absolutely, similarly if the entire load of contribution is imposed on the Companies alone then due to immense pressure of performing they might falter to deliver even basic functions which are required to be delivered by a corporate house. By making everyone responsible although the degree might vary it would be immensely helpful in the long run for the Act as well as the society.

Measures to Curb Political Ascendancy:

Adequate measures should be taken to curb the misuse of the funds by the indulgence of political parties. This could be done through making quarterly disclosures by the companies on the amount contributed and to whom it was contributed. Restrictions should be imposed on the companies from contributing towards political parties or their benamis. Transparency is the bottom line for this, which could be achieved through continual disclosures. The disclosures or reporting should be certified by qualified auditors.

Eligibility, Councils, Privileges:

Enterprises which are classified as small and medium enterprises should be exempted, only listed companies, public companies and companies with turnover of certain amount, net assets, on the basis of employees, etc could be made eligible. Even subsidiary companies of which the parent company fulfils the requirement should be prescribed.

A council should be set up to supervise, inspect and make necessary modifications to the Act whenever the need arises. Tax benefits or incentives should be given to all those who contribute for the up-liftment of the society through this Act.

Conclusion:

I would like to conclude my article stating there is no point in being a corporation, until you are responsible towards your society, which at least should be achieved through mandatory provisions. There is no point in complaining about the corporations attitude towards the society in the past, since both corporation and the society were at the nascent stages. But, now aren't in their developed stage and the society still lagging behind, this has to be fixed by the corporations. As Bill Maher said, 'we have bill of rights, what we need is bill of responsibilities.' If this is achieved then India will also become renowned like Denmark, and everyone will look upto us, and the dream of our country becoming a super power in the world is not too far.

SECTION 685 OF GREATER HYDERABAD MUNICIPAL CORPORATIONS ACT, 1955 — A NOTE ABOUT THE TWO DECISIONS 2010 (4) ALT 751 AND 2009 (2) ALT 652 = 2010 (3) ALD 47 — TAKING DIFFERENT VIEWS

By
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1. In the above two decisions, two learned Single Judges of the Honourable High Court considered the scope of Section 685 of the Hyderabad Municipal Corporations Act 1955 in different way. This section is on par with Section 80 Civil Procedure Code and provides that no suit against any Corporation could be filed without issuing notice as per the section.

2. Of the two decisions, the decision in 2009 (2) ALT 652 is earlier one having been rendered on 14.11.2008 and the other decision was rendered on 21.6.2010.

3. In the first decision, that learned Single Judge has decided that issuing of notice as per Section 685 of the Act before the filing of the suit for injunction against the Corporation to restrain the Corporation from interfering with the possession is not mandatory. The learned Judge has taken the view that when the Corporation is trying to commit some illegal act without following the due process of law, filing of suit by plaintiffs for an injunction to restrain the Corporation from doing a future act is maintainable without issuing notice. For taking this view, the learned Judge relied upon the decision in AIR 1972 Andhra Pradesh 96 and ultimately decreed the suit of the plaintiffs holding that non-issuing of notice under Section 685 is not necessary when the Corporation is about to commit some illegal act.

4. While rendering that decision, the learned Judge relied upon the decision of the Andhra Pradesh High Court reported in AIR 1972 AP page 96. In this case of 2009 (2) ALT 652 second appeals were preferred both by the plaintiffs as well as by the defendant Corporation. The suit in that matter was filed for grant a perfectual injunction against Corporation and their officials when they tried to remove certain alleged encroachments. The Trial Court decreed the suit holding that the plaintiffs have got right to the property and that notice under Section 685 of the Act is not necessary in the circumstances. The matter was taken in appeal before the 1st Appellate Court and the 1st Appellate Court agreed with the conclusions of the Trial Court regarding to the title to the property in dispute and held that it belongs to the plaintiffs but on the question of applicability of Section 685 of the Act, the said Court has taken the view that issuing of notice as per this section is mandatory and that as no notice was given, it dismissed the suit of the plaintiffs. Therefore the plaintiffs as well as defendant Corporation preferred second appeals and while considering the matter the learned Judge following AIR 1972 AP 96 took the view that notice under Section 685 of the Act is not necessary because the suit was filed in respect of a threatened act. Therefore on that premise the suit was decreed allowing the two second appeals preferred by the plaintiffs in the case and dismissing the second appeal preferred by the Corporation.

5. Now coming to the second decision rendered by the High Court on 21.6.2010 in 2010 (4) ALT 751, the question regarding the applicability of Section 685 of the Act is one of the questions in that matter. This learned Single Judge followed a decision of the Supreme Court of India reported in AIR 1972 SC 2510. The decision mentioned above (2009 (2) ALT 652) was distinguished by this learned Judge.

6. The decision in AIR 1972 SC 2510 was based upon Section 447 of the Hyderabad Municipal Corporation's Act of 1950 which was repealed by the present 1955 Act. Section 685 in the present Act corresponded to that Section 447 of the old Act. Dealing with a similar situation, the Honourable Supreme Court held that issuing of notice as per the section is mandatory whether the suit is filed for prevention of a threatened act or otherwise. It is to be specially noted here that while the decision in AIR 1972 AP 96 (Single Judge) was rendered on 25.9.1970 in a second appeal, the decision of the Honourable Supreme Court in AIR 1972 SC 2510 was rendered on 20.7.1972. Therefore it automatically follows that the decision in AIR 1972 AP 96 is itself not correct. Therefore the view taken in 2009 (2) ALT 652 on the basis of the decision in AIR 1972 AP 96 cannot also be correct. The Supreme Court decision should have been followed. Further, in AIR 1958 AP 102 also the purport and effect of Section 447 was considered and in that case the rejection of a

plaint filed without issuing a notice as per Section 447 of the old Act was held to be correct. As such, I feel that the said decision in 2009 (2) ALT 652 cannot be treated as good law.

