In the High Court of Punjab and Haryana, at Chandigarh

Company Appeal No. 26 of 2014 (O&M)

Date of Decision: 16.03.2022

Rajesh Singh

... Petitioner(s)

Versus

M/s Yellow Stone Infrastructures Private Limited and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Ms. Radhika Suri, Senior Advocate
with Mr. Manpreet Singh Kanda, Advocate
for the appellant(s).

Mr. Anand Chhibbar, Senior Advocate
with Mr. Ateevraj Sandhu, Advocate
for the respondents.

Anil Kshetarpal, J.

1. This is a company appeal filed under Section 10(f) of the Companies Act, 1956 (hereinafter referred to as "the 1956 Act"), while calling into question the correctness of the order, passed by the Company Law Board (hereinafter referred to as"the CLB") on 07.08.2013 in CA No. 78 of 2012 in CP No. 66 of 2008. The CLB dismissed the appellant's application for revival of the company petition filed under Section 397, 398, 237, 399 read with Section 402, 403, 406 of the 1956 Act and the Company Law Board Regulations, 1991 (hereinafter referred to as "the 1991 Regulations"). In the considered view of this Court, it is not required to give detailed facts, however, to complete the narration, basic relevant facts are being noticed.

2. The appellant claims to be the Promoter/Director of M/s Yellow Stone Infrastructure Private Limited. The company's authorized share capital of ₹1,00,000/- was divided into 10000 shares of ₹10/- each, which was allotted between the appellant and Tejinder Singh Bhatia in the ratio of 18% and 82% i.e. 1800 and 8200 shares, respectively. The appellant filed a Company Petition No. 66 of 2008, complaining oppression and mismanagement, while impleading Tejinder Singh Bhatia, Raghujeet Singh Sodhi and Jaspal Singh Sodhi as respondents. During the pendency of the petition, the parties arrived at a settlement on 01.08.2009 and a Memorandum of Settlement was signed between the parties. The relevant terms of the settlement are extracted as under:-

> *"1. That the shareholding pattern of M/s Yellow Stone Infrastructures Private Limited shall always be held in the following ratio:*
>
> *Mr. Tejinder Singh Bhatia and his family: 32.5 Percent*
> *Mr. Rajesh Singh : 27.5 Percent*
> *Mr. Raghumeet Singh Sodhi : 22 Percent*
> *Mr. J.S.Sidana : 18 Percent*
>
> *2. Accordingly the present share capital amounting to Rs.10,00,000/- shall be held in the following manner:*
>
> *Mr. Tejinder Singh Bhatia and his family: Rs.3,25,000/-(32.5%)*
> *Mr. Rajesh Singh : Rs.2,75,000/- (27.5%)*
> *Mr. Raghumeet Singh Sodhi : Rs.2,20,000/- (22%)*
> *Mr. J.S.Sidana : Rs.1,80,000 (18%)*
>
> *3. All the parties have agreed to maintain the above shareholding pattern in future in case the share capital of the company is issued and subscribed and payment of subscription money is paid by the shareholders.*
>
> *4. That the Second Party and a nominee of Fourth Party*

shall be inducted/regularised as the Director on the CLB of Yellow Stone Infrastructures Priate Limited. Thus there will be total of four directors on the CLB representing all four parties. The quorum for a board meeting will be complete with the presence/attendance of 3 directors.

5. The voting rights of the shares of Mr. Jaspal Singh Sidana (Fourth Party) will remain with Mr. Tejinder Singh Bhatia (First Party) for all purposes for the lockin of 4 years from the date of this agreement.

6. These shares (of Yellowstone Infrastructure Pvt. Ltd.) cannot be sold by any of the parties to anyone else other than within these four parties only. For all purposes, these shares will be deemed to be in a lockin period for 4 years from the date of this agreement. This clause can only be terminated with 80% of the votes of the shareholders.

7. That this is to put on record that M/s Yellow Sone Infrastuctures Private Limited is a shareholder of Shree Vrindavan Housing and Builders Pvt. Ltd. (SVHB) and SVHB in turn is a shareholder of Sukhm Infrastructure Pvt. Ltd.

8. That since the dispute amongst the parties hereto has been settled amicably therefore, the Second Party shall withdraw all the cases/complaints filed against the management of Yellow Stone Infrastructures Private Limited, Sukhm Infrastructures Private Limited and Shree Vrindavan Housing and Builders Pvt. Ltd. before the Company Law Board, Registrar of Companies, Police Station and any other *authorities immediately.*

10. All the parties have agreed that this agreement of settlement shall supersede all the earlier agreements/settlement deeds ever entered/executed between the parties.

11. The bank operations will have 3 signatories i.e. First party, Second party and Third party. The operations will done with 2 signatures, one of them necessarily being – First party and the other being from either Second party or Third party.

All the parties have set their hands onto this agreement (4 original copies) on the date and place mentioned herein above.

The detailed shareholders agreement will follow this.

Note: It will be taken up with Arcane Infra to release the mortgaged shares if any of SVHB owned by Yellowstone Infrastructure Pvt. Ltd. immediately".

2. Thereafter, the aforesaid settlement was amended. On 02.07.2009, the parties, once again, amended the Memorandum of Settlement while cancelling the first amendment of the agreement, Clause 8 and 11 of the original agreement were amended/substituted/replaced in the following manner:-

"1. The first amendment to the agreement will be treated as cancelled and all the relevant clauses of the original agreement will be valid.

