

IN THE HIGH COURT OF SINDH AT KARACHI

C. P. No. D – 5604 of 2018

[West Wharf Warehouse Company (Private) Limited
versus Federation of Pakistan and another]

Present:

Mr. Irfan Saadat Khan, J.

Mr. Muhammad Faisal Kamal Alam, J.

Date of hearing : 23.09.2021.

Petitioner : West Wharf Warehouse Company (Private) Limited through Mr. Behzad Haider, Advocate.

Respondent No. 1 : Federation of Pakistan, through Mr. Khursheed Javed, Deputy Attorney General.

Respondent No. 2 : Karachi Port Trust Estate Department, through Mr. Muhammad Sarfraz Sulehry Advocate.

JUDGMENT

Muhammad Faisal Kamal Alam, J:- Petitioner has, *inter alia*, challenged the Final Notice dated 14.05.2018, issued by Respondent No 2 – Karachi Port Trust (“KPT”), requiring the Petitioner to apply for change of Company’s name from ‘*Messrs General Steel Mills Limited*’ to ‘*Messrs General Steel Mills (Private) Limited*’ as well as change of Director name on payment of prescribed fee.

2. Succinctly, the Petitioner is engaged in the business of warehouse keepers, warehouse service providers and contractor to take on lease or on rent, godown, building premises for warehouse business.

3. Mr. Behzad Haider, Advocate for Petitioner, has referred to various documents to show that Petitioner was incorporated as a corporate entity on 18.11.1984. Petitioner was granted lease of a plot No.15, measuring 4181 Square Meters at Warehouse Area, West Warf Karachi – ‘**Subject**

Property', situated in Respondent No.2 – KPT. The initial lease deed expired on 31.03.1991, thereafter the same was renewed vide a Lease Deed dated 21.08.2014. It is argued that once the sanction was given by Respondent No.2 vide its correspondence of 17.05.2016 (*Annexure 'K' of petition, page-147 of the File*), and 02.12.2016 (*Annexure 'M' of petition, page-151 of the file*) that lease be renewed up to 2026 subject to certain conditions, then subsequent correspondence of 14.05.2018 (*Annexure 'Y' of the Petition*), that Petitioner should also apply for change of name in the Company and Board of Directors, is completely unjustified and unlawful.

4. Learned Advocate for the Petitioner has referred to various documents to show that despite passage of considerable time, Respondent No.2 has not resolved the issue, though sufficient explanation was given to KPT that neither there is change in the name of Petitioner nor its Directorship, that results in change of entity and that can attract levy of impugned charges/fees, but Respondent No.2 did not agree with the stance of Petitioner. Further argued that the Board Resolution No.129 dated 23.04.2015, of Respondent No.2, on the basis of which, the latter (said Respondent No.2) is demanding the fees/charges, is not applicable to the case of Petitioner and Respondent – KPT is deliberately misinterpreting its Board Resolution, in order to exact unjustified amounts from the Petitioner.

5. Mr. Muhammad Sarfraz Sulehry, learned Advocate for Respondent - KPT, has argued that the impugned demand is legal and is in line with the aforesaid Board Resolution of KPT. He has referred to the contents of his Counter Affidavit to the main petition, and has stated that although initially the Lease Deed was prepared in the name of 'Messrs General Steel Mills Limited' and was sent to it for stamping and execution vide letter dated 22.05.2017, but in the meantime it was observed that the petitioner has changed its name to '*Messrs General Steel Mills (Private) Limited*'.

Secondly, when information was sought from the Petitioner, it further transpired that even Board of Director of Petitioner Company has been changed and in view of this, under relevant provisions / paragraphs of **Board Resolution No.129** (of KPT), the Petitioner was called upon to pay requisite fee for change of name and Board of Directors.

6. Arguments heard and record perused.

7. Basic and relevant facts are not disputed by Respondent – KPT, that Petitioner is the lessee / tenant of KPT in respect of the aforereferred Subject Property and lastly the lease was renewed vide Instrument of Lease dated 21.08.2014.

8. What is to be considered is, that whether Board Resolution of KPT (*ibid*) is applicable to the case of Petitioner, vis-à-vis, for change of name and composition of Board of Directors?

9. Record shows that initially when the lease was granted by Respondent – KPT to Petitioner, at the relevant time, the name of Petitioner was ‘**General Steel Mills Limited**’, a company incorporated under the Companies Act, 1913. Subsequently, lease was renewed vide instrument of Lease Deed 21.08.2014, of Petitioner with the above name. A copy of this document is appended with the petition as Annexure “E”, at page-81. As per the terms of this lease, it expired on 31.03.2016. The above name ‘General Steel Mills Limited’ for the sake of clarity be referred to as **Previous Name**.

