

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI**

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

**COMPANY APPLICATION NO. 125 of 2016
TRANSFER COMPANY PETITION NO. 88/397-398/CLB/MB/(MAH) 2014**

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Courchevel Trading Pvt. Ltd. & Ors. Respondents.

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**COMPANY APPLICATION NOS. 126 of 2016
TRANSFER COMPANY PETITION NO. 91/397-398/CLB/MB/(MAH) 2014**

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Varsoli Trading Pvt. Ltd. & Ors. Respondents.

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**COMPANY APPLICATION NOS. 127 of 2016
TRANSFER COMPANY PETITION NO. 92/397-398/CLB/MB/(MAH)
2014**

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Artaud Trading Pvt. Ltd. & Ors. Respondents.

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**COMPANY APPLICATION NOS. 128 of 2016
TRANSFER COMPANY PETITION NO. 93/397-398/CLB/MB/(MAH) 2014**

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Novotel Trading Pvt. Ltd. & Ors. Respondents.

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**COMPANY APPLICATION NOS. 129 of 2016
TRANSFER COMPANY PETITION NO. 94/397-398/CLB/MB/(MAH) 2014**

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Ottokar Trading Pvt. Ltd. & Ors. Respondents.

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**COMPANY APPLICATION NO. 130 of 2016
TRANSFER COMPANY PETITION NO. 95/397-398/CLB/MB/(MAH) 2014**

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Castafiore Trading Pvt. Ltd. & Ors. Respondents.

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COMPANY APPLICATION NO. 131 of 2016
TRANSFER COMPANY PETITION NO. 96/397-398/CLB/MB/(MAH) 2014

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Annecy Trading Pvt. Ltd. & Ors. Respondents.

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COMPANY APPLICATION NO. 132 of 2016
TRANSFER COMPANY PETITION NO. 97/397-398/CLB/MB/(MAH) 2014

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Chantaco Trading Pvt. Ltd. & Ors. Respondents.

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COMPANY APPLICATION NO. 133 of 2016
TRANSFER COMPANY PETITION NO. 98/397-398/CLB/MB/(MAH) 2014

Mr. Purshotam Vishandas Raheja. Applicant
Versus
M/s Lapidaire Trading Pvt. Ltd. & Ors. Respondents.

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Petitioners.

Mr. A.S. Kamat a/w Pooja Kshirsagar i/b Ranji & Co. Advocate for Petitioners.

Respondents.

Aditya Pimple a/w Shrivardhan Deshpande i/b Desai & Dewanji Advocate for Respondents.

COMMON ORDER.

Heard on : 16.12.2016

Pronounced on : 10.01.2017

1. As many as 9 Interim Applications have been filed by the Petitioners of the main Petition, (hereinbelow referred as Applicants). The amendment sought can be summarized as under :-

- a. To challenge the Deed of Apartment dated 25th July 2014 executed by the Respondent No. 1 company with the balance eight companies for managing the affairs of the building "89 Nepean Sea Road" (earlier known as "The Savoy") (hereinafter, the "**subject building**") in which each of the nine companies (which include Respondent No. 1) owns one flat each;

b. To challenge the cessation of Petitioner No. 1 as a Director in the Respondent No. 1 company by operation of law under Section 167 of the Companies Act 2013 (hereinafter, the "**2013 Act**").

2. On the issues as summarized in short above, the respective Learned Representatives were heard at some length. From the side of the Applicant it is pleaded that a 'Deed' was made on 25th of July 2014 which was nothing but an act of oppression and mismanagement. According to the Applicant no Legal Resolution was passed on the said date. It was explained that on 24th of June, 2014 a Meeting was held which was undisputedly attended by Petitioner No. 1 and vehemently objected the proposed execution of the impugned "**Deed of Apartments**". It is also informed by the Learned Representatives that by a Letter dated 28th of June, 2014 the Applicant has informed the Board about the reservations. Although the Petitioner/ Applicant objected but without giving the copy of the Board Meeting, at the back, executed the impugned declaration. As per the said declaration Respondent No. 2, 4 and 8 were made part of the condominium. Through the said declaration the immoveable assets of the Company were purported to be taken away by an outsider. By the said act the Share Holders were deprived of the right to control over the property. Learned Advocate has therefore pleaded that it was a serious matter which requires due adjudication, hence should be allowed to be included in the Petition by way of amendment.

2.1 The next point raised was that the Petitioner was not keeping good health, therefore could not attend the Meeting held on 30th December, 2015. Further the Respondents were behaving rudely with the Petitioner, hence to avoid the confrontation with the young family members, he refrained himself from not attending the meeting since March, 2015. However, the Petitioner wrote letters and inquired about the business conducted in the Board Meetings. The Petitioner No. 1 was having 25% Share Holding and due to ill-health time and again proposed to appoint Petitioner Nos. 4 and 5 on the Board of Directors. But the Respondents with ulterior motives refused to keep the right balance of the Family Members in the Board of Directors. Deliberately the Notices were not properly served and the Respondents have taken advantage of his bad health. No notice was issued before removing Petitioner No.1 as Director.

