

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
CHENNAI

Arguments heard on 05.01.2017

Orders passed on 23.01.2017

TCP No.203 of 2016
(C.P.No. 12 of 2016)

Under Sections 237, 397, 398, 402, 406 r/w Schedule XI of the Companies Act, 1956

Petitioners : G.Palanisamy & G.Senthilkumar
Representing counsels : Senior counsel Shri. P.H.Arvinth Pandian,
counsels Shri. Cibi Vishnu and Shri. TVP Sai Vihari

Vs

Respondents : M/s. PMP Lunghi Private Ltd & 8 others
Representing counsel : Shri K.Moorthy for Respondent-7

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

ORDER

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

1. Under consideration is an issue that pertains to the appointment of interim administrator for running day to day affairs of M/s. PMP Lunghi Private Ltd. which is the subject matter in C.P.No.12 of 2016 that has been filed before the CLB, which stood transferred to NCLT and renumbered as TCP No.203 of 2016. The petitioners G.Palanisamy and G.Senthilkumar have filed the Company Petition against M/s.PMP Lunghi Private Ltd and 8 Others, under Sections 237, 397, 398, 402, 406 r/w Schedule XI of the companies Act, 1956. M/s.PMP Lunghi Private Ltd. (for short 'R1 company') is a company incorporated on 24.08.2005,

CIN : U18101 TN2005PTC 057271 issued under the Companies Act, 1956, having registered office at No.130, Coral Merchant Street, Mannady, Chennai-600001.

2. The petitioners have levelled allegations of oppression and mismanagement of the affairs of R1 company against the Respondents and sought different reliefs against them. The petitioners have also prayed for interim reliefs under para IX of the petition, inter alia, the appointment of Chartered Accountant for auditing the accounts of R1 company and appointment of interim administrator. During the course of hearing on 31.10.2016, this Bench identified two main issues relating to the disputes between the petitioners and respondents. The first issue is in relation to the appointment of Chartered Accountant for conducting audit of R1 company in order to determine the quantum of loss sustained by R1 company due to diversion of its funds and business that has been alleged by the petitioners against respondents. The second issue is pertaining to the appointment of interim administrator for running the day to day affairs and management of R1 company.

3. The first issue has been resolved with the consensus of both of the parties by appointing Chartered Accountant vide our order dated 05.01.2016 to conduct the audit of R1 company, along with its associate firms as has been agreed by the parties to the Company petition. In relation to the second issue that pertains to the appointment of interim administrator, the counsel for petitioners has filed written submissions stating therein that Kela and Company, the 7th Respondent (exclusively owned by the Respondents) had occupied the main factory premises of R1 company and are doing business by utilising the entire infrastructure belonging to that company. It has further

been averred that the firm continues to occupy the main factory premises of R1 company and the petitioners who hold 50% stake in the company and are two Directors out of four Directors of the company have been completely shut out from the main factory premises. Based on this arguments, the petitioners have contended that it is necessary to appoint an administrator by this Bench for ensuring that the assets and infrastructure belonging to R1 company are not misused any longer and used only for the betterment of the company.

4. Respondent-7 has also filed written submissions in the form of written statement contending that there has been division of R1 Company and this fact has been suppressed by the petitioners as there has been some settlement which is stated to have taken place between the parties through mediator Shri. Hithayathulla and practically the petitioners are managing the affairs of their division (in R1 company) with associate firms. In support of his contentions, Respondent-7 has made reference to various documents and the accounts being handled by the petitioners' group. However, Respondent-7 before concluding his written submissions, stated that since the auditor has been appointed for conducting the audit of R1 company, it would become easy for this Bench to conclude as to whether or not, the appointment of interim administrator is necessary. R7 further submitted that the appointment of interim administrator at this juncture is premature. Not only this, Respondent-7 also contended that the R1 company is a going concern along with its firms and the appointment of interim administrator is likely to generate negative propaganda which certainly would spoil the reputation of R1 company and the firms associated therewith.

5. After hearing both of the parties and going through the written submissions filed, it seems appropriate to wait till the report of the Chartered Accountant is submitted. When the detailed report would be made available, then we could be in a position to make fair assessment with regard to the desirability or otherwise of the appointment of interim administrator to manage the affairs of R1 company and the firm associated therewith.

6. In the light of the above, we feel it feasible to put the issue on hold till the report of the Chartered Accountant is received by this Bench and considered.


K. ANANTHA PADMANABHASWAMY
MEMBER (JUDICIAL)


CH. MOHD. SHARIEF TARIQ
MEMBER (JUDICIAL)