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* **THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on : 08.03.2011

WP(C) 2839/2010 & CM No. 5670/2010 (stay)

J K JUTE MILLS COMPANY LTD.

..... Petitioner

-versus-

GHANSHYAM SARDA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Suman Doval with Mr Sumit Babbar, Advs.

For the Respondents : Mr Sidharth Agarwal with Mr Gaurav Kejriwal, Mr Samanvya D Dwivedi & Ms Stuti Gujral, Advs.

CORAM :-

HON'BLE MR JUSTICE SANJAY KISHAN KAUL

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether the Reporters of local papers may
be allowed to see the judgment ?
2. To be referred to Reporters or not ?
3. Whether the judgment should be reported
in the Digest ?

SANJAY KISHAN KAUL, J (ORAL)

*1. M/s J K Jute Mills Ltd. (in short the 'company') in view of its financial position, filed a reference being: case 149/1994 with the BIFR under the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'the said Act'). The reference was entertained and an endeavour was made to rehabilitate the company.

2. In the said reference directions came to be passed on 20.07.2009 by the BIFR recording that despite ample time and opportunity there had been done little to revive the company and therefore it did not visualize the company reviving itself. The BIFR went on to observe that the change of management ordered earlier had also not produced the desired results and therefore it was just and equitable and in public interest to wind up the company. In the very same order it was also noticed that company had entered into a lease arrangement with another entity without the by and leave of the BIFR; which continued to operate despite BIFR's disapproval. The BIFR thus directed issuance of show cause notice; firstly, under Section 33 and 34 of the said Act on account of stated willful disobedience of its orders, and secondly, to state reasons why it should not be wound up under Section 20 of the said Act.

3. The management of the company filed an appeal before the AAIFR being Appeal No. 186/2009; which is pending adjudication.

4. It is in the course of the appeal proceedings, that an interim application being: MA No. 34/10 came to be filed by one Sh Ghanshyam Sarda, i.e., respondent no.1, seeking impleadment. In terms of the impugned order dated 18.03.2010, amongst other directions, a direction came to be issued allowing the said impleadment application.

5. This impleadment is sought to be assailed by the petitioner/company in the present writ petition under Article 226 of the Constitution of India.

6. The current management of the petitioner is with Mr Govind Sarda. There are three brothers – Mr Govind Sarda, Mr Jagdish Sarda and Mr Ghanshyam Sarda. There were inter se disputes between the family members which were referred to arbitration and these

arbitration proceedings resulted in an award dated 18.07.2009. In terms of the award, it is agreed before us, the three brothers are to hold 1/3rd of the equity stake in each of the closely held entities within the family fold. To be noted this award has been assailed by Mr Govind Sarda in a proceeding initiated under Section 34 of the Arbitration & Conciliation Act, 1996. This is as far as the family dispute goes.

7. Now, turning to the impleadment application filed by Mr Ghanshyam Sarda/respondent no.1, the plea of impleadment before the AAIFR is predicated on the right claimed as a shareholder of one Rainey Park Suppliers Pvt. Ltd. (in short 'RPSL'), which in turn holds a substantial part of the equity share in the petitioner/company. RPSL is stated to have acquired almost 87.63% of the equity of the petitioner/company. In paragraph 36 of the award it is noted that 50% of the share is owned in the petitioner/company by the Sarda family. Therefore, respondent no. 1 based on the very same award has claimed that he has a stake in the share holding of the petitioner/company to the extent 16.67%.

7.1 In the impleadment application various averments have been made. Broadly, these reads as follows: Firstly, there are inter se disputes in the Sarda group which were sought to be settled through arbitration, though the award is pending challenge; secondly, given the stake of respondent no.1 in the company if the show cause notice issued by the BIFR evincing a prima facie view to wind up the company is confirmed by the AAIFR, grave prejudice would be caused to the applicant as he would have had no opportunity to file a proposal for its revival.

