

COMPANY LAW BOARD
NEW DELHI BENCH
NEW DELHI

CP NO. 36(ND)/2014



CA NO.

PRESENT: CHIEF JUSTICE M. M. KUMAR
CHAIRMAN

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF THE
COMPANY LAW BOARD ON 05.05.2016

NAME OF THE COMPANY: Mr Sumit Dhir,
Vs.
M/s. SK Habitare Homes India Pvt. Ltd.

SECTION OF THE COMPANIES ACT: 397, 398, 402, 403 & 406

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
	KRISHNA KUMAR	Adv.	Advocate For Petitioner	
	Ishaan Shukla			
	Manisha Chaudhary	Adv.	Respondents No. 1 to 12 & 16	
	Karan Malhotra	Adv.		
	Mohit Naagar	Adv.		

ORDER

This is an application with a prayer for amendment of C.P. No. 36(ND)/2014.

The fundamental reasons for amendment of the petition emerges from subsequent events which have been proposed to be incorporated in para 6.35 by adding para 6.35.1 to 6.35.34. The applicant- petitioner has also sought impleadment of parties by making addition which are listed at para 24(Y) and additional reliefs have been indicated in para Z, AA, BB, CC, DD, EE, FF, GG, HH, II, JJ, KK, LL, MM, NN, and OO.

Reply of the application has been filed and the amendment has been contested.

I have heard learned counsel for the parties at a considerable length and found that the amendment sought by the applicant-petitioner is similar to the one which was made in the connected petition i.e. 37(ND)/2014 by filing C.A No.122/C-1/2015. The aforesaid amendment was allowed by passing a detailed order on 28.7.2015. Under the caption "Conclusion" this Board has recorded the operative order in para 8 to 15 which are as under:-

"8. Having heard the learned counsel for the parties and perusing the records with their able assistance, I feel that it would be first appropriate to understand the controversy raised in the un-amended petition and therefore evaluate the amendment sought to be incorporated by adding paragraphs. The petitioner in the original petition has alleged that Respondent No.2 in connivance with her brother Respondent No.3 and others have been threatening the petitioners to simply walk out of Respondent No.1 Company. There are further allegations of threats hurled by one Shri Sanjay Kumar Gupta. Various events alleged to have taken place on 12.12.2013, 16.12.2013, 18.12.2013, 21.12.2013, 27.12.2013, 31.12.2013 and 2.1.2014 which have been set out in various paras and sub paras of para 3 of the petition. The averments made by the petitioner indicate that violence was inflicted upon him; bank account of the respondent company was taken over and so on and so forth. It was in the aforesaid facts and circumstances that this court had granted two interim directions on 25.3.2014 and 22.5.2014. Those interim orders are comprehensive to protect the interests of the petitioner and Respondent No.1 company. The interim directions go to the extent of restraining Respondent No.1 company to hold meetings of the Board directors or any EOGM without the prior approval of this Board. By the subsequent interim order dated 22.5.2014 advance intimation of any withdrawal from the bank was required to be given to the petitioner atleast 48 hour before the

withdrawal. The bank accounts were not to be operated unless it was accompanied by a copy of the email sent by Respondents No.2 and 3 to the petitioners showing clear 48 hour prior notice. There was a complete bar imposed on respondent from opening a new bank account of Respondent No.1 Company without prior approval of this Board. It is in these circumstances that certain further acts of diverting the asset of the company are sought to be brought on record.

9. The amended petition seeks to incorporate additional paras 6.35.1 to 6.35.28. These paras only reflected the events which have taken place after filing of the petition on 18.3.2014. It also seeks to highlight fabricated documents and the receipts which are claim to be issued by Courier Company M/s Big Guys. The Respondent No.2 claims to have sent notice for meetings through that courier company. In some other paras the fact concerning the complaint to the police about fabrication, investigation by the police and its report have been highlighted. It has also been pointed out that interim directions of this Bench have been flagrantly violated. A further sequence of events have been brought on record which lead to floating of M/s Habitare Hoteru Pvt. Ltd-Respondent No.14 which has taken the hotel run by Respondent No.1 company on lease from its owner proposed respondent No.15. A perusal of these paras would show that numerous allegations have been levelled concerning clandestine transfer of business of the Respondent No.1 Company by Respondents No. 2 & 3 to Respondent No.14 and Respondent No.23. These allegations merely elaborate acts of oppression and mismanagement within the meaning sections 397 and 398 of the Companies Act which is the very basis of the original petition. There is inseparable unity of facts and allegations made in the original petition and the amendment sought to be incorporated. The details of documents submitted for inspection have also been part of the amendment sought to be added by para 6.37.1 to 6.37.10. As a consequence to the various events a number of new parties are sought to be added alongwith relief clause. All parties sought to be added are necessary and proper parties. In any case the Board is not bound

by the strict principles of CPC and it can act on the basis of just and equitable principles.

10. The principles governing the amendment of pleading which guide the exercise of discretion in nut shell are as follows:

- a. Multiplicity of proceedings should be avoided.
- b. The prayer for amendment should be granted if it is made at the initial stage.
- c. One distinct cause of action should not be substituted for another.
- d. The subject matter of the suit should not be changed by amendment.
- e. Another omnibus principle which governs the law of amendment is that additions sought to be made must be necessary for the purpose of determining the real questions in controversy between the parties. (Surya Prakash Bhasin v. Smt. Raj Rani Bhasin & Ors.) (1981) 3 SCC 652.

