

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI.

CA NO.34 IN CP No. 84/397-398/2015/NCLT/MB/MAH/2015

IN THE MATTER OF SECTION 397-398 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF MR. ARJUNDAS ALREJA

VERSUS

M/S. GOLDEN SILL & SHELTER PVT. LTD.

CORAM : SHRI M.K. SHRAWAT
Member (Judicial)

MR. ARJUNDAS ALREJA : Petitioner

Versus

M/S. GOLDEN SILL & SHELTER PVT. LTD.
& OTHERS : Respondents.

Represented By :

Shri M.S. Bhardwaj & }
Shri V.P. Verma : Advocate for Petitioner

Mr. Aniketh P. Nair,
i/b Mustafa Motiwala : Advocate for Respondent.

Date of Order : 19.06.2017

1. A Petition was filed (CP No.84/2015) on 17th November 2015 before the then CLB, Mumbai and thereafter on 24th August 2016 an application has been filed (CA No.34/2016) now under consideration. The Petitioner/Applicant is seeking permission to amend the main Petition. The application under consideration is carefully perused. Basically, the applicant is seeking three amendments, categorized as below:-

a) The **first** amendment is in the nature of allotment of shares and the prayer is declare the allotment as null and void. Relevant paragraph is reproduced below: -

"a) Declare the shares allotted to M/s. Genus Commo Trade Limited M/s. Supreme Telecom and Net India Limited and M/s. Ken Securities Limited as appearing in the Annual Return of the Respondent No.1 Company for the Financial Year 2006-07 and subsequent Annual Returns thereafter, as null and void;"

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- b) The **second** amendment revolves around the fact that a Memorandum of Understanding was executed on 4th May 2006 with Shri Krishna Abode Pvt. Ltd. for which seeking restrain order not to deal with the proposed property in any manner, relevant paragraph from the application is reproduced below:-

"To insert of new para in Petition as sub Para (c) of para 6.26 at page No.27 :

"The Respondent No.2 further executed a Memorandum of Understanding for financial Arrangements on 4.05.2006 with Shri Krishna Abodes Private Limited a Private Limited company registered as per provisions of the Companies Act, 1956 having its registered office at P-1, Malviya Apartments, Sardar Patel Marg, Jaipur, through its Director Mr. Rajendra Singh S/o Shri Shvinath Singh duly authorized by the resolution passed in the Board Meeting dated 3.05.2006 herein after referred in this deed as the "BUILDER" with Respondent No.1 Company through Respondent No.2 without authorization by the Board of Respondent No.1 Company. A copy of MOU is annexed herewith as Annexure – A-18(A)".

In the interim relief clause following prayers be added "Direct the Respondent No.2 not to deal with and create third party right, sale/dispose off the properties of Respondent Company in any manner."

- c) The **third** amendment is in the nature of directions claiming to be issued to one of the proposed Respondents, relevant portion from the application reproduced below:-

"4. After implementing the above proposed Respondents in array of parties, the relief clause of Petition needs to be amended as under :

- i) Direct Respondent No.5 to bring back to the company the amounts withdrawn/siphoned off by her to the extent of Rs.18,78,662/-as per Balance Sheet as at 31.03.2007. A copy of the same is Annexed as Annexure – 24.***
- ii) Direct the Respondent No.2 to bring back to the company the amount advanced to his HUF and other relatives as per Balance Sheet as on 31.03.2007."***

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2. On this issue of "amendment" heard both the sides. Case laws perused in the light of the facts of the case. On careful reading one thing is apparent that amendment can be allowed if the parties proposed to be impleaded are "necessary" and "proper" parties. However, the ratio laid down in the precedent cited is that the facts and circumstances of each case can only demonstrate whether the parties to be impleaded are intricately mixed with the facts of the case and the circumstances have clearly demonstrated that without their presence it would be difficult to arrive at a correct decision.

