IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY APPEAL NO. 3 OF 2009.

Morgan Ventures Limited,
A Company incorporated under the Companies Act, 1956 and rules framed thereunder having its registered Office at 53, Friends Colony (East),
New Delhi -110065 ….... Appellant.

Versus

1. Blue Coast Hotels and Resorts Limited, having its registered Office at 263C, Arossim, Cansaulim, GOA 403712
Corporate Office at :
415-417 Antriksh Bhawan, 22, Kasturba Gandhi Marg, New Delhi.

2. Mr. P.L. Suri,
C/o. Blue Coast Hotels and Resorts Limited, 263C, Arossim, Cansaulim, GOA 403712

3. Mrs. Sunita Suri
C/o. Blue Coast Hotels and Resorts Limited, 263C, Arossim, Cansaulim, GOA 403712.

4. Mrs. Mamta Suri
C/o. Blue Coast Hotels and Resorts Limited, 263C, Arossim, Cansaulim, GOA 403712.

5. Mr. B. K. Goswami,
C/o. Blue Coast Hotels and Resorts Limited, 263C, Arossim, Cansaulim, GOA 403712.

6. Mr. K. S. Mehta
C/o. Blue Coast Hotels and Resorts Limited, 263C, Arossim, Cansaulim, GOA 403712.

7. Mr. V. M. Kaul,
C/o. Blue Coast Hotels and Resorts Limited, 263C, Arossim, Cansaulim, GOA 403712.

8. Mr. Ashoka Kini,
C/o. Blue Coast Hotels and Resorts Limited, 263C, Arossim, Cansaulim, GOA 403712.

9. Morepen Laboratories Limited,
having its office at Village Masul Khana, Parwanoo, Tehsil Kasauli,
District Solan, Himachal Pradesh.

10. Laxmi Vilas Bank,
Registered Office at Salem Road, Kathaparai, Karur, Tamil Nadu – 639 006,

11. Dombivali Nagari Sahkari Bank Ltd.
Registered Office at :
Madhukunj, Plot No.P/162 MIDC, Phase – II, Kalyan – Shil Road, Sonarpada, Dombivali (East) – 421 204

12. Scope Credits & Financial Services Pvt. Ltd., Registered Office at : 3, Tordarmal Lane, 1st Floor, Bengali Market, New Delhi – 110001.

13. Seed Securities & Services Pvt. Ltd., Registered Office at : 3, Tordarmal Lane, 1st Floor, Bengali Market, New Delhi – 110001.

14. React Investments & Financial Services Pvt. Ltd., Registered Office at : 3, Tordarmal Lane, 1st Floor, Bengali Market, New Delhi – 110001.

15. Liquid Holdings Pvt. Ltd., Registered Office at : 3, Tordarmal Lane, 1st Floor, Bengali Market, New Delhi – 110001.

16. Epitome Holdings Pvt. Ltd., Registered Office at : 3, Tordarmal Lane, 1st Floor, Bengali Market, New Delhi – 110001.

17. Ebony Traders Pvt. Ltd., 1008, Sector – 19B, Chandigarh-160019.

(vide order dated 11/11/11, of the Ltd. Registrar, matter stands dismissed for want of prosecution against the respondents No.12 to 17.)

18. Blue Coast Hospitality Pvt. Ltd., at 263C, Arossim, Cansaulim, Goa 403712. ……. Respondents.

Mr. Sreejesh M.K. and Mr. R. Rao, Advocates for the appellant.

Mr. Shivan Desai and Mr. Jatin Ramaiya Advocates for the respondents.

CORAM :- F.M. REIS, J.

Date : - 4 DECEMBER 2015.

ORAL JUDGMENT :

Heard Mr. Sreejesh M.K., learned Counsel appearing for the appellant and Mr. Shivan Desai, learned Counsel appearing for the respondents.

