

NATIONAL COMPANY LAW APPELLAT TRIBUNAL, NEW DELHI**Company Appeal (AT) No.75/2018**

(Arising out of Order dated 02.02.2018 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in CA No.106/2017 in CP No.5/111A/2013(TP No.148/HDB/2016).

In the matter of:

1. Liquors India Ltd,
Regd Office Plot No.08-120
Road No.13,
IDA Nacharam,
Hyderabad 500076

Appellant No.1
(Original Respondent No.1)

2. Lemonade Share & Securities Pvt Ltd,
Regd Office:A-30 I, Hetal Arch,
Opp. Natral Market,
S.V. Road, Malad (V),
Mumbai-400064

Appellant No.2
(Original Respondent No.2)

Versus

1. M/s Ravi Kumar Distilleries Ltd,
Regd Office at S2 & S2, II Floor,
B Wing, Ameen Manors, 138
Nungambakkam High Road,
Nungambakkam, Chennai 600034

Respondent No.1
(Original Petitioner No.1)

2. Mr R.V. Ravikumar,
Villa Balaji No.2, Ist Cross Extn.,
Rainbow Nagar
Puducherry 605011

Respondent No.2
(Original Petitioner No.2)

Present:

For Appellant: Mr. V Seshagiri and Mr. Varun Loonkar, Advocates.

For Respondents: Mr Virender Ganda, Senior Advocate, Mr Kamal Agrawal, FCA and Mr. Ayandeb Mitra, Advocate.

ORAL JUDGEMENT

23.08.2018

A.I.S. CHEEMA, J. : This appeal has been filed by Original Respondent No.1

and 2 against the impugned order dated 2nd February, 2018 passed by the

National Company Law Tribunal, Hyderabad Bench, Hyderabad (NCLT in short) in Company Appeal No.106/2017 in Company Petition No.5/111A/2013 (TP No.148/HDB/2016). By the impugned order dated 2nd February, 2018 the Learned NCLT has allowed the impleadment and amendment to be made in the Company Petition which was sought by Respondent No.1 and 2, the original petitioners.

2. The Learned counsel for the appellants who are original Respondent No.1 and 2 in the Company Petition is pointing out the company petition which was filed on 25th April, 2013. A copy of the Company Petition is annexed as **Annexure A-10**. In the Company Petition the original petitioners prayed as under:

“a) To declare that the petitioners are the rightful title holders to 43,49,400 shares in the 1st respondent company.

b) To rectify the register of members of the first respondent company by reflecting the names of the petitioners in respect of 31,44,000 shares comprised in several Share certificates bearing distinctive numbers as mentioned in Table A to this petition;

c) Consequently, pass an order that the incorporation of the names of the others/companies in the place of the petitioners in the register of members of 1st respondent company in respect of 31,46,000 as null and void;

d) Consequently, pass an order that the allotment of 6000 shares made on 09/01/2013 is null and void.

e) To pass any other order that the Hon'ble Bench may think deem fit.”

3. Learned counsel submitted that the petitioners sought declaration regarding 43,49,400 shares and sought rectification regarding 31,44,000 shares and did not seek rectification regarding 12,05,400 shares. He submits that the original petitioners were aware regarding the transactions which had been done with regard to balance 12,05,400 shares and declaration regarding the title to such shares were not made in the company petition. Learned counsel has strenuously taken us through the various documents in the appeal to say that the original petitioners were having knowledge regarding the transactions with regard 12,05,400 shares. According to the counsel the transfer regarding these 12,05,400 shares was recorded by the Appellant No.1 company in its Board Meeting dated 13.03.2013. He referred to Ex. R-6 (Page 349) to say that Notice dated 12.03.2013 was sent to Original Petitioner No.2 Mr. R.V. Ravikumar, who was Director, regarding the Board Meeting to be held on 13.3.2013 and the agenda was as pointed out at Page No.350. He is referring to an email sent by one Mr. Badri Nath Gandhi, authorised representative of Petitioner No.1 raising certain disputes. Thus according to him the original petitioners had the required knowledge. According to the learned counsel the original petitioner knew about such meeting in March 2013 itself and did not raise dispute about these 12,05,400 shares in the Company Petition filed on 25th April, 2013. Learned counsel submitted that thus the amendment sought related to dispute which is now time barred as more than 3 years old.

