

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on, 06.03.2017

Order passed on, 06.03.2017

T.C.P.No.48 of 2016

(CP No. 36 of 2010)

Sections 111, 397, 398, 402 and 403 of the Companies Act, 1956

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

Petitioner : **M/s.Kasturi & Sons Ltd.**

Vs

Respondents : **M/s.Sporting Pastime India Ltd & 10 Others**

Representatives :

Shri Rohan K George, Counsel for petitioner

Shri Abishek Jenasenana, Counsel for R1, R2 and R10

Shri Gowtham Venkatesh, Counsel for R7

Shri Abishek Jenasenana for Shri S.Prakash, counsel for R8 and R9

ORDER

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

1. Under adjudication is the Company petition that came to be filed on 12.05.2010 before the CLB under Section 111 and Sections 397, 398, 402 and 403 of the Companies Act, 1956 and it was numbered as C.P.No.36 of 2010, which stood transferred to NCLT and renumbered as T.C.P.No.48 of 2016.

2. The main prayers which have been made in the Company petition are as follows :-

1) to cancel the transfer of 2,43,00,000 shares of Rs.10 each amounting to Rs.24,30,00,000 share capital issued in the name of Respondents No.2, 7, 8, 9 & 10 in the capital of R1 company and restore the name of the petitioner as the holder of all such shares in the capital of R1 company and

2) To rectify the register of members of the company suitably consequent upon such cancellation and registration of the shares.

However, the rest of the prayers are consequential in nature. From the pleadings, it is found that the very purpose of filing this petition is to get the implementation of the Award dated 16.12.2009 passed by the Arbitral Tribunal. In this connection, the petitioner has made a detailed mention under Para 6.20 of the company petition. The counsel for petitioner also filed a Memo dated 06.03.2017 for the implementation of the Arbitral Award dated 16.12.2009.

3. We have heard both of the sides and perused the documents placed on file. It is on record that Ms.B.Abirami, Advocate, associated with M/s.K.S.R.&Co. caused appearance on behalf of R3 on 26.04.2011. Thereafter, R3 chose not to appear. Hence, R3 is proceeded ex parte. R4 was deleted on 24.01.2017 from the Company Petition by the petitioner. R5, R6, R7 and R11 have already been set ex parte vide order dated 15.12.2016. However, Shri Gautham Venkatesh, Counsel

representing R7 present and stated that he has filed an application for setting aside the ex parte order dated 15.12.2016 passed against R7 and in support, he has filed an affidavit along with the application for condonation of delay. The counsel for petitioner stated that Mr.K.C.Palanisamy, being the Chairman of the group [as has been mentioned at Page 104 of the award] admitted before the CLB in his affidavit dated 13.7.2006 that he is the party to the Agreement dated, 19.07.2004 due to which he came to hold 90% of the capital of R1 through companies in Cheran. In view of the said fact having been admitted, we do not see that R7 is going to be prejudiced in any manner if the award is implemented. However, in order to comply with the principles of natural justice, the ex parte order dated 15.12.2016 passed against R7 is set aside and he is allowed to make submissions. Then he submitted that he is not the party to the Arbitral award.

4. Counsel for Respondents has drawn our attention towards the order of Hon'ble High Court of Delhi dated 15.07.2015 wherein an order of injunction in relation to the Company Application No.2258 of 2014 has been granted against Mr.K.C.Palanisamy that he shall not dispose of or otherwise part with, in any way, directly or indirectly any of his assets *inter alia* mentioned by him in the affidavit dated 22.8.2006 filed in Cr.Misc.Petn.No.4750 of 2006 and also in Annexure A-8. We have minutely examined the order passed by the Hon'ble High Court, Delhi, in the said matter. The said order does not mention anything about the shares held by

Mr.K.C.Palanisamy in SPIL. Therefore, we cannot presume that term 'any of his assets' includes the shares held by him in SPIL. Otherwise also the shares which is the subject matter of an award cannot be injuncted except the award is challenged. Even, the affidavit dated 22.8.2006 does not reveal anything about the shares being held by Mr.K.C.Palanisamy in SPIL. Further, Annexure A-8 at Page 12, under Item No.23 of the table indicates the shares [25,00,00,000] are held by R8 viz., Cheran Holdings Private Ltd., in SPIL but the fact is that the said increase in the share capital was declared illegal and void by CLB vide its order dated 9.10.2006 passed in C.P.No.15 of 2005, and the consideration of the shares received back was returned by SPIL to the creditor i.e. Canara Bank.

5. In the light of the submissions made by both of the parties and the documents placed on record, there does not appear any specific restriction imposed on the shares held by Mr.K.C.Palanisamy in SPIL. In view of this, the objection that has been raised by the counsel for R1, R2 and R10 stands rejected. It is not out of context to mention that the respondents have challenged the Award dated 16.12.2009 before the Hon'ble High Court of Madras which dismissed the application and then the SLP filed before the Apex Court was also dismissed. The Award dated 16.12.2009 has attained the finality.

6. In view of the above, the Respondents are directed to implement the award dated 16.12.2009 in its letter and spirit by making rectification

in the Register of members of R1 company and incorporating the name of the petitioner. The petitioner is directed to pay the consideration that has been mentioned in the award to the concerned.

7. However, during the course of hearing, it has been brought to our notice that the Board of Directors of SPIL is defunct. So, there is a need to appoint an independent Commissioner to execute the order of this Bench. In this connection, we hereby appoint the Deputy Registrar, NCLT, Chennai, as independent Commissioner to execute this order and submit a report to the Bench. The Commissioner is authorised to fix his fees for this purpose as per the norms in vogue and the petitioner shall pay the amount. After the entry of the name of the petitioner in the register of Members of R1 company, the petitioner shall file relevant papers before the Registrar of Companies concerned, by adopting the possible mode, which the ROC shall take on record. Accordingly, the company petition is disposed of.


K.ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)


CH. MOHD. SHARIF TARIQ
MEMBER (JUDICIAL)