

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH

IA No.36/2016 IN TP No.04.2016 IN
CP No.35.2007

UNDER RULE. 43 R/w Rule 135 & R/w Rule 11 OF NCLT RULES, 2016.

IN THE MATTER OF K. RAJIAH
Vs.
M/S. CHAMUNDESHWARI STUDIOS & LAB PRIVATE LIMITED & 4 OTHERS

Order delivered on: 22nd January, 2018

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

Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner : Shri K.V. Satish, Advocate.

For the Respondents : Shri K. Venkatramani, Advocate.

BETWEEN :

Sri K. Rajaiah,
No.40, 4th Main, 3rd Stage,
Rajarajeshwari Nagar, BEML Layout,
Bangalore – 560 098.

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Applicant/Petitioner

ABD

1. Chamundeswre Studio & Laboratory Pvt. Ltd.,
No.48/3, Millers Tank Bund Road,
Bangalore – 560 052.
2. Smt. Rajalakshmi Sadagopan,
W/o Sri R. Sadagopan,
No.48/1, Millers Tank Bund Road,
Bangalore – 560 052.
3. Sri R. Sadagopan,
S/o Sri R. Sadagopan,
No.48/1, Millers Tank Bund Road,
Bangalore – 560 052.
4. Smt. T. Gayatri,
D/o Sri R. Sadagopan,
No.48/1, Millers Tank Bund Road,
Bangalore – 560 052.
5. K.K. Foundation and Public Charitable Trust,
No.48/1, Millers Tank Bund Road,
Bangalore – 560 052.

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Respondents

ORDER

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

This application is filed on behalf of petitioner under Rule 43 read with Rule 135 and read with Rule 11 of NCLT Rules, 2016 praying the Tribunal to hold an enquiry against the Respondents arising out of the acts of misfeasance, fraud fabrication and falsification of records and accounts, forgery, breach of trust, improper maintenance of accounts, filing of false returns and documents and other illegal acts pertaining to the affairs of the Respondent No.1 Company, assess damages, etc.

The averments made in the application are briefly noted hereunder:

The main petition was filed under Sections 397, 398, 402, 403 and 406 of Companies Act, 1956 and praying for declaration that the appointment of Respondents No.2 to 4 as Directors of the Respondent No.1 Company as illegal and void and for a further declaration that the transfer of 4400 shares in favour of Respondents No.2 to 4 and also in favour of K.K. Foundation and Public Charitable Trust (Respondent No.5) as illegal and void and consequently, for a declaration that all acts and deeds carried out by Respondents No.2 to 4 as illegal and void.

It is further stated that the applicant is filing this application to order an enquiry into the acts of misfeasance, fraud fabrication and falsification of records and accounts, forgery, breach of trust, improper maintenance of accounts, filing of false returns and documents and other illegal acts pertaining to the affairs of the Respondent No.1 Company, assess damages, etc. and further require the respondents to produce further information/documents and evidences in exercise of powers under Rule 43 of NCLT Rules, 2016.

It is further alleged that basing on the enquiry by CBI, it came to light that the respondents are guilty of playing fraud, misrepresentation, suppression of material evidence, falsification of books and records, forgery of signature of the applicant and of Shri

Kuppuswamy Naidu, etc. It is also alleged that subsequent to the filing of the main Company Petition, it came to light through various incriminating documents evidencing fraudulent acts on the part of the respondents. Therefore, it requires a detailed enquiry before proceeding to hear on the main petition. It is alleged that there was fraudulent transfer of shares. The applicant and his brother, Shri Kuppuswamy Naidu are the only two subscribers and shareholders. They were the only Directors of the Company. It is alleged that Shri Kuppuswamy Naidu was not in sound state of mind. However, Respondent No.2 has claimed that late Shri Kuppuswamy Naidu had transferred the shares in his favour. It is further alleged that there are no documents filed by the respondents that the petitioner has given his consent for transfer. Further, the respondents have failed to produce the share certificate. There was fraud in payment of consideration for the said transfer of shares to Respondent No.2. Similarly, there was also fraud in the transfer of shares to Respondent No.4. No consideration was paid for alleged transfer of 2700 shares to Respondent No.5 Trust. It is also alleged that there was fabrication of minutes of the Board, signature of Shri Kuppuswamy Naidu was forged in the alleged Board meeting.