2.2. On the question of legality of the admission of amendment Petition and the incorporation of the amendment certain case laws have been cited viz.

- (a) Ganesh Trading Co. V/s Moji Ram AIR SC 484.
- (b) Estralla Rubber V.s Dass Estate (2001) 8 SCC 97.
- (c) Sampath Kumar V/s Ayyakannu (2002) 7 Supreme Court Cases 559.
- (d) Estralla Rubber V/s Dass Estate (P) Ltd. (2001) 8 Supreme Court Cases 97.
- (e) Rajesh Kumar Aggarwal V/s K.K. Modo (2006) 4 Supreme Court Cases 385.
- (f) Ramesh Kumar Agarwal V/s Rajmala Exports Private Limited (2012) 5 Supreme Court Cases 337.
- (g) B.K. Narayana Pillai V/s Parameswaran Pillai (2000) 1 Supreme Court Cases 712.
- (h) Revajeetu Builders and Developers V/s Narayanaswamy and Sons (2009) 10 Supreme Court Cases..

3. On the other hand from the side of the Respondents the objection is that, the amendment should not be allowed because the Petitioner was aware of the "Deed of Apartments" dated 25th of July 2014. The amendment now sought is nothing but a repetition because vide Para 9.4 on Page 68 of C.P. No. 88/2014 the same issue had already been raised. The issue now raised therefore, can be decided when the Company Petition shall be heard. The amendment is nothing but delay tactics to trouble the respondents in conducting the day to day business activities. It has also been argued that the Petition was moved on 17th October, 2014 and the amendment is now sought for by way of an Application filed on 28th October, 2014. The action of seeking amendment is hopelessly barred by limitation. After the lapse of so many years such type of Application should not be allowed.

3.2 On the issue of Removal of Director the argument of the Respondent is that by operation of law as prescribed under **Section 167 of the Companies Act, 2013** the said Director was removed because he had failed to attend the Board Meetings after November, 2014. The Petitioner is aware that he has defaulted in not attending the meetings therefore, the issue was not raised when the main Petition was filed but now through an amendment seeking this relief. Learned

Counsel has also informed that earlier vide an Order dated 18th February, 2015 the Petitioner was granted time to amend the Petition and thereafter amendments were carried out. The amendment should not take place time and again and the Petitioner should be restricted to take the advantage of law. On the legal issue as well as on facts the case laws cited are as under :-

- (a) **Sampath Kumar V/s Ayyakannu (2002) 7 Supreme Court Cases 559.**
- (b) **Rajesh Kumar Aggarwal V/s K.K. Modo (2006) 4 Supreme Court Cases 385.**
- (c) **Ramesh Kumar Agarwal V/s Rajmala Exports Private Limited (2012) 5 SCC 337.**
- (d) **B.K. Narayana Pillai V/s Parameswaran Pillai (2000) 1 SCC 712.**
- (e) **Estralla Rubber V/s Dass Estate (P) Ltd. (2001) 8 SCC 97.**

4. The trite law is that the amendment cannot be claimed as a matter of right. In the present case in respect of the amendment revolving around the "Deed of Apartment" dated 24th July, 2014 the admitted factual position is that a controversy had already been raised in the main Petition. The Respondents have pointed out from the main Petition the relevant paragraphs and therefore in my humble opinion the issue again raised through the proposed amendment is nothing but a duplicity of the proceedings. If the amendment as sought for is now allowed, then instead of streamlining the facts of the case, the issue involved shall get more complicated. Hence in the interest of justice and to get this Petition decided at an early date the lengthy amendments as suggested by the Applicant is not required to be carried out, hence this part of the prayer is hereby rejected. At this juncture it is worth to mention that the mere rejection of this amendment shall not in any way prejudice the right of the Petitioner to contest the matter of validity of "Deed of Apartments" dated 24th July, 2014 while adjudicating the main petition.

4.3 As far as the second issue of challenging the removal of Petitioner No. 1 as Director, I am of the view that considering the totality of the circumstances and the law pronounced on this issue it is in the interest of Natural Justice to allow the Applicant to incorporate the amendment in the main Petition. This grievance is substantial in nature and not agitated clearly before. The legality of the

Removal of Petitioner No. 1 from the Directorship of Respondent No.1 Company
shall therefore be decided at the time of the disposal of the Petition.

5. As a result, the Applications 9 in number are partly allowed as per the directions pronounced hereinabove. If the respondents are willing to submit a reply to the Amended Petition, as a consequence of this interim-order, then the Reply should be filed at an early date with a copy to the other side. Applications finally disposed of accordingly.

Dated : 10th January, 2017.

Sd/-

M.K. Shrawat.
Member (Judicial)