10. Petitioner through its letter dated 01.10.2015, requested the Respondent - KPT for renewal of lease for another twenty five years. After exchange of correspondences between Petitioner and Respondent – KPT, the latter vide its Missive dated 02.12.2016 conveyed sanction for renewal

of lease for the period of ten years from 01.04.2016 to 31.03.2026, subject to payment of rent, security deposit and lease preparation charges.

11. The above sanction letter was readily accepted by the Petitioner through its correspondence of 05.12.2016, and requisite pay orders for a sum Rs.1,97,964/- towards security deposit and Rs.25,000/- for lease preparation charges were also made in favour of Respondent – KPT, copies whereof are appended with the petition. In this context, Petitioner's counsel has argued that the above sanction letter was in fact an offer, which was accepted by the Petitioner, which results in a binding contract and Respondent – KPT cannot resile from its commitment, by introducing new terms in the form of above unjustified demand / purported fees towards change of name of the Company and composition of Board of Directors.

12. The Respondent – KPT has filed a **Statement dated 21.01.2020**, in the present proceeding along with a letter of 15.01.2020 addressed to Petitioner, wherein, it has mentioned the fees/charges for change of company's name and Director as Rs.5000/- per Square Meter and Rs.10,000/- is mentioned for Change of Purpose. This last item is a new addition to the impugned demand.

13. In response to the above two objections of Respondent – KPT, as mentioned in their letter of 29.09.2017, about change of name of Company (of Petitioner) and composition of Board of Directors, following documents and reply were exchanged between the Petitioner and KPT_

- i. A letter dated July 24, 2007, explaining that Previous Name of the Petitioner, under the erstwhile law – Companies Act, 1913, was the statutory requirement. With this letter the Certificate of Incorporation issued by the then Authority and certified by present Securities and Exchange Commission of Pakistan [SECP], has been appended, which bears the Previous Name [*supra*]of present Petitioner with remarks that it was a **private company limited by shares**;

- ii. This response from Petitioner was not found satisfactory by KPT, which responded vide its Letter of 20th September, 2017.
- iii. Petitioner again clarified this factual and legal aspect through its letter of October 18, 2017 along with copy of the relevant provisions of the Companies Ordinance, 1984, explaining that under the new scheme of law, that is, the Companies Ordinance, 1984, in particular Section 41 thereof, a company limited by shares will include in parenthesis the word (Private).

14. It is pertinent to mention that at the relevant time when Respondent KPT had given the approval for renewal of lease through its Missive of 02.12.2016 [*ibid*], the Petitioner was already corresponding with KPT by using the name of Petitioner's company as "**General Steel Mills Private Limited**". Similarly, Petitioner by its Letter dated 29.03.2016, informed the Respondent KPT that it was in a process to change its name "*to better project its future prospects and aims*". When this Correspondence was addressed to Respondent KPT, at the relevant time the name of the Petitioner was 'General Steel Mills (Private) Limited'. This letter was never challenged by Respondent KPT, which means, that KPT was duly informed about change of Petitioner's name.

15. With regard to objection of Respondent – KPT about change in nomenclature of Directorship, as mentioned in one of its letters dated 29.09.2017, following documents were filed by Petitioner, to explain its position_

Correspondence of 18.10.2017 (by Petitioner) in response to letter of 29.09.2017 (*ibid*, of KPT), wherein, Petitioner has clearly stated that change in the nomenclature of Directorship was within the family and without any sale of shares and the company remains with the original shareholders, while disputing that the transfer fee as mentioned in the above Board Resolution 129 [of KPT], is leviable.

16. Interestingly, learned Advocate for Respondent – KPT under his Statement filed documents with regard to the above two objections. The Missive of Petitioner dated 22.01.2019 (one of the documents filed with above Statement), contains a reference of a meeting in which Minister for Maritime Affairs and other Senior Executive of KPT were present. It is stated that nomenclature of Directors was changed due to death of Hafeez ur Rehman, the father of present CEO Saif ur Rehman Chaudhry. To support this plea Form-29 dated 08.06.2015 filed under Section 205 of the Companies Ordinance, 1984 is on record in which two Directors, namely, Najeeb ur Rehman and Chaudhry Saif ur Rehman, present CEO are mentioned as sons of Chaudhry Hafeez ur Rehman (Late). Under Column 5.2 relating to ‘*Ceasing of Office/Retirement/Resignation*’, it is mentioned that Ch. Habib ur Rehman, Director has died.

