



W.P.No.24723 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 23.11.2022

CORAM:

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

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PHA India (P) Limited,
C-16 & C-25, SIPCOT Industrial Park,
Irrungattukottai,
Sriperumbudur-602117.

.. Petitioner

VS.

State Industries Promotion Corporation
of Tamil Nadu Ltd.,
Represented by its Chairman and Mg. Director,
19A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent, culminating in Proceedings in REF No.D-II/IRU/PHC/30/2009 DATED 24.8.2011 and quash the same and further direct the Respondent to accord approval for the change in the name of the Petitioner Company from PHC Manufacturing Private Limited to PHA India (P) Limited, without insisting on any differential land cost.

For Petitioner : Mr. Kuberan for



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M/s.Rank Associates

For Respondents : Mr. Sudharsana Sundar
Standing Counsel for SIPCOT

ORDER

This Writ Petition has been filed to quash the Proceedings of the respondent in REF No.D-II/IRU/PHC/30/2009 DATED 24.8.2011 and further direct the Respondent to accord approval for the change in the name of the Petitioner Company from PHC Manufacturing Private Limited to PHA India (P) Limited, without insisting on any differential land cost.

2. It is the case of the petitioner that (a) PHC Manufacturing Private Limited was allotted the land of an extent 4.0 Acres by SIPCOT, under a Letter of Allotment dated 23.1.1998. A further extent of 3.95 Acres was also allotted by SIPCOT, under a letter of Allotment dated 10.2.2005 to the said Company. Both allotments were for a period of 99 years respectively. Clause 26 of the lease deed dated 08.03.2005 reads as follows :



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“ (a) Clause 26 of the Lease Deed – “The party of the Second Part (PHC) shall not assign, sublet, transfer or part with its interest in the allotted plot either in whole or in part except with the prior written consent of the Party of the First Part (SIPCOT). In the event of the Party of the Second Part seeking approval for change in constitution, or change in the management or control or amalgamation with any other Company or transfer of interest to any third party either in whole or in part, Party of the First Part shall grant approval, provided the Party of the Second Part or any person claiming under the Party of the Second Part agrees to pay the cost determined by the Party of the First Part and the cost determined by Party of the First Part shall be final and binding on the part of the Second Part or any person claiming under the Party of the Second Part and cannot be questioned in any Court of law.”

Clause 33 of the lease deed reads as follows :

Clause 33 (i)-“The constitution of the Party of the Second part in case Proprietary concern/Partnership Firm Board of Directors of Private Limited Company shall not be changed without prior approval of the Party of the First Part. For a Public Limited Company as and when the constitution of the Board of Directors (Professionals) gets changed, the same shall be informed to the Party of the First Part and



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acknowledgment obtained within 90 days.

Clause 40 [a] of the lease deed reads as follows :

Clause 40 (a) – It shall be open to the Party of the Second Part to ask for in writing and the Party of the First Part to grant a No Objection Certificate, with or without conditions, to enable the Party of the Second Part to mortgage its interest in the said allotted plot, at any time after taking possession for obtaining financial assistance from financial institutions and Banks for implementing the project in the plot and for the projects implemented under the same legal entity of the Party of the Second Part. The Party of the Second Part shall not offer this property as a collateral security to avail loan for other purposes/sister concern etc.”

3. As per the above clauses any change in the management or control of the allottee Company or transfer of interest to any third party either in whole or in part shall be made only with the prior approval of the respondent herein. The company has also availed loan after obtaining no objection from the respondent dated 19.05.2006 and 19.08.2007. When the petitioner company had obtained no objection from the respondent, by their letter dated 12.01.2011, to approve the change in the name of the company



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from M/s. PHC Manufacturing (Pvt) Ltd to M/s. PHA India Pvt. Ltd. The respondent by their proceedings dated 24.08.2011 accorded approval for the name change subject to payment of the differential land cost of Rs.1,8713,125/- and a processing fee of Rs.7,500/- and further execution of a modified lease deed. Hence, it is the contention of the writ petitioner that only in the event of the Petitioner seeking approval for change in constitution, or change in the management or control or amalgamation with any other Company or transfer of interest to any third party either in whole or in part, the Respondent shall grant approval, provided the petitioner or any person claiming under the petitioner agrees to pay the cost determined by the respondent. It is their further contention that there was no change in the constitution, management or control or amalgamation of the petitioner Company with any other Company or transfer of interest to any third party either as a whole or in part, there was absolutely no necessity to make such a demand.

