

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-26486-2015 (O&M)

Date of Decision:-06.02.2019.

M/s Haveli India Limited

.....Petitioner

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajinder Mahajan, Advocate for the petitioner.

Mr. Alok Jain, Advocate for respondent Nos.1 to 4.

Mr. Anand Chhibbar, Senior Advocate with
Mr. Shikhar Sarin, Advocate for respondent No.5.

ARUN MONGA, J. (Oral)

The present writ petition has been filed, *inter alia*, seeking issuance of a writ in the nature of *certiorari* to quash the impugned communication dated 15.09.2015 (Annexure P-1) passed by the Assistant Registrar of Companies – respondent No.3. Thereby, the name of the petitioner-Company, originally incorporated on 14.10.1998 as M/s. Asha Shoppers Private Limited, later rechristened to M/s. Haveli India Private Limited on 31.07.2015, was asked to be changed within a period of 3 months, due to the objections filed by respondent No.5.

2.) Learned counsel for the petitioner, at the outset, contends that Assistant Registrar has no power and it is the Registrar alone who is empowered to pass orders under Section 4 of the Companies Act, 2013. The impugned order is, therefore, liable to be set aside on that ground alone.

3.) Even otherwise, contends learned counsel for the petitioner, neither Registrar nor Assistant Registrar are empowered to pass the impugned order in the teeth of Section 16 of the Act, *ibid*. He submits that only Regional Director, Ministry of Corporate Affairs could have passed such an order under Section 16 and the Registrar/Assistant Registrar has no power under Section 4 to pass any such orders.

4.) For ready reference, the relevant extracts of Sections 4 and 16, *supra*, are reproduced hereinbelow:-

“Section 4.

(5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of application.

(ii) Where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then,-

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(b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard -

(i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;”

16. Rectification of name of company.— *(1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—*

(a) in the opinion of the Central Government, is identical with or too nearly resembles the name

by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

(3) If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer

who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.”

5.) *Per contra*, learned counsel for respondent Nos.1 to 4 contends that the definition clause under Section 2 sub-section 75 clearly states that the Registrar includes Additional Registrar, Joint Registrar, Deputy Registrar or Assistant Registrar. Accordingly, the impugned order has been rightly passed by the Assistant Registrar exercising his powers under Section 4 (5) (ii) (b) (i) of the Companies Act, 2013, *ibid*. For ready reference sub-section 75 of Section 2 of the Companies Act, 2013 is reproduced hereinbelow:-

“Section 2.

(75) “Registrar” means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act;”

6.) As regards Section 16, *ibid*, the learned counsel for the respondents No.1 to 4 contends that the shoe is, in fact, on the other foot. He contends that it is the petitioner who is taking advantage, of its own default, by not seeking remedy under the said Section. He contends that the present writ petition is not maintainable in view of the alternative remedy envisaged under Section 16 of the Act, *ibid*. He argues that the petitioner is at liberty to approach the Regional Director, if so advised, to seek mitigation of its grievance, and the Regional Director would pass appropriate orders in accordance with law, if approached by the petitioner. Therefore, contends the learned counsel for respondent Nos.1 to 4, the impugned order has been legally passed, after it was found that the name

applied by the petitioner for the Company was based on furnishing of wrong/incorrect information.

7.) On merits, contends Mr. Anand Chhibbar, learned Senior Advocate that respondent No.5/Company was originally incorporated on 03.09.1997 as M/s Asha Builders Limited. Later on, its name was changed to M/s Haveli Restaurant & Resorts Limited on 19.02.2009. Consequently, a fresh certificate of incorporation was issued to the Company under the Companies Act, 2013. The learned counsel for respondent No.5 states that, ever since respondent No.5 has been incorporated, it has been continuously using the trademark and brand name "Haveli". The said fact was concealed by the petitioner while applying for change of its name from M/s Asha Shoppers Private Limited to M/s Haveli India Private Limited.

