

IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, CHENNAI
TCP NO. 164 OF 2016
(CP NO. 25/2015 BEFORE CLB)
UNDER SECTIONS 397, 398, 247 AND 402 OF THE COMPANIES
ACT, 1956
AND
IN THE MATTER OF
M/S. CHANDRA ROYAL INN PRIVATE LIMITED

Mr. Joseph Selvakumar

... Petitioner

Vs

M/s. Chandra Royal Inn Private Limited & 2 others

... Respondents

Order delivered on: 03/11/2017

PARTIES PRESENT:

Shri. K. Moorthy
Shri. S. R. Sundar
Ms. P. Stella Mary
Shri. P. Suresh

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Counsel for Petitioner

Shri. R. Rajesh

Counsel for the R1 and R2

Per: K. Anantha Padmanabha Swamy, Member (Judicial)

ORDER

Under consideration is a petition filed under sections 397, 398, 247 402, and of the Companies Act, 1956 alleging various acts of oppression and mis-management in the affairs of M/s. Chandra Royal Inn Private Limited (the Company) and the petitioner has also sought the following reliefs against the Respondents.

- (1) Declare that acts of Respondent No. 2 as fraud, deceit and oppressive to the shareholders of the company in general and the petitioner in particulars and constitute acts of mismanagement.**
- (2) Declare that the default committed to statutory authorities in the name of the 1st Respondent company would not in any manner bind the petitioner.**
- (3) Declare that the respondent No. 2 is unfit to act as directors of the 1st Respondent company by reason of their conduct, disabled themselves from acting as directors of the company and they are unfit to continue as directors in the best interest of the company and to remove them from the office of the director and appoint such other person or persons as this Hon'ble Board may deem fit.**
- (4) Direct the respondent No. 2 to compensate the company for the loss caused to the company due to their oppressive acts and mismanagement of the company's assets by assessing the quantum of damage through a committee of independent officers appointed by this Hon'ble Board.**
- (5) Declare that the acts of the respondent 2 quay the 1st Respondent does not bind the petitioner in his capacity as director of the 1st Respondent.**
- (6) Direct the R2 to vacate the officer of the 1st respondent and return all the books and records of the 1st Respondent Company.**
- (7) Order and direct Respondent No. 2 & 3 to bear the cost of these proceedings and pass such further or other orders as this Hon'ble Board may deem fit and necessary in the facts and circumstances of the case to**

put an end to the acts of oppression and mismanagement by Respondent 2 & 3.

The petition was filed before the erstwhile Company Law Board in CP No. 25/2015 and consequent upon constitution of the National Company Law Tribunal, the said petition was transferred to this Tribunal and renumbered as TCP No. 164 of 2016.

2. The brief averments made in the petition are that:

- The Company was incorporated on 17/09/2009 in the State of Tamil Nadu as a private company limited by shares and the subscribers to the Memorandum were the 1st petitioner and one Mr. M. Govindaraj and both were holding equal shares in the Company. Subsequently, Mr. M. Govindaraj has transferred his entire shares to the R2 and after the said transfer the petitioner and the R2 were holding the shares equally as 50:50. On 13.11.2013, 1% of shares have been transferred to the R2 by the petitioner and as such on the date of filing of the petition the holding between the petitioner and the R2 is 49% and 51% respectively.
- The petitioner is having landed property at Velankanni and he wanted to build a Hotel in it and therefore incorporated the 1st Respondent Company along with one Mr. M. Govindaraj.
- The R2 was brought in the place of Mr. M. Govindaraj with a fond hope that he would extend all his expertise for the development of the hotel project. The R2 has advised the petitioner to obtain bank loans instead of infusing funds by the petitioner and the R2. The

petitioner has accepted the proposal for availing loan from R3 with whom the R2 is having a good relationship in his other business activities.

- The R3 has sanctioned two terms loans of Rs. 275 lacs and Rs. 134 lacs on 23.01.2012 and 22.11.2013 for setting up a 2 star hotel in the landed property of the petitioner at Velankanni. The petitioner at the instance of R2 has executed a lease deed in favour of the Company for 20 years with permission to construct the Hotel Project in his landed property for purpose of availing said loans from the R3. The R3 has created security charge over the leasehold rights held by the Company in addition to the collateral security given by the petitioner of his immovable properties such as land admeasuring 1 acre 51 cents and another property admeasuring 10890 sq ft together with all buildings and structures thereon. Apart from the said securities, R3 has also obtained irrevocable and unconditional personal guarantee from the petitioner and the R2.
- The petitioner insisted R2 equally to provide collateral, however, the R2, with a malafide intention, convinced the petitioner that the R3 would accept the property situated at Velankanni only. The R2 had also coerced the petitioner to transfer 1% of the shares at the time of signing documents for availing 2nd term loan and the same was transferred to him. The R2 has also promised the petitioner that he would obtain "no Installment period" for one year from the R3, however, no such sanction was granted by the R3.

