

(2012) 04 KAR CK 0059
In the Karnataka High Court
Case No : Co. Appeal No. 16 of 2011

Medi Projects (P.) Ltd.

APPELLANT

Vs

Cauvery Medical Centre Ltd.

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Companies Act, 1956 — Section 10 F, 111, 397, 398, 402

Citation : (2012) 113 SCL 302

Hon'ble Judges : K. Govindarajulu, J; D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : B.C. Thiruvengadam, for the Appellant; A. Murali J. Sagar, C.K. Nandakumar, Smt. Nalina Mayegowda and G.L. Vishwanath, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This appeal u/s 10F of the Companies Act is directed against the order dated 30.9.2011 passed on Company Application No. 49/2011, by the Company Law Board, Chennai Bench, Chennai, (copy produced as Annexure A1 to the petition) in pending company petition 46/2008 before the Board, rejecting the application that had been filed by the 2nd Company petitioner before the Board, who figures as the 2nd appellant in this appeal seeking, for impleading the 15th respondent herein, as an additional respondent to the company petition presented under Sections 397 and 398 r/w Sections 111, 402 and 403 of the Companies Act, 1956, (for short "the Act") at an advanced stage of the company petition. The company petition presented under Sections 397 and 398 of the Act was on the premise that the 1st company-petitioner having a share holding to the extent of 1396 per cent of the capital of the company and the 2nd company-petitioner aspiring for equity in the company to the extent of 10% of the equity shares on the premise of such extent of shares having been allotted to him, who was the erstwhile the CEO of the respondent company and for vacating his post of CEO; that the 1st respondent-company had acted in an oppressive manner and had indulged in transactions detriment to the

shareholders etc., and therefore necessary relief should be given to the shareholde Rs.

2. By an application filed under regulation 46 r/w 44 2nd petitioner-company had sought for impleadment of 15th respondent-another company on the premise that some of the assets of the 1st respondent-company had been transferred in favour of the proposed respondent and therefore, the proposed respondent was a necessary party to resolve the main company petition in a satisfactory manner.

3. It is submitted at the bar that such an application had come to be rejected in limine by Company Law Board and the present appellants had approached this court by filing a like appeal in Company Appeal No. 7/2011 and the appeal had come to be allowed as per the judgment dated 4.07.2011, after issue of notice to respondents.

4. In terms of this judgment this court remanded the matter to the Company Law Board for examination of the application afresh and after issue of notice to the proposed respondents.

5. Application was opposed by the proposed respondent and the Company Law Board on examination and after hearing counsel appearing for the 2nd petitioner-company, which stand was supported by the 1st company petitioner but opposed by proposed respondents, rejected the application for impleadment as per the order dated 30.9.2011.

6. It is aggrieved by this order of the Company Law Board, the present appeal.

7. Notice had been issued in this appeal to the respondents on 2.1.2012.

8. It appears in the meanwhile, one of the respondent viz., R-13 had expired and it is submitted at the bar, by Sri Tiruvengadam, learned counsel for the appellants, that steps are being taken in the main petition now pending before the Company Law Board.

9. However, Mr. Vishwanath, learned counsel appearing for the legal heirs of the deceased respondent No. 13 and who are proposed to be added in this appeal seeks a short accommodation to look into the matter and file a response if necessary.

10. Having regard to the nature of the matter, particularly, the matter arising during the pendency of the main matter before the Company Law Board and the question being one of justification or otherwise to implead the 15th respondent as a party to the pending company petition, we do not propose to keep this matter pending only for the purpose of receiving the response of the legal heirs of the deceased 13th respondent who are otherwise represented by counsel. We order the applications for bringing the legal heirs of the deceased 3rd respondent on record and permit the counsel for the appellant to carry out necessary amendment to the cause-title.

11. The company, which was sought to be added as additional respondent and

which figures as the 15th respondent in this appeal had been issued with notice, served and is represented by counsel Smt. Nalina Myagowda. Submissions on behalf of 15th respondent is that no funds had ever been transferred from the 1st respondent-company to the company proposed to be added as party to the main petition before the Company Law Board; that the proposed respondent has nothing to do with the affairs of the 1st respondent-company and therefore, is not a necessary party.

12. However, Sri Tiruvengadam, learned counsel for the appellant submits that some of the promoters of the 1st respondent-company and the 15th respondent-company are common; that some transfer of assets have taken place between the companies. This submission is very much contested by the learned counsel for all the respondents. However, Sri Vishwanath, learned counsel appearing for the legal heirs of the 13th respondent supports the stand of the appellants and submits that there is transfer of funds between the 1st respondent-company and the 15th respondent-company, which is sought to be represented in the proceedings between the Company Law Board, so also submits Mr. Rayappa Hadagali, learned counsel appearing for the respondent Nos. 11 and 12.

13. It obviously appears that the appellants have some support even amongst the existing respondents before the Company Law Board and the board found some justification to issue notice to the proposed respondents and we find that the proposed respondent is reluctant to join the proceedings before the Board. But in the larger interest of justice and a satisfactory resolution of the petition before the Company Law Board, we think it would be proper to allow this appeal, set aside the order of the Board and allow the application for impleadment, as it will be prudent to err on the safer side than to reject the appeal which can result in complications to occur later,

14. Having heard learned counsel for the appellants and learned counsel for the respondents, we deem it proper to set aside the order of the Company Law Board dated 30.09.2011, allow this appeal and allow company application No. 49/2011 filed in Company Petition No. 46/2008 before the Company Law Board, Additional Principal Bench, Chennai.

15. It is open to the newly added respondent to file their objections and if any other respondents want to supplement their objections, they can seek permission of the Company Law Board and do so.

16. All counsel appearing for the parties submit that the matter has been pending for quite some time before the Company Law Board and it is required to be disposed of expeditiously. The Company Law Board shall pay attention to this aspect of the matter.