

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on April 15, 2014
Judgment Delivered on April 21, 2014

+ **W.P.(C) 1255/2014**

LUFTHANSA GERMAN AIRLINES

..... Petitioner

Represented by: Mr.C.Mukhopadhyay, Sr.
Advocate with Mr.Alok Bhasin,
Ms.Rashmi Gogoi, Advocates

versus

GLOBE GROUND INDIA EMPLOYEES UNION AND ANR.

..... Respondents

Represented by: Mr.Raj Kr.Sherawat with
Mr.Sushil Kumar, Advocate for
R1
Mr.Virender Mehta, Advocate for
R2

CORAM:

HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. The challenge in this writ petition is to the order passed by the Central Government Industrial Tribunal (Tribunal, in short) dated December 12, 2013 in I.D. No. 335/2011 on an application moved by the respondent No. 1 under Section 18 (3)(b) of the Industrial Disputes Act, 1947 for impleading Lufthansa German Airlines, the petitioner as a party to the dispute.

2. The brief facts are, that the respondent No. 2 namely M/s. Globe Ground India Pvt. Ltd. (GGI, in short) was incorporated in the year 1999 as a joint venture of GGmbH (in short, GGG) and Bird Group with equity participation of 51% and 49% shares respectively. In the year

2009, GGG services sold its entire 51% share holding of GGI to Bird Consultancy Services Pvt. Ltd. The GGI was providing ground handling services for the petitioner company till December 15, 2009 when pursuant to the change in the policy of the Government of India, Delhi International Airport Ltd. was given the exclusive rights to appoint ground handling agent, which appointed M/s. Bird Worldwide Flight Service as exclusive agency for providing ground handling services w.e.f. December 15, 2009.

3. Pursuant thereto, the GGI decided to retrench 106 workmen employed by it at its establishment at Indira Gandhi International Airport, Delhi. The retrenchment of 106 workmen became a subject matter of Industrial Dispute which was referred by the appropriate Government for the adjudication of the Tribunal vide order dated February 04, 2010 as per the following terms:

“Whether the action of the management of M/s. Globe Ground India Pvt. Ltd., New Delhi, a subsidiary of Lufthansa German Airlines carrier in closing down their establishment on 15.12.2009 and retrenching the services of 106 workmen (as per annexure) is justified and legal? To what reliefs, are the workmen concerned, entitled?”

4. Pursuant to the reference made by the appropriate Government, the respondent No. 1-Union filed a statement of claim before the Industrial Tribunal wherein, they had made the CEO of the GGI as a sole respondent. The prayer in the claim petition is as under:

“It is, therefore prayed, keeping in view the above, the Hon’ble Court may very kindly be pleased to direct

the management to reinstated the workmen in service with continuity of service and full back wages along with all consequential benefits having passed an award in this regard in favour of the workmen and against the management in the interest of justice. It is further prayed that management may also be directed to make to pay the legal expenses accrued due to filing of this case under the provision of ID Act 1947 and Central Rules 1957.

Pass any other order which this Hon'ble Court deem fit"

5. It is noted that the respondent No. 1 filed an application dated May 25, 2010 seeking impleadment of the petitioner and Bird Worldwide Flight Service. The said application was considered and dismissed by the Tribunal vide its order dated June 16, 2011 by holding that the application filed by the respondent No. 1 is premature inasmuch as based on the stands of the parties, in the absence of any evidence coupled with the fact that the case is at the preliminary stage, the pleadings are not yet complete, replication to the written statement is yet to be filed, it is difficult to conclude that the impleadment of the parties sought for, could be termed as necessary and proper parties. Meaningfully read, the Tribunal was of the view that such an application is pre-mature. I note that within a period of six months, on December 03, 2012, yet another application was filed by the respondent No. 1 under Section 18(3)(b) of the Industrial Disputes Act, 1947 seeking impleadment of the petitioner as co-respondent. The premise on which such an application has been filed, was that the petitioner has a majority share holding of 51% in GGI and being a majority shareholder, the decision of the Tribunal can only

be sought through the petitioner. I note that the said application of the respondent No. 1 was allowed by the Tribunal whereby, the petitioner was impleaded as a party on January 11, 2013. Since the petitioner was not heard before the Tribunal impleaded it vide order dated January 11, 2013, the petitioner approached this Court by way of a writ petition being W.P.(C) 3259/2013 challenging the order of the Tribunal dated January 11, 2013. This Court, vide order dated September 16, 2013, set aside the order dated January 11, 2013 of the Tribunal and remanded the matter back to the Tribunal for deciding the application for impleadment filed by the respondent No. 1 afresh in accordance with law. It appears, pursuant thereto, the petitioner has filed a response to the application filed by the respondent No. 1 for impleading it as a party to the reference on October 03, 2013. I may note here that on the aspect of equity participation in GGI, it is the case of the petitioner that GGI is a joint venture of GGGmbH and Bird Group. According to the petitioner, the GGG is a subsidiary of the petitioner- Airlines, which had shares to the extent of 51% in GGI. In other words, the petitioner has no equity participation in the GGI.