- After availing the 2nd term loan, R2 started compelling the petitioner to register the undivided share of the landed property wherein the hotel was constructed for which the petitioner refused. When R2 tried to stall the construction activities, the petitioner was forced to infuse funds by himself for the construction of hotel.
- The hotel was inaugurated on 14.04.2014. Later R2 got appointed a person one Mr. David as Operational Manager in the hotel. R2 has also got another person appointed as operational manager at the cost of Company.
- It is mentioned that the cheque signing authority was held jointly by both of them, R2 has been in the habit of refusing to sign cheques even for routine payments.
- When the Company failed to pay the installments to R3, a notice was issued by R3 to the Company dated 20.01.2015 demanding to pay the entire loan amount of Rs. 4,25,39,736/- together with interest. There upon the petitioner assured the payment of loan amount to R3 in due course.
- The R2 in his personal capacity addressed a letter dated 12.03.2015 to the R3 wherein he has made a false statement that the petitioner had offered to sell his properties. On knowing this the petitioner approached the R3 and clarified the issues. Thereafter R2 started pressurising the petitioner for transfer of landed property to him or to pay Rs. 5 crores to resolve the entire issues.

- It is mentioned that R2 has invested only less than Rs. 2 crores and he is demanding Rs. 5 crores or transfer all the immovable property worth more than Rs. 5 crores. It would show the malafide intention of the R2.
- Further the R2 has not cooperated and avoided signing forms to be filed with the Commercial Tax authorities knowing fully well that non compliance would lead to deregistration and closure of the Hotel.

Learned Counsel for the petitioner while reiterating the above averments, has submitted that the R2 is not cooperating in the affairs of the Company and his intention is only to grab the properties of the petitioner and the Hotel.

3. The R1 and R2 have filed counter statement. The brief averments of the counter are that:

- The R2 is a pioneering industrialist having global operation in the engineering sector whereas the petitioner is a small business man at Velankanni running a restaurant under the name and style of "Chandra Restaurant". The petitioner had envisaged a plan to construct a hotel in his landed property and incorporate a Company. The petitioner being a small business man is not an Income Tax assessee and do not have any expertise to construct a star rating hotel. Therefore the petitioner has approached the R2 through Mr.

M. Govindaraj and sought help to raise funds and to manage and run the Company.

- The petitioner fully aware that funds to the tune of Rs. 7 crores would be required for the entire project, intentionally for the purposes of luring and enticing the R2 into the project, has misrepresented and undervalued the same.
- The R2 has invested to the tune of Rs. 2,35,01,730/- in the Company from the year 2011. The R2 not only invested his personal money but also arranged funds through private financiers and the same is being repaid by the R2 only. The petitioner has not invested any money in the Company except offering his land. The funds to the tune of Rs. 6.45 crore which includes the loan availed from the R3 was sourced by the R2.
- It is mentioned that the petitioner is resident of Velankanni where the hotel is situated, whereas the R2 is a resident of Chennai, therefore, the day to day affairs of the Company are being looked after by the petitioner and R2 was only supervising the affairs of the Company from Chennai.
- It was the petitioner who has undervalued the cost of the Company and therefore the Company has to avail the 2nd term loan from the R3. Besides the loans, the R2 has invested more than Rs. 2 crores in the Company and therefore the share holding of the petitioner was proportionately increased and the submission that the

petitioner was coerced to transfer 1% of shares in the company to the R2 is far from truth.

- The petitioner has approached this Tribunal with unclean hands. The petitioner who has executed all the documents now cannot claim that he was never interested in securing loans through R2.
- The petitioner has not applied his mind properly in so far as the understanding of the loan transaction is concerned since the R3 was willing to grant loan only for the purpose of hotel business of the Company and hence, primarily insisted on providing security for the loan to the Company. Since, the hotel was constructed on the property of the petitioner, it was given as security for the loan availed from the R3 and more over it was the pet project of the petitioner and R2 was roped in for the purpose of infusing funds as the petitioner had no source of money to complete the project.
- The R2 has never compelled to register any property in his name or transfer of the business. The R2 has only assisted the petitioner for the betterment of the Company and the petitioner is continuously making false statements.
- The appointments of staff in the Company were done by both the petitioner and R2. The petitioner did not want any person to report to the R2. Subsequently, one Mr. Shangy Rajkumar was appointed and he has asked not to report to the business operations to R2, which proves that the business is being conducting individually by the petitioner. .

