

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI BENCH

Company Application No.185 of 2015

&

(Company Application 186 of 2015)

In

Company Petition No.129 (ND)/ of 2014

20.01.2017

Present: Mr. M.K.HANJURA & MR.R.VARADHARAJAN, MEMBERS (JUDICIAL)

In the matter of:

IN THE MATTER OF THE COMPANIES ACT, 1956

Mr. Rajnish Chadha.....

Petitioner

Versus

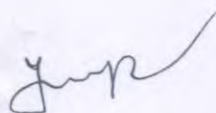
Celsius Healthcare Pvt. Ltd. & Ors.

Respondents

Present: Mr Jatin Mongia, Advocate for the Petitioner & Applicant in C.A.No.186/15

**Mr Saurabh Kalai & Ms Aishwarya Mishra, Advocates for the Respondents
and Applicant in C.A.No.185/15**

COMMON ORDER

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- 1) Pending Company Petition, in relation to the above Company Applications, upon directions contained in the order dated 16.03.2016 passed by the Hon'ble High Court of Delhi at New Delhi (being the then Appellate Court) in CO.A(SB) 42/2015 and CA Nos.2691/2015 and 3183/2015 to the Company Law Board (

CLB), the predecessor to this Tribunal, we are perforce to hear and dispose of the applications as expeditiously as possible within the time limit prescribed therein. However due to the CLB being abolished and this Tribunal being constituted on and from 01.06.2016, these applications are being taken up for disposal as directed. Before going into the merits of the two applications to appreciate the intent of the order, it will be worthwhile to extract the order of the then appellate court as under:-

"The captioned appeal is directed against order dated 24.08.2015 passed by the Company Law Board (CLB). Mr. Kathpalia, who appears for the appellants, says, apart from anything else, there is one serious error in the said order, which is that, the appellants' application being: CA No.185/2015, which was pending consideration and, to which, a reply had been filed by the respondents, was not taken up for hearing prior to CLB passing the impugned order.

Learned counsel submits that, inter alia, via CA No.185/2015, the appellants had sought variation of an earlier order, passed by the CLB, which is, dated 25.11.2014.

It is the learned counsel's contention that, as a matter of fact inspection was given to the respondents on 10.12.2014.

Mr. Kathpalia further submits that the respondents have been acting in CO.A(SB)42/2015 in a fashion, which is detrimental to the interest of appellant No.1 company.

Learned counsel for the respondents, on the other hand, refutes the submission of Mr. Kathpalia; more specifically, that the respondents have been acting in a manner which is detrimental to the interest of appellant No.1 company.

Be that as it may, learned counsel for the respondents says that he has no difficulty if this court were to set aside the impugned order and direct a re-hearing in not only in CA No.186/2015, in which the impugned order was passed, but also a hearing in CA No.185/2015, which was preferred by the appellants herein.

Mr.Kathpalia is also agreed to such a modality being followed.

Accordingly, the impugned order is set aside. The CLB is directed to re-hear CA No.186/2015 and hear CA No.185/2015. Reply if any, will be filed by the non-applicant(s) in the said applications, within one week from today. Rejoinder thereto, if any, be filed within one week thereafter.

The applications will be heard and disposed of by the CLB as expeditiously as possible, though not later than four weeks from today. Needless to say, none of the observations made hereinabove by me will come in the way of the CLB deciding the applications on merit.

The appeal and the applications are, accordingly, disposed of in the light of the aforesaid directions issued above.

