRI M. K. SHRAWAT
MEMBER (J)

SHRI RAVIKUMAR DURAISAMY
MEMBER (T)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 27.07.2017

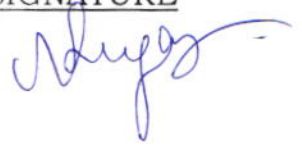
NAME OF THE PARTIES: Riverdale Infrastructure Pvt. Ltd.

V/s.

Kirloskar Ebara Pumps Ltd. & Anr.

SECTION OF THE COMPANIES ACT: 58(4) of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
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1.	Nishant S. Nyan	Mr. Dinyar Madon a/w	
	27/7/17	Mr. Shanay Shah i/b	
		Nishant Nyan	

2. For Respondent No. 1:-

~~Mr. Kamal Kadam, Advocate~~
a/w. Mr. Anil Ashish Kamat, Counsel
& Mr. Swati Jain i/b A.S. Deyal & Asso.



3. For Respondent No. 2

Mr. Vijay Nair, with
Mr. Mahesh Loadhe, with
Mr. Darshan Ashar, with
Mr. Prashant Jain
i/b. Sanjay Udeski & Co.

27/7/17

(Contd...2)

MA 273/2017 IN CP 221/58(4)/NCLT/MB/MAH/2017

1. An application was filed by the Petitioner/Applicant on 18-07-2017 seeking permission to implead Kirloskar Bros. Ltd. (KBL). On this short issue, heard both the sides. Case records perused. From the side of the Applicant it is informed that the Respondent had filed an Application under section 11 of NCLT Rules seeking invocation of inherent powers to dismiss the Petition/Appeal on the ground of non-impleadment of KBL among the array of parties. It is explained that the Petition/Appeal was filed under section 58(4) of the Act on the ground that whether Respondent No.1 Company had rightly refused to register the transfer of share by Respondent No.2 in favour of the Petitioner. Learned Counsel has informed that KBL and Respondent No.2 had entered into a JV agreement dated 27-01-1988 pursuant to which KBL and Respondent No.2 have incorporated Respondent No.1 Company. According to the Application under consideration KBL had the first right to accept or refuse purchase of shares and after the KBL had refused to purchase the shareholding of Respondent No.2 in Respondent No.1 Company, the Respondent No.2 had sold its entire shareholding to Petitioner/Applicant. On the other hand, the objection is that the Respondent No.2 could not have sold its shareholding without written consent from KBL. Since the issue revolves around the action of KBL hence the present Applicant has made a prayer to permit to implead KBL as one of the party among Respondents.
2. From the side of the Respondents it is informed that there is one more Miscellaneous Application (MA 258/2017) filed on 11-07-2017 by Respondent No.1 challenging the maintainability of the Petition. Therefore, this Petition do not survive because the KBL is allegedly neither a necessary nor a proper party in the present proceedings.
3. In my considered opinion the question of impleadment of KBL is purely a question of facts, therefore, required to be considered on the merits of the case. Since in this case the impleadment is directly connected with the factual



(Contd.....3.)

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circumstances of the case, hence it is worth as well as justifiable to include KBL among the array of parties to arrive at a justifiable decision. The Application is therefore allowed. The Petitioner can amend the Petition only to the extent of including KBL as a Respondent subject to the condition that this decision shall not adversely prejudice the merits of the Respondent. At this juncture it is worth to mention that a Miscellaneous Application filed by the Respondent challenging the maintainability of the Petition is pending for disposal and the factual as well as legal questions raised therein are yet to be decided. As a result, this Application is hereby allowed subject to the observations made hereinabove.

4. To complete the pleadings in the main Petition the Respondents are permitted to file reply within 2 weeks' time and thereafter the Petitioner, if deemed fit, can file Rejoinder within 2 weeks thereafter. Respondent No.2 is seeking leave to annexe certain documents with a reply already submitted. Permission is granted.
5. Matter is now listed for 4th September, 2017.


Sd/-**RAVIKUMAR DURAISAMY**

Member (Technical)

Date : 27.07.2017


Sd/-**M.K. SHRAWAT**

Member (Judicial)