

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

I.A. NO.60/2016
IN
C.P.NO.942/2012

In the matter of :
Companies Act, 1956

And

In the matter of
Section 397/398 of the said Act

And

In the matter of :

M/s Yashdeep Trexim Private LimitedPetitioner

And

In the matter of

Rainey Park Suppliers Private Limited Respondent

Judgement / Order delivered on : 08-08-2017

For the Petitioner: Mr. Pramit Kumar Roy, Sr. Advocate
Mr. Sankarsan Sarkar, Advocate
Mr. Rajib Mullick, Advocate
Mr. Indradeep Basu, Advocate

For the Respondents: Mr. R.K. Mitra, Advocate
Mr. S. Ghosh, Advocate
Mr. S. Choudhary, Advocate
Mrs. P. Choudhury, Advocate
Mr. Sapna Chaubey, Advocate
Mr. Ratul Das, Advocate
Mr. Sanjiv Kumar Trivedi, Advocate

CORAM:

Ms. Manorama Kumari, Member (J)

ORDER

The instant application is filed by the petitioner/applicant being I.A.No.60/2016 with prayers:

- (a)The parties as mentioned in Annexure-A hereto be added as party respondents to C.P.No.942 of 2012;
- (b)Leave be granted to the petitioner to amend the Company Petition being C.P.No.942 of 2012 in the manner indicated in Annexure B hereto;
- (c)Leave to re-verify the Company Petition;
- (d)Leave be granted to serve a copy of the amended petition upon the entities named in Annexure A hereto; apart from other prayer.

Heard both sides at length, seen the application, reply and documents annexed therein.

The contention of the applicants is that at the time of filing company petition some time in 2012, the petitioner/applicant did not array the name of transferee of R.2, 3 and 4 as party to the company petition. On perusal of the records it reflects the applicant alleged that there were transfer of shares by R.2, 3 and 4 who are the shareholders of respondent No.1, as detailed below:

| Existing shareholders of R.1 Company | Transferred to |
|---|-------------------------------|
| R.2 Mooldhan Advisory System Pvt. Ltd. | Good Life Minerals Pvt. Ltd. |
| R.3 – Acme Consultants Pvt. Ltd. | Aravali Commodities Pvt. Ltd. |
| R.4. Namaskar Vinimay Pvt. Ltd. | Melogen Dream Pvt. Ltd. |

Admittedly the said transaction took place in the year 2010 and annual return is filed in the year 2011 as per MCA Portal; whereas the instant C.P. is filed in the month of November 2012. Thereafter, both sides have filed their reply, rejoinder and on completion of the pleadings, the C.P. proceeded for the argument. On perusal of the records, it reflects that on 26.03.2015 and also thereafter the case was adjourned on the ground of settlement. Not only this, in between various interlocutory applications are filed from both sides, consequent upon which disposal of the C.P. is getting delayed.

During all these years i.e. about 4 years, the petitioner did not think it fit to file petition to array the transferee of R.2, 3 and 4 as party to main C.P. and all of a sudden come with the instant petition, without showing any valid reason as well as the cause of delay, when all the information is available in the M.C.A Portal. Had petitioner cared to array them party to the C.P., they could have arrayed them as party to C.P. at the time of filing

C.P. which was filed on 2012, whereas, the transfer of shares by R.2,3 and 4 took place in the year 2010.

During the course of argument, petitioner relied on the following citations:

1. 1983 (2) SCC 8 of Limitation Act, 1963 (63 of 1963) – Sections 21(1) proviso and 2(b) and Article 97 – ‘Mistake made in good faith’- Failure to implead one of the necessary parties within time owing to error in the certified copy of a document – Held, on facts, proviso to Section 21(1) attracted – Civil Procedure Code, 1903, Order 1, Rule 10.
2. 2013 5 Supreme Court cases – 397 : In the light of the settled principles of law on the doctrine of its pendens, we have to examine the provisions of Order 1 Rule 10 of the Code of Civil Procedure. Order 1 rule 10 empowers the court to add any person as party at any stage of the proceedings if the person whose presence before the court is necessary or proper for effective adjudication of the issue involved in the suit.
3. 1963 Supp.(1) SCR 676 : AIR SC 768 Para 7 : To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding. The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding.

There is no dispute with regard to the case law but each case turns to its own facts and circumstances.

The respondent has also vehemently opposed the petition as the said transaction is much prior to the filing of the C.P. and the same is also reflected in the M.C.A Portal. The very intention of the petitioner is to delay the matter.

In my opinion, if at such a belated stage, any new respondent is added, the C.P. shall, as regard to them, be deemed to have been instituted when they were so made party. Under such circumstances the relief sought for by the petitioner in original C.P. will get totally changed which is not permissible in the eye of law, more so it amounts to fresh filing of C.P. However, in petition under section 397/398, past transaction cannot be dealt with. Further, the transactions referred to in the petition are past concluded transactions i.e. prior to the filing of the C.P. Moreover, the application is barred by delay acquiesce^{and} waiver.

Further, on perusal of the records, I found no valid reason for impleading the proposed parties in the C.P. Necessary parties are parties whose presence is essential and in whose absence, no effective order can at all be passed, whereas in the present case reliefs can be granted even in the absence of the proposed parties provided the alleged acts of oppression and mismanagement are established by the petitioner. Moreover, where reliefs can be obtained by the applicant in establishing the alleged acts in the affairs of the company, it is not necessary to join the parties proposed by the applicant.

In the instant case R.2,3 and 4 sold the shares sometime in the year 2011, the petitioner has made no endeavour to add them party to the C.P. since then, when all information is available in M.C.A. Portal, thereby acquiesced their / his rights. That apart, the parties also made no

endeavour to argue on C.P during this period of 4 years, else, by this time there would have been final order. Instead, both sides were busy in filing interlocutory applications, which delayed the matter substantially. Under such circumstances, I find no reason to allow the petition so filed by the applicants. Hence, I.A.No.60/2016 is dismissed.

(MANORAMA KUMARI)
MEMBER (JUDICIAL)