

NATIONAL COMPANY LAW TRIBUNAL: ALLAHABAD

Company Application 30 of 2016 in

C.P.78/241-242/ALD/2016

Dated Wednesday, the 7th day of December, 2016

Coram: Mr. V.S.R. Avadhani & Mr. H. P. Chaturvedi

(Judicial Members)

In the matter of M/s R. R. Sheetgrah Private Ltd

Between

1. Shri Girish Kumar Bansal
 2. Shri Naveen Agarwal
 3. Shri Shalabh Bansal
 4. Shri Sanjeev Kumar
- ...Applications (Petitioners in Company Petition)

AND

1. M/s R. R. Sheetgrah Pvt Ltd., having its Regd Office at 1-56, Shri Radha Puran, NH-2, District -Mathura, U.P-281 001
 2. Mr. Rajendra Singh
 3. Mr. Bachoo Singh
 4. Mr. Nandlal
 5. Mr. Nandlal
 6. Mr. Rajveer
 7. Mr. Jagat Singh
 8. Mr. Naredra Singh Verma
 9. Mr. Rajesh Kumar
 10. Mr. Yadaram
 11. The Registrar of Companies
 12. The Regional Director, Ministry of Corporate Affairs, Northern Region, A-14, Sector-1, PDIL Bhawan, Noida, UP
-Respondents (non-applicants)

Application under Rule 44 read with Rule 11 of National Company Law Tribunal Rules, 2016 seeking permission for withdrawal of the Company Petition with liberty to file afresh.

The above application came before us for hearing on 28.11.2016 before us in the presence of *Shri Aditya Nayyar* and *Shri G.K. Sachdeva*, Advovates for the Applicants and of *Shri Arun Saxena*, and *Ms. Nalini*, Advocates for the Respondents and having stood over till day for consideration, the Bench delivers the following

ORDER

(Per Mr. V.S.R. Avadhani, Judicial Member)

1. The Company Application is filed under Rule 44 read with Rule 11 of the National Company Law Tribunal Rules, 2016, to allow the applicant who is the Petitioner in the Company Petition to 'withdraw' the Company Petition 'with the liberty to file afresh in accordance with the law'. The learned Counsel appearing for the non-applicants (Respondents in the CP) submitted across the bar that he has least objection to permit withdrawal of the CP but has strong objection to allow the applicant the liberty to file CP afresh. On this objection, we have heard both the counsel.

2. Though it may not be necessary for us to carve a detailed order, we still longing to do so, in view of the argument addressed at the bar that whether the Rules of this Tribunal permit to grant liberty to the applicant to file fresh petition after withdrawing the present CP. In that context, we have referred to the facts of the case for the limited purpose of appreciating the reasons that obligated the applicant to withdraw the CP.

3. The CP is filed under Sections 241 and 242 read with Sections 58 and 59 of the Companies Act, 2013. There are four Petitioners. The Petitioner No. 4 is Shri Sanjeev Kumar. The 2nd Respondent in the CP (non-applicant No. 2 herein) filed Application under Rule 11 challenging the maintainability of the CP and it is pending. In that Application the non-applicants herein have taken the following plea:

"3) That the petitioners in the present Petition have played fraud not only upon the Respondents but also upon this Hon'ble Court. It is respectfully submitted that the present Petition has been filed by the four Petitioners wherein Petitioner No. 4 is Mr. Sanjeev Kumar. Further the Petition has been allegedly signed by the Mr. Sanjeev Kumar and an affidavit of Mr. Sanjeev Kumar and an affidavit of Mr. Sanjeev Kumar dated 03.09.2016 verifying the Petition has also been enclosed with the Petition. However, it is most respectfully submitted that after receipt of present Petition, the Respondent No. 2 made some enquiries and came to know that the Petitioner No. 4 Mr. Sanjeev Kumar died on 27.02.2011 itself. Therefore signatures of Late Mr. Sanjeev Kumar on the Petition and on the affidavit are forged."

To demonstrate the above plea, the non-applicant herein filed the Copy of the Voter Identity Card of *Mr. Sanjeev Kumar S/o Vidyadhar*, in the address "*135, Panditan, Sadabad; Mathura Dt*" and also Copy of the Register of Death issued by the concerned authority. There is absolutely no denial of this allegation made by the non-applicant that the person styled as 4th Petitioner is any more and he died in the year 2011 itself. As the matter is at that stage, the applicant filed the present petition seeking leave to withdraw the CP without disclosing any reasons but simply stating at para 2 that

"That on 26th October, 2016, the Petitioners had submitted before the Hon'ble Tribunal that they wish to withdraw the present Petition as due to certain clerical mistakes, it has been filed with certain defects therein."