Death certificate of deceased Hafeez ur Rehman along with heirship certificate has been filed. Record from SECP further reveals that the Petitioner Company comprised of the following members / shareholders_

20. List of members & debenture holders on the date upto which this Form A is made					
Folio	Name	Address	Nationality	No. of shares	NIC (Passport No. if foreigner)
	Members				
	Ch. Habib ur Rehman S/o Ch. Abdul Karim	44-Gulberg-V, Lahore	Pakistani	2,500	35200-1409345-3
	Najeeb ur Rehman S/o Ch. Hafeez ur Rehman	244-A, Block-C, Unit-2, Latifabad, Hyderabad	-do-	3,214	42000-0508657-7
	Ch. Saif ur Rehman S/o Ch. Hafeez ur Rehman	-do-	-do-	714	42301-0812085-5
	Ch. Aziz ur Rehman S/o Ch. Hafeez ur Rehman	-do-	-do-	714	42301-0792809-3
	Mrs. Mobina Hafeez D/o Ch. Hafeez ur Rehman	-do-	-do-	358	502-63-347247
			Total	7,500	

17. The above undisputed official documents conclude that it is a family concern and there was no transfer of shares for consideration, in the Petitioner Company, but in terms of Section 80 of the Companies

Ordinance, 1984 [applicable at that time considering the change recorded in the above Form 29 is of 08.06.2015], it was transmission of shares/ devolution of shares by way of the inheritance.

18. If the Clauses/Paragraphs of the above Resolution is seen, then for the present controversy Clauses/Paragraphs [ii] and [iii] relating to the Transfer Fee and Mutation Fee, respectively are relevant. Language of Transfer Fee conveys a meaning that this Transfer Fee is chargeable for transfer of lands from one tenant to a new one; *whereas*, mutation fee would be levied in the event when there is a change in tenancy, *primarily*, due to a family arrangement; that is, when land is not transferred to third party but when an internal structure of a tenant in respect of a land is changed. The Respondent KPT itself has **made a distinction** between a Transfer Fee [Clause (ii)] and Mutation Fee [Clause (iii)].

However, provision of “Change in nomenclature or change of Directors”, as claimed by KPT, is mentioned under Clause/ Paragraph 5 [of the above Board Resolution] and not with above two Clauses/ Paragraphs (ii) and (iii). For a ready reference the same is reproduced herein below_

“The Board also directed to submit the case of transfer fee in case of any change in nomenclature or change of Directors/Partners of a proprietorship or a company to the Board for consideration.”

19. Clauses / Paragraphs (ii) and (iii) relating to Transfer Fee and Mutation Fee, respectively, as contained in the Board Resolution No. 129, are not applicable here, because, *firstly*, the above undisputed official documents and statutory provisions of the erstwhile Companies Ordinance, 1984, show that change of previous name of Petitioner to subsequent name, that is, ‘*Messrs General Steel Mills (Private) Limited*’ was neither transfer of tenancy nor a change of company’s name, as alleged by Respondent – KPT, but the said change of name was done, due to promulgation of new

Statute at the relevant time, viz. Companies Ordinance, 1984. Respondent – KPT has misinterpreted the above cited provision of the Companies Ordinance, 1984. Therefore, the Objection of the Respondent KPT about change of Company's name is an afterthought and not a fair, just and reasonable exercise of discretion; and *secondly*, Mutation Fee is chargeable in the event of a family arrangement, but, neither Petitioner nor KPT/ Respondent No.2 has produced any document about a family arrangement as envisaged in the above Clause/ Paragraph 3, but as already discussed above, in the present case transmission of shareholding has taken place.

However, at the same time since the Petitioner itself has mentioned in its above correspondence of 22.01.2019 (appended with the Statement filed by learned Advocate for KPT) that Petitioner is ready to pay Transfer Fee for change in the name of Company, that is from General Steel Mills (Private) Limited to present name, viz. '*West Wharf Warehouse Company (Private) Limited*', therefore, the applicable fee will be paid by Petitioner to Respondent – KPT.

20. The latest demand of KPT as mentioned in its Letter of 15.1.2020 filed with the Statement of its Advocate, has added an additional claim / component of "Change of Purpose", but Respondent KPT has failed to point out that what new commercial activities Petitioner has started, which makes it liable to pay Rs.10 thousand per square meter towards 'Change of Purpose'. KPT has failed to set up a convincing defence in support of its impugned demand, particularly, after getting explanation to its queries together with documentary evidence from the Petitioner. In such cases onus is not only on a petitioner but also on the government functionaries, in the present case, KPT, to justify its demand/ claim with reasons.

21. Consequently, when the Board of KPT has already conveyed its approval for renew of lease vide its Correspondence of 02.12.2016 (*ibid*), then there was no justification for raising the impugned demand.

22. The upshot of the above is that the impugned demand as mentioned in the above Notices(s) including the Final Notice dated 24.05.2018 and the Letter of 15.01.2020 [appended with the above Statement dated 21.01.2020] except for the change of Company name to the present one, is illegal, unjustified and arbitrary, thus, is hereby set aside.

23. The Respondent KPT should process the renewable of Lease of the Petitioner in accordance with Law and codal formalities.

24. The present Petition is accepted in the above terms.

Judge

Judge

Karachi,

Dated: .10.2021.

Riaz, P.S.