2. The above appeal challenges an order passed by the Company Law Board dated 31th July, 2008 whereby an application under Sections 397 and 398 of the Companies Act, 1956 came to be dismissed on two counts. The learned Company Law Board came to the conclusion that as the affidavit dated 1/8/2007 was not in accordance with the requisite consent required for filing an application under Sections 397 and 398 of the Companies Act, 1956, the appellants were not entitled for any relief in such an application for filing such a false affidavit. The next ground on which the application came to be rejected is that the allegation of the appellants that they had consent of more than 100 members of the respondent Company was on the basis of a list submitted by M/s. Religare, out of which 43 members were not shown in the Register of Members maintained by the respondent

Company.

3. The learned Counsel appearing for the appellant, in support of the above appeal, has pointed out that the learned Company Law Board has erroneously come to the conclusion that the affidavit filed by the Company Secretary of the appellant was a defective affidavit, overlooking the fact that the affidavit was dated 1/8/2007 though the application under Sections 397 and 398 was, in fact, dated 26th September, 2007 when, according to the learned Counsel, consent of 106 members as reflected in the affidavit was already obtained by the appellant as on the date of filing such an affidavit. The learned Counsel further points out that in any event, such an irregularity in the verification can be corrected as, according to him, it is a curable defect. The learned Counsel further submits that the appellants have produced sufficient material on record to substantiate their contention that the requisite consent of more than 100 members was in fact obtained as on 26/9/2007, which is the date when the petition was filed. The learned Counsel has, thereafter, taken me through the observations of the learned Company Law Board in the impugned order to point out that the Authorities have misconstrued the affidavit and erroneously

come to the conclusion that as the allegations made therein were not in conformity with the admitted number of members as on the date reflected in the affidavit, the appellants were not entitled for the reliefs sought in the such an application.

With regard to the second ground, the learned Counsel appearing for the appellants has pointed out that the appellants have produced a letter from the depository dated 14/2/2008, *inter alia,* confirming the list of beneficiaries shown in the records of the depository. The learned Counsel has, thereafter, pointed out that the list of the members was attached to the said letter and on perusal of the consent relied upon by the appellants, such persons are to be accepted to be the members of the Company for the purpose of filing an application under Sections 397 and 398 of the Companies Act. The learned Counsel has, thereafter, taken me through the impugned order to point out that the learned Company Law Board erroneously non-suited the appellants merely on the basis of the Register of Members, as maintained by the Company, overlooking the fact that in terms of Section 41(3) of the Companies Act, 1956, the list shown with the depository draws a presumption in favour of the appellants. The learned Counsel has, thereafter, pointed out that though the provision of Section 41(3) of the Companies Act has been noted by the learned Company Law Board, the effect thereof based on the list of beneficiaries submitted by the depository has not at all been considered by the learned Company Law Board to come to the conclusion that 43 persons reflected in the list produced by the appellants, were not the members of the Company. The learned Counsel further submits that in case of any deficiency between the list of members as shown in the list of the Company and the list maintained by the depository, a presumption would be drawn based on the members shown in the list of Members maintained by the depository. The learned Counsel has, thereafter, taken me through the impugned order to point out that in any case, since the respondents are disputing the correctness of the contents of the said letter dated 14/2/2008, the Company Law Board ought to hold an inquiry and give an opportunity to lead evidence in support of their such contention. The learned Counsel further pointed out that though there is a categorical averment in the said letter to point out that M/s. Religare is in trading account, nevertheless, the learned Company Law Board has erroneously come to the conclusion that the fact that they were shown in the trading account has not been established by the appellant. The learned Counsel has, thereafter, taken me through the findings of the learned Company Law Board to point out that the impugned order cannot be sustained and deserves to be quashed and set aside.

4. On the other hand, Mr. Desai, learned Counsel appearing for the respondent has seriously contested the contentions of the learned Counsel appearing for the appellant. The learned Counsel submits that the verification of the affidavit filed the appellant, clearly shows that the averments therein are false and, as such, on the basis of such a false affidavit, the learned Company Law Board was justified to dismiss the application filed by the appellant. The learned Counsel further points out that on the basis of the evidence on record the respondents have produced, as on the date of the verification of such an affidavit i.e. 1/8/2007, the list of members as shown in the Register of Members of the respondents and from the list produced by the appellant only 6 persons are shown as members of the concerned Company. The learned Counsel has, thereafter, taken me through the averments in the affidavit to point out that the deponent had, in fact, stated that 106 members were shown as members, when in fact only 9 persons shown therein were members, which clearly shows the falsity

of the averments made therein. The learned Counsel, as such, submits that the learned Company Law Board was justified to dismiss the application filed by the appellant on this count alone.