Some of these principles have also been discussed by Hon'ble Supreme Court in the case of Ram Sahai v. Ramanand (2004) 13 SCC 40.

11. When the principles stated in the preceding paras are applied to the facts of the case in hand it becomes crystal clear that the additions sought to be made by amendment are absolutely necessary for deciding the controversy raised in the petition. The facts sought to be added are closely interconnected with the sequence of events earlier set out in the original petition. Various acts of omission and commissions as alleged in the earlier petition are stated to be continuing as reflected in various paras sought to be added by amendment. There are substantial allegations of siphoning of share capital of the Respondent No.1 Company and diverting the business of the Respondent No.1 Company to the new entities. Even the customers of the companies which are corporate houses have been hijacked to be the lease holders in a newly floated company. Likewise name of the parties who are necessary and proper to the controversy are also sought to be added. The amendments are undoubtedly necessary for deciding the controversy at hand. The law of amendment is liberal which guides the exercise of discretion because it avoids multiplicity of litigation. It is further appropriate to observe that the provisions

of Civil Procedure Code do not strictly apply to the proceeding before the CLB. Moreover, the amendments have been sought at the initial stage which highlighted the various acts of mismanagement causing irreparable loss to Respondent No.1 Company and the Petitioner. Therefore I am of the considered view that the prayer for amendment made by the petitioner warrants acceptance.

12. The arguments of learned counsel for the Respondent based on the order dated 25.5.2015 passed in CA No.113/C.1/2014 is wholly misconceived. No doubt, it is true that prayer (a) to (o) made in the application was not pressed by the Petitioner. It is equally true that the order enabled him to file appropriate application for amendment of the petition to introduce various acts of mismanagement in Respondent No.1 Company. It would be travesty of justice if the order is read the way respondents wanted me to read it. The order in fact permits the Petitioner to introduce all fraudulent acts of the Respondents alongwith such acts which are oppressive to Petitioner and Respondent No.1 Company. The Respondents are unlikely to suffer any legal prejudice by addition of facts/acts to be made by way of amendment of by addition of parties and the prayers. Therefore I do not find any substance in the submissions made by the Respondents. The second argument based on section 402(e) equally lacks substance. The aforesaid provision on a close scrutiny does not create any bar to terminate, set aside or modify any agreement between Respondent No.1 company and any other person except after due notice to the party concern. The argument is that the Respondent No. 1 Company has no connection with the agreement made by the proposed Respondent No.15 and proposed Respondent No.14. Such a submission cannot be sustained for the reason that proposed Respondent No.15 is the owner of the hotel which is run by Respondent No.1. Company and the lease between Respondent No.1 Company and Respondent No.15 was to expire in the year 2016. The allegation is that there is violation of agreement between Respondent No.1 Company and proposed Respondent No.15 as Respondent No. 15 entered into a fresh agreement to lease the same hotel to proposed Respondent No.14. By no stretch of imagination could it be said that

Respondent No.1 Company would be a stranger and have no interest in the agreement entered into between the proposed Respondents No.14 & 15. The submission made by learned counsel for the respondent is wholly without substance and therefore the same is rejected. The other two submissions that Misaki Hotel Pvt. Ltd.-proposed Respondent No.23 with Respondents No.2 & 3 as director alongwith Shri Keiji Nakajima, proposed Respondent No.24 have been unnecessarily dragged. Similar submissions have been made with regard to Respondent No. 16 to 22. It has also been noticed in the preceding paras that there are allegations that the assets of the Respondent No.1 Company have been clandestinely diverted to Misaki Hotel Pvt. Ltd where Respondents No.2 & 3 alongwith Japanese national Mr. Keiji Nakajima are director. Likewise the other Respondents No.16 to 22 are the corporate houses who were the customers with Respondent No.1 company. All those Respondents have now become customer of Respondent No.14 Company where Respondents No.2 & 3 are the Directors. There are allegations that asset of the R-1 company alongwith employees of the company have been clandestinely transferred to company Respondent No.14 which have similar name. Therefore the aforesaid objections would not survive because according to law they are necessary and proper parties for deciding the litigation pending before this Bench.

13. For the reasons, aforementioned the application is allowed. The amended petition is taken on record. Before parting I wish to make it clear that any observation made in this order shall not be construed as an expression of opinion on the merit of controversy.

14. The application stands disposed of. A copy of the amended petition have already been served on Respondents. Reply if any be filed before the adjourned date with a copy in advance to the opposite side.

15. List for further hearing on 19th August at 2.30 pm."

The aforesaid order was carried in appeal and the High Court of Punjab & Haryana has already dismissed the appeal.

The facts in the present application for amendment are quite akin to the case already decided by which is substantial between the same company and parties therefore the order dated 28.7.2015 would be applicable to the case in hand.

For the parity of reasoning and keeping in view that the same principal would apply I feel that the amendment deserved to be allowed. Accordingly application is allowed. However the petitioner shall pay the cost Rs.10,000/- as respondents would suffer in convenience of filing amended reply.

The amended petition is taken on record. Reply to the amended petition has already been filed and the same is taken on record. Rejoinder if any be filed within three weeks from today with a copy in advance to the counsel for the respondents.

The office is directed to take notice of the added parties from the amended memo and issue notice to the added parties for the date fixed.

List on 15.7.2016 at 10.30 am.


(CHIEF JUSTICE M.M. KUMAR)
CHAIRMAN

Dated: 05.05.2016

(vidya)