

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

IA No.30/2017 IN CP No.5/2017

UNDER SECTION 242 (4) OF COMPANIES ACT, 2013

R/W Rule 11 NCLT RULES, 2016.

IN THE MATTER OF S.R, MOHAN & ANOTHER  
Vs.  
Mr. DUVALLA DEEKSHIRULU & OTHERS

Order delivered on: 08<sup>th</sup> January, 2018

Coram: Hon'ble Shri Ratakonda Murali, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Interlocutory Applicant: M/s. J. Sagar Associates, Advocates.  
For Petitioners in the main petition: Shri Kiran B.S., Advocate  
For the Respondents No.1 & 2 : M/s. Common Law Chambers, Advocates,  
For Respondent No.7 Shri Rajesh S., Advocate,  
For Respondent No.6 : Shri Prasad Hegde, Advocate

BETWEEN :

M/s. V.K. Building Services Private Limited,  
No.73, 3<sup>rd</sup> Main, 1<sup>st</sup> Cross, Defence Colony,  
HAL 2<sup>nd</sup> Stage, Bangalore 560 038.  
Respondent No.8 in the main Company Petition

...

Interlocutory Applicants/

AND

Mr. S.R. Mohan & Another

...

Petitioners in the main CP

AND

Mr. Duvalla Deekshitulu & Others

...

Respondents in the main CP

ORDER

Per Hon'ble Shri Ratakonda Murali, Member (Judicial):

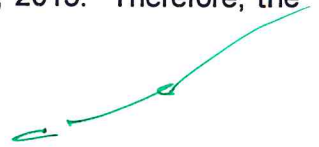

This Interlocutory Application is filed on behalf of Respondent No.8, under Section 242(4) of Companies Act, 2013 read with Rule 11 of NCLT Rules, 2016, with a prayer to delete the name of the applicant/Respondent No.8 from the array of respondents in the main Company Petition for the reasons stated in the application which are briefly described hereunder:

The applicant/Respondent No.8 in the main petition is a Registered Company. It had purchased the property in Plot No.186, EPIP Phase II, Whitefield, Kundalahalli Village, Bangalore from Respondent No.7 under a Registered Sale Deed. The applicant/Respondent No.8 has further leased out the said plot to Respondent No.11, which is a multinational Company engaged in the business of mobile technology. Respondent No.11 took possession of the property in 2015.

The contention of the applicant/Respondent No.8 Company is that it is not a necessary and proper party to the Company Petition. It is submitted by the applicant/Respondent No.8 that the main contention of the petitioners in the main petition are that the respondents No.1 and 2 and others have indulged in acts of oppression and mismanagement. So, no allegation is made against the applicant/Respondent No.8. The applicant is neither a shareholder nor a Director in the Respondent No.5 Company. The applicant company is totally an outsider. It is in no way connected to Respondent No.3 Company (in the main petition). Therefore, it has prayed to delete the name of the applicant Respondent No.8 from the array of respondents.

The petitioners No.1 and 2 in the main petition have filed their objections alleging that Respondent No.5 in the main petition has taken possession of the property of the Respondent No.3 company in a fraudulent manner. Therefore, the title of the applicant/ Respondent No.8 is vitiated and non-est. The transaction between the Respondent No.5 and the applicant/Respondent No.8 Company is by fraud. Therefore, the applicant/Respondent No.8 is a necessary party to the proceedings in the Company Petition.

The petitioners in the main petition have also alleged illegal alienation of the Company's property and they have also prayed for setting aside the sale deed executed in favour of the applicant/Respondent No.8. They have also stated that this Tribunal has jurisdiction to adjudicate on acts of fraud under the Companies Act, 2013. Therefore, the



Applicant/Respondent No.8 is a necessary party since the sale and transfer of the property in favour of the applicant/Respondent No.8 is challenged in the main petition on the ground of fraud.

