

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI

Arguments heard on 4.11.2016

Orders passed on 4.11.2016

C.P.No. 9 of 2016

(U/Ss 58, 59, 241 and 242 r/w other applicable provisions of the Companies Act, 2013)

Petitioner : Shri T.O.Abraham
Represented by Ms Pushpa Menon, Advocate

Respondents : M/s.St.Mary's Hotels Private Ltd. & Ors. (R2)
Represented by Shri Thriyambak Kannan, Advocate

CORUM

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. The Company Petition No.9 of 2016 is filed by Shri T.O.Abraham against R1 Company and 5 others under Sections 58, 59, 241 and 242 r/w other applicable provisions of the Companies Act, 2013. The petition is represented by Advocate Ms.Pushpa Menon. When the matter was called Shri Thriyambak Kannan caused appearance on behalf of R2. The counsel for the petitioner has elaborated the acts complained of which led him to file this petition for seeking the reliefs as mentioned in para 22 (v) of the petition. Besides the above, the interim prayers are made under para 22 (vi) for seeking interim order. For the sake of convenience, the interim prayers made in the petition are reproduced as follows:-

“(a) Pass an order of injunction restraining the 1st respondent company from in any manner proceeding with the Board Meeting called on 04.11.2016 or on any other date as expressed in the notice dated 26.10.2016;

(b) In the alternative pass an order of injunction restraining the respondents from in any manner acting upon or giving effect to the resolutions to be passed at the Board Meeting called on 04.11.2016;

(c) Pass an order of injunction restraining the 3rd and 4th respondents as holding out as the directors of the 1st respondent company;

(d) Pass an order of injunction restraining the respondents from in any manner calling for any board meeting of the 1st respondent company without the leave of this Bench;

(e) Pass an order of injunction restraining the 2nd respondent from in any manner representing the 1st respondent company as its Managing Director and binding by their acts the 1st respondent company;

(f) pass such further orders or other orders as this Hon'ble Board may deem fit in the facts and circumstances of the case. ”

2. We have heard the counsel for petitioner and counsel for R2 in relation to the interim prayers made in the petition. Before interim order is passed, it is necessary to have a bird's eye view of the background of presenting this petition which is summarised as follows:

i. The petitioner states that he is the Managing Director of the 1st respondent company since its incorporation in 1996. The petitioner, 2nd respondent and 6th respondent are the first directors of the 1st respondent company and the company had made its initial major allotment only after the completion of the Hotel Project in 2001. However, disputes arose between the parties immediately after the hotel was commissioned and the 2nd respondent and his group had approached the then Company Law Board. After an initial round of litigation upto the Supreme Court, the Company Law Board, Delhi Bench had disposed of the Company Petition. The said Order was appealed by the 2nd respondent before the Hon'ble Kerala High Court. The Hon'ble High Court had set aside all transfers which were made on 17.04.2002 in the company and had held that the shareholdings of the 1st respondent company would be as on 19.10.2001. The High Court had also named as to whom the directors of the company would be. However, on a review petition filed by the 2nd respondent, the Hon'ble High Court had reviewed its Order to the extent that it had upheld the transfers in favour of 3rd and 4th respondents and had rejected transfer in favour of the petitioner alone. The High Court had held that the composition of the Board of Directors would be the same as on 17.04.2002. An appeal was filed before the Hon'ble Supreme Court. The Hon'ble Supreme Court had dismissed the Appeal filed by the petitioner. The petitioner has filed a review against the said order and the same is pending before the Apex Court.

ii. The petitioner, 2nd respondent and 6th respondent are the directors of the company. The said composition of the Board as on 17.04.2002 continues even today. The 3rd and 4th respondents do not continue as directors since they were only additional directors and they had vacated office on the day when the next AGM was to be held. The Company has been functioning for the last 15 years with the petitioner as the Managing Director of the Company. Now, the 2nd Respondent is said to have taken actions which are stated not only to be oppressive to other shareholders but is also in direct contravention with the orders passed in the previous rounds of litigation. The 2nd respondent had conducted a board meeting on 14th October 2016 in the presence of 3rd and 4th respondents and himself and had appointed himself as the Managing Director. Apart from the fact that the notice for the said meeting was received by the petitioner after the conduct of the meeting, the meeting itself is stated to be bad since the 3rd and 4th respondents are not directors of the company. Immediately thereafter, the 2nd respondent had moved for police protection on false premise to the Kerala High Court and has now issued a notice for a board meeting on 4th November 2016 to carry out several agenda items which according to petitioner will directly affect the management of the company and its affairs in future. The agenda items are also against the orders passed by the Courts in the previous rounds of litigations. The petitioner stated that he received the notice dated 26.10.2016 only on 31.10.2016.

3. If we keep in view the rounds of litigation and the endeavours of the CLB, Hon'ble High Court of Kerala and then the Hon'ble Supreme Court of India, it can safely be stated that a solution was worked out to put an end to the strained relations between the groups of the petitioner and the respondents by way of parting by the petitioner and his group on transferring all their shares to the Respondent's group of R1 company and other company that was involved in the previous rounds of litigation. Obviously the stage set out for such exercise was determined by the High Court of Kerala, Ernakulam vide its order dated 19.10.2015 in para 21 of the judgement, the relevant portion of the para reads as follows:

"The parties shall have the shareholding as on 17.04.2002 with the transfers to Abraham Baby and Gigy Kuriakose affirmed; as admitted by both parties. The shareholding and the constitution of Board of Directors shall be as on 17.04.2002."


4. Therefore, in the light of the above, the only business by the board of directors of R1 company that was required to be initiated is to appoint a Chartered Accountant for the purpose of valuation and then to provide the consideration of the shares to petitioner's group for his exit from R1 company. But the respondents has not followed the said course of action due to which this company petition came to be filed and prayer is made for grant of interim reliefs as detailed above. We understand that in the totality of the circumstances the parties cannot be allowed to start any fresh rounds of litigation, because all the efforts which have been made by the erstwhile CLB and the Judiciary will certainly go waste. Thus, there is an urgent requirement to direct the parties in the right direction in order to get them engaged as envisaged in the earlier round of litigation. With this objective the interim reliefs prayed need to be granted so that the Chartered Accountant could be appointed with mutual consent of the parties for making assessment of the fair value of the shares of the petitioner and his group for his exit from the R1 company.


5. Therefore, in the light of the above, since the petitioner has established his case prima facie and the balance of convenience is also in his favour, we exercise our discretion and grant interim reliefs that are as follows:

- a) The respondents are restrained from giving effect/acting upon the resolutions passed, if any, at the board meeting held on 4.11.2016;
- b) R3 and R4 are restrained from holding out as directors of the R1 company;
- c) The respondents are restrained from calling for any board meeting of the R1 company without the leave of this Tribunal; and
- d) R5 is restrained from representing R1 as its Managing Director and binding his acts on R1 company.

6. In the light of the above, the respondents are directed to comply with the interim directions in its letter and spirit with immediate effect.

7. The CP is admitted for hearing. The Registry is directed to issue notice to rest of the respondents except R2, returnable within three weeks. Put up on 29.11.2016 at 10.30 A.M.


(Anantha Padmanabha Swamy)
Member (Judicial)


(Mohd Sharief Tariq)
Member (Judicial)