

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.A. NO. 206/2014
IN
TCP NO. 37/397, 398/NCLT/MB/2014**

CORAM:

SHRI M.K. SHRAWAT
MEMBER (JUDICIAL)

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

BETWEEN:

Ms. Shama Jaorawala

.. Petitioner

AND

M/s. VStar Plasto Mould Pvt. Ltd. & Anr.

.. Respondents

PETITIONERS

Ms. Shama Jaorawala
Residing at F/105, Sarkar Tower II
50th Nesbit Road, Mazgaon
Mumbai 400 010.

RESPONDENTS

1. M/s. Star Plasto Mould Pvt. Ltd.
241, Shiv Leela Estate
Plot No.8, S. No.241/1
Chinchpada, Vasai (East)
Thane 401 208

.. Respondent No.1

2. Mr. Prakash G. Shah
R/o. B-602, Venus Vasant Valley
Co-op. Housing Society Ltd.
Film City Road
Goregaon (East)
Mumbai 400 097.

.. Respondent No.2

PRESENT ON BEHALF OF THE PARTIES

FOR THE PETITIONER

Mr. Arun Mishra, Advocate.

FOR THE RESPONDENTS

Mr. S.R. Murarka, Advocate
Ms. Meenakshi Iyer, Advocate
Ms. Prachi Ojha, Advocate
Mr. Sinde Mahesh, in person for Proposed Respondent Nos. 4 & 5

ORDER

Heard on : 12.01.2017

Date of Order : 14. 02.2017

1. The Application under consideration was filed on 24th of July, 2014 before the then CLB, Mumbai Bench through which the Petitioner / Applicant is seeking amendment to the main Petition to the effect to implead three parties claimed to be "necessary" and "proper parties". The interim relief sought is reproduced verbatim below:

"1. Allow amendment of the Petition and prayer clause and to permit to ass **A.W. FABER CASTLE (I) Pvt. Ltd., M/S. HARSH ENTERPRISES** and **M/S. UNIQUE PRINT & PACK** as other Respondents in the present Petition on urgent basis."

2. From the side of the Applicant, Ld. Representative has clarified that rest of the claims are not relevant for disposal of this Application. Narrating the facts, he has informed that without the knowledge of the Petitioner a letter was issued by the Respondents to A.W. Faber Castle (I) Pvt. Ltd. to make the payment of the bills in the account of one Mr. Shinde, C/o. M/s. Harsh Enterprises. The Respondent No. 1 Company was required to collect the payment pertaining to supply of goods and materials to the said company. He has also intimated that the said M/s. Harsh Enterprises later on transferred the amount to a Proprietorship concern of Respondent No.5 M/s. Unique Print & Pack. He has further intimated that the Petitioner and the Respondents have

earlier approached Apna Sahakari Bank for credit facility to the tune of ₹5.60 crores. The husband of the Petitioner had kept his property bearing Gala No.1, Building No.4, Golani Naka, Vasai (East) as a collateral security. Due to default of ^{non-}payment, the bank had started [^]recovery proceedings. On the issue of recovery an Order of the Arbitrator was issued on 10th July, 2014 where the Apna Sahakari Bank was directed to execute the Order by attaching hypothecated machinery. The Petiti0ne has, therefore, prayed that the personal property of the husband of the Petitioner mortgaged as a collateral security for the benefit of the Respondents can only be protected if the Trade recoveries of the Company are not allowed to be siphoned to the Proprietary concern of Respondent No.2. On the same lines, it is argued that M/s. Harsh Enterprises and M/s. Unique Print &Pack be made parties to the litigation. ^{M/s}

3. In response the proposed Respondent has objected the Application. From the side of M/s. AW Faber Castle, an Affidavit is on record wherein it was stated that the Indian Company is a part of global network of Fabre Castle Companies engaged in the business of stationery products, pens, pencils, etc. The Respondent No.1 Company happened to be in the business of manufacturing of plastic products. Fabre Castle was looking for a manufacturer. As a result, an agreement on 1st February, 2012 was executed between Fabre Castle and Respondent No.1. Various moulds and machineries were to be procured at the cost of Fabre Castle to be deployed at the factory premises of Respondent No.1. One of the conditions was that the moulds and machineries so supplied should only be used for the manufacture of the products of Fabre Castle. In the said Affidavit, it is also informed that the manufacturing as well as supply was abruptly stopped by Respondent No.1 Company in October, 2012. The moulds and machineries have also not been returned. During the association

with Respondent No.1 Company, several invoices were raised and payments have been cleared by Fabre Castle against those bills to R1 and there was no outstanding amount. It is, therefore, pleaded that the relationship was purely a contractual business relationship. It had nothing to do with the management of R1. In the Affidavit filed in reply to the Application vide para (v) it is affirmed / admitted that R2 had instructed Fabre Castle (India) to make payments against the invoices of R1 to the account of one M/s. Harsh Enterprises. Accordingly, the payments have been made. It is further stated that Fabre Castle was nothing but a mere customer of Respondent No.1 Company.

3.1 Rest of the "Proposed Respondents" have also objected the impugned Application. The main argument is that a customer or a debtor cannot be impleaded in a Suit. Case law cited are as under:-

1. T.P. Sokkalal Ram Sait Factory (P.) Ltd., (in re) Prabhakaran and Others Versus T.P.S.H. Selva Saroja and Others. 1974 SCC OnLine Mad 302 ; (1978) 113 ITR 625.
2. C.G. Holdings P. Ltd. and Another Versus Cheran Enterprises P. Ltd. and Others. (2007) 138 Comp Cas 454 (CLB).
4. Heard the parties and perused the pleadings on record containing replies, rejoinder, sur-rejoinder, etc. At the outset, it is necessary to mention that the view taken in this Interim Order shall not be taken as a pre-judgement on the merits of the case. The merits of the Petition shall be decided on the basis of the facts and the corroborative evidences. Prima facie it appears that the Petitioner is mainly worried about the protection of one of the properties hypothecated to Apna Sahakari Bank, belonging to the husband of the Petitioner. However, the payments due to Respondent No.1 are not coming to its account, but alleged to have been transferred to another concern viz. M/s. Harsh Enterprises, a Proprietorship concern of R2.

For this reason, at this juncture, it appears that to ascertain the payments made by AW Fabre Castle (India) Pvt. Ltd. to R1 the accounts as also the communication are required to be examined. Side by side, it is also necessary to examine that in a situation when bills have been raised by one concern, then why the payments have been made to another concern. Due to this reason a distinction can be drawn that this is not a case of simple relationship of debtor and creditor or a case of an agreement between supplier and manufacturer. Only after impleadment of these parties, the nature of the transaction and their involvement in the business activity of R1 Company can be determined. On perusal of the Case Laws, the law pronounced was that a "proper" or "necessary" party in a Suit are those in whose absence justice cannot be dispensed; hence their presence is justifiable to enable the Court to decide that issue effectively and completely. This is not the case that strangers are going to be impleaded. This is also not a case where a debtor simplistically, who is not involved in the alleged transferring of the amounts, is concerned about the transaction of the amount due.

5. Resultantly, in my humble opinion, the Application under consideration has substance; hence the three aforesaid parties are directed to be impleaded so that the sub-judice Petition can be decided completely. The Petitioner is directed to carry out the amendment as early as possible on or before 28th of February, 2017 with a copy in advance to the other side. The matter is directed to be listed for hearing on 10th March, 2017

7. Application allowed. The Application being disposed of is to be consigned to records.

Sd/-

Dated: 14th February, 2017

M.K. SHRAWAT
MEMBER (JUDICIAL)