The applicant/Respondent No.8 has filed rejoinder contending that the applicant is an outsider. It is stated that the main allegations in the main petition are against Respondents No.1 and 2 and not against the applicant/Respondent No.8. The applicant company is in no way connected to the dispute. The applicant company has purchased the property in 2012 from Respondent No.5 Company. The Respondent No.3 Company was holding some shares in the Respondent No.5 Company. The petitioners in the main petition cannot question the execution of sale deed which was between the two strangers, not connected to the litigation. It is further contended in the rejoinder that the Tribunal can pass order against the Directors, shareholders or officers against whom oppression and mismanagement is alleged. However, the applicant/Respondent No.8 is a bonafide purchase for a value. The applicant/Respondent No.8, after due verification had purchased the plot. The applicant is also not aware of any Memorandum of Understanding between the petitioners and Respondents No.1 to 3 in the main petition. It is also stated that the applicant/Respondent No.8 has obtained the information from KIADB under RTI Act and that Respondent No.5 has clear marketable title for the sale of the property. The KIADB has transferred the property in favour of Respondent No.5 on 04.05.2011 which was later sold to the applicant. Therefore, it is prayed to delete the name of the applicant/Respondent No.8 from the array of respondents in the main petition.

The counsel for petitioners in the main petition has relied on the following decisions:

1. (1999) 3 SCC 457 Iswar Bhai C. Patel Vs. Harihar Behera & Anr (Paras 11 & 12);
2. (1992) 2 SCC 524 Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & Ors. (Para 14);
3. (2010) 7 SCC 417 Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors. (Para 15); and
4. 2013-5L.W. 333 State Bank of India Vs. P. Narayanasamy & Ors (Paras 23-26).



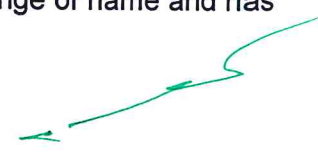



The learned counsel for petitioners in the main petition has also filed written submissions. Heard both sides.

The counsel for applicant/Respondent No.8 would contend that the applicant/Respondent No.8 is wrongly impleaded as respondent in the main petition which is filed against Respondents No.1 to 5 and others, mainly making allegations of oppression and mis-management.

The contention of the learned counsel is that the applicant/Respondent No.8 is neither a shareholder nor a Director either in Respondent No.3 Company nor in Respondent No.5 company. The counsel contended that the applicant is totally an outsider who has purchased the property from Respondent No.5 company under the Registered sale deed for a valuable consideration. In this connection, the learned counsel has filed additional documents vide memo dated 08.12.2017. Annexure-'A' to the memo consists of pages 1 to 5. Annexure-1 consists of information given by the Public Information Officer of KIADB with letter dated 20.12.2014, endorsement dated 14.03.2005, letter by Respondent No.3 company to KIADB and copy of the minutes of the Board of Directors meeting of Respondent No.5 company dated 02.05.2011.



The counsel for applicant/Respondent No.8 would contend that the applicant had obtained the information from the KIADB under the RTI Act. The applicant/Respondent No.8 wanted to establish through these documents that Respondent No.3 made a request to KIADB to change the name of the Company from M/s. OSS Technologies (P) Ltd., to M/s. Core Object Soft systems & services (P) Ltd. (Respondent No.5 company). The request was accepted by KIADB subject to payment of conversion charges. KIADB, further gave endorsement dated 14.03.2005 for change of name from M/s. OSS Technologies (P) Ltd., to M/s. Core Object Soft systems & services (P) Ltd. (Respondent No.5 company), i.e., from Respondent No.3 company to Respondent No.5 company. The applicant/Respondent No.8 has also filed letter dated 26.11.2004 sent by Respondent No.3 company to KIADB for change of name and has further filed minutes of the Board of Directors.



It is not in dispute that the industrial plot was allotted to Respondent No.3 company. But, on the request of Respondent No.3 company, the KIADB had changed the name of allottee from that of Respondent No.3 company to Respondent No.5 company. It is also not in dispute that the applicant/Respondent No.8 company had purchased the industrial plot along with structures from Respondent No.5 company. However, the fact remains that the applicant/Respondent No.8 company is the purchaser of the plot.

The petitioners in the main petition have made several allegations of mismanagement, misappropriation and wrongful transfer of the industrial plot besides other allegations against Respondents No.1 and 2 in the main petition. Further, in the main petition, the petitioners have challenged the sale of the company's property to the applicant/Respondent No.8. They have specifically prayed for setting aside the agreement/transfer of the plot. The petitioners in the main petition are challenging the alienation on the grounds of oppression and mismanagement, etc. Therefore, the applicant/Respondent No.8 is a proper and necessary party. The reliefs prayed by the petitioners in the main petition can only be adjudicated in the presence of the applicant/Respondent No.8 company, whose interest is directly involved. In that view of the matter, the applicant/Respondent No.8 is a proper and necessary party.

