

Company Application Nos.462 and 463 of 2018
in
C.P.Nos.40 and 41 of 2004

M.SUNDAR.J.,

Read this in conjunction with and in continuation of earlier proceedings dated 17.07.2020, which reads as follows:

'Mr.R.Murari, learned senior counsel instructed by Ms.Suba Shiny, counsel on record for applicant in both these applications and Mr.Madhan Babu, learned counsel on record for the sole respondent in both these applications are before me in this web-hearing on a video-conferencing platform today.

2. Facts that emerged from hearing learned counsel on both sides in a nutshell are as follows:

a) The main Company Petitions are for demerger and a scheme of arrangement for demerger was approved by this Court by a common order dated 25.03.2004 in the main Company Petitions.

b) The two entities are Indo French Laboratories Ltd., and Indo French Healthcare Ltd. Former is the transferor company and latter is the transferee company. Former shall be referred to as 'IFL' and latter shall be referred to as 'IFHC'.

c) Nucleus of these two applications is a mark 'REJUCALCIUM' (hereinafter 'said mark' for convenience and clarity).

3. With regard to two applications on hand, while Company Application No.462 of 2018 has been filed with a prayer to restrain IFHC from exporting medicinal preparations under said mark, Company Application No.463 of 2018 has been filed with a prayer to restrain IFHC from manufacturing, marketing, selling and exporting medicinal

preparations under the said mark.

4. *Learned senior counsel for applicant, adverting to the scheme of demerger, as approved by this Court, drew the attention of this Court to Clauses 2(b) and 6(b) thereat and submitted that IFC is violating the scheme and they deserve to be indicted by orders in instant application. In this regard, I noticed that these two applications have been filed under Rule 186 of 'Company Court Rules' ('said Rules' for brevity) besides invoking the usual procedural provisions of Order XIV Rule 8 of Original Side Rules and Rules 9/11(a) of said Rules. Rule 186 of said Rules deals with variation of list of contributories and is therefore noway relevant to prayers in applications on hand.*

5. *Faced with above situation, learned senior counsel, on instructions, submitted that the substantive provision under which these prayers are made is Section 392 of the Companies Act, 1956 ('said Act' for brevity) read in the context of sub-sections (1) and (2) of Section 391 of said Act. Learned Senior Counsel made a request to treat these applications as one under these provisions. It was also submitted that Rule 186 is clearly incorrect and has no application to the applications on hand.*

6. *Mr.Madhan Babu, learned counsel for IFHC drew the attention of this Court to an order dated 13.11.2009 made by a Hon'ble single Judge of this Court being a common order in eight applications. Prayers in two of the applications therein, namely C.A.Nos.2452 and 2453 of 2006 are as follows:*

'C.A.Nos.2452/2006

This Company Application praying this Court to restrain the respondent from effecting export of REJUCALCIUM Tablets to Sri Lanka.

C.A.Nos.2453/2006

This Company Application praying this Court to restrain the respondent from manufacturing and/or selling/marketing of RECALCIUM LIQUID or any other product under the name or chemical formulation which are deceptively similar to the products allocated to the applicant under the scheme.'

7. A perusal of the order dated 13.11.2009 makes it clear that these two applications forming part of the eight applications have been disposed of/closed by a Hon'ble learned single Judge by taking on record an award dated 17.07.2009 made by a Chartered Accountant, who was appointed as Arbitrator. Adverting to the aforesaid applications and the order made by Hon'ble single Judge, learned counsel submitted that these prayers have also already been made and Company Court has already disposed of those applications.

8. With regard to Company Application No.463 of 2019, learned counsel for IFL submitted that she has already moved 'Intellectual Property Appellate Board' (IPAB) for rectification of said mark qua IFHC. Considering the scope of applications on hand, it is not necessary to advert to those details or dilate much on those aspects.

9. The proceedings today and a summation of what unfurled in the hearing today have been captured herein for the purpose of clarity and ease of proceedings in the next listing.

10. Faced with the above situation i.e., same prayers having been disposed of, learned counsel for IFL i.e., applicant in these two applications on hand, sought time to get instructions regarding pursuing these applications.

List on 24.07.2020.'

2. Mr.R.Murari, learned senior counsel instructed by Ms.Suba Shiny, counsel on record for applicant in both these applications and Mr.Madhan Babu, learned counsel on record for the sole respondent in both these applications are before me in this web-hearing on a video-conferencing platform.

3. In continuation of earlier proceedings dated 17.07.2020, learned senior counsel, on instructions, submits that learned counsel on record for the applicant would withdraw the instant applications, but makes a plea that the rights of the applicant may please be preserved for taking out suitable new applications (as permissible in law) on the same issue.

4. Request acceded to. Permitted to withdraw albeit preserving the rights of the applicant in the aforesaid manner. There shall be no order as to costs.

24.07.2020

kmi

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24.07.2020