

(2019) 02 CAL CK 0018

In the Calcutta High Court

Case No : Can No. 6652 Of 2018 In Tender Of Md Appl (Mat) No 869 Of 2018

State Of West Bengal & Ors.Vs Gopi Vallabh Solutions Private Limited & Ors.

Date of Decision : 05-02-2019

Acts Referred:

Companies Act, 1956 — Section 3, 21

Citation : (2019) 02 CAL CK 0018

Hon'ble Judges : Biswanath Somadder, J;Arindam Mukherjee, J

Bench : Division Bench

Advocate : Kishore Datta, Naba Kumar Das, Pathik Bandhu Banerjee, Raj Ratan Sen, P.C. Sen, Ritabrata Mitra, A.P. Gomes

Final Decision : Dismissed

Judgement

Arindam Mukherjee, J

1) The appellants are the respondent Nos. 1,2,3,4 and 5 in the writ petition being W.P. No. 26288 (W) of 2016 (Gopi Vallabh Solutions Private Limited and Another versus The State of West Bengal and Others.). The writ petitioner, namely, Gopi Vallabh Solutions Private Limited (formerly known as BNKe Solutions Private Limited) is the respondent no. 1 in the above appeal. The West Bengal Electronics Industries Development Corporation Limited (Webel) was respondent no. 6 in the writ petition and proforma respondent in the above appeal.

2) The following facts emerge from the pleadings before the learned First Court:-

i) By a registered deed of lease dated 19th January, 1987, the Governor of the State of West Bengal was pleased to grant a lease in favour of Webel in respect of 87,555,621 acres of land(approximately) in Block-EP & GP in Sector-V of Bidhan Nagar in the district of 24 Pargana (North) for a period of 999 years on the terms and conditions mentioned therein.

ii) The said lease deed, inter alia, allowed Webel (lessee) to sub-divide or sublet the demised land or the building to be constructed for the purpose of setting up

of different units of electronic industries and also prevented the use of the demised land or of any unit constructed thereat for any purpose other than for setting up of electronic industries without the prior permission in writing of the Government or of any other authority prescribed in that behalf.

iii) In terms of the authority granted by the said deed of lease dated 19th January, 1987, Webel executed a sub lease in favour of BNKe Solutions Private Limited (hereinafter referred to as the 'BNK') on 22nd July, 2005 in respect of 1.12 acres (plot no. E2 - 2/1) for a period of 90 years, inter alia, on the terms and conditions recorded in the said document. Webel is described as sub-lessor and BNK as sub-lessee. The sub lease is also a registered document. The obligations of Webel in the lease dated 19th January, 1987 were incorporated in the said sub-lease deed.

iv) The said lease executed by Webel was known to and notified with the appellants.

v) The sub-leased plot was duly mutated in the name of BNK.

vi) BNK was incorporated on 29th February, 2000. The Memorandum of Association of BNK annexed to the writ petition provides for the main and the ancillary objects of the said company.

vii) By a gazette notification dated 26th May, 2008, and revised subsequently by gazette notifications dated 16th December, 2011 and 26th November, 2012 the transfer fee in respect of leased out plots at Bidhan Nagar was fixed.

viii) By a deed of declaration/rectification dated 18th July, 2012 entered by and between the Webel and BNK, a rectification was brought in to the sub-lease deed dated 22nd July, 2005 by which BNK was allowed to sub-let or sub-lease the surplus built up space of the building for being used by other IT/ITES and electronic units only on previous written consent of the Webel.

ix) The name of BNK changed to Gopi Vallabh Solutions Private Limited (in short "GVSPL") under the provisions of Section 21 of the Companies Act, 1956. A fresh certificate of incorporation was issued by the Registrar of Companies in favour of GVSPL on 12th March, 2012. The concerned authorities apart from being made aware about this change of name were also aware of that fact while they granted permission to GVSPL to sub lease some units at its leased out plot to other entities.

x) The Memorandum of Association of GVSPL on being compared with that of BNK reveals that the main and ancillary objects of the BNK and GVSPL are the same.

xi) Subsequently, GVSPL requested the appellants through Webel as also by itself to allow the change of name of sub-lessee in the sub-lease dated 22nd July, 2005 from BNK TO GVSPL.

xii) The appellants held that the change in name of BNK to GVSPL amounts to

transfer of the sub-lessee interest of BNK in favour of GVSPL and, as such, demanded transfer/permission fee by a memo dated 7th July, 2015 followed by another demand vide memo dated 16th May, 2016.

3) These two memos are under challenge in the writ petition. GVSPL contends that, change in name under the provisions of Section 21 of the Companies Act, 1956 does not amount to a new company coming into existence. In such circumstances, it cannot be held that the change in the name of BNK to GVSPL amounts to transfer of lease hold interest in the plot of land sub leased to BNK. GVSPL, therefore, has prayed for quashing and/or setting aside and/or to recall, reseal, revoke, cancel and/or withdraw the letters dated 7th July, 2015 and 16th May, 2016 respectively being annexure P-20 and P-27 to the writ petition and further directing the appellants to record the change of name from BNK to GVSPL without payment of any permission fee as demanded.

