

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

C.A. NO. 171/2014

IN

TCP NO. 26/237, 397-398/NCLT/MB/MAH/2014

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

In the matter of Sections 237, 397, 398 of the Companies Act, 1956
and Sections 241 & 242 of the Companies Act, 2013.

BETWEEN:

Mr. Shridhar Vasudeo Bedekar & Ors. .. Petitioners

AND

M/s. V.P. Bedekar And Sons Pvt. Ltd. & Ors... Respondents

PETITIONERS

1. Mr. Shridhar Vasudeo Bedekar
A-6/12, Sarita Mangalya Co-op. Hsg. Soc.,
Sarita Nagari, Phase – I, Ganeshmala,
Pune – 411 030 .. Petitioner No.1
2. Mr. Suhas Shridhar Bedekar .. Petitioner No.2
Address as above
3. Mr. Sanjay Shridhar Bedekar .. Petitioner No.3
Address as above

RESPONDENTS

1. M/s. M/s. V.P. Bedekar And Sons Pvt. Ltd.
56, Gharpure Path, Girgaum,
Mumbai 400 004 .. Respondent No.1
2. Mr. Vasant Vasudeo Bedekar
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.2

3. Mr. Atul Vasant Bedekar
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.3
4. Mr. Ajit Vasant Bedekar
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.4
5. Mr. Mandar Trimbak Bedekar
Badekar Sadan No.4
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.5
6. M/s. V. D. Khadilkar & Co.
Chartered Accountants
Flat No.6, Dnyaneshwari
R.A. Kidwai Road
Wadala, Mumbai 400 031. .. Respondent No.6
7. Mr. Vasudeo Anant Bhide
Chartered Accountant
Temple Bar Building, 2nd Floor
147, M.G. Road
Fort, Mumbai 400 023. .. Respondent No.7
8. M/s. Bedekar Masalewale Pvt. Ltd.
Badekar Sadan No.3
56, Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.8
9. M/s. Bedekar Pickles Pvt. Ltd.
Badekar Sadan No.5
Tatya Gharpure Path
Girgaon, Mumbai 400 004 .. Respondent No.9

PRESENT ON BEHALF OF THE PARTIES

FOR THE PETITIONERS

Ms. Anagha Anasingaraju, Practicing Company Secretary i/b Kanj & Associates.

FOR THE RESPONDENTS

Mr. Sameer Pandit, Advocate and Ms. Madhupreetha Elango i/b. M/s. Wadia Ghandy & Co.

ORDER

Reserved on : 20.12.2016

Date of Order : 13.02.2017

1. The Application under consideration was submitted before the then CLB, Mumbai Bench, on 18th of June, 2014 seeking dismissal of the mina Petition on the ground of wrongful impleadment of certain Respondents.

2. from the side of the Applicant (Original Respondent No.1), Ld. Representative Mr. Samir Pandit appeared and explained that with ulterior motive Respondent Nos. 6 to 9 have been made the parties to the litigation. According to him, this is a case of misjoinder of parties; therefore, the Petition under consideration deserves to be dismissed. The description of the above Respondents, as per C.P. No.26/2014 is as under:-

"6) V. D. Khadilkar & Co., Chartered Accountants, Flat No.6, Dnyaneshwari, R.A. Kidwai Road, Wadala, Mumbai 400 031.

7. Mr. Vasudeo Anant Bhide, Chartered Accountant, Temple Bar Building, 2nd Floor, 147, M.G. Road, Fort, Mumbai 400 023.

8. M/s. Bedekar Masalewale Pvt. Ltd., Badekar Sadan No.3, 56, Tatya Gharpure Path, Girgaon, Mumbai 400 004

9. M/s. Bedekar Pickles Pvt. Ltd., Badekar Sadan No.5, Tatya Gharpure Path, Girgaon, Mumbai 400 004."

2.1 Ld. Representative has elaborated that Respondent Nos. 6 and 7 are professionals looking after the accounts and other Company affairs being Chartered Accountants by profession. They have simply

worked as Auditors and nothing to do with the litigation raised in the Petition revolving around the oppression and mismanagement. My attention was drawn on the Affidavits of Respondent Nos. 6 and 7 to demonstrate that the Chartered Accounts have simply acted as the Auditors and nothing to do with the oppression and mismanagement. The allegation is baseless. Hence, no legal requirement to implead these professionals.

