

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 85 OF 2011**

M/s. Crystal Island Park Private Limited,
a Private Limited Company having its present
Registered Office at X-14, Building A-1, 4th floor
floor, Jairam Complex, Navy Nagar, Mala,
Panaji-Goa-403001.

... Petitioner

V e r s u s

1. Mr. Ashok Chawla,
S/o. Late Mr. R.P. Chawla,
64 years of age, resident of E-6,
Anand Niketan, New Delhi-110 021.

2. Mr. Mark William Rodrigues,
S/o Sunith Rodgriues, 42 years
of age, businessman, permanent resident
of 61, Defence Colony, Alto de Porvorim,
Bardez, Goa 403 521.

... Respondents

Shri S. S. Kantak, Senior Advocate with Mr. Surjendu Sankar Das, Advocate
and Mr. P. Sawant, Advocate for the Petitioner.

Shri Abdhesh Chaudhary with Adv. J. Godinho for Respondent no.1

Shri Menino Pereira, Advocate for Respondent no.2.

CORAM: C. V. BHADANG, J.

Date: 23rd August, 2019.

Oral Order:

The challenge in this petition under Article 227 of the Constitution of
India, is to the orders dated 16/11/2010, 30/11/2010 and 3/1/2011 passed by

the Company Law Board (CLB) in Company Application no.697/2010 in Company Petition no.61/2006.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the first respondent had filed Company Petition no.61/2006 before the CLB against the appellant and the second respondent under section 397/399 of the Companies Act, 1956 (The Act, for short) alleging oppression and mis- management. It appear that a preliminary objection was raised on behalf of the appellant to the maintainability of the petition on the ground that the first respondent has ceased to be a member/shareholder of the company, namely M/s. Grandeur Private Ltd., on the date of the filing of the petition i.e. on 6/7/2006. It appears that the Company Law Board refused to uphold the objection by its order dated 2/7/2009 which was challenged by way of two appeals, namely Company Appeal No.10/2009 and 11/2009 before this Court. This Court by a judgment and order dated 13/9/2011 found that unless and until the first respondent establishes that he is a member/shareholder of the company, as on the date of the filing of the petition, the company petition as framed and filed was not maintainable. However, at the same time this Court granted liberty to the first respondent to take out appropriate proceedings for establishing that he was a

member/shareholder of the company as on the date of filing of the petition within a period of twelve weeks from the passing of the said order and in the meantime, the proceedings in the company petition were stayed. This Court also stipulated that if such proceedings are not taken out within the period of twelve weeks, the company petition shall stand dismissed automatically.

3. It appears that the first respondent filed company application purportedly under section 111/111A of the Act before the Company Law Board in the very same company petition no.61/2006. That application was sought to be filed on 18/10/2010 vide diary no.5615. It appears that the Bench Officer (B.O) vide letter dated 21/10/2011 returned the said application requiring the first respondent to file a separate petition under section 111/111A of the Act. However, the first respondent filed a composite application for seeking amendment of the Company Petition no.61/2006 “for incorporation of section 111 of the Companies Act 1956”. That application was registered as Company application no.697/2010 in Company petition no.61/2006. The filing of the said application was objected to on behalf of the petitioner on two grounds. First that the application to establish that the first respondent was a member/shareholder of the company as on the date of the filing of the company petition cannot be made in the company petition itself which was otherwise stayed in terms of the order passed by this Court.

It was pointed out that liberty was granted to the first respondent to take out “separate proceedings” for such establishment and secondly that the application was filed beyond the period of twelve weeks allowed by this Court.

4. The Company Law Board after noticing the objection raised on behalf of the petitioner (the respondent before the CLB) by the impugned order dated 3/1/2011 has granted liberty to the petitioner to file a comprehensive application in this regard within a period of two weeks. The impugned order dated 3/1/2011 passed by the CLB may be reproduced thus :