5. At any rate, the issue remains is whether the 4th Petitioner was alive when the CP was filed. The question for consideration before us is whether the applicants can be granted leave to withdraw the Company Petition and whether liberty may be given to them to file fresh Company Petition?

We shall read Rule 44 which is relevant for our purpose. It is as below:

"44. Hearing of petition or applications: (1) The Tribunal shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

(2) Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to the Tribunal, and the Tribunal on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for the Tribunal in the interests of the Justice."

In view of the lucid language of the Rule, there can be no difficulty to accept the prayer to withdraw the CP. The Rule is conspicuous in its absence of power to the Tribunal to grant leave to the Petitioner to file another CP afresh. For analogy we may profitably refer to Order XXIII Rule 1, sub-rules (1) to (4) of the Code of Civil Procedure which is as below:

1. Withdrawal of suit or abandonment of part of claim: (1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,--

(a) That a suit must fail by reason of some formal defect, or

(b) That there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

It may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff--

(a) Abandons any suit or part of claim under sub-rule (1), or

(b) Withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

-he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

6. The synopsis of the scheme of the Order XXIII is like this. If at all the plaintiff in a suit wants to withdraw the suit simplicitor, the Court cannot prevent the plaintiff from doing so. Even the opposite party cannot contend that the plaintiff shall not have the right to withdraw the suit. On the other hand, the opposite party, namely the defendant, may insist upon awarding cost. If the prayer is not for withdrawal of the suit simplicitor, but with a rider that the permission must be coupled with a leave to file a fresh suit in respect of the same subject matter, then the Court has to decide whether such an application comes under any one of the clauses of sub-clause (3) of Rule 1 under Order 23 of the Code of Civil Procedure.

7. The legal position with regard to right of the plaintiff to withdraw the suit has been explained by the Apex Court in *K.S. Bhoopathy and Others vs. Kokila & Others*,¹ in clear terms. According to the Court, the law as to withdrawal of suits as enacted in the present Rule may be generally stated in two parts:

(a) A plaintiff can abandon a suit or abandon a part of his claim as a matter of right without the permission of the court; in that case he will be precluded from suing again on the same cause of action. Neither can the plaintiff abandon a suit or a part of the suit reserving to himself a right to bring a fresh suit, nor can the defendant insist that the plaintiff must be compelled to proceed with the suit; and

(b) A plaintiff may, in the circumstances mentioned in sub-rule (3), be permitted by the court to withdraw from a suit with liberty to sue afresh on the same cause of action. Such liberty being granted by the court enables the plaintiff to avoid the bar in Order II Rule 2 and Section 11 CPC.

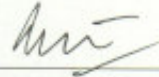
8. That was the theme of permitting a petitioning party to a civil proceeding to withdraw the proceedings. Applying that analogy, if we examine the facts of the present case, it is implicit in our mind that whether there is any defect in the CP or not is insignificant. But the prayer to grant liberty to the Petitioner to file a petition afresh cannot be granted by this Tribunal because, obviously, Rule 44 does not empower this Tribunal to grant such leave as provided to a Civil Court under the Provisions of the Code of Civil Procedure. Whether the Petitioner can file a fresh Company Petition and whether such fresh Petition is barred by principles of res Judicata are the issues to be decided by the tribunal, if once such fresh petition is filed and not at this stage. But the applicants are liable to pay costs incurred by the opposite party-non applicant. We are estimating the costs at Rs.15, 000/ which shall be paid to the opposite party within two weeks.

9. For the aforesaid reasons, we hold that the Applicants in the present application and the petitioners in the CP are at liberty to withdraw the Company Petition ~~subjected~~ to payment of Costs of Rs. 15, 000/- (Fifteen Thousand Rupees only) to the opposite parties within a period of two weeks. However, the second part of the relief so far as liberty to file fresh petition is concerned, it is dismissed.

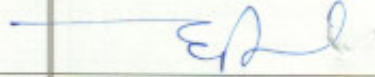
¹ (2000) 5 SCC 458

Company Application No~~30~~/2016, is thus partly allowed and partly dismissed in the above terms~~st~~,

Typed to diction, corrected and pronounced by us in open court, this Wednesday the 7th day of December, 2016



V.S.R.AVADHANI (JDL MEMBER)



H.P. CHATURVEDI (JDL MEMBER)