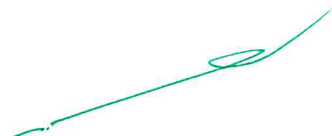
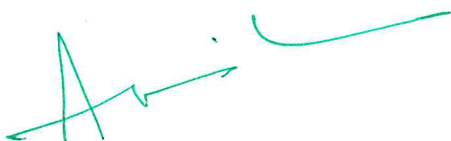
Further, an allegation is made alleging fabrication of Board meetings and the General meetings. It is also alleged that there was fraud and forgery in respect of documents filed before the ROC. It is alleged that Respondent No.2 was born to muslim parents and she had admitted the same in her cross examination in CC No.21065/2008. However, in the passport, she gave false information with regard to the name of her parents. It is further alleged that the Respondents have indulged in filing false returns and documents.

The appointment of Respondents No.2 to 4 as Directors is also questioned. Thus, several allegations are made in the application that Respondents No.2 to 4 have indulged in fabrication, playing fraud and committing forgery. Therefore, the applicants have prayed the Tribunal to hold an enquiry into the various allegations made in the application.



The respondents have filed their objections. It is averred in the statement of objections that whatever allegations made in the application, the same were made in Company Application bearing No.150/2008 before the CLB, way back in the year 2008 and that the respondents gave their reply to the same. It is further averred in the reply that the averments in the application are also similar to the Criminal complaint bearing No.CC 512/2009 and CC No.145/2010, respectively filed before the Special Court for Economic Offences at Bangalore. The Respondents No. No.2 and 3, who were referred to as accused in the above two criminal cases have filed petitions bearing Criminal Petition No3597/2010 and Criminal Petition No.4263/2010 before the Hon'ble High Court of Karnataka, seeking for quashing of the criminal complaint. The petitioner has already filed criminal cases against Respondents No.2 and 3 with similar allegations as averred in the present application which is bending before the Special Court for Economic Offences. Therefore, the present application is nothing but, abuse of process of the Court. It is further alleged that when the Tribunal had listed the main Company Petition for final hearing, then, the applicant has filed this application solely to drag on the proceedings.

It is further alleged that the applicant who is holding one equity share of Rs.100/- is harassing the respondents by filing suits and applications. The private complaints filed by the applicant are pending before the Special Court for Economic Offences. It is therefore, prayed that the present application deserves to be dismissed. The respondents have given details of various cases filed which are pending and which were dismissed as withdrawn. It is further stated that the applicant has also filed suits against the respondent company and others in different courts. The main Company Petition was filed for setting aside the appointment of Respondents No.2 to 4 as Director and to declare the transfer of 4400 equity shares as not valid and also sought for certain interim reliefs. It is stated that the alleged period during which some records are said to have been forged or manipulated, the Respondents No.2 to 4 were never in the control of the affairs of the Respondent No.1 Company. It is averred that



Respondents No.2 to 4 were involved in the affairs of the Company only from August, 2006 when they were co-opted as Directors.

The Respondents have further denied all the allegations made by the applicant/petitioner with regard to forgery, fabrication of documents, etc. It is prayed that the application deserves to be dismissed. The averments made in the petition will be dealt in the course of the order.

Heard both sides.

Both sides have filed their written submissions. The counsel for the petitioner has relied on the following decisions:

1. Decision of the Hon'ble Supreme Court in (2010) 6 SCC 719 – Incable Net (Andhra) Limited & Ors. Vs. Apaksh Broadband Limited & Ors. (Head Note:c, Paras 16, 30 and 46).
2. Decision of the Hon'ble Apex Court in the case of Kamal Kumar Dutta Vs. Ruby General Hospital; and
3. Decision of the Hon'ble High Court of Karnataka in the Case of Central Park, Farm And Developers Pvt., Ltd., Bangalore Vs. Mohamed Ataulla.

The counsel for Respondents has also relied on the following decisions:

1. Decision of the Hon'ble Apex Court in 2005(11) SCC 314 (Head Note J, Paras 144 and 232(iv);
2. 2001(4) SCC 420 (Paras 3 and 12);
3. AIR 1965 SC 1535 (Head Note and Paras 15,16 and 19)
4. AIR 1983 SC 1272 (para 10);
5. 2001 (3) SCC 68 (Para 5); AIR 1958 Mad 287;
6. 1994 SUPP (3) SCC 220 (Para 38).

