

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

I.A.No. 81/2017

IN

T.P. No. 13/2016

Under Section 397/398 of the Companies Act, 1956
Judgement/Order Delivered on: **13th November, 2017**

**IN THE MATTER OF
CAUVERY MEDICAL CENTRE LIMITED**

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

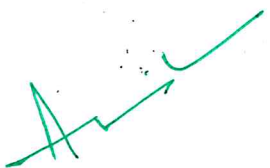
**MEDI PROJECTS PRIVATE LIMITED & ANOTHER - PETITIONERS
AND
CAUVERY MEDICAL CENTRE LIMITED & OTHERS - RESPONDENTS**

BETWEEN

1. Dr. B.V.Murali Mohan,
15/1, 4th Cross, Lakshmi Road, Shantingar,
Bangalore-560027 - Applicant/Respondent No.11
2. Dr. G.Mohan,
No.1266, 22nd Main, 1st Sector, HSR Layout,
Bangalore-560034. - Applicant/Respondent No.12

AND

1. Medi Projects Private Limited,
19-04-05, High Street Centre,
Singapore 179094 - Respondent / Petitioner No.1
2. Mr. Vivek Kulkarni,
14, 5th C Cross, 18th Main, BTM II Stage,\nBangalore-560076. - Respondent / Petitioner No.2
3. Cauvery Medical Centre Limited,
43/2, Bellary Road, Hebbal,
Bangalore-560024. - Respondent / Respondent No.1
4. Cauvery Medical International Inc.
5451, West La Palma Avenue,
47,La Palma – 90623,
California, USA. - Respondent / Respondent No.2
5. Dr.G.R. Ravi Kumar
3010, W.Orange Avenue,
402, Anaheim-92804,
California,USA - Respondent / Respondent No.3
6. Sri B.V.Sathyanarayan,
No.70, 6th Main Road, Chamrajpet,
Bangalore-560018. - Respondent / Respondent No.4




7. Sri Jayanthi Ravi Kumar,
3010, W.Orange Avenue,
402, Anaheim-92804,
California-USA. - Respondent / Respondent No.5
8. Sri G.R.Surya Narayana,
259, 1st A Cross,
3rd Masin, 6th Block, 2nd Phase, BSK, 3rd Stage,
Bangalore-560085, - Respondent / Respondent No.6
9. Sri Basavaraj Srikanthaiah,
No.1211, Mandara,
35 B Cross, East End Road, 4th Block,
Jayanagar, Bangalore-560041 - Respondent / Respondent No.7
10. Sri N.R. Devaraj,
3400, West Ball Road,
Anaheim-92804,
California-USA. - Respondent / Respondent No.8
11. Sri Ravi Makam,
2710, Sobristoal, 204
Aanaheim-92804,
California-USA - Respondent/ Respondent No. 9
12. Sri Subramaniam Arumugam,
141, West Wilshire Avenue,
No.110-, Fullerton-928332. - Respondent/Respondent No.10
13. Dr. H.S.Venkatesha Murthy,
No.7, 15th Cross, 5th Phase,
J.P Nagar, Bangalore-560078. - Respondent/Respondent No.13
14. Dr. A.C Vishwanatha Swamy,
No.502, Aralavilas, 6th Main, H.I.G Colony, RMV,
Bangalore. - Respondent/Respondent No.14
15. Nagavara Estates Pvt. Ltd.,
No.43/2, Bellary Main Road, Hebbala,
Bangalore-560094 - Respondent/Respondent No.15
16. Aster DM Healthcare Limited,
IX/475L,Aster Medicity, Kuttisahib Road,
Near Kothad Bridge, South Chittoor,
P.O. Cheranalloor,
Kochi-682027.- Respondent/Proposed Respondent No.16

For the Petitioner : 1) Mr. B.C.Thiruvengadam, Advocate for Petitioners 1 & 2
2) Mr. C.K. Nandakumar, Advocate for the Respondents
No.1,4,5,7 & 8
3) Mr. A.M Sridharan, Advocate for Respondent R11 & R12
4) Mr.Perikal K.Arjun, Advocate for R2 & R3
5) Mr. K.Srinandan, Advocate for R15