The respondents have expressed their objections to the maintainability of the CA No.697/10 on the ground that it has been filed beyond the time, allowed by the Hon'ble H.C. of Bombay at Goa. The applicant brought it to my notice that they ha already filed an application on time on 18/10/2010 vide diary No.5615, which however was returned by the Bench Officer vide letter dated 21/10/2010 requiring the applicant to file a separate petition under section 111/111/A of the Companies Act, 1956. The applicant, it was pointed out, filed the same application with a little change in the heading to be read as amendment to the CP No.61/06 on 12/11/2010 vide diary no.6103. On going through the first application it is noted that the B.O has inadvertently returned the application without looking into the contents and without noting the H.C's order in this regard. The Respondents wish

to file objections to taking the earlier application on record. Respondents are given liberty to file a C.A in this regard within a period of two weeks failing which the petitioner's application on amendment of the CP, the CA No.697/10 shall be said to have filed on 18/10/2010 vide diary No.5615 and the said application shall be in continuation of the earlier application, amendment application to which only respondent no.2 has filed reply, shall be heard on the next date of hearing i.e. 18/2/2011, however, respondent no.1 is again given opportunity to file reply to the amendment application within three weeks from today.”

5. Feeling aggrieved, the petitioner is before this Court.
6. I have heard Shri Kantak, the learned Senior Counsel for the petitioner. Mr. Chaudhary, the learned counsel for the first respondent and Mr. Pereira, the learned counsel the second respondent. With the assistance of the learned counsel for the parties I have gone through the record.
7. Shri Kantak, the learned Senior Counsel for the petitioner has submitted that in terms of the order passed by this Court in Company Appeal nos.10 and 11 of 2009, the first respondent was obliged to take out separate proceedings, if any, for establishing that he was a member/shareholder of the company as on the date of the filing of the company petition and secondly,

any such proceedings ought to have been filed, within twelve weeks of the passing of the order of this Court. The contention is that neither of these two conditions have been satisfied by the appellant and the attempt by the appellant to seek amendment of the Company petition to include section 111/111/A of the Companies Act is not legal and proper.

~~Mr. Kantak, the learned Senior Counsel for the petitioner, on instructions, has made an alternate submission that the petitioner shall file a comprehensive reply in terms of the opportunity granted to the petitioner (the respondent no.1 before the CLB) to the amendment application within a period of four weeks from today raising all such contentions as are available on facts and in law.~~

Modification
carried out
As per order
Dated 18.10.2019
In STA No.3583/2019

8. Mr. Pereira, the learned counsel for the second respondent has supported the petitioner. It is pointed out that the second respondent has filed a separate application before the CLB on 17/12/2010 for giving effect to the order passed by this Court in Company Appeal nos.10 and 11 of 2009.

9. The learned counsel for the first respondent, has raised a preliminary objection to the maintainability of the petition on the ground of availability of an alternate remedy of an appeal. On merits it is submitted that the CLB has

already granted liberty to the petitioner to file appropriate company application and to raise all such objections and therefore this Court may not entertain the present petition, in the supervisory jurisdiction under Article 227 of the Constitution of India.

10. I have given my anxious consideration to the rival circumstances and the submissions made. The principle challenge is only to the order dated 3/1/2011. A bare perusal of the said order passed by the CLB would show that the CLB has granted liberty to the petitioner to file a company application within a period of two weeks raising all such objections to the filing of the company application no.697/2010. It is significant to note that, before the CLB could decide any such objection, the petitioner has approached this Court. In my considered view, it would be appropriate if the petitioner raises all such contentions/objections as may be available on facts and in law in the company application no.697/2010. It is a matter of common ground that the Company petition no.61/2006 as well as the Company application no.697/2010 would now stand transferred to the National Company Law Tribunal (NCLT). Thus after such objection is filed by the petitioner, the NCLT can decide the company application no.697/2010 and pass appropriate orders in company petition no.61/2006 particularly in the context of the order passed by this Court in company appeal nos. 10 and

11/2011. In the result the petition is disposed off in the following terms:

- (i) The petitioner shall file a comprehensive reply to the company application no.697/2010 raising all such contentions as may be available to it on facts and in law, within a period of four weeks, from today.
- (ii) If such a reply is filed, the first respondent will be at liberty to file a rejoinder, if any, within a period of three weeks thereafter.
- (iii) Upon such a reply/rejoinder, if any, being filed, the NCLT shall decide the company application no.697/2010 and shall pass appropriate orders in company petition no. 61/2006 on its own merits and in accordance with law.
- (iv) Rival contentions of the parties on merits are left open.
- (v) The parties to appear before the NCLT on 9/9/2019.

C. V. BHADANG, J.

Ap/