6. Be that as it may, the application filed by the respondent No. 1, came to be decided vide the impugned order dated December 12, 2013, whereby the Tribunal was of the view that the earlier order passed by it on January 11, 2013 need to be rehabilitated inasmuch as the reasoning given in the said order would hold good while deciding the application. I note, in the order dated January 11, 2013, the Tribunal was of the view that the petitioner is not only a necessary but a proper party and as such, allowed the impleadment of the petitioner.

7. Mr.C. Mukhopadhyay, learned Senior Counsel for the petitioner

would submit that the Tribunal having dismissed the earlier application, which was also for the impleadment of the petitioner, the second application would be barred by the principle of res judicata. He would further urge that the GGI being a separate legal entity, and the reference being against GGI, the petitioner has no role to play in the dispute. In support of his contention, he would state that the GGI has its own balance Sheet with separate Profits and Loss Account, having its own Board of Directors, the concept of lifting of corporate veil, that too against the petitioner-company, which has no equity participation in GGI, is unsustainable. In any case, it is his submission that the reference being what it is, the impleadment would be beyond the reference and no claim can be made against the petitioner. He would rely upon the following judgments in support of his case:

1. *2010, Vol. IV, LLJ 26, Delhi, Air India Ltd. Vs. Rakesh Kumar and Ors.*
2. *2011 (Vol. 4) LLJ 477, Delhi, Balwant Rai Saluja and Ors. Vs. Air India Ltd. and Ors.*
3. *(1964) II LLJ 460, Supreme Court, Hochtief Gammon Vs. Industrial Tribunal, Bhubaneshwar, Orisa and Ors.*
4. *(2007) 147 Punjab Law Reporter 628, Bahadur Singh and Anr. Vs. Avtar Singh.*

8. On the other hand, Mr. Raj Kumar Sehrawat, learned counsel for the respondent No. 1 would state that the principles of res judicata has no application in the facts of this case inasmuch as the Tribunal in its earlier order dated June 16, 2011 has not decided the issue of impleadment on merit, but rather has concluded that the same, at that stage was premature. In the absence of any determination on the issue of

Impleadment, on merit, the principle of res judicata would not be applicable. He would reiterate that the petitioner-Airlines was a majority shareholder of 51% shares in GGI and the presence of the majority shareholder is required for implementation of an award if granted by the Tribunal in the favour of the Union. He would rely upon communication dated October 16, 2001 written by Indo-German Chambers Commerce wherein, it has been mentioned that the petitioner has 51% stake in GGI. He would also point out to the written statement filed by the GGI before the Tribunal wherein, GGI has taken a stand that it is the petitioner-Airlines which has 51% shareholding in GGI.

9. In response to the submissions made by Mr. Sehrawat, Mr. C. Mukhopadhyay, the learned Senior Counsel for the petitioner has placed before me the claim petition filed by the respondent No. 1 before the Tribunal to show that it is the stand of the respondent No. 1 itself before the Tribunal that GGI was formed by GGG and Bird Group having 51% and 49% shares respectively. He has also drawn my attention to the response filed by the petitioner to the application before the Tribunal, wherein, the petitioner has taken a stand that 51% shares of GGI were held by GGG.

10. Having heard the learned counsel for the parties, the first and foremost aspect, which need to be clarified is whether the petitioner had any equity participation of 51% shares in GGI. It is clear as per the stand of the respondent No. 1 and also the stand of the petitioner before the Tribunal that it is the GGG, which held 51% shares in GGI. In that view of the matter, the terms of the reference of the appropriate Government which narrates GGI as a subsidiary of Lufthansa Airlines may be factually incorrect. Be that as it may, suffice to state that the GGI

was a subsidiary of GGG, which had 51% shares in GGI. The position that can be noted is that GGI was a subsidiary of GGG, which is a subsidiary of petitioner-Airlines. Coming to the merits of the submissions insofar as the plea of res judicata raised by the learned Senior Counsel for the petitioner, I note that the Tribunal in its order dated June 16, 2011, has held that the application for impleadment requires an adjudication about a party being a necessary or a proper to be determined on evidence and in view of the fact that pleadings have not been completed, such an application was not maintainable. In other words, such an application was a premature one. I find that in the earlier application also, the respondent No. 1 had claimed the impleadment of the petitioner-Airlines. Since there is no adjudication of the application on the merit, surely, the principle of res judicata would not be applicable.

