

(2012) 09 DEL CK 0169
In the Delhi High Court
Case No : Co. Petition 212 of 2006

M/s Dabur (Nepal) Pvt. Limited

APPELLANT

Vs

M/s Woodworth Trade Links Pvt. Limited

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Companies Act, 1956 — Section 591, 591(1)(b), 592, 593, 594

Citation : (2013) 112 CLA 216 : (2012) 175 CompCas 338

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Sudhir Makkar and Ms. Meenakshi Singh, for the Appellant; S. Ganesh with Mr. Anurag Dubey, Meenesh Dubey and Mr. D.P. Pande, for the Respondent

Final Decision : Allowed

Judgement

Indermeet Kaur, J.

C.A. No. 1109/2008 & Co. Pet. 212/2006

1. The respondent M/s Woodworth Trade Links Pvt. Ltd. has filed the present application seeking rejection of the petition i.e. C.P. No. 212/2006; submission being that in terms of Section 591 (1)(b) of Companies Act a foreign company which is incorporated outside India and has an established place of business within India is bound to comply with provision contained under Sections 592 to 594 incorporated in part XI of the Companies Act of the said Act; the petitioner is a foreign company; it has been incorporated outside India; it has an established place of business within India; however the provisions of Sections 592 to 594 have not been complied with. Attention has been drawn to Section 599 of the Companies Act which specifically prohibits such a company to institute any legal proceedings until it has complied with the provisions of this part. The petitioner has disputed this position.

2. Record shows that the petitioner company M/s Dabur (Nepal) Pvt. Ltd. is a

foreign company. There is no dispute to this fact. Part XI of the Companies Act deals with the companies which are incorporated outside India i.e. foreign company. This Chapter imposes certain obligations upon these foreign companies which are doing business in India and have established a place of business within India; they have to comply with the provisions of Section 592 to 594 of the said Act failing which the hurdle of Section 599 prevents such a foreign company from initiating any legal proceedings in India.

3. Section 591 1(b) inter alia reads as under:-

591 (1)(b). Companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

4. Section 592, 593 and 594 contain the formalities which have to be complied with by such a company i.e. a foreign company who has established its place of business in India. Submission of the respondent being reiterated that the petitioner has an established place of business in India. The rigors of Section 599 prevent such a company to institute legal proceedings.

5. Record shows that C.A.No. 993/2007 has been filed by the Respondent seeking a recall of an order of this Court dated 06.11.2007. The reply filed by the petitioner to the said application and submission contained therein is relevant. In para 11 the petitioner company has stated:-

It is however submitted that the Petitioner Company is a subsidiary of Dabur India Limited and as such the affairs of the said company pertaining to Delhi region are handled and looked after through the Delhi office of Dabur India Ltd."

6. This is an admission by the petitioner company that it is a subsidiary of Dabur India Limited and affairs of the petitioner company pertaining to the Delhi region are being handled and looked after by the Delhi office of its parent company i.e. Dabur India Limited. The correspondences exchanged between the respondent and the parent company of the petitioner are also relevant Annexure A-4 (page 258) is a letter dated 11.05.2001 sent by Dabur India Limited to the respondent wherein the reconciliation of accounts between the parent company and its subsidiary on a regular basis has been sought to be insured. So also are the other correspondences, which find mention at page 259, 260 and 261 of the paper book. Annexure A-8 (page 263) is a letter addressed by the respondent to the petitioner wherein it is stated that the materials of the petitioner will be stored at his godown at Tumariya Tola, which is admittedly a place in India. There is also no dispute that the petitioner company has godowns and warehouses at Raxaul (page 266).

7. In Tumlare Software Services Private Limited Vs. Magic Software Services, while considering the provisions of Section 591 of the Companies Act in the context as to whether a foreign company has an established place of business in

India, the following extract would be relevant:-

As is apparent, the crux of the above provisions of Companies Act is that unless a Company has a specified or identifiable place at which it carries on business it cannot be said to have an established place of business that include office, storehouse, go down or any other kind of such activity that has direct relation with the business and place.

8. Admittedly in the present case the company has its warehouses/ storehouses in India where the goods of the company are being stored. The correspondences exchanged between the parent company (of the petitioner) and the respondent also shows that all reconciliation of accounts on behalf of the petitioner is being undertaken by its parent company in India.

9. In a judgment reported as 1990 BCLC 546 (QBD) (Commercial Court) Cleveland Museum of Art v. Capricorn Art International SA the test laid down by the English Courts to determine whether a foreign company had an established place of business in the place where the legal proceedings had been initiated, the Court had held as follows:-

In order to find that an overseas company had an established place of business in England it was necessary to show that it had some more or less permanent location associated with the company and from which habitually, or with some degree of regularity, business was conducted. On the facts of the case in which this observation occurs, it was clear that the company used the London premises for storing works of art and also for the viewing of works of art stored there and that these were carried out to such an extent that the company had clearly established a place of business on the premises.

10. In Deverall v. Grant Advertising Inc. (1954) (3) All ER 389, a Court of England in this context had noted as follows:-

A company will be establishing a place of business in India, if it has a specified or identifiable place at which it carries on business, such as an office, store house, go down or other premises having some concrete connection between the locality and its business. The word "establish" indicates more than occasional connection.

11. In another case reported in (1944) 2 All ER 556 Tovarishetvo Manufactur Liudvig Rabenek, the Court had gone to the length of holding that where the representatives of a foreign company were often coming and staying in a hotel in England for purchasing machinery, cotton etc., the foreign company had a place of business in England.

12. The application filed by the respondent has to be viewed and tested in this background.

13. The petitioner has himself in his reply to C.A. No. 993/2007 admitted that it is a subsidiary of its wholly owned company i.e. Dabur India Limited. The correspondences exchanged between the respondent and Dabur India Limited

show that all business transactions of the petitioner company were being reconciled on its behalf by its parent company. The petitioner company also admittedly has its warehouses and godowns at Tumariya Tola and Raxaul in India. This evidence amply establishes that the petitioner company has an established place of business in India. Admittedly, the provisions of Section 592 to 594 have not been complied with. Section 599 creates a hurdle for such a foreign company to institute any legal proceedings.

14. The prayer made in the present application is allowed. The present petition is not maintainable.

15. At this stage, Learned Counsel for the petitioner submits that the provisions of Section 599 are not mandatory; they are directory; on the payment of the requisite fee this irregularity can be cured. Circular No. 12/2002 dated 14.05.2002 has been revised and the fee payable by a foreign company u/s 601 and the additional fee payable in respect of their application relating to condonation of delay u/s 637B is contained therein. This submission is undisputed. This petition not being maintainable is accordingly disposed of with liberty granted to the petitioner to file a fresh petition after curing the affronted defects. Pending applications also stand disposed of. Period spent in pursuing this litigation be excluded for the purposes of limitation.