4. It is their further contention that the land allotment by the Respondent was made in favour of PHC Manufacturing Private Limited,



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which was incorporated under a Joint Venture Agreement dated 19.09.1997

between (i) M/s. Pyeong Hwa Automotive Co. Ltd. Korea, (ii) M/s. Component Speciality Inc USA and (iii) M/s. Component Speciality India Private Limited, Bangalore. Hence, it is their contention that the above referred three Companies are the original promoters of the allottee. Their share holdings pattern in PHC is as given below:

1. <i>M/s.Pyeong Hwa Automotive Co. Ltd., Korea</i> 50%	
2. M/s. Component Speciality Inc. USA 25%	Both belonging to UCA Group USA
3. M/s. Component Speciality India Private Limited, Bangalore 25%	

Subsequently, the shares held by M/s. Component Speciality Inc. and M/s. Component Specialty India Private Ltd., Bangalore, were transferred to M/s. CS Holdings Co., USA and M/s.CS Management Services Private Limited Bangalore, in the process of restructuring. Pursuant to the restructuring, the shareholdings pattern changed as follows:

1. <i>M/s.Pyeong Hwa Automotive Co. Ltd., Korea</i> 50%
2. M/s. CS Holdings Co. USA 37.50%



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1. <i>M/s.Pyeong Hwa Automotive Co. Ltd., Korea</i> 50%
3. M/s. CS Management Services Private Limited, Bangalore 12.5%

5. In between, on 28.11.2007, the name of PHC Manufacturing Private Ltd was changed into PHA India Private Limited by following due process of law. Subsequently the entire 50% holding was absorbed by the original promoter M/s. Pyeong Hwa Automotive Co. Ltd, Korea and the holdings of M/s. Pyeong Hwa Automotive Co. Ltd became 100%. All the changes were intimated to SIPCOT and SIPCOT had also provided No Objection Certificate for the changes till the year 2007. But when the information relating to M/s. Pyeong Hwa Automotive Co. Ltd, Korea, the original promoter, becoming entitled to 100% of the holdings was given to SIPCOT, along with a request for grant of No Objection Certificate, the same is sought to be given subject to payment of differential land cost. Therefore, it is the contention of the writ petitioner that there is no change in the management or control of the allottee Company or transfer of interest to any third party either in whole or in part, as contemplated under the Lease



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Deed. The changes in the share holding pattern have all throughout been only within the original promoters and have happened in the form of restructuring. As such the change of name or restructuring, resulting in the original promoter Company M/s.Pyeong Hwa Automotive Co. Ltd., Korea getting hold of 100% share holding will not give rise to an occasion to enable the SIPCOT to demand differential land cost and withhold approval and No Objection Certificate. Even after proper explanation, the respondent by letter dated 25.05.2012, onceagain called upon the petitioner to remit the differential cost demanded in the impugned Order dated 24.08.2011. Hence, the same is challenged in this Writ Petition.

6. In the counter filed by the respondent, it is stated that during the currency of the lease, any question of dispute or difference in relation to or in connection with the terms of the lease deed shall not be raised by the Party of the Second Part and, if at all raised, such question of dispute or difference shall be referred to an Arbitrator appointed by Government of Tamilnadu. As per the allotment Order dated 23.01.1998 and amendment letter dated 01.07.1998, Plot No.C-25/3.95 acres was allotted to M/s. PHC



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Manufacturing (P) Ltd. Subsequently, plot No.C-16/3.95 acres was allotted to the company on 10.2.2005 for its expansion of manufacture of Auto components and Engineering products. On 10.02.2005, the company changed its constitution from Public Limited Company to Private company for which the respondent accorded approval vide letter dated 10.2.2005. Though earlier they have have issued no objection to the M/s. PHC Manufacturing (Pvt) Ltd vide their letter dated 19.05.2006 and 08.01.2007 in favour of the Bank for availing financial assistance, it is their contention that the company in their letter dt.12.1.2011 has informed that they have started their commercial production during the year 1998 manufacturing door locking part and other stamping and welding parts to passenger vehicles. Only for availing loan, no objection has been issued. It is his further contention that the company sought change of name from M/s. PHC Manufacturing (Pvt) Ltd to M/s. PHA India Pvt. Ltd with effect from 28.11.2007 and requested approval from the respondent. They provided shareholding pattern from 1.10.1998 to 25.3.2010 as follows :

