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OA. No.480 of 2024
in
C.S. (COMM.DIV) No.118 of 2022
and
(T) OP (TM) Nos.200, 201 & 202 of 2023
and OA. Nos.334, 335, 336, 337 & 338 of 2022
and
A.No.2373 of 2022, 5733 of 2023, 3052 & 3053 of 2024

P.B.BALAJI, J.

O.A. No.480 of 2024 has been filed by the Applicants/plaintiffs seeking to grant an ad-interim injunction restraining the respondents from issuing any advertisements, circulating any invitation, conducting any function promoting any event in the name of Kalimark Groups or appointing/informing the 2nd Respondent, J.Ramesh as the Managing Director of Kalimark Groups pending disposal of the suit.

2. Heard Mr.A.Swaminathan, learned counsel for the Applicants and Mrs.G.Thilagavathy, learned Senior Counsel for Mr.R.Gopinath, learned counsel for the respondents.

3.The case of the Applicants is that a total stranger is being appointed as the Managing Director and being given control of the entire properties of the Kalimark Group of Companies. The learned counsel for the Applicants submits that the 2nd respondent, Mr.J.Ramesh, is sought to be projected as if he



is the Manager Director of the entire Kalimark Group of Companies. In this regard, he would enclose the invitation for the function which is proposed to be held on 22.07.2024 at 5.45 pm, where it is stated:



4. He would therefore submit that the respondents have no right to project a third party, non family member as the Managing Director and given the control of the assets of the Company. He would also invite my attention to the Articles of the Association dated 06.12.2013, where Clauses 64 to 66 read as follows:-

“64. Subject to the provisions of the Act, or any other acts in force and these Articles, the Board may delegate any of its powers to committees comprising of one or more Directors and/or officers of the Company, to be exercised jointly or severally, subject to such supervision, restriction and direction of the Board as may be deemed necessary.

MANAGING DIRECTORS AND WHOLE TIME DIRECTORS

65. The Board of Directors may from time to time appoint one or more



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Directors to the office of Managing Director(s) for such period and on such terms as they think fit and subject to the terms of any agreement entered into in any particular case may revoke such appointment. Such appointment shall automatically terminate if the appointee ceases, for any cause, to be a Director.

66. The business and management of the Company shall be conducted and carried on by the Managing Director who shall be in full and absolute charge of the office and properties of the Company with all the powers of management except those specifically to be exercised by the Board at the meeting or by the Company in General Meeting. Where the company has more than one managing director or joint managing directors or whole time or executive directors, the Board shall decide proper division of powers between them in order to regulate the affairs of the company smoothly.”

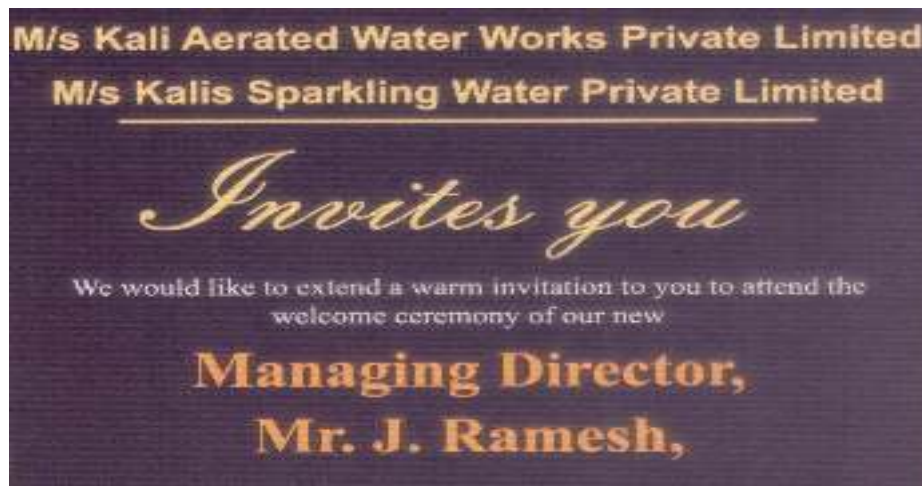
5. He would also invite my attention to various other Clauses from the Deed of Mutual Agreement dated 12.03.1993, where the brothers, numbering 9, have agreed amongst themselves that no third party, non family members would be inducted into the business and the very purpose of the mutual arrangement was to protect the trademarks (Kali Mark) and other family related marks like, Trio, Bovonto, Kali Kola, Club Soda, Solo, Frutang, Captain, etc. He would therefore submit that the respondents have no rights to go ahead appointing Mr.J.Ramesh, as the Managing Director and consequently, they should also be restrained from going ahead with the function relating to welcoming the said Managing Director on 22.07.2024.

6. Per contra, Mrs.G.Thilagavathi, learned Senior Counsel would submit that the prayer challenging the appointment of the Managing Director cannot be maintained before this Court and the appropriate Forum would be



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the National Company Law Tribunal (NCLT). The learned Senior Counsel further submits that the invitation enclosed by the Applicant along with the Application is not admitted by the respondents and she would circulate the original of the invitation which has been printed by the respondents, which is as follows:



7. She would therefore submit that the respondents are not projecting Mr.J.Ramesh, as the Managing Director of the Kali Mark group of Companies, but only in respect of *M/s.Kali Aerated Water Works Private Limited and M/s.Kalis Sparkling Water Private Limited*. She would also submit that the same can be recorded and necessary orders be passed. She would further submit that the Managing Director need not be a shareholder and therefore by appointing Mr.J.Ramesh, there is no violation of the statutory mandated under the Companies Act, 2013 or its provisions and also the family arrangement



dated 12.03.1993.

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8. I have heard the learned counsel on either side and perused the materials available on record.

9. With regard to the present Application, the prayer appears to be two fold. One is to restrain the respondents from going ahead with the function, including causing advertisements or circulating any invitation, conducting any function promoting any event in the name of Kalimark Groups. Secondly, it also seeks to restrain the respondents from appointing the second respondent, Mr.J.Ramesh as the Managing Director of Kali Mark Groups.

10. With regard to challenge to the appointment of Mr.J.Ramesh as the Managing Director, Kalimark Groups, I am of the opinion that the present prayer cannot be maintained before this Court. The appropriate Forum to challenge the appointment would be before the NCLT and not before this Court, that too trying only the Intellectual Property Rights of the Company.

11. Even with regard to the advertisement or circulation or any invitation conducting any functions, promoting any event in the name of



Kalimark Groups, in view of the specific stand taken by the respondents, disowning the invitation enclosed by the Applicants/plaintiffs alongwith their Application, and on the contrary producing the original invitation, it does not disclose in any manner as if the Managing Director is for the entire Kalimark Group of Companies. I see no reason for any injunction being granted at this juncture.

12. In any event, it is open to the Applicants to move the appropriate Forum challenging the appointment of Mr.J.Ramesh, as the Managing Director, if they desire. It is made clear that the respondents shall continue to go ahead with the proposed function only in respect of the two companies in respect of which invitation has been printed by the respondents.

13. With the above observations, this Original Application No.480 of 2024 is closed.

rkp

19.07.2024



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P.B.BALAJI, J.
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