11. Further, insofar as the submission that the impleadment of the petitioner would be beyond the terms of the reference is concerned, I agree with the learned Senior Counsel for the petitioner-Airlines that the reference made was with regard to the adjudication of retrenchment of 106 workmen by the GGI. The reference to Lufthansa Airlines was even though factually incorrect, have no bearing insofar as the claim of the workmen, primarily being against GGI. It is not disputed that the workmen in question were appointed by GGI and the retrenchment effected by GGI. It is the action of the GGI which has to be tested by the Tribunal. In this regard, I refer to the judgment of the Orissa High Court reported as 2008 (119) FLR 321, *Birla Tyres Workers Union Vs. Industrial Tribunal and Ors.* where it held as under:

“10. A perusal of Section 10(4) of the I.D. Act clearly goes to show that the Labour Court or the Industrial

Tribunal is required to confine its adjudication to the specific points of dispute, which has been referred to it by the appropriate Government for adjudication and matter incidental thereto. In the instant case, the reference being specific and confine to the adjudication of the question as to whether the action of the management of M/s. Baba Enterprises, opposite party No. 2, in effecting retrenchment of 75 workmen is legal and/or justified, the same cannot be expanded to include the issue as to whether the concerned workmen were in fact working under the principal employer and whether they have been retrenched by such principal employer. Such a plea of the workmen is alien to the original reference, as quoted above and allowing the same would amount to introducing a new case beyond the scope of such reference. The aforementioned decisions referred to by Sri Mohanta, for the petitioner, has no application to the facts of the present case.”

12. Holding of majority shares to the extent of 51% by GGG, which is a separate legal entity (separate from Lufthansa Airlines also) has no bearing on the implementation of an award even if granted in favour of the workmen inasmuch as a subscriber is different from a company, which is a separate legal entity. The award needs to be executed against a company and not against a majority share holder (here erstwhile). Hence, the submission of Mr. Seherawat that the presence of the petitioner even though, not having any equity participation in GGI, for

effecting implementation of the award, need to be rejected. Even in the facts, the GGI, GGG and Lufthansa Airlines, being separate legal entities, the concept of lifting of corporate veil would not be applicable. The position of law is well settled in this regard. The Division Bench of this Court in the case of *M/s. Freezair India (P) Limited Vs. Commissioner of Central Excise, Commissionerate, 2014 IAD (Delhi)* has held as under:

“11.....A company once incorporated in accordance with the law is a juristic person, a body corporate capable of being sued and with the right to sue a third person. A company in law is a different person, altogether from the subscribers of the memorandum and the promoter directors. Company's debts are the obligations of the company and similarly the promoter's debts are obligation of the promoters and cannot be normally recovered from the other. Principle of independent corporate existence of a registered company is of great significance and cannot be ignored except in the case of statutory mandate or when the corporate veil is required to be pierced for exceptional and good reasons. These are extraordinary situations when the law goes behind the corporate personality and ignores the legal entity for justifiable, sound and adept reasons.

12. Strictly speaking, principle of lifting of corporate veil has no application to the facts of the present case. The said principle is normally applied against the promoter directors, directors or others in charge and responsible for day to day work of the company, to enforce obligations of the corporate identity and seek performance or penalise the natural person behind the corporate cloak. Sometimes but rarely it can be applied as a principle at the behest of the company i.e. the corporate entity.....”.

13. None of the above circumstances are available nor have been pleaded by the respondent No. 1. I find, the Tribunal had proceeded to decide the issue on a fallacy inasmuch as the stake of 51% in GGG having been registered by the Registrar of Companies after the termination was effected on December 22, 2009, which is a date after the workmen concerned in the Industrial Dispute services were terminated i.e. December 15, 2009, the Airlines cannot be said to have transferred its undertaking in favour of M/s. Bird Consultancy Services Pvt. Ltd. Such a conclusion is totally erroneous. There is no transfer of undertaking by the Airlines in favour of M/s. Bird Consultancy Services Pvt. Ltd. What has been transferred are the 51% shares, that too, by GGG in favour of M/s. Bird Consultancy Services Pvt. Ltd. Transfer of shares would not effect the existence of the company as a legal entity. It existed before December 15, 2009 and even thereafter. It is the action of the legal entity namely Globe Ground India Pvt. Ltd. in retrenching the 106 workmen, which need to be determined in the Industrial Dispute and not the action of a shareholder (now erstwhile shareholder). Such a conclusion is antithesis to the very concept of a company under the provisions of the Company Law.

