

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2018

CORAM

THE HONOURABLE MR. **JUSTICE M.M.SUNDRESH**

**Company Petition No.397 of 2016
and
Company Application No.55 of 2018**

M.J.Rajiv

.. Petitioner

Vs.

1.M/s.Madras Boat Club,
No.2, 3rd Avenue, Boat Club Road,
Raja Annamalaipuram,
Chennai - 28.

2.The Registrar of Companies,
Ministry of Corporate Affairs,
Block No.6, B Wing, 2nd Floor,
Shastri Bhavan, Haddows Road,
Chennai - 34.

.. Respondents

Petition filed under Sections 210 (2) of the Companies Act, 2013
r/w Section 237 of the Companies Act, 1956 for investigation into the
affairs of M/s.Madras Boat Club.

For Petitioner : Mr.P.Giridharan

For Respondents : Mr.T.R.Rajagopalan,
Sr. Counsel
for Mr.P.Jose for R1
Mr.K.Ramanamoorthy for R2

ORDER

The petitioner herein is a member of the first respondent. A complaint was made by the petitioner inter alia alleging various violations committed by the first respondent. One of the complaints is with respect to the voting rights. It appears that on the very same issue, a suit has been filed by a third party, which is pending adjudication. The second respondent rejected the request made by the petitioner on the premise that a comprehensive suit is pending. Thereafter, invoking Sub Clause 2 of Section 210 of the Companies Act, 2013 and by relying upon Section 213 of the Act, the present company petition has been filed.

2. After making submissions, learned counsel appearing for the petitioner would submit that it would suffice, if a direction is issued to the second respondent to have a fresh look into the matter without going into the issue *qua* voting rights, which is the subject matter of the suit. Reliance has been made on the decision rendered by this Court in ***M/s.GEMS Education Asia 1 Limited Vs. Everonn Education Limited (C.P.No.237 of 2016 dated 18.10.2016)***.

3.Learned senior counsel appearing for the first respondent would submit that the company petition itself is not maintainable and no such relief having been sought, the same has to be dismissed *in limine*. Learned counsel appearing for the second respondent would submit that if appropriate orders are passed, the same would be complied with in letter and spirit by the second respondent.

4.Chapter XIV of the Companies Act, 2013, deals with the inspection, enquiry and investigation. Section 206 of the Act speaks about the power of the second respondent to call for information, inspect books and conduct enquiries. Under Section 210(1) of the Act, if the second respondent is of the opinion that it is necessary to investigate into the affairs of the company, he can order such investigation either on the report of the Registrar or Inspector. under Section 208 of the Act or in public interest.

5.A perusal of the order passed by the second respondent would show that this exercise has not been done. On the contrary, complaint was rejected on the sole premise that the suit was filed, which at best, would cover one of the complaints raised. Therefore, this Court is of the view that the second respondent is duty bound to look into the complaints and form an opinion as to whether it is necessary to investigate into the affairs of the company either in public interest or

on the receipt of the report of the Registrar or Inspector under Section 208 of the Act. The second respondent can also invoke the power under Section 206 of the Act in this regard. To put it differently, we are not in the stage of investigation into the affairs of the company. This is exclusively a discretion vested with the second respondent. However, such a discretion has to be exercised under the Act. Such discretion has to be based upon the materials placed before him. When exercising such discretion, the second respondent can rely upon the report of the Registrar or Inspector under Section 208 of the Act or in public interest.

6. The power of the Company Court is rather wide. The Company Court cannot take the role of the Central Government or the Registrar. However, in a case, where larger relief is asked for, certainly a lesser one can be granted. A similar issue has also been taken into consideration by this Court in *M/s. GEMS Education Asia 1 Limited Vs. Everonn Education Limited (C.P.No.237 of 2016 dated 18.10.2016)*. The first respondent cannot be termed as a person aggrieved or prejudiced at this stage. Therefore, this company petition stands disposed of giving liberty to the petitioner to prefer a complaint, which shall not include the issues, which are the subject matter of the suit, which is stated to be pending and which has been taken note of by the second respondent. As and when the same is received, the second

respondent shall form an opinion either on receipt of the report of the Registrar or Inspector or in public interest. For doing so, he can also exercise the power under Section 206 of the Companies Act, 2013.

7.The company petition stands disposed of accordingly. It is well open to the second respondent to put the first respondent also on notice, if so required. Consequently, connected application is closed.

26.04.2018

Index:Yes/No

mmi

To

The Registrar of Companies,
Ministry of Corporate Affairs,
Block No.6, B Wing, 2nd Floor,
Shastri Bhavan, Haddows Road,
Chennai - 34.

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M.M.SUNDRESH,J.

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