5. With regard to the second ground, Mr. Desai, learned Counsel appearing for the respondent has submitted that inconsistency in the arguments of the learned Counsel appearing for the appellant before the Company Law Board would clearly defeat the contention of the respondents that 43 members were shown in the trading account of M/s. Religare. The learned Counsel further submits that as the disputed persons are not shown in the Register of Members maintained by the Respondent, nor are established to be the beneficial owners in the records of the Depository, the question of drawing any presumption in terms of Section 41(3) of the Companies Act, would not arise. The learned Counsel has, thereafter, taken me through the inconsistent stand taken by the appellant in the impugned order to point out that the learned Company Law Board was as such justified to dismiss the application filed by the appellant as consent of more than 100 persons was not shown on the date of filing of such an application. The learned Counsel further submits that there is no case made out for

interference in the impugned order and consequently, the above appeal be dismissed.

6. I have considered the submissions of the learned Counsel and I have also gone through the records. No doubt that on perusal of the verification in the said affidavit dated 1/8/2007, it is seen that there are incorrect statements made by the deponent therein, but, however, the defect in the verification, is a curable defect. The learned Counsel appearing for the appellant, as such, points out that the appellants would file a fresh affidavit, correcting such defects, in accordance with law. The observations of the learned Company Law Board, in the impugned order, on such count would not survive by granting liberty to the appellants to file a fresh affidavit, along with the verification in support of their contention that the appellant had the requisite consent of the members as on the date of the filing of the application.

7. With regard to the second ground on which the application of the appellant came to be rejected, I find that though the appellants had produced the letter from the Depository, namely M/s. Religare, dated 14/2/2008 along with a list of members allegedly shown as beneficial

owners, as per the record of such Depository, which aspect was seriously disputed by the Respondent Company, the learned Company Law Board was not justified to reject the correctness of the contents thereof, without holding a proper inquiry/investigation on that count, by giving both the parties an opportunity to lead evidence in support of their rival claims. The effect of the said letter, based on the factual aspect and the provisions of Section 41(3) of the Companies Act, would have to be examined only after the appellants are in a position to prove the contents of the said letter dated 41/2/2008 submitted by M/s. Religare.

8. On perusal of the impugned order, I find that merely because the respondents have disputed the correctness of the list of members as reflected in the record of the Depository, as it was not in conformity with the list of members maintained by the Company, the Board chose to non-suit the appellant in an application under Section 397 and 398 of the Companies Act. As this aspect would have to be considered based on the investigation/inquiry, I find that the learned Company Law Board ought to have given an opportunity to the parties to lead evidence on this aspect and thereafter proceeded to examine the

correctness of the rival contentions. Having failed to do so, the learned Company Law Board has erroneously exercised the jurisdiction whilst passing the impugned order which would call for interference of this Court in the present appeal.

9. At this stage, the learned Counsel appearing for the respective parties point out that the remaining contentions, based on merits, may not be examined by this Court as it may influence the learned Company Law Board whilst disposing of the preliminary objections raised by the respondents to the application under Sections 397 and 398 of the Companies Act, considering the view I propose to take in the above appeal.

10. In view of the above and for the reasons aforesaid, I pass the following Order :

(I) The appeal is partly allowed.

(II) The impugned order dated 31/7/2008 passed by the Company Law Board, Municipal Bench, New Delhi is quashed and set aside.

(III) The Company Law Board is, accordingly, directed to decide the preliminary objections raised by the respondents vide Company

Application No.88/2008 afresh, in the light of the observations made herein above, in accordance with law.

(IV) All the contentions of both the parties, on merits, are left open.

(V) The appeal stands disposed of accordingly, with no order as to costs.

F.M. REIS, J.

ssm.