- Even after filing this petition, R2 was signing the cheques till the month of April 2015. The petitioner was unable to pay the installments to the R3 and the R2 was only paying the installments. The petitioner wanted the R2 to continue to pay the installments of the loan availed from the R3 and when the R2 could not support such payments after a period of time, the petitioner has agitated and filed the present petition.
- The petitioner while managing the affairs of the hotel collected huge sums of money in cash from the guests and not shown in the accounts the Company. Further various taxes were not paid to the concerned authorities. The petitioner has drawn huge amounts from the accounts of R1 for his personal use. The R2 neither used nor enjoyed any income of the Company.

By submitting the above, the learned Counsel for R1 and R2 prayed for dismissal of the petition.

4. The petitioner in his rejoinder inter-alia has stated that:

- The R2 on one side representing the Company is making false and frivolous allegations against the petitioner and the said dual stand would prove the malafide intention of the R2.
- The R2 was introduced through Mr. M. Govindaraj, the former shareholder and the director of the Company and the said Mr. M. Govindaraj still peeping into the issues of the Company and would shows that the said Mr. M. Govindaraj and the R2 is having personal

terms in grabbing the land of the petitioner. The "Chandra Restaurant" is pioneer brand in Velankanni having its culture and heritage of 68 years.

- The petitioner was not aware that funds to the tune of Rs. 7 crore would be needed to complete the project. The 2nd term loan was availed only due to the escalation in the cost of building materials. The claim that the R2 has invested in the share capital of the Company by borrowing money from private financiers is false as the same are loans to the company and the same was repaid to the said financiers by the company. The amount infused by the R2 was only investment and not investments towards share capital. The R2 has also failed to state that the private funds were arranged from the private financiers by using the cheque of the Company. The R2 has siphoned of the 2nd term loan through the account of Mr. M. Govindaraj and his spouse.
- The petitioner has availed the loans for the Company from R3 by mortgaging his own land and house property whereas the R2 has voluntarily included him a personal guarantor and recently has issued a letter to the R3 revoking his personal guarantee. Besides the loan obtained from R3, the petitioner himself infused Rs. 40 lakhs.
- The foundation of the hotel project was done even before the R2 become shareholder and the director of the company and before availing loan from the R3.

- The R2 refused to sign the 2nd term loan papers and he has insisted that 1% of shares of the petitioner has to be transferred to him. As the company was in dire need of funds to complete the construction, the petitioner has transferred his 1% share to the R2 only for the purpose of the betterment of the Company.
- Mr Dinesh and Mr. David both have left the company respectively on 01.01.2015 and 31.03.2015 without any intimation after the visit of the R2 to the Company. Mr. Sanghy Rajkumar who was the brother of the petitioner has taken over post of GM (acting) when the petitioner was on a short foreign assignment.
- The R2 has clearly stated in his letter dated 12.03.2015 addressed to the R3 that he would be taking the house property of the petitioner in settling the dues to them and subsequently vide letter dated 29.07.2015 intimated the R3 that he is withdrawing his personal guarantee extended to the company for availing loans.
- The R3 has sent a possession notice dated 30.10.2015 under section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and took the symbolic possession of the company and residence of the petitioner. The SARFAESI proceedings were subsequently stayed by the DRT. The R2 did not take any effort to deal with the R3, on the contrary has been insisting the R3 to put the petitioner's property for sale.
- The R2 has used a cheque signed by the petitioner and filled an amount of Rs. 18,10,000/- and paid the same to his own creditor,

which would prove that he is acting towards the detriment of the Company.

5. A Sur-rejoinder was filed on behalf of the R1 and R2 and inter-alia stating that:

- The R2 was cooperating with the affairs of the Company. When the R2 refused to pay the instalments to the R3, the petitioner has filed the present petition and did not allow the R2 into the hotel of the Company. When there was an obstruction, the R2 has filed an application in CA. No. 32 of 2016 for granting permission to enter into the hotel premises which was allowed by order dated 05.10.2016.
- The petitioner is well aware that for the purpose of construction activities the R2 paid money from his personal chit money and said chit was cancelled midway. As the money to the chit was paid by the R2 from his personal account, the same was drawn from the company account by way of the cheque signed by the petitioner and he is well aware of the same.
- The petitioner has forged the signature of the R2 in the purported minutes of a board meeting convened on 02.03.2016 for availing I CONNECT facility from Axis Bank. No such meeting was convened on 02.03.2016 as the R2 has only visited the hotel only after 05.10.2016 after he got the order in CA No. 32 of 2016 dated 05.10.2016.