14. Insofar as the judgments relied upon by the learned counsel for the petitioner, the ratio of the judgment of this Court in *Air India Ltd.'s case* (*supra*) is squarely applicable inasmuch as in para 17, this Court, has held as under:

“17. A perusal of the Memorandum and Articles of Association of HCI shows that the general management of business of HCI vests in the Board of Directors of HCI subject to the directions, if any, from

time to time of Air India in regard to the finance and conduct of the business and affairs of HCI. The composition of the Board of Directors of HCI is controlled by Air India in consultation with the Government of India. The question which arises is whether for the said reason only it can be said that the employees though employed by HCI are employees of Air India. This stares in the face of the first principles of Corporate Law, dating back to Solomon Vs. Solomon and Co.Ltd. 1897 AC 22 where it was held that in law a company is a person altogether different from its shareholders. Air India is nothing but the sole holder of the shares of HCI. However HCI is a legal entity independent of its shareholders. Merely because the shareholder is one, the said fact does not eliminate the difference in the identity of a company as a separate legal identity from its shareholders. Also, merely because the Articles of Association of a company provide that the management or its affairs and business and finances shall be subject to the direction, if any, issued by the sole shareholder, the said fact again does not merge the identity of the shareholder with the company. Neither has the CGIT returned a finding nor have the respondent workmen contended that in the exercise of the aforesaid Articles of Association of HCI, Air India has issued a directive as to whom to employ and whom not to employ and is

regulating or supervising the terms of employment of any of the employees of HCI. Thus, in my view the mere fact of HCI being a 100% subsidiary of Air India and the aforesaid peculiar Articles of Association would not be decisive of whether the employees aforesaid of HCI and working in the canteen of Air India are to be treated as employees of the Air India or not”.

15. Further, in *Balwant Rai Saluja’s case (supra)*, this Court has held, when there is no material on record to show the respondent had any role in appointment of employees in Canteen, no administrative or disciplinary action could be taken by the respondent against the Canteen workers, the respondent had itself not undertaken obligation to run Canteen but had only provided facility so that its employees could avail Canteen facility. The responsibility to run Canteen was absolutely with HCI and it was totally a contractual relationship between two, had no say in selection or other affairs of the canteen workers. Their claim for regularization in Air India on the premise that they are its employees, was rejected.

16. Similarly, in *Hochtief Gammon’s case (supra)*, the Supreme Court, while dealing with the dispute related to payment of bonus, the parties impleaded Hindustan Steel Ltd., the Supreme Court held that the Hindustan Steel Ltd. cannot be regarded as necessary party and thus, cannot be impleaded in the circumstances of the case. The Court also held that the Industrial Tribunal is a Tribunal of limited jurisdiction to try the Industrial Dispute referred to it for adjudication by the appropriate Government under Section 10, and it is not open for the

Tribunal to travel materially beyond the terms of reference, for it is well settled that the terms of reference determined the scope of its powers and jurisdiction from case to case. In the present case also, I find that in the claim petition filed by the respondent No. 1, the GGI was made a sole respondent. That apart, even the relief was primarily directed against the respondent No. 2. Further, the terms of reference shows the adjudication is with regard to the action of GGI in closing down their establishment and retrenching the services of 106 workmen. A reference to GGI as subsidiary of Lufthansa German Airlines Carrier, would not mean that such a claim could also be made against the Airlines, when the Airlines did not have any equity participation in GGI. In terms of the ratio of the judgment of this Court in *Air India Ltd's case (supra)*, even if GGI was said to be a 100% subsidiary of the petitioner, then also a claim cannot be made against the petitioner-Airlines.

17. The judgment of *Bahadur Singh's case (supra)* relied upon by the learned counsel for the petitioner would not be applicable in the facts of this case. Moreover, as I have already concluded that the said principle would not be applicable in the facts of this case, the judgment is clearly distinguishable.

18. In any case, in view of my above conclusion, I find that the order of the Tribunal is clearly erroneous and the same is liable to be set aside. I do so accordingly. The order dated December 12, 2013 passed by the Tribunal, impleading the petitioner is set aside.

19. The writ petition is allowed in terms of the above.

20. No costs.

CM No. 2592/2014

21. In view of the order passed in the writ petition, this application is

disposed of as infructuous.

(V.KAMESWAR RAO)
JUDGE

APRIL 21, 2014
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