8.) Learned Senior counsel also submits that the petitioner-Company has been incorporated at the instance of one Mr. Harish Jain, who is the real brother of Chairman/Promoter of respondent No.5-Company. It is submitted that both the brothers incorporated a company namely "Asha Builders Limited" of which both the brothers were having equal shareholding i.e. 1000 shares each. Later on, in the year 1998, another company was floated in the name and style of **"Asha Shoppers Private Limited"** on 14.10.1998. Mr. Harish Jain, Chairman and Managing Director of petitioner company decided to separate his business and opted to do the same under the name of M/s Asha Shoppers Private Limited. Mr. Harish Jain transferred his 1000 shares of Rs.10 each in respondent no.5 company vide transfer deed dated 24.08.2007 and received the sale consideration of the same vide cheque. Thereafter, Mr. Harish Jain in compliance of

signatures declaring that he is no more director of respondent no.5 company.

9.) Notwithstanding, contends learned Senior Counsel, Mr. Harish Jain with an ulterior motive intentionally changed the name of its company from M/s Asha Shoppers Private Limited to “Haveli India Private Limited” in order to earn the benefit and gains from the goodwill and reputation earned by respondent no.5 with “HAVELI” name. He contends that name “Haveli” is now a heritage, made and created by respondent no.5 after so many years of hard work. Actions of Mr. Harish Jain show his the *mala fide* intention to usurp the business of respondent no.5 and wrongfully reap the benefit of brand name / trademark, reputation and goodwill of respondent no.5. It is submitted that “HAVELI” is the registered trademark of respondent no.5.

10.) The learned Senior counsel submits that the present lis has a cantankerous history, as various litigations, inter se the two brothers, are pending in different Courts viz. Civil Courts, Jalandhar, Criminal Courts, Jalandhar, National Company Law Tribunal, Chandigarh and National Company Law Appellate Tribunal, New Delhi. He submits that the present writ petition is completely frivolous and vexatious in nature and is, therefore, liable to be dismissed.

11.) I have gone through the pleadings and the record appended thereto and have heard the learned Senior counsel for respondent No.5 as also the learned counsels representing the respective parties. After careful consideration, I am of the opinion, that the impugned order dated 15.09.2015 (Annexure P-1) passed by respondent No.3 does not warrant any

interference from this Court.

12.) The argument of the learned counsel for the petitioner that Assistant Registrar does not have the power to pass the impugned order is devoid of any merit. A bare perusal of sub-section 75 of Section 2 of the Act shows that Registrar includes an Assistant Registrar also discharging the duty of registering companies and discharging various functions under the Act. The argument that Registrar alone was empowered under Section 4 to pass the impugned order is, therefore, completely misplaced and devoid of any merit and is to be repelled outrightly.

13.) A bare perusal of Section 2 sub-section 75 read with 4 (5) (ii) (b) (i) read with of the Act, *ibid*, reflects that upon receipt of an application, on the basis of information and documents furnished along with the application, the proposed name is reserved for a period of 60 days from the date of application. If, after reserving the name, it is found that the same was applied by furnishing wrong or incorrect information, then the Assistant Registrar/Registrar is empowered to direct the applicant/Company to change its name within a period of 3 months.

14.) Without going into the issue of alternative remedy under Section 16, or any other remedy as also the other rival contentions between the petitioner-Company and respondent No.5/Company, at this stage suffice it to note that the fact of respondent No.5 being priorly incorporated under the name of “Haveli Restaurant & Resorts Limited” was not brought to the notice of respondent No.3 at the time of change in name of the petitioner-Company. Accordingly, he has rightly asked the petitioner-Company to change its name, within 3 months, as envisaged under Section 4 (5) (i), (ii) & (b) (i) of the Companies Act, 2013. A perusal of the said sub-section

Registrar/Assistant Registrar is well within his powers to amend/rectify the error, within a period of 60 days, after the initial change of name. Concededly, the impugned order has been passed within a period of 60 days. There is thus no illegality of procedure committed in exercise of powers by the Assistant Registrar by passing the impugned order.

15.) With these observations, writ petition is dismissed as no grounds are made out to interfere with the impugned order under Article 226 of the Constitution of India.

(ARUN MONGA)
JUDGE

February 06, 2019.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.