<i>S. No.</i>	<i>Name of the Shareholders</i>	<i>% of shareholding at the time of allotment [01.10.1998</i>	<i>%</i>
1.	Pyeong HWA, Korea	49.99%	4



S. No.	Name of the Shareholders	% of shareholding at the time of allotment [01.10.1998]	%
2.	Components Spe.USA	24.99%	-
3.	Com.Spl India P. Ltd	24.99%	-
4.	CS. Holdings Co., USA	-	3
5.	CS. Mgt. Services India	-	1
6.	Jyis Suresh Chandrasekar	0.0034%	0
7.	Geetha Suresh	0.0034%	-
8.	Vijaysingh	0.0034%	-
9.	YS.Chandrasekar	0.0034%	-
10.	SR.Srinivasan	0.0034%	-
11.	NS.Chandrasekar	0.0034%	-
12.	Sunhoo Partk	-	0
13.	BC. Mohan	0.0034%	-
Shareholding Pattern as on 23.06.2011			
1.	Pyeong HWA, Korea	99.98%	
2.	Sung Ho Park	0.02%	
	Total	100.00%	

7. It is the further contention of the respondent that on a perusal of the shareholding pattern of the subject company, the company has undergone changes many times since allotment. From 12.1.2005 to 14.12.2009, the original promoters were holding less than 51% of shares. Hence, the differential land cost has to be collected as per 0.0.1/2005 dated



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05.01.2005. Accordingly, they have accorded approval for the name change of the company from M/s. PHC Manufacturing (Pvt) Ltd to M/s. PHA India Pvt. Ltd subject to payment of the differential land cost of Rs.1,87,13,125/- and processing fee of Rs.7,500/- and other dues if any within 90 days from the date of their letter dated 24.08.2011. The company also submitted their representation dated 3.11.2011 and 5.12.2011 that their company was promoted in the year 1997 by 3 corporate bodies i.e. M/s. Pyeong Hwa Automotive Co. Ltd Korea (50%), M/s. Component Speciality Inc, USA (25%) and M/s.Component Speciality India Pvt. Ltd (25%).

8. Further during Jan 2005, M/s. Component Speciality Inc, USA and M/s.Component Speciality India Pvt. Ltd had restructured their shares held in their company, which resulted in transfer of their shares to their group of companies M/s.C.S.Holding Co., USA and increased the shareholding of M/s. CS Holdings in their company to 37.50% and shareholdings of all the above 3 companies i.e. M/s.Component Speciality Inc, USA, M/s.Component Speciality India Pvt. Ltd and M/s.CS Holdings Co. USA are held only by Mr.N.B. Nandkumar and Mr.Bruce J Carter at 50% each.



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During March 2010, the major shareholder of their company M/s. Pyeong Hwa Automotive Co. Ltd., Korea acquired all the shares and having 100% shareholding in their company. However, examining the request of the petitioner in detail, it has been decided to reiterate our earlier stand in their letter dated 24.8.2011 for name change of the company from M/s. PHC Manufacturing (Pvt) Ltd to M/s.PHA India Pvt. Ltd subject to payment of the differential land cost. Hence, prayed for dismissal of the Writ Petition.

9. The learned counsel appearing for the petitioner would mainly contend that the impugned Order passed by the respondent cannot be sustained in the eye of law. The question of demand of differential cost will arise only in the event of the petitioner seeking approval for change in constitution, or change in the management or control or amalgamation with any other Company or transfer of interest to any third party either in whole or in part, without prior written consent of the respondent. Whereas, in this case, according to the petitioner, there is no change in constitution or management. There is only restructuring of shares among the directors of the promoters' company. Hence, it is contented that the conditions



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stipulated in Clause 26 and 33 of the lease deed cannot be applied mechanically in this case as there is no change in constitution or management or control of the company.

