(2014) 01 SHI CK 0035

In the High Court Of Himachal Pradesh

Case No : Company Petition No. 11019 of 2013 in Company Application No. 4009 of 2013

Emmbros Autocomp. Ltd. APPELLANT

Vs

Emmbros Automotives Private Ltd. RESPONDENT

Date of Decision : 09-01-2014

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Companies Act, 1956 — Section 101, 391, 392, 393, 394

Citation : (2014) 1 ShimLC 338

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Anil K. Aggarwal, Advocate for the Appellant; Payal Mehta, Advocate for the Respondent

Judgement

Rajiv Sharma, J.—The present application under Order 1 Rule 10 CPC read with Rules 6 and 9 of the Companies (Court) Rules, 1959 read with Section 151 CPC has been filed for impleading the applicant, Jiwan Mehta, as party respondent in Company Petition No. 4009/2013. "'Key facts" necessary for the adjudication of this application are that the non-applicant has filed a company petition under Sections 391 to 394 read Section 101 of the Companies Act, 1956 for demerger of M/s. Emmbros Autocomp Limited and transfer of the same to M/s. Emmbros Automotives Private Limited. Both the companies have approved the demerger. According to the applicant, he was one of the promoter directors of the non-applicant company. He was illegally removed from its directorship. He was shareholder of the company to the extent of 16.16%. He had filed a company petition No. 2004 before the Company Law Board/New Delhi under Sections 397, 398 and 402 of the Companies Act, 1956. The petition was dismissed by the Company Law Board on 20.11.2007. Thereafter, he filed company appeal No. 4 of 2007 against the decision of the Company Law Board dated 20.11.2007 before this Court. The Court dismissed the same on 16.1.2010. He also sought review of the judgment dated 16.1.2010 by way of filing Civil Review No. 133 of 2010, which was dismissed on 13.9.2013 with liberty to pursue legal remedies, as advised. Thereafter, the applicant approached the Hon''ble Supreme Court by filing Special Leave Petition.

2. Ms. Payal Mehta, learned Advocate, has vehemently argued that the applicant is a proper and necessary party for adjudication of Company Petition No. 4009/2013.

3. Mr. Anil K. Aggarwal, learned Advocate, has opposed the application.

4. What emerges from the facts, enumerated hereinabove, is that that the non-applicant has filed an application bearing Company Petition No. 4009/2013 under Sections 391 to 394 read Section 101 of the Companies Act, 1956 for demerger of an undertaking of M/s. Emmbros Autocomp Limited and transfer of the same to M/s. Emmbros Automotives Private Limited. Demerger has been approved by the two companies. According to the applicant, he was shareholder of the non-applicant company to the extent of 16.16%. However, the same was reduced subsequently to 0.52%. It has come in the reply filed by the non-applicant that even after scheme of demerger becoming effective, the applicant would have the same rights in the resulting company as he was holding in the demerged company. The details of shares, which shall be issued to the shareholders of M/s. Emmbros Automotives Private Limited find specific mention in para 7.2 and 7.5 of the company petition No. 4009/2013.

5. The applicant had earlier filed a company petition No. 2004 before the Company Law Board, New Delhi under Sections 397, 398 and 402 of the Companies Act, 1956, which was dismissed by the Company Law Board on 20.11.2007. This Court has also dismissed company appeal No. 4 of 2007 filed by the applicant against the decision of the Company Law Board dated 20.11.2007 vide judgment dated 16.1.2010. The Civil Review Petition No. 133 of 2010 was also dismissed by this Court on 13.9.2013. The applicant is neither proper nor necessary party for the adjudication of the company petition No. 4009/2013. The shares of the applicant will be protected as per demerger scheme in the resulting company. The company Petition No. 4009/2013 can be decided without impleading the applicant as party respondent. In view of discussion and analysis, made hereinabove, there is no merit in the application and same is dismissed. No order as to costs.

