

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI

Arguments heard on 25.01.2017

Orders passed on 07.02.2017

CA No.26 of 2016

in

TCP No.197 of 2016

(C.P.No.91 of 2015)

(Under Sections 111A, 397, 398, 402, 404 of the Companies Act, 1956 and
Sections 42 and 62 of the Companies Act, 2013)

Applicants/Respondents : Shri.Sudhindran Parikkal & Shri Chokkalingam
Represented by : M/s.K.Ramasamy & G.V.Mohankumar

-Vs-

Respondents/Petitioners : M/s East India Investment Holding PTE Ltd.
Represented by : Advocate Shri S.Aravindan for
M/s.Fox Mandal & Associates

Respondents/Respondents : M/s.Mamallapuram Development Private Ltd.
Represented by : Advocate Ms P.Indumathy

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

ORDER

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

1. Under adjudication is a Company application No.26 of 2016 filed in C.P.No.91 of 2015. This application has been filed by the Applicants/Respondent 8 & 9 against Respondent/Petitioner-1 and R2/R1. The Applicants/Respondents 8 & 9 are the practising Chartered Accountants having Fellow Membership No.032100 and 210062 respectively. The Applicants pray in the application to exonerate them from being Respondent 8 & 9 in the company petition.

2. In order to ascertain the factual aspects we may turn to C.P.No.91 of 2015 that has been filed before the CLB and stood transferred to NCLT and renumbered as TCP No.197 of 2016. In the petition under para 34 and 35 it has been stated the Applicant/Respondents 8 & 9 have, being Chartered Accountants, certified the documents without proper verification and without following the procedures laid down in the declaration contained in the certificates. To make it more specific, Applicant No.1/8th Respondent certified the documents for the purpose of filing before the MCA21 (ROC, Chennai) which are as follows :-

(a) Form DIR-12 for the appointment of 4th Respondent as Additional Director;

(b) Form DIR-12 for the appointment of 3rd Respondent as Director and Cessation of 7th Respondent as Director w.e.f. 30.09.2015;

(c) Form INC 22 for shifting of the Registered office.

(d) The 2nd Applicant/9th Respondent certified PAS3 for issue and allotment of shares to 3rd and 6th Respondents on 30.09.2015;

3. The Petitioner alleged that the Applicant/Respondent having not taken care and not acted with due diligence at the time of certification as per the declaration contained in the relevant form. As the same has been done without verification of the documents with *mala fide* intention by colluding with 2nd Respondent for personal gain and have falsely certified the forms filed with the Registrar of Companies with an intention to defraud. Based on these allegations, the petitioners have arrayed the Applicants/R8 & R9 as Respondents in the petition and prays for a direction to the Institute of Chartered Accountants of India to take disciplinary action against R8 and R9 and consequently take necessary action pursuant to such disciplinary proceedings. The Applicants/R8&R9 while denying the allegations levelled against them under para 34 and 35 of the petition, stated that the information on the basis of which they have certified the documents has been supplied by 1st and 2nd Respondents in the C.P and if the

information is found incorrect, it is the responsibility of the person concerned who provided wrong information. Therefore, they have duly complied with their professional duties and acted upon the code of conduct prescribed by the Institute of Chartered Accountants of India. The Applicants/Respondents 8 & 9 further contended that the matter pertaining to the professional misconduct should be dealt with by the disciplinary committee of the respective professional institutes. The Applicants/Respondents 8 & 9 have also made allegations against the Respondent/Petitioner that their array in the C.P. has been done with *mala fide* intention to defame the names of the Applicants/Respondents 8 & 9 and therefore, it will adversely affect their reputation in the industry. But the Applicants/Respondents 8 & 9 have not been in a position to show as to what is the reason/motive for such *mala fide* intention of the Respondent/Petitioner.

4. The Respondent/Petitioner and Respondent/Respondent-1 have filed counter to the company application wherein it has been denied that there is any *mala fide* intention to defame the Applicants/Respondents 8 & 9 in any manner and contended that the intention of the Respondent/Petitioner, Respondent/Respondent-1 is to prove that the illegal elements and the removal of 7th Respondent as Director were done with the help of the Applicants/Respondents 8 & 9. The Applicants/Respondents 8 & 9 were aware that they have committed fraud and it is the duty of the Respondent/Petitioner and Respondent/Respondent-1 to bring to the notice of this Bench, the professional misconduct on the part of the Applicants/Respondent 8 & 9 and to seek a direction to the ICAI to initiate proper action against Applicants/Respondents 8&9. The Respondent/Petitioner, Respondent/Respondent have also referred to the e-mail communication that has been sent by 2nd Applicant/9th Respondent on 23.08.2016 wherein it has been stated that the DSC has been used by the Company Secretary office to file the details of authorised capital and he did not know anything about the company or its dealings and the Institute of Chartered Accountants of India is calling them for any information which they do

not know that may relate to the company activities. The e-mail is on record. The perusal of which further goes to show that the tone and tenor with which the communication has been written, appears to be contemptuous in nature, as the sending of any notice by the NCLT is questioned; whereas it is the primary duty of the NCLT to issue notice to the concerned for giving reasonable and fair opportunity of being heard in order to comply with the principles of natural justice. We are expressing displeasure over the way the notice of the NCLT is questioned. However, care has to be taken that our displeasure may not affect the merits of the case.

5. We have heard both the sides and have perused the pleadings and the record placed on file. The counsel representing the Applicants/Respondents 8&9 have pleaded their innocence. However, the counsel appearing for Respondent/Petitioner has vehemently argued that if such kind of misconduct is not taken note of, then the same is likely to encourage other such Chartered Accountants to follow suit thereby the very reputation of the Institute of Chartered Accountants of India will ultimately be dashed to ground. The counsel for R2 in the company petition has, during the course of arguments, also submitted that the Chartered Accountants Act, 1949 and the Rules made thereunder provide a clear procedure for taking disciplinary action against the erring Chartered Accountants. Since an equally efficacious remedy is available under law there is no need to keep the applicants/R8 & R9 as Respondents in the company petition.

6. Based on the arguments which have been submitted by both of the parties, we deem it appropriate to delete the names of Applicants/R8 & R9 from the array of Respondents in the company petition and direct the Institute of Chartered Accountants of India that para 34 and 35 of the company petition and the counter filed by the Respondent/Petitioner-1 be treated as complaint against Applicants/R8 & R9 in Form-I under sub-rule (1) of Rule 3 of the Chartered Accountants (Procedure of investigation of professional and other misconduct and conduct of

cases) Rules, 2007 read with Section 21(3) of the Chartered Accountants Act, 1949 and to investigate into the allegations levelled against the Applicants/R8 & R9, if found correct, appropriate action be taken against them. The complainant is directed to provide the said documents including e-mail dated 23.08.2016 in triplicate before the Director (Discipline) of the Institute of Chartered Accountants of India by making payment of the fees prescribed. Accordingly, the Company applicant is disposed of.


(ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)


(CH. MOHD. SHARIEF TARIQ)
MEMBER (JUDICIAL)