The petitioners in the main petition have made allegations in the main petition regarding this sale transaction at paras 95 to 102. They have sought the relief for setting aside the sale agreement between Respondent No.5 company and the applicant/Respondent No.8 company for the sale of industrial plot and structures therein in the main prayer No. (d)(iii). When the petitioners in the main petition are seeking for setting aside the sale agreement/sale entered into between Respondent No.5 company and the applicant/Respondent No.8 company, then, to adjudicate the same, the presence of the applicant/Respondent No.8 company is proper and necessary and without whose presence, the issue cannot be resolved and if any order is passed, it will directly affect the interests of applicant/Respondent No.8 company if it is not made a party to the petition. Therefore, the applicant/Respondent No.8 company is proper and necessary party.





Order 1 Rule 10(2) of the CPC empowers the Court to delete the name of defendant who is improperly joined. But, here the question is whether the applicant/Respondent No.8 company is improperly joined in the main petition. The answer to this is **No**, because, the petitioners have sought for setting aside the agreement/sale said to have been executed in favour of the applicant/Respondent No.8 company the industrial plot and structures thereof. Therefore, it can never be said that the applicant/Respondent No.8 company is improperly joined as a respondent.

The petitioners have filed the main petition among others under Section 241 and 242 of Companies Act, 2013, dealing with oppression and mismanagement.



Section 242 (2) (f) of the Act empowers the Tribunal to pass an order of termination, setting aside or modification of any agreement between the company and any person. So, Section 242 deals with the powers of the Tribunal. As such, the Tribunal can pass an order of termination, setting aside or modification of any agreement between the company and any person.

The learned counsel for the petitioners in the main petition have relied on the decision of the authorities cited above.

The learned counsel has relied on the provisions of Order 1 Rule 3 of CPC which was referred to by the Hon'ble Apex Court in the first case referred to above, i.e., (1999) 3 SCC 457 Iswar Bhai C. Patel Vs. Harihar Behera & Anr.

Order 1 Rule 3 of CPC provides as under:

*"3. Who may be joined as defendants. - All persons may be joined in one suit as defendants where –*

- (a) Any right or relief in respect, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist against such persons, whether jointly, severally or in the alternative; and*
  - (b) If separate suits were brought against such persons, any common question of law or fact would arise."*
- 
- 

In the above case, the Hon'ble Apex court in para 12 of its order has observed as under.

*"12. This Rule requires all persons to be joined as defendants in a suit against whom any right to relief exists provided that such right is based on the same act or transaction or series of acts or transactions against those persons whether jointly, severally or in the alternative. The additional factor is that if separate suits were brought against such persons, common question of law or fact would arise. The purpose of the Rule is to avoid a multiplicity of suits."*

The learned counsel for the petitioners has relied on para No.14 of the judgment of the Hon'ble Apex Court rendered (1992) 2 SCC 524 Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay & Ors. In this decision, the Hon'ble Apex Court has held that necessary or proper party means, *"a person who is having direct or legal interest in the litigation."*

The learned counsel has further relied on the decision of the Hon'ble Apex Court in the third case referred to above in (2010) 7 SCC 417 Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors. The learned counsel for the petitioners has relied on para 15 of the said judgment.

The learned counsel has also relied on the judgment of the Hon'ble Madras High Court in 2013-5L.W. 333 State Bank of India Vs. P. Narayanasamy & Ors.

This decision was rendered by the Hon'ble High Court in the case of oppression and mismanagement under Sections 397 and 398 and Section 402 of Companies Act, 1956. The Hon'ble High Court held that clause (e) of Section 402 of Companies Act, 1956, empowers the Company Law Board to terminate, set aside or modify any agreement between the Company on one hand and any person on the other. The Hon'ble High Court held that the principles of natural justice are inbuilt in Section 402 (e) of Companies Act, 1956 and that no termination or setting aside or modification of any agreement can be made without notice to the party concerned.



In the light of the above decisions and also in the light of the legal position, it is clear that the applicant/Respondent No.8 company is a proper and necessary party as the relief claimed by the petitioners in the main petition can only be decided in the presence of the applicant/Respondent No.8. Therefore, there are no grounds to strike off the name of the applicant/Respondent No.8 from the array of respondents. Therefore, the application deserves to be dismissed.

In the result, IA No.30/2017 is dismissed. No costs.



(ASHOK KUMAR MISHRA)  
MEMBER (TECHNICAL)



(RATAKONDA MURALI)  
MEMBER (JUDICIAL)

psp.