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




ORDER

This is an application filed by the Applicants/Respondents 11 & 12 for impleading proposed party as Respondent No.16 to the main petition. The details of proposed party/Respondent are given below:-

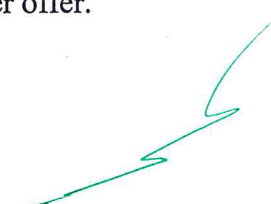
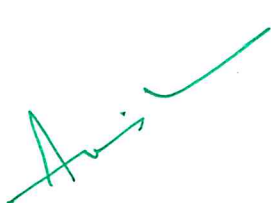
Aster DM Healthcare Limited,
IX/475L, Aster Medcity, Kuttisaheb Road,
Near Kothad Bridge,
South Chittoor,
P.O. Cheranalloor, Kochi-682027.

This application is filed under Rule 11 of NCLT rules 2016 r/w order 1 Rule 10 and under section 151 of CPC.

The averments of the Application are briefly stated as hereunder:-

It is alleged that, Applicants/Respondent 11 & 12 filed their statement of objections as well additional statement of objections in the main case. Further, they contended that in their additional objections at para No.30 they had specifically pleaded that, 1st Respondent Company in the main petition had entered into business sharing agreement with the proposed party and had collected a sum of Rs 40.00 Crores under guise of guarantee and virtually the business to continue for 24 long years just to circumvent the orders passed by the erstwhile Company Law Board dated 08/08/2008 and dated 29/08/2008. The proposed party Aster DM Healthcare Limited also confirmed the same in the Draft Red Herring Prospectus filed with the SEBI. Meanwhile in the Draft Red Herring Prospectus contained a recital about the order of Company Law Board dated 29/08/2008 under which status quo was ordered to be maintained in the share holding pattern of the company.

It is further alleged that, in the said Draft Red Herring Prospectus additional rights in relation to some immovable properties of the company were given to Aster DM Healthcare Limited and right of first counter offer.



It is alleged that, company has violated the order of Company Law Board dated 08/08/2008. The said agreement it is alleged entered between 1st Respondent Company and Aster DM Healthcare Limited is to be declared as null and void even though such relief is not asked by the petitioners. The petitioners in the main petition it is alleged for the reasons known to them have not filed the Application to implead Aster DM Healthcare Limited as Respondent. Therefore, the Applicants have come forward and filed this petition for impleading Aster DM Healthcare Limited.

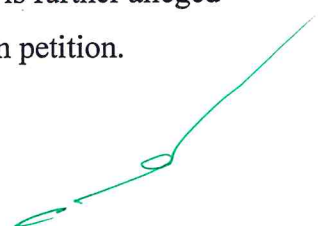
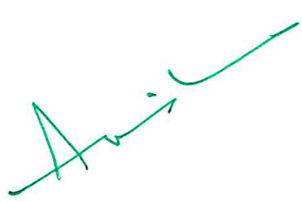
Objections are filed on behalf of 1st Respondent Company, Memo is filed on behalf of Respondents 2 & 3 adopting the objections filed on behalf of R1 Company.

Averments of the objections filed on behalf of Company are briefly stated as hereunder:-

It is averred that, the present Application is wholly false, frivolous, vexatious filed with a sole intention of harassing the company and its business partners. It is nothing but an attempt to stay the judicial process. The applicants it is alleged have failed to demonstrate any legal basis on which the prayer asked for could be granted.

It is alleged, the Applicants utterly failed to demonstrate as to how the proposed party is a necessary and proper party to the proceedings. There is no question of this the, 1st Respondent Company committing violation of the order of Company Law Board dated 08/08/2008.

The 1st Respondent Company admitted that it had entered into a management services agreement with the said Aster DM Healthcare Limited on a revenue share basis for the management of the hospital. This move by the Company has significantly benefitted company and also its share holders including the Respondents. It is further stated that, applicants utterly failed to show how the order of Company Law Board dated 08/08/2008 was violated. It is further alleged that, Applicants are hand-in-glove with the petitioners of the main petition.



