

(2011) 07 KAR CK 0237

In the Karnataka High Court

Case No : Company Application No. 7 of 2011, Miscellaneous CVL No"s. 12498, 12499 and 12500 of 2011

Medi Projects (P.) Ltd.

APPELLANT

Vs

Cauvery Medical Centre Ltd.

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Citation : (2011) 109 SCL 48

Hon'ble Judges : V.G. Sabhahit, J;Ravi Malimath, J

Bench : Division Bench

Advocate : B.C. Thiruvengadam, for the Appellant; C.K. Nanda Kumar, A. Murali and Povaiah, for the Respondent

Judgement

V.G. Sabhahit, J.—This appeal is filed by the applicants in Company Application No. 49/11 in Company Petition No. 46/08 being aggrieved by the order dated 8-4-2011, wherein application filed by the appellants herein seeking for impleading of the proposed 15th respondent has been rejected.

2. The main argument in the appeal is that application was filed for impleading the 15th respondent and without even issuing notice to the proposed respondent order is passed by the Company Law Board ("CLB") on 8-4-2011 dismissing the application on the basis of the submission of the other respondents and the documents produced by them. The proposed 15th respondent has entered caveat and the learned counsel appearing for the proposed 15th respondent submits that he had no opportunity whatever to put forth his contention before the CLB.

3. The contention of the learned counsel appearing for respondent Nos. 1, 2 and 3 before the CLB and in this appeal is that material was available on record to pass the order.

4. Having perused the material on record and having heard the learned counsel appearing for the parties it is unnecessary to go into the merits having regard to the order that is proposed to be passed by us.

5. It is well-settled that in every application for impleading, it is not mandatory for CLB to issue notice to the proposed respondent. If the application is not maintainable or averments do not make out any prima facie case, application for impleading can be dismissed without issuing notice. However, having regard to the facts of the present case, we are of the opinion that the CLB was not justified in disposing of the application without notifying the proposed respondent. Having regard to the fact that application is maintainable and averments make out a case for issue of notice to the proposed respondent before consideration on merits, from the perusal of the order passed by the CLB which is impugned in this appeal, it is clear that application is not disposed of on the ground that it is not maintainable and order is passed on merits. Wherefore, for the reasons aforesaid the impugned order is liable to be set aside.

6. Accordingly, the impugned order passed by the Company Law Board dated 8-4-2011 is set aside and Company Application No. 49/11 is restored to the file of Addl. Principal Bench at Chennai (Chennai Bench) filed in Company Petition No. 46/2008 with a direction to dispose of the Company Application No. 49/11 after considering the objections filed by the proposed respondent and contentions of applicant and other respondents.

7. It is made clear that we have not expressed any opinion on the merits of the case. The CLB shall proceed on the basis of the application for impleading and objections that would be filed by the proposed respondent and thereafter pass orders in accordance with law expeditiously.

8. Learned counsel appearing for the 15th respondent submits that he will file counter to the Company Application No. 49/11 within one week. After filing of the counter the application shall be considered and disposed of within two weeks as all the counsel submit that they will co-operate in the disposal of the Application.

Appeal is disposed of accordingly.

Since the appeal is disposed of it is not necessary to consider Misc. Cvl. 12500/11 for stay, Misc. Cvl.12499/11 for investigation and Misc. Cvl. 12498/11 for direction and they are disposed of as such.