- 2) A narration of the prequel to the above order of the Appellate Court will be required with a view to better appreciate the facts of the case as well as for the disposal of the two applications, one each filed by the petitioner and respondents. While C.A.No.185 of 2015 has been filed by the respondents in the main C.P, C.A.186 of 2015 has been filed by the petitioners. The reliefs sought for in the above company applications are extracted hereunder:

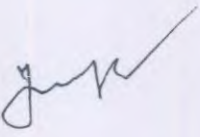
In CA No.185 of 2015 filed by the respondents – in the main C.P


- a) Modify/Recall the Interim Order dated 25.11.2014.
- b) Direct the Petitioner to disclose on an affidavit, to this Hon'ble Board the following:
- i) Names, Address, Professional Qualifications, Business Interests of the persons who accompanied the Petitioner for inspecting the books of the Respondent No.1 Company on 10.12.2014;

ii) State the capacity/reasons due to which the Petitioner was accompanied by the persons so disclosed in compliance of the prayer (b(i));

c) Pass any other order as this Hon'ble Board may deem fit in the interest of equity and justice.

In CA No.186 of 2015 filed by the petitioners:

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- 1) Direct that the Petitioner be given a fresh inspection of books of accounts and other records of the Company and be permitted to take photocopies of all such documents as he may require;
 - 2) Direct Respondent Nos. 1 to 4 to produce all documents relating to purchase of the "JMD Buildcom" property situated at Ghaziabad including but not limited to receipt for advance payment of Rs.75 lakhs and the agreement to purchase the said property;
 - 3) Direct Respondent Nos. 1 to 4 forthwith submit the financial statements for the month of April,2015 and for the period 16.07.2015 till date and henceforth to comply with the order dated 25.11.2014 by providing the Petitioner with the financial statements on a fortnightly basis;
 - 4) Restrain Respondent Nos. 2 to 4 from operating the bank accounts of the Respondent No.1 Company without the signature of the Petitioner pending final adjudication of the present Petition;
 - 5) To deposit the Rs.1.25 crores cash in hand of the Respondent No.1 Company with this Hon'ble Board pending final adjudication of the present Petition.


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- 3) The genesis for filing both the above applications seems to be the order dated 25.11.2014 and hence this Tribunal is inclined to dispose these two

applications by a common order and it will be in the fitness of things to extract the order passed by CLB dated 25.11.2014.

"In view of the undertaking given by the Respondent side, this Bench hereby directs the Respondents to maintain status quo over the shareholding and assets of R-1 Company, to provide inspection of the books of R-1 Company to the petitioner within 15 days thereof, that R-8 will not create any third party rights over the 21 trademark rights to R-8 from R-1 Company, to submit fortnightly financial statement of R-1 Company before this Bench by supplying copy to the petitioner until further order.

Since the Respondents Counsel stated that R-1 Company have already entered into an agreement to purchase a property called "JMD Buildcom" situated at Ghaziabad by making an advance payment of 75 lakhs of rupees and they are under obligation to pay balance sale consideration of 50 lakhs of rupees, the Respondents are at liberty to make the payment of balance sale consideration out of the cash lying with the company and the respondents shall not create any third party rights over the above said property as well until further orders, as to remaining cash lying with the company, R-1 shall not withdraw the same without permission of the Bench until further orders."

4) The brief factual matrix which prompted the CLB to pass the above interim order dated 25.11.2014 based on the petition is as under:-

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- a) 1st respondent company is a closely held private limited company incorporated in 2004 under the name and style of **Shrim Marketing Pvt Ltd**. The name of the company was changed to **Celsius Healthcare Pvt Ltd** in 2009 in view of its foray into the business of marketing medicines. 1st respondent company has its registered office at 3 Kapil Vihar, Pitampura, Delhi-110034.
- b) The authorized share capital of the company is Rs. 5, 00,000 divided into 50,000 equity shares of Rs. 10 each. The subscribed and paid up capital of the company according to the petitioner is Rs. 2,00,000 divided into 20,000 equity shares of Rs. 10 each even though reflected as Rs.5,00,000 in the returns of the company as the petitioner challenges the allotment of 30,000 equity shares of Rs.10/- each

to respondents No. 2 and 3 as illegal. Petitioner was initially appointed as a Director in the Company under the name and style of Shrim Marketing Pvt. Ltd. on 28.07.2004 and then due to personal reasons he resigned from the directorship of the company on 07.08.2008.