4) The appellants in the other hand, contends that there has been transfer of share holding in BNK which amounts to change in the controlling interest of and in the said company which amounts to transfer of the sub lease and, as such, GVSPL is liable to pay permission/transfer fees. The appellants have further contended in its opposition filed before the learned First Court that the lease hold premises is in effect changing hands in a circuitous manner which should not be permitted and, as such, GVSPL is liable to pay permission/transfer fees as asked for.

5) GVSPL(writ petitioner) in reply, contends that, the share holders of the company and the company are different. The company is a separate juristic entity and its share holders are free to transfer their share holdings at any time they chooses subject to the statutory restrictions and compliance. The change in share-holding does not bring into existence a new company. GVSPL remains liable for all acts of BNK. In any event, the transfer of share holding had taken place in 2009 and the application for change in name has been made much later and, as such, the appellants cannot haul up BNK of having transferred its share as late as in 2015. In fact, permissions was granted to GVSPL to transfer its units in 2013/14 through Webel.

6) The learned Single Judge after considering the materials on record and the arguments advanced by the parties allowed the writ petition by commanding the appellants (respondent nos. 1,2,3,4 and 5 in the writ petition) to record the change in name of BNK to GVSPL without payment of any permission fee.

7) Being aggrieved and dissatisfied with the said judgment and order the instant appeal has been preferred.

8) The appellant have cited a judgment reported in 2015 (12) SCC 501 to persuade us to hold that the change in name coupled with prior change in share holding amounts to transfer and, as such, the respondent no. 1 (writ petitioner) is obliged to pay the permission fee.

9) We have considered the said judgment and several fact situations discussed therein. We find none of the entities whose case has been discussed in the said judgment which persuaded the Hon'ble Supreme Court to hold that there has been a transfer is similar to the case in hand. None of the companies whose case has been discussed in the said judgment had changed their names under the provisions of Section 21 of the Companies Act, 1956. Moreover, we do not find any similar embargo as contained in some of the clauses of the lease deeds considered in the said judgment. In absence of such restrictive covenants in the lease deed before us or in the sub lease under consideration we are not inclined to hold that the change in share holding of a company coupled with change in name under the provision of Section 21 of the Companies Act, 1956 will amount to transfer of its lease hold interest on the plot of land in question which will entitle the appellants to demand permission fee.

10) On the other hand, the decisions cited by the respondents/writ petitioners being (2005) 128 Company Cases 996 (SCC), AIR 1966 Cal. 585 (DB) and (1986) 60 Company Cases 707 (DB) clearly goes on to show that change in name under the provisions of Section 21 of the Companies Act 1956 does not bring into existence a totally different company and, as such, there can be no transfer of the interest in the plot of land under the sub lease which entitles the appellants to claim permission fees. The change in name prayed for by the respondent no.1/writ petitioner is merely a rectification of the lease deed which does not even attract payment of stamp duty as in lease. Stamp duty at best can be claimed as of deed of rectification.

11) It is correct that a company is a juristic entity separate from its share holders. The company functions of itself through its board of directors while the share holders are only entitled to participate in the elections and receive dividend. All the share holders jointly cannot be said to be the company as defined under Section 3 of the Companies Act, 1956. The share holders are also free to transfer their shares at will, however, of course subject to statutory restrictions and compliance. Even with the entire transfer of share holding the company continues to exist by its name and is liable for any breach of the agreements entered into by it. The old company after its change in name under the provisions of Section 21 of the Companies Act, 1956 continues to exist in the new name with all its aspect and liabilities. In the instant case, even if the transfer of entire share holding of BNK had been transferred in 2009 it did not amount to a new company coming into existence which is different from BNK, in fact BNK continued to be liable as a sub lessee even after transfer of its entire share holding. Any action as to breach of any covenant of the sub lessee ought to have been brought against BNK till its change in name irrespective of who held what shares of and in the said BNK.

12) We have also considered the Memorandum of Articles of Association of BNK and GVSPL and have found that there is virtually no change between the two which could have created a doubt in our mind that BNK and GVSPL are different

companies. This is also not a case where the corporate veil has to be lifted to probe into or hold transfer of the lease hold interest with the transfer of shares.

13) We are, therefore, unable to accept the contentions of the appellants and on the contrary accept that of the respondent no. 1/writ petitioner.

14) We have considered the impugned judgment and did not find any infirmity and/or perversity therein which requires to be interfered with in an Intra-Court Mandamus Appeal.

15) In view of the facts and circumstances as aforesaid, the appeal is dismissed.

There shall, however, be no order as to cost.

Urgent photostat certified copy of this order/judgment, if applied for, be supplied to the parties on a priority basis.