2. Clause no 11 of the agreement will be replace with clause as below:

"The bank account operations for all the bank accounts of Yellow stone infrastructure Pvt. Ltd will have only 2

(two) authorized signatories i.e. FIRST PARTY and SECOND PARTY. The operations of bank accounts will be done jointly by both signatories i.e. FIRST PARTY and SECOND PARTY."

3. *The following words will be added in clasue no. 8 of the agreement:*

   "Mr. Rajesh Singh shall have the liberty to approach to Company Law Board either through restoration of or fresh petition, in case compliance of terms of Agreement is not completed within 30 (thirty) days from the 2nd Amendment of Agreement".

4. *A shareholder agreement will be drawn within 30 days from the 2nd Amendment of Agreement.*

5. *Unless specifically defined in this Second Amendment Agreement all other terms will have the meaning as defined in the Agreement dated 1st April, 2009".*

3. On the application, filed by the appellant, the CLB, vide its order dated 29.10.2009, permitted the appellant to withdraw the company petition with liberty to file an application for revival, in case the compromise fails. The order, passed by the CLB, reads as under:

> *"C.A. mentioned. Petition is dismissed as withdrawn with liberty to file applicatoin for revival in case the compromise fails".*

4. The appellant filed an application for revival of the company petition alleging the violation of the terms of the settlement including the allegations that the respondents have forged an ante dated resolution and

have fraudulently allotted the shares of ₹30,00,000/- to the respondent No.1 and his family members. It was also pointed out that the respondent had fraudulently shown an ante dated resolution dated 20.09.2008, whereas, the Form No.II has been filed with the Registrar of Companies, Chandigarh, only on 01.04.2011. The appellant further narrated various acts of the alleged oppression and mismanagement on the part of the respondents.

5. The CLB has dismissed the application for revival of the company petition only on the ground that it was required to be filed within a period of 30 days from the date of the second amended agreement, without examining the application on merits.

6. Heard the learned senior counsel representing the parties, at length and with their able assistance, perused the paper-book.

7. At the outset, it will be appropriate to notice that the learned senior counsel representing the parties have unequivocally stated that there is no statutory provision, either in the 1956 Act or in the 1991 Regulations, prescribing any limitation for filing an application for revival of the company petition.

8. The learned senior counsel representing the appellant contends that the application for revival of the company petition has been wrongly dismissed on the ground of being beyond the prescribed limitation, whereas, there is no statutory provision barring the same, therefore, in the facts of the case, the CLB should have allowed the application.

9. Per contra, the learned counsel representing the respondent contends that once it was provided in the second amended Memorandum of Settlement dated 02.07.2009 that the appellant shall have the liberty to

approach the CLB, either through restoration or a fresh petition, in case of non- compliance of the terms of the agreement is to be filed within 30 days from the date of second amendment to the agreement, then, the order passed by the CLB does not suffer from any error.

10. Having considered the arguments of the learned senior counsels representing the parties and on a careful reading of the impugned order, passed by the CLB, it is evident that the CLB has committed a manifest error. The limitation for a suit, application or appeal depends upon the accrual of cause of action. The limitation begins to run from the date the cause of action arises. In the absence of accrual of cause of action, the period of limitation would not begin to run. Even in the Schedule attached to the Limitation Act, 1963, it is apparent that the Schedule has been divided into three columns, out of which the last column is with regard to the time from which the period begins to run. The cause of action for any action depends on a bundle of facts. The CLB has overlooked both the aspects while passing the impugned order. While permitting the appellant to withdraw the company petition on 29.10.2009, the CLB on being apprised of the settlement between the parties, permitted withdrawal of the company petition with liberty to the appellant to file an application for revival. As per the allegations made in the application for revival, it is evident that the appellant was allegedly kept in dark. In para 4 of the application, the appellant has asserted that he has been betrayed and the said settlement has miserably failed. It is also asserted by him that these facts came to his knowledge very late. Apart from that, the appellant has also pleaded that the respondent No.1 filed a suit through his wife against the appellant, from

where he came to know that he stands removed as the Director of the company. It has also been asserted that all efforts of the appellant to resolve the dispute through the intervention of the respectables have failed miserably.

11. Moreover, once the CLB, itself, has granted liberty to the appellant to file an application for revival in case the settlement between the parties fail, there was no justificatioin for the CLB to dismiss the application, in the absence of any statutory period for filing an application to revive the company petition.

12. The learned senior counsel representing the appellant has drawn the attention of the Court to the Regulation No.44 of the 1991 Regulations, which enables the CLB to exercise its inherent power to make such orders, as may be necessary, for the ends of justice or to prevent abuse of the process of the Bench. The CLB ought to have been conscious of the aforesaid provision. Furthermore, the CLB has failed to honour its own order. Once, the liberty was granted and there was no decision on merits by the CLB and further, there was no statutory bar to the filing a fresh petition, then, in the considered view of this Court, the company petition ought to have been restored/revived.

13. Keeping in view the aforesaid discussion, the present appeal is allowed and the order passed by the CLB on 07.08.2003 is set aside. The Court has been informed that in view of the Companies Act, 2013, the National Company Law Tribunal has been constituted and is authorized to hear such matters.

14. Therefore, while remitting the matter to the National Company Law Tribunal, Chandigarh, the parties, through their learned counsels, are directed to appear before the Tribunal on 04.04.2022.

15. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

March 16, 2022
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No