- c) Petitioner and Respondent No.7, his brother were once again appointed as Directors in the company on 15.12.2009. Between 2009-2012, the Petitioner facilitated assignment of Trademarks of 22 brands in favour of the Company which are collectively worth at least Rs. 9.5 crores as on date and is making profits to the tune of approx. Rs. 33.40 lakhs before depreciation and tax and also after allowing remuneration of Rs. 24 lakhs to the Directors. Further Petitioner has also advanced loans to the company.
- d) Owing to the Petitioner's contribution to the company, he was inducted as the shareholder of the company in 14.06.2013 and was allotted 5000 shares at a premium of Rs. 40 each thereby constituting 25% of the paid up share capital of the company.
- e) Respondent No.2 in the main C.P. who is a director of the company holds 5,000 shares constituting 25% of the paid up share capital of the company while Respondent No.3 is also a director in the company since 2010. Respondent No. 4 originally held 5000 shares of the paid up share capital of the company.
- f) Respondent No.5 and Respondent No.6 alleged to have been appointed as the additional Director of the Company and the said appointment is challenged in the company petition. Respondent No.7 has been director in the company since 15.12.2009 and holds 5000 shares since 14.06.2013. The petitioner through his efforts has been able to take trademarks assigned from third parties in favour of the respondent company which is the only worthwhile asset the company holds and which trademarks have been illegally assigned to respondent No.8 by the other respondents acting in concert with each other.

g) As on 14.06.2013 the company is held 50-50 by two groups that is Respondent No. 2 & 4, on the one hand and the Petitioner along with Respondent No. 7 on the other.

5) Based on the above allegations predominantly given in a nutshell the petitioner seems to have filed the above main C.P. and the CLB had passed the interim order dated 25.11.2014. Subsequent to the above, it is a matter of record that the respondents have permitted the petitioner alongwith 2 of his representatives, even though it is claimed as three by the respondents in the main C.P., had been allowed to inspect the records of the company as enumerated in Annexure 9 of C.A.No.185 of 2015 filed by the applicant / therein. In the meanwhile, it is seen from the order sheets available in the file that some settlement talks had been mooted between the parties, which talks however, seems to have come to a naught. Subsequent to the failure of settlement talks, the parties seem to have once again adopted a warring mode and the above C.A's have been filed against each other seeking reliefs as prayed for therein which invited the CLB to pass order dated 24.8.2015 impugned before Hon'ble High Court of Delhi which as noticed in paragraph supra had set aside the order of 24.8.2015 and thus the parties are back to square one before us.

6) From the perusal of the reliefs prayed for in CA 185/2015 by the respondents, it is seen that the respondents want to withdraw from the undertaking which had been given on 25.11.2014, in relation to the inspection of books and accounts and records to the petitioner on the ground that the petitioner is abusing the said undertaking by writing correspondence to its suppliers and other third parties and hence in the fitness of things the applicant is justified in withdrawing the undertaking given to the erstwhile CLB. The applicant in CA 185/2015 also submits that the non-applicant petitioner has filed a civil suit in

C.S.No.3752/2014 titled 'Rajnish Chadha and Others Vs. Lalit Jaiswal and Others' before the Hon'ble High Court of Delhi based on the same grounds and grievances as alleged before this Tribunal and hence is basically on a fishing and roving enquiry to somehow or other sustain the said suit filed before the Hon'ble High Court of Delhi in relation to the trademark by repeatedly seeking inspection of documents before this Tribunal and hence this Tribunal should not permit such probing enquiry to be conducted by the non-applicant petitioner under the guise of inspection of records and thereby abuse the right given under Section 209(4) of the Companies Act, 1956 and presently Section 128 under the 2013 Act. The applicant/respondent, however, taking into consideration the rights of the petitioners is willing to concede to the prayers made in company application C.A.No.186/2015 filed by the petitioner namely prayer(b) in relation to production of documents relating to particulars of purchase of JMD Buildcom property situated at Ghaziabad which it is claimed by the respondents as having been cancelled subsequently and the amounts received being refunded as well as making available the financial statement as prayed for in (c). However, in relation to other prayers/ reliefs sought for in the application C.A.No.186/2015, the same is vehemently contested. The respondents in the main C.P. also submit during the course of oral submissions that in the typed set of documents filed in relation to company application in any case, all the documents pertaining to prayer (b) of the C.A. 186 of 2015 has been annexed and the respondents also submit that in compliance with order dated 25.11.2014 the respondents are submitting fortnightly statements which is not disputed.

