

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH CA 123-16-CP 44-13  
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH,  
MUMBAI

Coram: Shri M.K. Shrawat, Member (Judicial)

C. A. NO. 123 OF 2016  
in  
T.C.P. NO. 44 OF 2013 (Old CP No. 91/2006).

(Under Sections 397 and 398 of the Companies Act, 1956 and Sections 241 and 242 of The Companies Act, 2013).  
And

Mr. Prabhat Jhunjunwala

.... Petitioner.

Versus

Unicom Skytech Ltd. and Ors.

.... Respondents.

Present on behalf of the parties :

Mr. Ajay Basutkar, Advocate for the Petitioner.

Mr. Ajay Kumar, Practicing Company Secretary, for the R-1.

ORDER

Reserved On: 16.01.2017

Pronounced On: 16.01.2017

1. The Application (C.A.123/2016) filed by the Petitioner is mentioned when the court assembled. The Learned Representative of the Applicant/Petitioner has stated that the Application was filed on 26<sup>th</sup> October, 2016 **seeking amendment in the main Petition.** In support he has referred an earlier order of the then CLB, Mumbai Bench dated 14<sup>th</sup> March, 2014 wherein an observation was made as under :-

*"As prayed, the Petitioner is granted liberty to file an application for Amendment. As and when such application is filed and mentioned Appropriate order, may be passed."*

2. In the Application it is stated that the Applicant is the original Promoter Director holding single largest shares which constituted about 49.51 % of the shares. It is alleged that the respondent No. 2 in connivance with respondent No. 3 had illegally taken over the control of the respondent No. 1 Company. It is also explained that earlier an application was moved (CA No.



131/2013) seeking permission to file an application for amending the Petition on account of the fact that pursuant to an Order of Hon'ble CLB certain additional documents were filed by the respondents. Because of the additional information furnished by the Respondents the Petitioner sought permission to amend the Petition, which was claimed to be granted by the CLB vide Order dated 14<sup>th</sup> March, 2014 (supra). It has also been pleaded that the delay in seeking amendment was not deliberate because in the past years various events took place due to which the Petition could not be amended, however, for proper adjudication of the Petition the proposed amendment is required. In short the nature of amendment and consequential relief sought for are stated to be as under :-

*" To add prayer (aa) and (aaa) after prayer (a) as follow :*

1. *That this Hon'ble Bench may be pleased to remove R-3 Mr. Omprakash Jhunjhunwala as a Director of the Respondent No. 1 Company who has caused deliberate losses in operation of business of the company.*
2. *To Appoint an Independent Director on the Board of Respondent No. 1 Company for running day to day affairs of the Respondent No. 1 Company.*
3. *That this Hon'ble Bench may be pleased to declare that the purportedly held Annual General Meeting dated 30.09.2006, 29.09.2007, 29.09.2008, 29.09.2009, 30.09.2010, 30.09.2011, 29.09.2012 and 30.09.2013 as illegal, bad in law, null and void and non-est.*
4. *That this Hon'ble Bench may be pleased to declare all the purportedly held Board Meeting during the period from 01.10.2005 till date including purported Resolution passed through circulation as illegal, bad in law, null and void and non-est.*

3. On the other hand from the side of the Respondents Mr. Ajay Kumar, Practicing Company Secretary, for the Respondent No. 1 appeared and vehemently objected mainly on the ground that after the lapse of so many years the action of the petitioner is malafide and the alleged amendments are not necessary to decide the petition. He has argued that the Petitioner was never serious about the disposal of the Petition. The Petition which was originally filed in CLB, New Delhi on 21<sup>st</sup> September, 2006 was not seriously persuaded. He has



mentioned that vide an Order of CLB, Mumbai Bench dated 30<sup>th</sup> of June, 2013 while disposing of CA No. 219 of 2013 in CP No. 5 of 2010 and CA No. 128 in CP No. 113 of 2009 in the case of M/s Kaizer Flavest Private Limited the observation was that with sole purpose to stall the hearing applications are moved in malafide manner. Against that order of CLB an appeal was filed before the Hon'ble High Court, however, vide Order of 19<sup>th</sup> June, 2013 no interference was made and directed to decide the Petition finally. He has further informed that vide an Order of 23.09.2016 the NCLT had made an observation that the Petitioner was not attending the proceedings so last opportunity was granted to the Petitioner. Thereafter only in the month of October, 2016 the Petitioner is seeking amendment in the main Petition. He has placed on record an Order of Principal Bench, CLB in the case of *Ashok Mittal V/s Uniworth Resorts Limited ((2008) 86 CLA 185 (CLB))* for the legal proposition that the undue delay was malafide and against the natural justice.

4. Heard both the sides at some length. I have carefully examined the contents of the main petition as well as the past record of the case. The petitioner is stated to be the original Promoter Director and the single largest share holder of the Respondent No1 company. The undisputed fact is that vide an Order dated 14<sup>th</sup> March, 2014 the then CLB had recorded a finding, naturally after examining the totality of the circumstances, that the Petitioner be granted liberty to file an Application for amendment. Once a Co-ordinate Bench has recorded its satisfaction and thereupon granted the requisite relief to the Petitioner, therefore, at this juncture it is not legally permissible to interfere with that finding. Rest of the interim orders are not relevant on the issue of amendment of the Petition. Prima facie the applicant has established the nexus between the petition and the amendments, proposed to take place. The events which came to the notice of the Petitioner were on account of the Reply filed by the Respondents. Therefore on account of those facts brought to the notice, proposed amendment is hereby sought for by the Petitioner.

4.1 The precedent cited by Learned Representative is examined. In some of the cases a view has been taken that the Courts should be liberal in granting the prayer for amendment of pleadings. The only condition is that such amendment should not cause serious injustice or irreparable loss to the other side.



It has also been held in some cases that the '**rule of amendment is a rule of justice.**' The amendments which are necessary for determining the real question in controversy should not cause any injustice or prejudice to the other side. Some of the cases have said that under Order 6 Rule 17 of C.P.C. also allows amendment in the pleadings if found to be necessary to determine the real question of controversy. In one precedent cited a summary of the settled legal proposition pertaining to amendment of a Petition is enlisted. According to the said requirement of amendment as enumerated in the said precedent are that the Court may at any stage of proceedings can either allow or partly allow amendment for the purpose of determining the real question in controversy. The Tribunals are quasi-judicial authority hence guided by the principals of natural justice. I therefore hold that, the amendment is not causing any prejudice to the Petitioner for disposal of the Petition and prima facie the amendments are necessary to adjudicate the petition. As a result, I hereby hold that the Petitioner shall amend the petition as indicated in CA 123 of 2016 and shall not go beyond the reliefs sought by filing an amended petition on or before 30<sup>th</sup> of January, 2017. Thereafter the Respondent is at liberty to file a Reply within 2 weeks time. On completion of the pleadings the matter be enlisted for hearing on **1<sup>st</sup> of March, 2017.**

5. The Application for amendment is allowed. No order as to cost.

**Dated: 16<sup>th</sup> January 2017.**

**M. K. Shrawat**  
**Member (Judicial)**