4. Against this Learned counsel for Respondent No.1 and 2, original petitioners submitted that the prayer of the company petition itself shows that the original petitioners were claiming to be rightful holders to 43,49,400

shares. According to the learned counsel if the petitioners had information as to what respondents had done with regard to 12,05,400 shares it was not difficult for the petitioners to make necessary prayer accordingly in the company petition. Learned counsel submitted that in the company petition after the Respondent No.1 and 2 (appellants herein) filed Reply, the petitioners came to know regarding the respondents dealing with these 12,05,400 shares. He submits that consequently the original petitioners filed CA No.1/2014 seeking information and documents and the original respondents (appellants) filed reply and subsequently NCLT passed the orders giving direction to give the necessary information and documents. Learned counsel submitted that in consequence of the orders passed by the NCLT the present appellants filed their affidavit dated 27.2.2017 and it was at that point of time the petitioners had the information due to which the original petitioners moved amendment application to amend the company petition.

5. To seek amendment petitioners stated (Annexure A-13-Page 238 at Page 251 in paras 2 to 4) as under:-

“2. The applicants state that as on the date of filing of the captioned Petition the Applicants were not aware about transfer of balance 12,05,400 shares of Respondent No.1 from the name of Proposed Respondent No.2 to No.8 to Respondent No.2 as according to the applicants, said shares were lying under pledge with proposed Respondent No.9 and were registered in the name of proposed Respondent Nos 1 to 8. The applicants further state that said proposed Respondent No.1 to No.8 had executed an authority letter in favour of Applicant No.2 to collect the certificates of the

said shares from the proposed Respondent No.9 and get the same transferred in the name of the applicants. The applicants crave leave to refer to and rely upon documents executed by proposed Respondent No.1 to No.8 in favour of the Applicants as and when produced.

3. The applicants state that during the pendency of the present petition, Respondent No.2 and Respondent No.3 colluded with their associates and submitted forged and fabricated documents to proposed Respondent No.9 and somehow got physical possession of 12,05,400 shares of Respondent No.1 registered in the name of proposed Respondent No.1 to 8.

4. The Applicants stated that on or about last week of August, 2014 when the Applicants have taken search of the Annual Return filed by Respondent No.1 on 6th June, 2013 for the AGM held on 28th May, 2013 for the year ended 31st March, 2013, 12,05,400 shares of Respondent No.1 which were lying with Respondent No.9 under pledge were illegally and unauthorisedly transferred in the name of Respondent No.2. The Annual Return further shows that 9400 shares which were transferred from the name of the applicants to Respondent No.2 were further transferred from the name of Respondent No.2 to Respondent No.5 and proposed Respondent No.10 to Nos.15. The applicants crave leave to refer to and rely upon copy of Form No.20B filed by Respondent No.1 with the ROC for the AGM held on 28th May, 2013.”

6. They then referred to the filing of CA No.1/2014 and further developments in the litigation.

7. Having heard the learned counsel for both the parties and on perusing the material available on record and considering the impugned order passed by the NCLT and the reasons recorded allowing the amendment, we find that keeping in view the dispute between the parties the amendment is necessary and does not change the nature of the petition. As far as the dispute regarding the limitation is concerned although the NCLT has stated that there cannot be any question of limitation involved in the issue, we observe that the question of delay and laches needs to be kept open. The question of limitation being mixed question of fact and law in the facts of the matter, the question of limitation would also remain open for the parties to agitate at the time of the final disposal of the company petition. Otherwise, we see no reason to interfere in the order permitting impleadment and amendment.

8. We hold that the question of delay and laches and limitation as raised by the appellants shall remain open for decision at the time of final disposal of the company petition. The appeal is accordingly disposed. No orders as to costs.

(Justice A.I.S.Cheema)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

Bm/nn