- 7) The applicant/respondent in C.P, inter alia, submits that a perusal of the petition will disclose that the allegations pertain to the following aspects namely (i) allotment of 30000 equity shares of the respondent No.1 to respondents No. 2 and 3 in the main company petition and that the said allotment has been done without the knowledge and consent of the non-applicant petitioner; (ii) the appointment of respondents No.5 and 6 as Directors of the respondent No.1

Company has been done without the consent of the petitioner and respondent No.7, his brother; (iii) that trademarks of the respondent No.1 Company has been palmed off at a very low price thereby seriously prejudicing the interest of the respondent No.1 Company.

- 8) A perusal of the written submission in CA.186/2015 as filed by the petitioner in the main company petition also enumerates the points as above as the primary areas of dispute between the parties. Thus, it is seen that in relation to the allegations which are required to be looked into by this Tribunal at the time of final adjudication have been crystallized by both the parties. Hence, the plea of the petitioner for requiring another opportunity to inspect the books and accounts in addition to what has already been done has to be looked into in the prism of the above allegations crystallized as between the parties. On perusal of the application in CA No.186/2015, we find no plea to sustain the additional inspection of documents in respect of all these three allegations and as already submitted by the respondents in the main company petition, all the documents for adjudication of lis between the parties has been made available to the petitioners, as the respondents have filed the minutes of contentious meetings as well as other documents by way of typed set and hence the plea of the applicant / petitioner in CA No.186/2015 is nothing but an abuse of the process of law and to delay the final hearing based on the plea of inspection of documents/records, deliberately the applicant/petitioner in CA No.186/2015 is delaying the completion of pleadings in the main company petition by not filing the rejoinder. There seems to be some force in the arguments of the respondents in the main company petition and the applicant in No.185/2015, in as much as the petitioner and the respondents by virtue of their submissions seems to have crystallized before this Tribunal, issues which are primarily required to be looked into for the final disposal of the company petition. Further, from the pleadings in these two company applications, it is also evident that the petitioner has filed a civil suit before the Hon'ble High Court of Delhi at New Delhi against the company and other respondents the details of which have

been given in para supra thereby making his intentions clear in relation to the trademark. It is also evident on the perusal of the record by way of typed set filed by the parties that the petitioner has addressed several letters to both the suppliers as well as customers of the first respondent company to the detriment of its finances and with a view to cripple the production activities of the company and not in the best interest of all the parties concerned to this petition. It is also on record that based on the directions of the CLB vide order dated 25.11.2014, the petitioner along with two of his representatives had taken an inspection of the records as listed in Annexure No.A-9 in CA No.185/C 2/2015, which prima facie seems to be comprehensive and we are unable to comprehend the rationale of the petitioner in seeking further inspection. It is also pertinent to note that even though the petitioner claims 50% of the shareholding of the company along with respondent No.7, his brother, respondent No.7 has consistently remained absent and has not filed any pleadings for reasons best known only to the petitioner and respondent No.7.