7.2 Apart from the above, respondent no.1 has further pleaded that he never interfered in the management of the

petitioner/company and that the same was being managed by the board of directors appointed by Sh Govind Sarda since he had been allowed to look after the affairs of the petitioner/company on behalf of the three brothers. Mr Jagdish Sarda is alleged to have transferred his right, title and interest in the property and that since then the management of the petitioner/company was being carried out in a manner detrimental to the interest of the company. Endeavours are alleged to have been made to liquidate the assets of the company. The management is stated to have been handed over to third parties. It is thus the plea of the respondent no.1 that no action is taken against persons presently controlling the management of the company, and that the affairs of the company are so ineptly handled that the possibility of revival would increasingly become difficult. It is also averred that disputes between the existing management and the workers have erupted as the MOU between the two was not honoured. The workers are stated to have formed an association and have purportedly expressed their willingness to support the respondent no.1 to take over the management of the petitioner/company.

8. We have heard learned counsel for the parties. There can be no dispute about the proposition that it is not necessary to implead each direct or even an indirect shareholder of the petitioner/company. However, what has to be kept in mind is that the principles applicable to impleadment of parties are not those governed by the provisions of the Code of Civil Procedure, 1908 (in short the 'Code'). The right of an applicant, in this case respondent no. 1, is circumscribed by the provisions of Section 13(2) of the said Act which reads as under:-

“13. Procedure of Board and Appellate Authority:-

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(2) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Board or, as the case may be, the Appellate Authority, shall include the power to determine the extent to which persons interested or claiming to be interested in the subject-matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives or to cross-examine witnesses or otherwise to take part in the proceedings.”

9. In terms of the said provision the BIFR or the AAIFR allows parties to be represented or even be heard after determining the extent of their interest or claimed interest “in the subject matter of any proceeding” before it. In other words representation of a party, by allowing his or her impleadment in a proceeding, is dependent on the parties’ interest in the subject matter, which is in issue before BIFR/AAIFR.

10. If the aforesaid principle is applied to the facts of the present case, we find that the petitioner/company and RPSL are companies in which the Sarda group has a substantial stake. The award provides for a 1/3rd stake to each of the brothers in each of the entities (including RPSL) which of course, as noticed above, is subject to challenge in an application filed under Section 34 of the Arbitration & Conciliation Act. In view of the apprehensions expressed by respondent no.1, which in turn to some extent is supported by the orders passed by the BIFR proposing to wind up the company, one cannot say that respondent no.1 is an outsider having no interest in the proceedings before AAIFR wherein one of the grounds of challenge is to the show cause notice issued by BIFR to wind up the company. The order of the BIFR seeks to recommend winding up and take action against the management for breach of orders. This order is sought to be assailed before the AAIFR.

Respondent no.1, as submitted by the learned counsel, seeks revival of the petitioner/company and to present an alternative mode of management which may or may not be acceptable to the AAIFR/BIFR. Therefore, looking at the totality of circumstances, it cannot be said that respondent no.1 has no interest in the outcome of the proceeding before AAIFR. In our view, respondent no .1 has the right to present his point of view in the form of a proposal/scheme before either the BIFR or the AAIFR to revive the petitioner/company. The proceedings before the AAIFR are the second step arising from the orders passed by the BIFR whereby it has come to a prima facie view to wind up the petitioner/company. It is in these circumstances that the AAIFR has deemed it appropriate to implead respondent no.1 as a party. As far as we can see the objective of the petitioner (represented by Govind Sarda) and respondent no. 1 is not contrary to the interest of the company, which on the face of it appears to be to seek its revival. To that limited extent, both stand aggrieved by the order of the BIFR.

11. We thus see no reason to exercise our jurisdiction under Article 226 to interfere with the impugned order.

12. Dismissed.

13. Interim order dated 28.04.2010 stands vacated.

SANJAY KISHAN KAUL, J.

MARCH 08, 2011
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RAJIV SHAKDHER, J.