10. It is the further contention of the petitioner that PHC Manufacturing Private Ltd. was originally incorporated under the Joint Venture Agreement dated 19.09.1997 between (i) M/s. Pyeong Hwa Automotive Co. Ltd. Korea, (ii) M/s. Component Speciality Inc USA and (iii) M/s. Component Speciality India Private Limited, Bangalore. Therefore, it is their contention that Pyeong Hwa Automotive Co. Ltd., Korea had 50% of shares pursuant to the reconstruction and remaining 50% shares held by M/s.CS Holdings Co. USA 37.50% and CS Management Services Private Limited, Bangalore 12.50%. The above 50% held by M/s.CS Holdings Co. USA and CS Management Services Private Limited Bangalore was absorbed by the original promoter M/s.Pyeong HWA Automotive Co. Ltd., Korea. Therefore, the holdings of M/s.Pyeong Hwa Automotive Co. Ltd., Korea, the original promoter became entitled to 100% of the holdings. It is only restructuring of the shares among the promoters.



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Change in name or restructuring, resulting in the original promoter M/s.Pyeong Hwa Automotive Co. Ltd., Korea getting holdings will not give raise to an occasion to enable the SIPCOT to demand differential land cost, since there is no change of management or control or change of constitution. Hence, submitted that the impugned Order has to be set aside.

11. Whereas the learned counsel for the respondent would submit that at the time of allotment to land to PHC Manufacturing Private Ltd., there are only 7 Directors. It is also agreed in the lease agreement that in the event of approval of change in constitution, or change in the management or control or amalgamation with any other Company or transfer of interest to any third party either in whole or in part, such approval shall be given by the SIPCOT subject to the payment of cost determined by the SIPCOT. Hence, submitted that the petitioner being the original allottee was incorporated under a Joint Venture Agreement dated 19.09.1997 between (i) M/s. Pyeong Hwa Automotive Co. Ltd. Korea, (ii) M/s. Component Speciality Inc USA and (iii) M/s. Component Speciality India Private Limited, Bangalore. Even as per their shareholdings pattern



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submitted by the petitioner company, transfer of shares took place between the companies. Hence, it is their contention that there is a clear change of management or control of the company and the Order impugned does not require any interference.

12. I have perused the entire materials. The allotment was originally made by the PHC Manufacturing Private Ltd. on 23.01.1998. Clause 18 of the allotment Order reads as follows :

The allotment Order issued to you/your company, firm consisting of the following Directors/Partners :

- i] Jois Suresh Chandrashekar
- ii] Geetha Suresh
- iii] Vijay Singh
- iv] Y.S.Chandrashekhar
- v] S.R.Srinivasan
- vi] N.S.Chandrasekha
- vii] B.C.Mohan

The constitution of the Partnership/Board of Directors at the company shall not be changed without the prior approval of SIPCOT.

Clause 26 of the Lease Deed entered between the parties reads as



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follows :

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“ (a) Clause 26 of the Lease Deed – “The party of the Second Part (PHC) shall not assign, sublet, transfer or part with its interest in the allotted plot either in whole or in part except with the prior written consent of the Party of the First Part (SIPCOT). In the event of the Party of the Second Part seeking approval for change in constitution, or change in the management or control or amalgamation with any other Company or transfer of interest to any third party either in whole or in part, Party of the First Part shall grant approval, provided the Party of the Second Part or any person claiming under the Party of the Second Part agrees to pay the cost determined by the Party of the First Part and the cost determined by Party of the First Part shall be final and binding on the part of the Second Part or any person claiming under the Party of the Second Part and cannot be questioned in any Court of law.”

Clause 33 of the lease deed reads as follows :

Clause 33 (i)-“The constitution of the Party of the Second part in case Proprietary concern/Partnership Firm Board of Directors of Private Limited Company shall not be changed without prior approval of the Party of the First Part. For a Public Limited Company as and when the constitution of



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the Board of Directors (Professionals) gets changed, the same shall be informed to the Party of the First Part and acknowledgment obtained within 90 days.