The learned Counsel for the R1 and R2 has submitted that the petitioner has not made out any case of oppression and mis management in the affairs of the Company and the control of the company is with the petitioner only. In support of his submission he relied on a case law:

V. J. Thomas Vs Kuttanad Rubber Co limited – (1984) 56 Comp Cas 284 (KER) – to show that dissatisfaction of a minority of shareholders with the conduct of the affairs of the company by the majority will not normally persuade a court to interfere with the management. It is only when the court has before it reliable evidence where the majority acts against the provisions of the articles of association of the company or of the statute governing it or unconscionable use of the majority's power resulting or likely to result in financial loss or where action which could be characterized as unfair and improper is made, that the court will exercise its powers under section 397 or section 398 of the Companies Act. Therefore, he prayed this Tribunal to dismiss the petition.

6. This Tribunal vide its order dated 13.06.2017 permitted the R2 to visit the office premises of the Company along with a Chartered Accountant on 21.06.2017 and 22.06.2017 to ascertain upkeep of the books of account and registers pertaining to management and day to day affairs of the Company. The Chartered Accountant has filed a report dated 27.06.2017 wherein he has stated that in the absence of any stand alone financial statements, the up-keeping of the books of accounts and

register pertaining to management would not give a true and fair view in conformity with the accounting principles generally accepted in India or the state of affairs of the Company.

7. Heard. Perused the pleadings of both the parties.

8. It is on record that the petitioner has incorporated the company with one Mr. M. Govindaraj and subsequently the entire shares of Mr. M. Govindaraj have been transferred to R2 and both the parties have not disputed the same. The petitioner has stated that the basement work of the hotel was commenced before R2 becoming shareholder and director of the Company and the same was also accepted by the R2. It is also a fact that the R3 has sanctioned the term loans on the basis of the property of the company, collateral of the petitioner and the personal guarantee of the petitioner and the R2. It is also a fact that the R2 has revoked his personal guarantee given for the said loan availed by the Company. The petitioner in his petition, has stated that the R2 has invested Rs. 2 crores in the Company, however, it was not in the share capital of the Company and subsequently denied that R2 did not invest in the Company. The petitioner and R2 have made allegations against each other in the affairs of the Company, therefore at this juncture this Tribunal has to see the paramount interest of the Company.

9. There is no doubt that the hotel has been constructed on the property of the petitioner and he has given collateral securities to secure the loans availed from the banks besides his personal guarantee. The R2

has also withdrawn the personal guarantee given to the R3. The only dispute is that whether the R2 has invested more than Rs. 2 crores and the question is how to protect his interest in the Company. Though the petitioner holds only 49%, the control of the Company is vested with him and the R2 has also accepted that he is only supervising the affairs of the Company from Chennai and he is not taking part in the day to day affairs of the company and more over the petitioner is the Managing Director. In these circumstances, it is a fact that the petitioner and R2 will not be able to conduct the affairs of the company smoothly and jointly. Taking into consideration of the above, in my considered view any one of them has to be given an exit, then only the interest of the Company will be protected. It is on record that the petitioner has already filed a memo dated 03.04.2017 wherein he has stated that he is not willing to exit from the Company and he has offered an amount of Rs. 2.5 crores for the exit of the R2. In view of this, it is inevitable to value the shares of the Company and the option to be given to the petitioner and the R2 to purchase the shares of each other for the value to be determined by the Valuer.

10. Therefore, I am inclined to order that a Chartered Accountant has to be appointed to value the shares of the Company as on the date of filing of the petition and I direct both the parties to suggest a common Chartered Accountant within 10 days on receipt of this order, failing which this Tribunal will appoint a Chartered Accountant by referring to ICAI. The Chartered Accountant so appointed by the Tribunal has to file his report to

this Tribunal within four weeks from the date of receipt of the order. The fee for the valuer will be paid by both the parties equally. The Chartered Accountant is at liberty to collect the information and documents from the Company, the petitioner and the R2. Further both the parties are directed to cooperate with the Chartered Accountant to value the shares. Once the Chartered Accountant files the valuation report, first option will be given to the petitioner to purchase the 51% shares of the R2 within 2 months for the rate fixed by the Valuer, failing which the R2 will be given the opportunity to purchase the 49% of the shares of the petitioner with in a further period of 2 months. If the R2 purchases the shares of the petitioner, he shall take necessary steps to release the security provided by the petitioner and his personal guarantee for the loan availed by the Company. The R2 shall also take necessary steps pertaining to the lease executed by the petitioner in favour of the Company for 20 years. With the above observations the petition is disposed of. No orders as to costs.



K. ANANTHA PADMANABHA SWAMY

MEMBER (Judicial)