It is clear that, Applicants openly supported the petitioners. The main petition was filed in the year 2008 and it is being protracted by these Applicants for one reason or other. The present application is filed by them it alleged is yet another attempt to delay the proceedings.

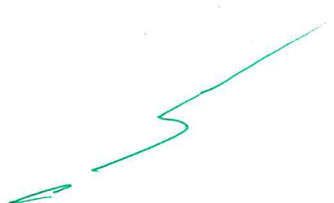
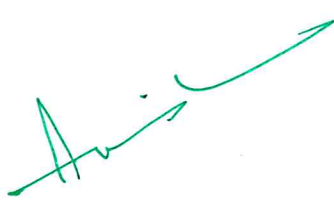
It is stated that, the Applicant have not asked for any remedy for their alleged rights either against the company or against the proposed party. It is further alleged the Applicants cannot ride on the back of the petitioners in the main petition and seek additional relief. Therefore, it is prayed to dismiss the Application.

We have heard the Counsel for Applicants and also the Counsel for contesting Respondents.

Interestingly the Petitioners in the main petition have not filed any objections. The Company alone filed objections which was adopted by the Respondents 2 & 3.

It is the contention of learned Counsel for Applicants/Respondents 11 & 12 in the main petition that Company in violation of the order dated 08/08/2008 has entered into Draft Red Herring Prospectus (Agreement) with the proposed party Aster DM Healthcare Limited.

This is a matter relating to the year 2008 when main petition was coming up for final hearing, the Respondent 11 & 12 have filed this Application to implead the 3rd party as Respondent No.16. Interestingly the Petitioners in the main petition have not filed this Application to implead the proposed party. The petitioners have right to choose their own adversary. The petitioners in the main petition had not asked for any relief against the proposed party. The petitioners in main petition filed the main petition for oppression and mismanagement against the company and other Respondents including Applicants herein. Thus the petitioners in main petition made the Applicants as Respondents. The Applicants have filed their counter/objections and also additional objections to the main petition.



The Applicants have not taken any step to transpose them as petitioners in the main petition. They are still shown in the petition till date, as Respondents in the main petition. The contention of Applicants that 1st Respondent Company allegedly violated the order of the erstwhile Company Law Board dated 08/08/2008. Therefore, they want to implead the proposed party. If 1st Respondent Company allegedly violated any order of the Company Law Board then it is open to the Applicants to initiate contempt proceedings against the company, but not to file an Application to implead a third party.

The Company admitted entering into agreement called Draft Red Herring Prospectus with the proposed party by which the hospital owned by the company has to be managed by the proposed party on revenue sharing basis. Interestingly, the petitioners in the main petition have not questioned the action of the 1st Respondent Company in entering into a management agreement. The Company in the course of its business activities had entered into a management agreement with the proposed party. It is only a part of its business activity. Therefore, the proposed party is neither necessary nor proper party for deciding the issues involved in the main petition. Petitioners mainly alleged in the main petition with regards to certain acts of oppression and mismanagement against the Company and other Respondents including Applicants herein. To decide the same presence of proposed party is not necessary.

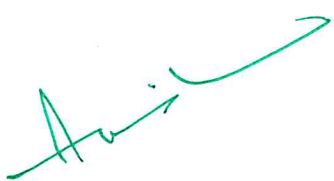
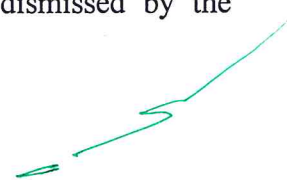
The learned Counsel for Respondents has relied on the following decisions:-

- 1) Kasturi Vs Iyyamperumal & Others – (2005) 6 -Supreme Court Cases 733

The learned Counsel for Applicants has relied on the following decisions:-

- 1) C.M.V. Krishnamachari Vs M.D Dhanalakshmi Ammal & Ors –
16.04.1965 – High Court of Madras.
- 2) Ramesh Hirachand Kundanmal Vs Municipal Corporation of Greater
Bombay & Ors. – Hon'ble Supreme Court of India Civil Appeal No.
3570/1991.