13. A perusal of the above clauses makes it very clear that in the event of seeking approval of change in constitution, or change in the management or control or amalgamation with any other Company or transfer of interest to any third party either in whole or in part, SIPCOT shall grant approval, provided the first part pay the cost determined by the SIPCOT. Now it is the contention of the petitioner that the share holdings of the petitioner partnership company as on 01.03.1998, M/s.Pyeong Hwa Automotive Co. Ltd. Koea had 48.99%, M/s.Component Speciality Inc, USA had 24.99% and Com. Spl. India P. Ltd had 24.99%. It is his further contention that the Managing Directors of Components Spe. USA and C.S. Holding USA are one and the same. Similarly, the Director of C.S. Management Services India is also the Director of Components Spl. India Pvt. Ltd. Therefore Pyeong HWA Automotive Co. Ltd., Korea which had 50% of the share holdings had acquired entire shares from the group of companies. Therefore, it is his contention that it is only restructuring made



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among the original promoters. Therefore, it is their contention that there is no change of management or control or constitution. It is their further contention that in the year 1997, the promoters of PHA Manufacturing [P] Ltd. Korea under the Joint Venture Agreement dated 19.09.1997 between Pyeong Hwa Automotive Co. Ltd., M/s.Component Speciality Inc. USA and M/s.Component Speciality India Private Limited, Bangalore. Hence, merely because there were transfer of shares among the promoters, it cannot be construed as change of constitution or change in management or control. Therefore, Clause 26 and 33 of the lease deed will not apply to mere restructuring.

14. Whereas, it is the stand of the respondent that the management changes has been effected on several occasions and the original main promoter M/s. PHC Manufacturing Private Limited, who had 49.99% at the time of allotment is holding 99.99% as on date. Hence, there was a change of management.

15. It is not disputed by the respondent that the allottee was



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originally promoted by three group of companies namely M/s.Pyeong Hwa Automotive Co. Ltd. Korea, M/s.Component Speciality Inc. USA and M/s.Component Speciality India Private Ltd., Bangalore. It is seen from the communication of the respondent that on 25.02.2012 itself it is admitted that the allottee had 49.99 shares at the time of allotment and it is the specific stand of the petitioner that the other promotes namely M/s.Component Speciality Inc. USA and M/s.Component Speciality India Private Ltd., Bangalore had remaining 50% of the shares by way of restructuring, they transferred 37.491 shares to M/s.C.S.Holdings Co. USA and 12.497 shares to M/s.CS Management Services India by way of restructuring on 13.12.2009 and the promoters of M/s.Components Seciality Inc. USA and M/s.Component Speciality India Private Ltd. Bangalore are one and the same, viz, one Nandakumar and Bruce J Carter and in respect of which they have also filed necessary documents before the respondent certified by Chartered Accountants in Chennai and Illinois, USA. The respondent cannot repute the above facts. Whereas, their main contention is that since there was a change in share holdings pattern from M/s.Component Speciality Inc. USA and M/s.Component Speciality India Private Ltd,



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Bangalore to M/s.CS Holdings Co. USA and M/s.CS Management Services Private Limited, Bangalore. According to them there was a transfer of shares.

16. As long as the promoters of the petitioner's companies are one and the same, transfer of shares from one company to other, where the same promoters are the Directors of other companies, such transfer cannot be construed as transfer of interest to the third party. At most, it has to be construed as only restructuring of the companies and the share holdings pattern of the group of companies can only be construed as restructuring. As the respondent themselves have admitted that the time of allotment M/s. PHC Manufacturing Private Limited had 49.99% and also not disputed that the allottee was promoted by the three companies as referred above. In such view of the matter, transfer of shares and restructuring among the group of companies cannot be construed as transfer of interest to the third party or change in management. Now the allottee has acquired the entire shares in the company by way of restructuring among the group of companies. Therefore, the conditions set out in clause 26 on the lease deed cannot be



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applied mechanically to construe that there is a transfer of interest to the third party or change in management. Hence, the impugned Order fixing differential cost mainly on the ground that there is change in management and there is transfer of interest to third parties cannot be sustained.

17. Accordingly, this Writ Petition is allowed and the impugned Order of the respondent 24.08.2011 is set aside. The respondents are directed to accord approval of change in name of the petitioner company expeditiously on payment of application charges and process fee alone. Consequently, connected miscellaneous petitioner is closed. No costs.

23.11.2022

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Speaking/Non speaking order

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Internet : Yes/No

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The Chairman and Mg. Director,
State Industries Promotion Corporation
of Tamil Nadu Ltd.,
19A, Rukmani Lakshmipathy Road, Egmore, Chennai 600008.

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