**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AT NEW DELHI**

**Date of Pronouncement: 13th January, 2017**

**Company Petition No. 144(ND) 2016**

**In the matter of**

Sections 397, 398 r.w Sections 402 & 403 and 235 of the Companies Act, 1956 read with Sections 241-246 of the Companies Act (2013)

**M/s. Montreaux Resorts (P) Ltd.**

**.....Petitioners**

**Versus**

**M/s Ascot Hotels & Resorts (P) Ltd & Ors.**

**...Respondents**

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**For Petitioner(s): Mr. Deepak Khosla, Advocate.**

**For Respondent(s): Mr. Rishi Sood, Advocate.**

**ORDER**

This Company Petition is yet another in the long line of litigation between the parties. The petitioners have accused Respondent no.1 Company of oppression and mismanagement by

invoking the provisions of Sections 241 & 242 of the Companies Act, 2013 and have prayed for exhaustive reliefs, not only against its Directors and shareholders respondents 2-8, but several other parties.

2. Their prayers include inter alia:

(a) Setting aside Sale Deeds executed by Mr. Khayaali Ram and Mr.Dharam Dutt in favour of Respondent no.9, Mr. Rajeev Puri, (an erstwhile associate of Respondent no.2), and to declare the petitioner company as owner thereof;

(b) to declare agreement dated 31.03.2006executed between the Petitioner Company and Respondent no.2 void being ultra-virus the objects of the Memorandum of Association of the Petitioner Company as also the contingent contract which otherwise has become unenforceable;

(c) Lift the corporate veil from Respondent no.1 and hold its business with Respondent no 30, M/s. K.K.Ropeways as competing business to that of the Petitioner company and to transfer all its interest/shares to the petitioners;

(d) To hold the intended project of Respondent no.1 on land purchased from Respondents 12 and 13 as competing business with that of the Petitioner no.1

Besides the above the petitioners have prayed for various reliefs in the form of Declaration of agreements being void.

3. As per averments the petitioner company M/s. Montreux Resort was incorporated on 13.04.2005 with an authorised and paid up capital Rs.1 Lakh, being 10,000 equity shares of Rs. 10/- each. Its initial promoters and Directors were deceased Mrs. Sonia Khosla and Mr. Vini Ahuja. One of the objects of the company was to develop a Holiday Resort at Kasauli in Himanchal Pradesh on land belonging to her father-in-law, Petitioner no.6 herein. For this purpose agreement had also been entered into with Respondents 12 & 13 and others to acquire adjoining properties. A proposal for tying up with M/s. K.K. Ropeways, Respondent no. 30 was also agreed upon to facilitate the business objects. In terms of a business arrangement, it was proposed that Respondent 2 would infuse investment for developing the project and would be a majority shareholder. Agreements dated 31st. March 2006 was signed between the parties. Respondents 2 to4 were inducted as Directors. As per allegations made by Petitioners, Respondent no. 2 further allotted shares to his wife and daughters i.e. Respondents 5-8, in an attempt to fraudulently usurp majority control of the Petitioner Company under the garb of increasing its capital. Various acts of fraud and misfeasance have been attributed to Respondents 2 to4 which are also a subject matter of CP 144/2007.

4. The crux of the allegation is that Respondent no.2, during his tenure as the Director of the Petitioner Company no.1 got sale deeds of various pieces of land parcels executed in favour of respondent no. 1 or his nominees instead of getting it executed directly in favour of the Petitioner no.1 Company. Respondent no.2, being a majority stakeholder in the Respondent no.1

Company, is accused of setting up competing business with that Petitioner no.1 Company, breaching the fiduciary relationship and the trust reposed in him by the petitioners. The petitioners have therefore not only arrayed Respondents 2 to 8 as directors/ members of respondent no.1 company, but also its management, erstwhile directors, and employees in the present proceedings. In addition, the other respondents are Bankers, Directors of M/s. Connaught Plaza Restaurant Pvt. Ltd. (another business venture of respondent no.2), Ex CFOs/Company Secretary of M/s. Connaught Plaza, Mc Donalds India, Mc.Donalds Corporation Inc USA, K.K.Ropeways, Chartered Accountants, Bank of Karnataka besides the RoC.

5. The allegations in the present petition are founded on the same facts as in CP 114/2007, the deviation being arraying as many as 40 respondents herein.

6. Before going into the merits of the case, Respondent no.1 impugns the maintainability of the present petition, predominantly on three fold grounds. In the arguments advanced by them, it has been submitted that **Firstly** the petitioners have no locus to file the present petition u/s 241/242 of the Companies Act, 2013 as they are not the shareholders of the Respondent Company, let alone surmounting the threshold of holding 10% equity.

7. **Secondly,** in addition to the aforesaid objection, it is stated that no resolution has been passed by the Petitioner Company authorising Petitioners to sign, verify or institute the present

proceedings. In the absence of any resolution, filing of the present petition is not maintainable.

