

(2020) 02 NCLT CK 0122

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application No. 47/C-III/ND Of 2016 In Company Petition No. 114 Of 2007

Sonia Khosla

APPELLANT

Vs

Montreaux Resorts Pvt. Ltd

RESPONDENT

Date of Decision : 07-02-2020

Acts Referred:

National Company Law Tribunal Rules, 2016 — Rule 11, 51
Companies Act, 2013 — Section 241, 242

Citation : (2020) 02 NCLT CK 0122

Hon'ble Judges : Dr. Deepti Mukesh, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Deepak Khosla, Arvind Bhatt, Ritika Choubey, Kuber Giri, Abhishek Rautji, Jay Savla, Anand M. Mishra, Rishi Sood

Final Decision : Allowed

Judgement

1. The present application CA 47/C-III/ND/2016 is filed by the L.R. of the Petitioner seeking permission/direction from this Bench with the following prayers:

"1). In exercise of its inherent powers under Rule 11 and 51 of the NCLT Rules, 2016, grant liberty to withdraw the Company Petition, and file it afresh after correcting the same within 3 days of the withdrawal, while sustaining all status quo orders for one week from the date of allowing withdrawal./In the alternative to (1):

2) Allow the present application ex parte, and in consequence thereof, allow the amended Company Petition as per Annexure 1 to be taken on record, to substitute the Company Petition filed on 13-08-2007.

3) If the amendment of the Company Petition be allowed ex parte, direct or hold

that the approval of the filing of the amended petition does not constitute the endorsement/ adjudication by this Hon'ble Tribunal of the correctness of the post amendment contents, and that its approval to allow the amended petition to be taken on record in substitution of the earlier petition shall be without prejudice to the right of the Respondents to oppose the correctness/veracity of the post amendment version in due course, such as, as and when notice is issued on the Company Petition.

4). Pass ex-parte orders as prayed for above.

5). And Pass such other order or further order or orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

2. During the hearing of CA-47/C-III/ND/2016, the Applicant submitted a summary of amendments proposed to be made to the Company Petition No. 114 of 2007, which gives an overview of the types of amendments/enlargements being sought by the Applicant in the Company Petition No. 114/2007. The Applicant has elaborately analyzed the types of amendments/enlargements being sought in the Company Petition No. 114/2007 filed in 2007. It has been shown that there are eleven types of amendments/ enlargements for which, approval of this Bench is sought. These eleven types of amendments/ enlargements include two instances of "Enlargements",_30 instances of amendments which are "Factually correct-already expressed/" 22 instances of amendments which are "Factually correct-but inadvtly. omitted", 13 instances of "Discovery of new matter", 15 instances of "Mere insertion of- "allegedly", 5 instances of "Corrections already accepted/allowed", 11 instances of "Legal submissions or summations", 2 instances of "Addition of Respondents (Ord 1 R 10)" 1 instance of "Revised reliefs", 6 instances of "Amendments on shareholding" and 1 instance of "Deletion of what is factually incorrect". In the same summary of amendments, the Applicant has further submitted meanings of the legends being used e.g. "enlargement," "factually correct and already expressed," "discovery of new matter", "correction of already accepted/allowed" and "addition of respondents, etc."

3. Admittedly, the Applicant wants 11 types or categories of amendments/enlargements, of which the number of instances, where these amendments/enlargements occur, runs into 108 such instances of amendments being proposed.

4. During the arguments the Applicant has also submitted a convenience chart, laying down propositions on which amendments are sought. 27 such propositions for requiring the amendments are described, discussed and supported with citations of various Hon'ble High Courts and Hon'ble Supreme Court rulings and also rulings of foreign courts. These propositions discuss various aspects of law also, including the points deciding that:-

(i) At what stage amendment can be allowed?

(ii) Whether correctness of amendment has to be determined at the stage of allowing?

(iii) Whether limitation should be considered while allowing the amendment of preliminary issue?

(iv) Whether court has to consider only the aspect of necessity of amendment to put an end to entire controversy between parties, even though amendment may change/add to the ingredients in pleadings.

(v) Whether, if respondents are not prejudiced or can be compensated with cost, then without any further consideration, amendments can be allowed?

