

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

IA No.56/2017 IN CP No.02/2017

UNDER RULE 11 OF NCLT RULES, 2011

IN THE MATTER OF ZUARI FERTILISERS & CHEMICALS LIMITED

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MANGALORE CHEMICALS AND FERTILISERS LIMITED & 7 OTHERS

Coram: Hon'ble Shri.Ratakonda Murali, Member Judicial.

Order delivered on 09th October, 2017

For the Petitioner: M/s. s.m. Mangaldas & Co., Advocates,

For the Respondents : M/s. Holla & Holla for R-2 and R-4 to R-8.

M/s.J. Sagar Associates for R-3.

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

ORDER

This Interlocutory Application is filed on behalf of petitioner under Rule 155 Read with Rule 11, Read with Rule 51 of NCLT, Rules, 2017 read with Order 6 Rule 17 CPC praying the Tribunal to permit the petitioner to amend the cause title of the petition by deleting the address particulars of Respondent No.6 United Breweries (Holdings) Ltd., and to add in its place "represented by its official Liquidator at No.12, Raheja Towers, M.G. Road, Bengaluru – 560 001 and to read Respondent No.6 as United Breweries (Holdings) Ltd., (under Liquidation) represented by its Official Liquidator, At No.12, Rajeha Towers, MG Road, Bengaluru – 560 001.

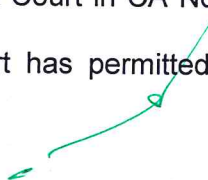
The applicant in the affidavit in support of the application has averred that the petitioner has filed the main petition against Respondents No.2 to 8 seeking various reliefs contending that they mismanaged the affairs of Respondent No.1 Company. When the proceedings are pending before this Tribunal, the Honble High Court of Karnataka, by order dated 07.02.2017, has directed winding up of Respondent No.6 Company M/s. United Breweries (Holdings) Ltd., in CP No.52/2012.

It is averred that the petitioner has filed an application before the Hon'ble High Court of Karnataka under Section 446 (1) of Companies Act, 1956, praying to permit the petitioner herein to continue the proceedings before this Tribunal. The Hon'ble Hih Court allowed the application vide order dated 20.04.2017 permitting the petitioner to continue with the proceedings before this Tribunal. The order is shown as Annexure-'A' . In view of the winding up order passed by the Hon'ble High Court in respect of Respondent No.6 company, it has become necessary to amend the cause title of Respondent No.6 company as stated supra.

The Respondent No.8 in this IA , has filed objections stating that the Hoin'ble High Court of Karnataka has passed the order of winding up against M/s. United Breweries (Holdings) Ltd., the Respondent No.6 herein in Co P No.162/2013. The Respondent No.6 company has filed an appeal in OSA No.05/2017 before the Hon'ble High Court of Karnataka, challenging the order of winding up which is pending before the Division Bench of the Hon'ble High Court. In the course of hearing, the Hon'ble High Court orally directed the Official Liquidator not to take any precipitated action and also not to take possession of the assets of the Company. It is contended that in the light of the order passed by the Division Bench of the Hon'ble High Court dated 25.04.2017, the question of amending the cause title does not arise. Therefore, the petition is liable to be dismissed.

At the time of hearing of the matter, the counsel for petitioner suggested that instead of amending the cause title of Respondent No.6, the Official Liquidator may be impleaded as an additional Respondent No.9. The counsel for Respondent No.8 reported that he has no objection if Official Liquidator is made as Respondent No.9 to the main petition without making any amendment to the title of Respondent No.6. Counsel for Respondents No.1 and 3 also reported no objection if the Official Liquidator is made as Respondent No.9. The petitioner company has obtained an order from the Hon'ble High Court to continue the proceedings against the respondents including Respondent No.6.

I have gone through the order of the Hon'ble High Court in CA No.67/2017 in Co P No.57/2012, dated 20.04.2017. The Hon'ble High Court has permitted the petitioner to



continue the proceedings before this Tribunal. The order of winding up of Respondent No.6 company was passed by the Hon'ble High Court. But, the order is appealed to the Division Bench and it is pending. Since, the liquidation order is passed against Respondent No.6, the petitioner wanted amendment that Respondent No.6 to be represented by Official Liquidator in view of the passing of winding up order.

Now, both sides agreed that instead of amending the cause title of Respondent No.6, the Official Liquidator to be made as additional Respondent No.9 to the main petition. This amendment can be permitted in the light of the order of liquidation passed by the Hon'ble High Court of Karnataka.

In the result, IA No.56/2017 is allowed to the extent of permitting the petitioner to implead the Official Liquidator, 12th Floor, Raheja Towers, MG Road, Bengaluru – 560 001, as Respondent No.9 in the main petition.


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

psp.