2.2 In respect of Respondent Nos. 8 and 9, the explanation is that the said Companies are neither member nor officer of the Company except that those companies have common Directors. To put pressure tactic, these companies have been made parties to the litigation. All the Respondents from 6 to 9 are neither **"proper parties"** nor **"necessary parties"**. Therefore, the Petition is to be held as non-maintainable. Alternatively, the names of Respondent Nos. 6 to 9 should be directed to strike off from the Petition.

2.3 Ld. Representative has pleaded that all persons against whom relief is claimed should join in the Suit. The **"necessary party"** is that party which is required to be impleaded for the convenience of the trial. He has further elaborated that a **"necessary party"** is a person who ought to have been joined as a party because in whose absence no effective decree could be passed. If a **"proper party"** is a party, though not a **"necessary party"**, whose presence would enable the Court to effectively and adequately adjudicate the disputes in the Suit. The Case Laws cited are (1) Cellular Operators Association Of India & Ors., Petitioners Vs. Tata Teleservices Ltd. & Ors., Respondents. 2010-(CCI)-GJX-0148-TDSAT, (2) Mumbai International Airport Private Limited, Appellant *versus* Regency Convention Centre And Hotels Private Limited And Others, Respondents. (2010) 7 Supreme Court Cases 417.

3. From the side of the Petitioner (of the main petition) / (Respondent of the application), a Reply is on record vehemently objecting the Application and pleaded that the Respondents / Applicants are delaying the disposal of the main Petition. The Application is nothing but a counterblast because the objections were not raised immediately after the Petition was filed. The Auditors have not performed their professional duties and joined hands with other Respondents to siphon the money. It is a clear case of oppression and mismanagement where the Chartered Accountants have played an active role. The Respondent Nos. 8 and 9 have made the parties to embarrass other Respondents only to prevent family settlement. It has also been pleaded that Respondent Nos. 8 and 9 are the subsidiaries of the Respondent Company. Therefore, necessary to implead those subsidiaries. He has also drawn the attention on the Affidavits of Respondent Nos. 6 to 9. The Chartered Accountants have not affirmed in their respective Affidavits about the pilferage of accounts. Silence is a tacit acceptance. Merely on the ground that certain parties have been wrongly impleaded should not lead to a conclusion that the Petition is *mala fide*. To implead or not to implead a person depends upon the evidence on records and the facts and circumstances of the case. Only because of these technical issues a Petition cannot be declared as non-maintainable. Case Law cited is Sumito Corporation And Others, In Re. V/s Mitsubishi And Ors. 2001-(CC2)-GJX-0087-MRTPC.

4. Heard the parties at some length in the light of the Compilation filed and Case Laws referred. As held in number of cited cases, a party can be impleaded if their presence in the litigation is proper as well as necessary depending upon the facts and circumstances of each case. At this preliminary stage, when the

Petition is yet to be decided and the elaborate discussion on the issue of oppression and mismanagement is sub-judice; therefore, at the very threshold it is unfair to recuse the Respondents in question from the litigation. There are two sets of Respondents now under question. Out of four Respondents, two are professionals i.e. Chartered Accountants. It happened to be only the Auditors, then naturally their presence or involvement in the Suit was not necessary. But, in this case, the Petitioner had written several letters to the Auditors informing them the irregularity in the financial statements. No satisfactory response was given by those professionals; therefore, the Petitioner was left with no choice but to implead them in this Suit. Not only this, the Petition contains the fact that the Petitioner has filed complaint of professional misconduct. Because of this reason, I am of the conscientious view that let these professionals be parties to the litigation but with an exception that their presence or attendance are not necessary. Alternatively, they can be represented by their respective legal representatives.

4.1 In respect of rest of the two Respondents viz. Respondent Nos. 8 and 9, I am of the view that in a situation when the Directors are common and undisputedly subsidiary of the Respondent Company having financial involvements; hence their presence in this litigation is required so that these two Respondents have chance not only to rebut the allegation, but also to establish their non-involvement in any such alleged allegation. At this preliminary stage, when the evidences are yet to be examined, it is neither proper nor justifiable to exonerate / absolve / exempt / drop or to strike off as Respondents from the captioned Petition.

5. Prima facie, I am of the humble opinion that merely on this technical ground the circumstances of this case do not warrant to

dismiss this Petition at the very threshold without adjudicating on merits. The Petition is, therefore, required to be enlisted for hearing. The Application under consideration has no force in the eyes of law; hence dismissed to be consigned to records. Ordered accordingly.

Sd/-

Dated: 13th February, 2017.

M.K. SHRAWAT
MEMBER (JUDICIAL)