- 9) The reliance of the petitioner in respect of the citations which had been placed before this Tribunal, this Tribunal is of the considered opinion that the same can be distinguished on facts and will not come to the assistance of the applicant petitioners more so, in view of the respondents having already granted an opportunity to inspect the books and records and documents as sought for by the petitioners and to his representatives. While **Maharaj Kumar Mahendra Singh v. Lake Palace Hotels and Motels (P) Ltd. & Ors. MANU/RH/0050/1983**, deals with the maintainability of a company petition filed under Section 209(4) individually in view of the then applicable Companies (Court) Rules, 1959 to the Company Courts, in the case of **Jagatbhai Palkhiwala v. Vikrambhai Punjabhai & Ors. MANU/GJ/0087/1985** and **Rajdhani Roller Floor Mills Pvt. Ltd. V. Mangilal Bagri & Ors. MANU/DE/0352/1991** case the matter seems to have been pending before the Civil Court and documents filed of which copies were sought to be taken therefrom. The observations of the court in **Gobind Mohun Doss & Ors. V.**

Kunja Benary Doss MANU/WB/0207/1505 given as here under elucidated the point in relation to the discretion to be exercised under a given circumstances for inspection or production of books and documents by the courts:

"No doubt the order for the production of documents is to be limited to such documents alone as relate to matters in question in the suit, and the Court must, consequently, before it makes the order, determine for the purpose thereof what are the matters in question in the suit.

The principles applicable to cases of this description are perfectly well-settled; A party cannot obtain a commission for the inspection or production of books or papers in order that he may ransack them for evidence to make out his case; he is entitled to production or inspection only when the same is material and necessary to establish his cause of action. No doubt a party cannot ask for discovery which a view to ascertain the evidence on which his opponent's action or defence rests; but where the documents are material to the case of the applicant, it is no objection to their production or inspection that they relate to the case of his adversary. When the Court is satisfied that an order for production of document should be made, the time and place of inspection should be specified, and it should also give directions as to the manner of inspection."

10) In the light of the above we are of the view that in the present instance circumstances do not exist for grant of additional inspection to the petitioner and hence C.A.186 of 2015 is dismissed.

11) In relation to C.A.No. 185 of 2015, we are of the view that the same also deserved to be dismissed as the undertaking given stems from the right of inspection as enshrined in the provisions of the statute. Further, having allowed the representatives of the petitioner to accompany and inspect in the first place, the applicant/respondents cannot use this forum to seek out particulars which are not relevant to the proceedings.

12) In the circumstances, both applications in C.A.No.185/2015 and C.A.No.186/2015 are dismissed without costs. However, interim orders as enunciated in order dated 25.11.2014, save in relation to right of inspection to continue. The petitioner is given 2 weeks' time to file his rejoinder, if any.

13) Before parting it is incumbent on this Tribunal to remind the parties that this Tribunal is bound by the statute being a creation of it and under Section 422 of the Companies Act, 2013 an onus has been placed on the Tribunals to dispose of the petition within three months from the date of its presentation. By filing vexatious applications the parties are only handicapping the Tribunal to fulfil the statutory mandate with respect to time limit as the adjudication of applications and lengthy arguments wastes the valuable time of the Tribunals and consequently the disposal of the main company petition. Needless to say perpetuation of brief at all costs is required to be eschewed. The necessity of compliance with the statutory mandate has also been forcefully reiterated by a judicial pronouncement by the Hon'ble National Company Law Appellate Tribunal in its order dated 19.10.2016 passed Company Appeal (AT) No.12 of 2016 in *Shri Fidaali Moiz Mithiborwala & Anr Vs. M/s.Aceros Fortune Industries Pvt. Ltd & ors.*

14) It is needless to state that any observation made in this order shall not be considered as a final expression of opinion with respect to the issues pending in the main company petition. In the main C.P. the petitioner will file the rejoinder if any, as directed above with any advance copy be furnished to the counsel for respondents. List the main C.P for arguments on 20.02.2017 prior to which the counsel for the parties shall also file their written synopsis and list of citations.

SD/-

(R.Varadharajan)
Member (Judicial)

SD/-

(Maharaj Krishan Hanjura)
Member (Judicial)