7. Although the correct view is taken in the decision in 2010 (4) ALT 751 following the Supreme Court Case, how far this decision can be treated as binding is a question that is arising, because the decision is rendered in a C.R.P. which was ultimately held to be not maintainable. Therefore it is a decision rendered in a matter which did not lie. It is for this reason, I am expressing my doubt. I further feel that when the C.R.P. itself was found to be not the correct remedy, the Honourable learned Judge should have left open the other question about Section 685 of the Act. Or, alternatively, the learned Judge, in the interests of justice should have converted the C.R.P. into a C.M.A. or A.A.O and then decided the question relating to Section 685 of the Act. My doubt is for the reason that an order passed by a Judicial Authority over which it has no jurisdiction is *null* and *void*. If any particular provision that is under interpretation is mandatory, then, any order passed in such a case incorrectly filed on matters is *null* and *void*.

8. This question regarding the maintainability of a suit against a Corporation without issuing the statutory notice was already considered previously in many cases as follows. Unfortunately, none of these decisions have been referred in the two decisions under consideration.

Under Section 447 of 1950 Act.

(i) 1967 (1) An.WR. 148

(ii) 1968 (2) An.W.R. 174 DB

In both these decisions it was held issuing of notice is mandatory, irrespective of the type of the suit.

Under Section 685 of the 1955 Act.

(i) 1981 (1) An.WR 303

(ii) 1982 (1) An.WR 401

(iii) 1983 (1) A.L.T. 51 NRC

(iv) 2003 (4) ALT 701

In all these decisions it is held that issuing of notice is mandatory and that a suit without issuing such a notice is not maintainable. In 1982 (1) An WR 401, it was also held that for considering the maintainability of a suit filed without issuing the notice, question of hardship is of no relevance and that non-compliance with the section entails in rejection of the plaint.

9. In the decision in 2003 (4) ALT 701, the learned Judge Honourable Sri *P.S. Narayana*, J, a great writer of books while holding that notice is mandatory, suggested for amendment of this Section 685 of the Act on the lines of Section 80 C.P.C. made under Act 104/1976

10. Even though 8 years elapsed after the above decision, no steps are taken. The above section as it stands is causing lot of inconvenience and hardship to genuine persons where Corporations are trying to take some actions without proper basis. It is to be recalled that prior to 1976 the situation was the same with regard to Section 80 C.P.C. Nearly 7 decades after the enactment of C.P.C. in 1908 and after several observations by the Judges in various decisions, ultimately the Parliament amended Section 80 C.P.C. by introducing sub-clauses (2) and (3) in that section which enables a suit to be filed without such a notice and dispensing with the notice under Section 80 C.P.C. in case of emergency. What is emergency depends upon the facts and circumstances of each case and since the time of the amendment in 1976 people are able to approach Courts against Government *etc.*, after dispensing with notice under Section 80 C.P.C.

11. Therefore I feel it is highly desirable that similar amendment which have been made in Section 80 C.P.C. are absolutely necessary in the case of Section 685 of the Municipal Corporations Act 1955 in order to safeguard the interests of the public at large. By the year 1955 when that Act was passed only Hyderabad and Secunderabad were the two cities governed by that Act. Subsequently after formation of the State of Andhra Pradesh from 1.11.1956 the Corporations of Vijayawada, Visakhapatnam, Guntur, Warangal have been formed. Of late several Municipalities like Rajahmundry, Kakinada, Eluru, Nellore, Karimnagar, Nizamabad, and other places have also been changed into Corporations and as such it is all the more necessity for the amendment of the section on the lines of Section 80 C.P.C. Therefore I am of the opinion that as the section stands today, filing of suit against a Corporation without issuing a notice cannot arise. As such both the above decisions in 2009 (2) ALT 652 and 2010 (4) ALT 751, seem to be *per incuriam*, for the reasons submitted above and for the reason that earlier decisions including a Division Bench decision which already laid down the law are not followed. At the same time I request the Honourable High Court of Andhra Pradesh to recommend to the State Government for amending Section 685 of the Corporations Act and I also request the State Government to bestow their thought over the matter in the interest of public and take necessary action at once.

"UNIVERSAL NATURE OF COMPETITION ISSUES" – DEALING THE CROSS BORDER MERGER PHENOMENON UNDER THE COMPETITION ACT

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"*The history of the world, my sweet, is who gets eaten and who gets to eat.*" – SWEENEY TODD

Introduction

Over the past several years, the mergers-and-acquisitions market in India has been very active. In particular, the percentage of cross-border transactions has risen significantly. Cross-border deals have taken the form of both inbound and outbound transactions[1]. It is evident that the appetite of Indian companies for making global acquisitions has grown bigger with time.

Every merger or acquisition involves one or more methods of obtaining control of a public or private company, and the legal aspects of these transactions include issues relating to due-diligence review, defining the parties' contractual obligations, structuring exit options, and the like. In India, the relevant laws that may be implicated in a cross-border merger or acquisition include the Company Law, the Income Tax Law, the Stamp Duty Act, the Foreign Exchange Laws, Competition Laws, and Securities Regulations, among others.

Mergers and acquisitions are used as a means to achieve crucial growth and are becoming more and more accepted as a tool for implementing business strategy,

1. CROSS-BORDER M&A IN INDIA, Vineet Aneja, **19-SPG Int'l L. Practicum 53)**