8. The **Third** objection to the maintainability is questioning the locus of the petitioners as shareholders of petitioner no.1 itself. The respondents repudiate that the petitioner no.2 is either a director or a shareholder of the Petitioner Company. Reliance is made on the agreement dt. 31/03/2006 recording the transfer of major equity in favour of Respondent no.2, as also on the admissions made by the deceased wife of the petitioner no.2 in various proceedings before different courts. Respondent no.2 asserts holding 51% equity in the Petitioner Company. Since this fact was disputed the Hon'ble High Court of Delhi in Arb. P 93/2008, vide its order dated 29th. Feb. 2008 set up an arbitral panel to decide the same. Further, orders passed in OMP no. 63 of 2010 (a petition under section 9 of the Arbitration and Conciliation Act), had specifically restrained petitioner no.2 from acting as the Managing Director or from holding any Board or Shareholders meeting. Even in the CP 114/07 which is still pending adjudication before this court, directions were given to maintain a status quo in respect of the land as on 22.08.2007. It is submitted that the petitioners claim to be shareholders on the basis of the transmission of shares of Late Mrs. Sonia Khosla could neither be approved by the Board of Directors nor given consent to in the light of the orders of the Court restraining petitioner no.2 from holding any Board Meeting. Similarly, the submission of petitioner no.2 that he had purchased the shares of Mr. Vini Ahuja is repudiated by the respondents who have pointed out that there is no document on record to substantiate

either the said transfer or the transmission of shares in favour of any of the petitioners.

9. In rebuttal to the aforesaid objections, Mr. Khosla, Petitioner no.2 in person and husband of late Mrs. Sonia Khosla admits that neither the petitioner Company nor any of the other petitioners are shareholders of the respondent Company. It is his case that the present petition is in a derivative form. Petitioners 2 to 7, being members/ shareholders of Petitioner no.1 company, have derived a right and interest which accrued in its favour. The fraudulent acts of Respondents 2 to 4 and 5 to 8 have resulted in oppression to the petitioners. As the acts of the Respondents prejudicially effect the interest of Petitioner no.1, they too are affected by the same. It is argued by Mr. Deepak Khosla that the view formed that a shareholder can only proceed against the company in which he holds interest is based on an erroneous practice that a petition can be filed only for the benefit of the company and not by individual shareholders. Seeking protection of a company's right can be invoked by any shareholders because it means consequential devolution of interest on them.

10. In respect of the Resolution authorising filing of the present petition, there is none on record, neither is there any averment made in this respect. The petitioner maintains that the same is not required in the facts above pleaded.

11. With respect to the third objection of the respondents, the petitioner no.2 submits that he is not bound by the orders of the CLB in CP 114/2007 or those passed by the Hon'ble High court

of Delhi in Arb. P 93/08 restraining him from holding out as the Managing Director of the Petitioner Company or holding any Board Meeting. It is his argument that the said orders are null and void, being founded on fraud and on principles of Coram non judice. He therefore maintains that being in charge of the affairs of the Company, effective transmission of the shares of late Mrs. Sonia Khosla has been recorded in favour of her legal heirs i.e. petitioners 2-6 as also the transfer of shares in his favour from Mr. Vini Ahuja. He further seeks to retract admissions made in various pleadings made by his late wife on grounds of being factually incorrect.

12. I am unable to appreciate the arguments advanced by the petitioner. Firstly, in the absence of any resolution passed by the Petitioner no.1 Company, the maintainability of the proceeding is vitiated by lack of authorisation to file the same. The company is a separate entity and cannot be represented through individual petitioners. Mr. Khosla has relied upon a catena of judgements. Needless to say all these are proceedings pertaining to Suits and not to Company Petitions. Moreover, in a derivative claim the shareholders invoke their rights for wrongs done by their own company for which the company is necessarily a defendant. The substance of allegations made by Petitioners 2 to 6 in a derivative capacity, for and on behalf of Petitioner no.1 can be adjudicated in civil proceedings only. The reliefs claimed are by way of Declaration or Injunction on principles of Non Compete between two business entities. The allegations of the petitioners are of breach of fiduciary relationship. The respondents controvert it

and allege breach of an agreement. Such a dispute can be adjudicated only in civil proceedings.

13. Similarly, in respect of the locus of the other petitioners as shareholders, other than averments, there is no document to substantiate the Resolution approving the transmission of the shares of late Mrs. Sonia Khosla, or the transfer of shares by Vini Ahuja in favour of the Petitioner. While the respondents rely on Courts directions and orders and admissions made in various pleadings filed in Courts negating such a step, the petitioner seeks to completely disregard them on grounds of being void orders or being factually incorrect.

14. Though the objections raised by the respondents on all three grounds find favour with this bench, their one point alone is sufficient to dismiss the present petition on grounds of maintainability. The petitioners not being the shareholders of Respondent no.1 Company, cannot invoke the provisions of sections 241-242 of the Companies Act 2013. The provisions of the Act make it abundantly clear as to who can initiate such proceedings. Sec. 241 of the Companies Act 2013 is reproduced as below:

> ***"(1) The following members of a company shall have the right to apply under section 241, namely:-***
>
> ***(a)In the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less***

***than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;***

***(b)In the case of a company not having a share capital, not less than one-fifth of the total number of its members:***

***Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.***

***(2)Where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them."***

15. The petitioners have candidly admitted that neither petitioner no.1 nor the other petitioners are shareholders of Respondent no.1 Company. I therefore find the present petition not maintainable.

16. It would not be out of place to observe that the allegations made in the present petition are almost the same as in CP 114/2007, which is still pending adjudication on account of initiation of multiple proceedings. The petitioner seeks to array herein several other parties who may be just remotely connected

with respondent no.2 and which he did not include in the earlier proceedings. The arraying of such parties in a proceeding under 241/242 of the Companies Act 2013, is a total manifestation of misjoinder of parties and an absolute abuse of the process of law.

17. In the light of the above observations, this Company Petition is dismissed as not maintainable.

Sd/-

**(Ina Malhotra)**
**Member Judicial**