2.1 Apropos to the first amendment it is justifiable to apply the fundamental principle of the insertion of section 241 of the Act which says any member of a Company who complains that the affairs of the Company have been or are being conducted in a manner prejudicial to public interest which are oppressive to him or any other member/members may apply to the Tribunal for an order, provided such member has a right to apply under the provisions of this Act. In the light of this legal background it is apparent that the issues which are connected with the corporate body can be taken up if raised by the member of the Company. The Petitioner is proposing to implead said parties in the array of Respondents on account of the fact that the allotment was allegedly illegal due to the reason that no investments were made by those parties, however, shares were allotted. The main Petition under consideration has quoted the instances that the balance sheet does not reflect ^{that} any investment ^{was} ever made by those proposed parties in the corpus of the Company. On the other hand, the Respondents are furnishing corroborative evidences to justify their claim. Since the rival contentions as emerging from the pleadings are dove-tailed hence the allotment of shares to the respective parties can only be ascertained if those parties are Impleaded and made part of the array of Respondents. Up to this extent it is hereby granted to the Petitioner to amend the Petition on or before 15th of July 2017 with a copy in advance to the concerned Respondents.

2.2 Apropos to second amendment, the matter was discussed on last few occasions with reference to section 242(2)(f) of the Act wherein it is prescribed that an order on an Petition under section 241 may provide for the termination, setting aside or modification of any agreement between the Company and "any person" other than those referred to in clause(e) of this sub-section, Provided that no such agreement shall be terminated or set aside or modified except after due notice and after obtaining the consent of the party concerned.

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This sub-section has a vast ramification and to be applied carefully. After discussion with the Learned Counsel an admitted factual position emerged that the parties yet to be impleaded were not the parties as prescribed under section 241 of the Act but undisputedly "**third parties**" with whom the alleged transaction was carried out in the past. When this factual position was discussed and admitted by the Learned Advocate that those "third parties" are in the nature of "any person" as noted in sub-section(2)(f) of section 242 of the Act, then only the Learned Counsel has agreed to serve a legal notice on them by any acceptable mode of service. The Petitioner had chosen the mode of service through newspaper publication, placed evidence on record. Hence a conclusion can be drawn that the parties in question, yet to be impleaded as one of the Respondents, are none other than "any person" referred to in sub-section (2)(f) supra.

Another ingredient of this sub-section is to procure the "consent of the party concerned". Therefore, the second condition precedent for operation of this sub-section is to "obtain the consent of the party concerned". In this case, the Petitioner had not fulfilled this condition.

An overall situation thus emerges that the alleged parties are the third parties ^{which} are not within the domain of "necessary party" where the relief sought cannot be granted, if deemed fit. They are also not the "proper party" in the absence of whom the decision on the impugned transaction cannot be adjudicated upon. The categories of "persons" as defined in section 241 are limited. Therefore, this Court has jurisdiction to decide only issues relating to "oppression" and "mismanagement" by the persons inside the Company. Without going into the merits of the impugned transaction at this preliminary stage, it is worth to mention at this juncture that the affairs of the Company can be adjudged vis-à-vis Directors/Members. If a transaction is found to be void or illegal, the natural legal consequence shall follow thereafter. One more reason to reject this part of the prayer is that the Petitioner has not discharged the onus to demonstrate with corroborative evidences that why the parties to be impleaded as Respondents No.10 to 15 are necessary to be impleaded. The application (CA 34/2016) under consideration has not mentioned instances at all to demonstrate that their inclusion in the array of Respondents shall be necessary to adjudicate the main Petition. When the preliminary onus is not discharged by quoting the instances then the involvement of a party at the secondary stage is not within the purview of the provisions of sections 241 read with section 242 of the Act. As a result, this part of the prayer is rejected.



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- 2.3 Apropos to third amendment, the prayer is already embedded within the facts of the Petition, hence no separate insertion of a paragraph is required in the main Petition. Only an observation at this stage is suffice that this point shall be raised at the time of arguments on the main Petition. Moreover, the Petition in question happened to have been filed way back in the year 2015 and by way of alleged amendment it may further delay the proceedings hence only that amendment which is intricately linked with the Company (Respondent No.1) can be entertained for the requisite mandatory amendment. Rest is otherwise not permissible under law.
3. Inter alia, the Application under consideration is partly allowed. The main Petition is already listed for hearing on 11th July 2017, already communicated.

Date : 19.06.2017

Sd/-
M.K. SHRAWAT
Member (Judicial)

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