It is the contention of Counsel for Respondents that, earlier the petitioners in the main petition filed a similar petition with allegations similar to the allegations now urged by applicants in their additional objection filed on their behalf. Said application bearing No. I.A 7/12 seeking amendment was dismissed by the

Company Law Board. Appeal preferred by the petitioner in main petition to the Hon'ble High Court of Karnataka in C.A 9/15 was withdrawn. It is contended that, petitioners in the main petition have now set up the Respondents 11 & 12 to file present application to circumvent the orders of the Company Law Board in I.A 7/12.

The petitioners in main petition are dominus litus. They are competent to choose their opponents. Now the Respondents 11 & 12 have filed this application to implead Aster DM Health Care Limited as Respondent No.16. The applicants are unable to establish how the proposed party is a proper and necessary party. Petitioners in main petition have leveled allegations against Respondents for oppression & mismanagement. To decide the same the proposed party is totally a stranger to the subject matter and therefore proposed party is neither necessary nor proposed party. The issues involved in the main petition can be decided without the presence of proposed party. The only allegation made against the proposed party is that, it entered into management business agreement with 1st Respondent Company. The 1st Respondent Company is not losing its identity by entering into the management revenue sharing agreement.

The learned Counsel for Applicants in this case relied on the decision of Hon'ble High Court of Madras for the proposition on necessary and proper party. The Ratio Decidendi in the above decision is as follows:

"Persons shall be entitled to be parties to suit if such course shall ensure final and complete adjudication of points involved and avoid multiplicity of proceeding".

The learned Counsel for Applicants also relied on the decision of Apex Court cited supra wherein Hon'ble Apex Court has held as follows:

"Order 1 Rule 10 provides that only necessary or proper party may be added – necessary parties is one without whom no Order can be made effectively – proper party is one in whose absence effective order can be made but whose presence is necessary for complete and final decision on question involved in proceedings – addition of parties not question of initial jurisdiction of Court but of judicial discretion which has to be exercised in view of all facts and circumstances of particular case."

On the other hand, the Counsel for Respondents relied on the decision of Apex Court reported in **Kasturi Vs Iyyamperumal (2005) 6 Supreme Court Cases 733** for the proposition.

“the question of jurisdiction of the Court to invoke order 1 Rule 10 CPC to add a party who is not made a party I the suit by the plaintiff shall not arise unless a party proposed to be added has direct and legal interest in the answers to the controversies only if he can satisfy the court that it may lead to a result that will affect him legally A bare reading of Order 1 Rule 10(2) CPC would clearly show that the necessary parties in a suit for specific performance of a contract for sale are the parties to the contract or if they are dead, their legal representatives as also a person who had purchased the contracted property from the vendor. In equity as well as in law, the contract constitutes rights and also regulates the liabilities of the parties. A purchaser is a necessary party as he would be affected if he had purchased with or without notice of the contract, but a person who claims adversely to the claim of a vendor is, however, not a necessary party. Two tests are to be satisfied for determining the question who is a necessary party. Tests are – (1) there must be a right to some relief against such party in respect of the controversies involved in the proceedings; (2) no effective decree can be passed in the absence of such party. In a suit for specific performance the first test can be formulated in the following manner, that is, to determine whether a party is a necessary party there must be a right to the same relief against the party claiming to be a necessary party, relating to the same subject matter involved in the proceedings for specific performance of contract for sale.”

Considering the propositions laid down by Apex Court in the above decisions, the question whether proposed party is a proper or necessary party to the proceedings. This is an old matter of the year 2008. When matter is coming up for final hearing, this application is filed by Respondents 11 & 12 and not by petitioners in the main petition. As already said, since it is a case of Oppression and mismanagement, the proposed party has no role to play. Therefore, the considering the nature of transactions said to have been entered by Company with proper party the proposed party is neither proper nor necessary party. The application deserves to be dismissed.

In the result Application I.A No.81/17 is dismissed.

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

(RATAKONDA MURALI)
MEMBER, JUDICIAL

13/11/17