5. Although of this application notice was issued, however, in spite of various opportunities all the Respondents have chosen not to file reply, nor has any application come seeking time to file reply. The Applicant had thereafter filed an application being CA No. 46/2016, seeking an ex parte order in the present application. Vide order dated 21.11.2019 this Bench has allowed CA No. 46/2016 and accordingly present application is being decided ex-parte. During the hearing, the respondent No. 2 to 4 and 6 to 8 sought liberty to make legal submissions limited to maintainability of present application for amendment. The Respondents were allowed to assist the court with respect to legal propositions involved in the present application and no submissions with respect to facts were allowed from the Respondents.

6. Both sides had requested and were permitted to file written submissions and Respondents have filed five judgments in support of their contentions that the application cannot be entertained in law based on principles of law, as laid down by the Hon'ble Apex Court while considering, allowing/rejecting amendments. The following illustrative factors were discussed which are not exhaustive:-

(I) whether the amendment sought is imperative for proper and effective adjudication of the case;

(ii) Whether the application for amendment is bona fide or mala fide;

(iii) The amendment should not cause such prejudice to the other side which cannot be compensated adequately in terms of money;

(iv) Refusing amendment would in fact lead to injustice or lead to multiple litigation;

(v) whether the proposed amendment constitutionally or fundamentally change the nature and character of the case; and

(vi) As a general rule, the court should decline amendment, if a fresh suit on the amended claim would be barred by limitation on the date of application.

7. While submitting arguments, it was mentioned by the Applicant that from the date the petition C.P. No. 114/2007 was filed in 2007 and till date, various cross litigations have been filed by both sides before Criminal Courts, NCLT, Hon'ble

NCLAT, Hon'ble High Courts and even before the Hon'ble Apex Court, and though in some of these matters various orders have been passed, other matters are still pending. It was further submitted by the Applicant that in these proceedings Applicant has received numerous reliefs, thereby crystallizing some of the issues pending in the present main petition C.P.No.114/2007. On obtaining certain reliefs sought, the Applicant is now in control of the Respondent No. 1 Company herein and had control of the management of the Respondent No. 1 Company.

8. As admitted by the Applicant, who presently controls the management of Respondent No.1 Company, the Respondent No. 1 Company M/s. Montreaux Resorts Pvt. Ltd. through present Applicant has filed another petition against the same Respondents in 2016 U/S. 241-242 of the Companies Act, 2013 for acts of oppression and mismanagement, wherein an application seeking interim relief is pending consideration before this Bench, admittedly with parallel/similar prayers against the same Respondents.

9. On overall view of the entire scenario amongst the parties, litigations pending, issues involved, and also long pendency of present main petition, wherein Hon'ble Supreme Court and Hon'ble NCLAT have categorically directed NCLT to ensure an early disposal of the present main petition No. 114/2007, in our view a practical approach to minimize the entire process of litigation needs to be adopted.

10. In view of these facts and circumstances, we are of the view that if the amendments are to be allowed at this stage, these will no doubt change the entire original petition being CP 114/2007, as numerous amendments will have to be carried out and the procedure as well as litigation period will further get protracted, which will defeat the main purpose of honouring the directions passed time and again, by Hon'ble Supreme Court and Hon'ble NCLAT to expedite the hearing and disposal of CP No. 114/2007.

11. The Applicant has prayed in the first prayer, seeking liberty to withdraw the petition and to file it afresh. In order to minimize the procedure, pleadings and time spent on the amendment application which, if allowed, will take substantial time, derailing the hearing of the main petition No. 114/2007, we are of the view that granting the prayer (1) will meet the requirement of equity and justice and will further comply with the orders of the Hon'ble Supreme Court and the Hon'ble NCLAT. The Id. Counsels for the respondents did not object to allowing Ist prayer but had objected to grant of liberty for filing afresh stating that the grant of liberty would mean the extension of limitation period.

12. While making argument on the amendments the Applicant had submitted that argument of limitation issue cannot be raised at the stage of allowing amendments since the raising of limitation issue and objection will be open to the Respondents after the amendments are allowed and it is a baseless objection to raise at this stage specially when the Applicant is being heard ex parte of the Respondents.

13. Hence we are of the view that it will be in the interest of expeditious disposal of the main petition CP No. 114/2007 that the prayer (1) is granted.
14. Since the prayer (1) is granted, the other alternative prayer Nos. 2,3,4, and 5 need not be considered and decision on these is obviated.
15. The present application is allowed and disposed of in terms of above order.
16. As a consequence all pending company applications in this CP No. 114/2007 stand disposed of in terms of the above order.