

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CAPP No. 39 of 2015 (O&M)

Date of decision : 28.8.2015

Misaki Hotel Private Limited

.. Appellant

versus

Mr. Sudeep Dhir and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. U. K. Chaudhary, Senior Advocate with
Mr. Himanshu Vij and Mr. Praveen Gupta, Advocates,
for the appellants in CAPP No. 39 and 41 of 2015.

Mr. Anand Chhibbar, Senior Advocate with
Mr. Gaurav Mankotia, Advocate, for the appellant
in CAPP No. 40 of 2015.

Rajesh Bindal, J.

This order will dispose of three appeals bearing CAPP No. 39 to 41 of 2015.

Challenge has been made to composite order dated 28.7.2015 passed by the Company Law Board (for short, 'the Board'), whereby the application for amendment of pleadings and impleading the parties was allowed.

In the case in hand, respondent no.1 filed petition before the Board against respondent no. 2- company alleging oppression and mismanagement. In the petition initially filed, 13 respondents had been added. However, the same was withdrawn. Later on, application was filed for amendment of the pleadings and also for impleading additional parties. The same was allowed by the Board vide order dated 28.7.2015 and the said order has been impugned in the present appeal (Annexure A-1).

Learned counsel for the appellant submitted that earlier respondent no.1- applicant filed application praying various reliefs including the prayer for impleading the parties. The same came up for

hearing on various dates and ultimately on 25.5.2015, learned counsel for the applicant did not press the prayers from 'a' to 'o' in the application. However, counsel for the applicant prayed for liberty to file appropriate application for amendment of the petition by introducing facts of mismanagement in the company and fraudulent acts by the respondents. The Board granted the liberty. Later on, the application was filed for amendment of the petition and further seeking permission to add new parties.

While impugning the order, the contention raised is that a fresh application filed for the same relief was not maintainable in view of Order II Rule 2 CPC. A composite application filed for amendment of the pleadings and impleading parties was not maintainable. The parties sought to be impleaded were to be offered opportunity of hearing before impleading them. It was further argued that in the cases of M/s Misaki Hotel Private Limited and Mr. Keiji Nakajima right had accrued in favour of the appellants as the application earlier filed seeking their impleadment was dismissed as not pressed. The appellants were not impleaded earlier as party to the litigation as they have nothing to do with the lis between the shareholders and the company.

In CAPP No. 40 of 2015, additional argument submitted by learned counsel for the appellants was that it was merely lessor of the property to the company. In terms of lease-deed, the lease would be cancelled in case the cheques issued towards payment of rent amount are dishonored for a continuous period of two months. In that event the lease deed shall be rendered null and void and the lessee shall be liable to immediately restore the actual physical possession of the leased premises to the Lessor.

Cancellation of lease-deed with respondent no.2- M/s Habitare Hotels & Resorts Private Limited on 17.5.2014, cannot possibly be gone into by the Board as no relief can be claimed against the appellant. It has wrongly been dragged in the litigation.

The facts pertaining to the dealing with the appellant can be taken on record but it cannot be impleaded as party. Any dispute pertaining to the lease-deed with the appellant can only be raised before Civil Courts at Gurgaon and not before the Board. It was further submitted that respondent no.1 misused the orders passed by the Board and even filed a complaint

with the police seeking registration of FIR. It was prayed that the impugned order directing the impleadment of the appellants as parties to the litigation be set aside.

After hearing learned counsel for the parties, I do not find any reason to interfere with the impugned order. The contention sought to be raised by learned counsel for the appellants have been considered threadbare in the impugned order. No legal issue as such has been decided earlier, rather the prayers from 'a' to 'o' made in the earlier application filed were dismissed as not pressed with liberty to file a fresh application for amendment of the pleadings regarding mismanagement in the company and fraudulent act by the respondents. Zimni orders passed in a case are not to be treated as judgments. There is no requirement in law to hear any person before he is impleaded as a party to the litigation. It is settled that in a petition filed for oppression and mismanagement, even a third party can be impleaded against whom an order can possibly be passed. Section 402 of the Companies Act, 1956 is quite wide in its application. Reference can be made to judgment of this Court in Triangel Builders and Promoters Private Limited vs CPI India Real Estate Ventures Limited 2015 (3) PLR 163. The appellants have been impleaded because in the amended petition, respondent no.1 had made allegation regarding diversion of business by the company. It is too pre-mature to hold that the Board will pass any order which may be beyond its jurisdiction. The matter is still at the preliminary stage. The respondents are still to file their reply to the amended petition.

For the reasons mentioned above, I do not find any reason to interfere with the impugned order. No question of law arises. The appeals are accordingly dismissed.

28.8.2015
vs

(Rajesh Bindal)
Judge