The main contention of the counsel for the applicant is that before proceeding with the main matter, there is a need to hold an enquiry against the respondents who have indulged in the acts of misfeasance, fraud, fabrication and falsification of records and accounts, forgery, breach of trust, improper maintenance of accounts and further for indulging in forgery, etc. The counsel contended that Rules 43 and 135 of NCLT Rules, 2016, empowers the Tribunal to call for further information or evidence and in particular the counsel has relied on Rule 135 of NCLT Rules, 2016 which deals with the procedure for examination of witnesses and issue of commissions. The counsel contended that, earlier the petitioner could not seek such a relief

before the then CLB. The contention of the learned counsel that the power now vested with the Tribunal was not available with the then CLB where the matter was originally filed. The learned counsel has further contended that Respondents No.2 to 5 have indulged in fraudulent transfer of shares. The petitioner has got right of pre-emption which was there in the Articles of Association of the Company. He contended that no consideration was paid and thus it is a fraudulent transfer. The counsel contended that the CBI had already seized the records. Hence, the contention of the learned counsel that there was fraud and falsification of records, etc. and therefore, the Tribunal to conduct an enquiry.

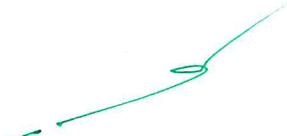
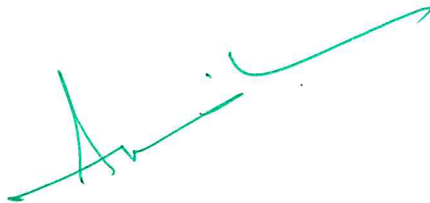
On the other hand, the counsel for the respondents would contend that the petitioner was a party to the Board meetings in passing of resolutions when Respondents No.2 to 4 were co-opted as Directors. The counsel contended that during the life time of Shri Kuppaswamy, the petitioner did not dispute or challenge the transfer of shares and that he has filed the Company Petition only after the death of Shri Kuppaswamy. In the written arguments, the Respondents No.1 to 5 have submitted that the petitioner has filed a similar application like the present application before the then CLB which was numbered as CA No.150/2008. Again, the petitioner has filed the present application when the matter was actually listed for final hearing on the main petition. It is also contended that the petitioner has filed several suits in various Courts. The counsel for respondents has further denied the various averments made in the application.

The main contention of the learned counsel is that the main company petition was filed seeking the reliefs of setting aside the appointment of Respondents No.2 to 4 as Directors of Respondent No.1 Company and also for setting aside the transfer of shares to Respondents No.2 to 5. However, in the present application, the petitioner is alleging forgery, fabrication of records, etc. and requested the Tribunal to hold an enquiry. It is the case of the respondents that the petitioner is only 1% shareholder. The present application is filed at a highly belated stage. The main Company Petition is coming up for final hearing. The Company Petition was filed in the year 2007 and when the Company Petition was transferred to this Tribunal

after abolition of CLB, the petitioner has come forward with this application. As seen from the records, the main petition had come up for hearing even before the then CLB. After transfer, this matter was listed for hearing on the main petition. At this juncture, the petitioner has filed the present application seeking holding of enquiry.

When the main Company Petition itself is coming up for final hearing and the reliefs prayed for in the Company Petition are for setting aside the appointment of Respondents No.2 to 4 as Directors of Respondent No.1 Company and for setting aside the shares said to have been transferred to Respondents No.2 to 5, now the counsel for the petitioner would contend that the respondents indulged in forgery, etc. and therefore, prayed the Tribunal to conduct an enquiry. The counsel would contend that the issues involved cannot be decided without conducting enquiry. Counsel contended that the signature of late Shri Kuppuswamy was forged in all important documents.


It is an undisputed fact that not only the present Company Petition, several other suits were filed. It is also not in dispute that the CBI has conducted an enquiry and complaints were filed. In the main petition, the reliefs prayed by the petitioner are for setting aside the appointment of Respondents No.2 to 4 as Directors of Respondent No.1 company on some specific grounds, and also for cancellation of the transfer of shares of late Kuppuswamy in favour of Respondents No.2 to 5. For deciding these issues, there is no need to conduct any enquiry by the Tribunal. The issues can be decided on the basis of material available on record. This Company Petition was originally filed in the year 2007. Nearly, about 9 years later, the petitioner has come up with this application, particularly, when the main matter is listed for hearing. Thus,, the present application is filed at a highly belated stage. The pleadings are completed in the main matter. Therefore, the main matter can be disposed of. Therefore, there is absolutely no need to conduct any enquiry.



The facts in the decisions cited are different from the facts of this case and also to the reliefs prayed for in the present application. Therefore the application deserves to be dismissed.

In the result IA No.36/2016 is dismissed.


(ASHOK KUMAR MISHRA)
MEMBER (TECHNICAL)


(RATAKONDA MURALU)
MEMBER (JUDICIAL)

psp.