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

+ CO.A(SB) 33/2009

SUMANA BHASIN

..... Appellant

Through: Ms. Malavika Rajkotia, Advocate with
Ms. Arpita Rai, Advocate.

versus

EASTERN CONNEXION(EXPORTS)

PVT LTD & ORS

..... Respondents

Through: Mr. Adhip Iyer, Advocate.

Date of Decision: December 19, 2011

J U D G M E N T

MANMOHAN, J :

1. Present appeal has been filed under Section 10-F of the Companies Act, 1956 (for short 'Act') challenging the order dated 24th August, 2009 passed by the Principal Bench, Company Law Board (for short 'CLB') whereby the respondent was directed to pay Rs. 3,00,000/- to the appellant on or before 15th September, 2009 as "fair valuation for the 1000 shares held by the appellant". On receipt of the aforesaid consideration, the appellant was directed to transfer to the respondent her entire shareholding in the respondent company and the register of the members of the company was to be rectified.

2. The relevant portion of the impugned order is reproduced hereinbelow:-

“1. In the hearing held on 7.4.2008, the petitioner also expressed her willingness to go out of the company if fair consideration was paid for her shares. The counsel for the respondent, while agreeing to purchase the shares of the petitioner also submitted that his client would file a valuation report within 4 weeks. Accordingly, a valuation report was filed by the respondent on 2.7.2008 indicating the fair value of the shares at Rs.157.81 per share. Since the petitioner raised certain objections on the valuation report submitted by the respondent, in the hearing held on 11.12.2008, both the sides agreed that this Board itself would appoint an independent valuer to fix the share price as per the balance sheet as on 31.3.2008. Accordingly, I appointed M/s. Vipin Aggarwal, Chartered Accountants to determine the fair price of the shares. The valuer determined the fair price of the share of Rs.10/- each at Rs.174.82 per share and at this fair price, the total consideration for 1000 shares would come to Rs. 174820/-. The petitioner desired to file objections on the valuation report and on given liberty, filed an application challenging the valuation. The application was heard on 22.7.2009. Ms. Rai appearing for the petitioner, other than submitting that the valuation was wrong, was not able to substantiate her objections with any details. In view of this, I asked her to indicate a lump sum amount which her client would accept to go out of the company. She indicated a sum of Rs. 10 lakhs, which was not acceptable to the respondent, who insisted that the amount should be as determined by the valuer. On my persuasion, the respondent was agreeable to pay Rs. 3 lacs which was not acceptable to the petitioner.”

2. It is on record that in the hearing held on 11.12.2008, the petitioner had agreed to go out of the company on a fair valuation based on the balance sheet as on 31.3.2008. Accordingly, this Board appointed an independent valuer, namely, M/s Vipin Aggarwal, Chartered Accountants. As per the valuation report, the fair price of the shares comes to Rs.174.82/- per share. In her application challenging the valuation, while seeking for the valuation to be based on the balance sheet as on 31.3.2005, the petitioner has not advanced any grounds for challenging the valuation. It is to be noted that as per the valuation done by the company itself, the fair price of the shares comes only to Rs.157.81/- per share. Thus, even a comparison between the two valuation reports done by the Chartered Accountants, the difference is not large. Once the petitioner has consciously given her consent for the date of valuation being 31.3.2008, the question of change of valuation date does not arise. Further, as a practice, this Board has always followed the date of valuation being the balance sheet proximate to the date of the petition. In the present case, the date of the petition is 22nd February, 2008 and therefore the proximate date of the balance is 31.3.2008 which has been rightly adopted for valuation. It is to be noted that the investment of the petitioner for 1000 shares, being 10% of the paid up capital at Rs.10/- per share, is only Rs.10,000/-. Since the respondent himself had offered to pay Rs.3 lacs as against the entitlement of the petitioner of Rs.1,74,820/- (as per the valuation of M/s. Vipin Aggarwal of Rs.174.82 per share), I am of the view that it would be just and equitable that the respondent should pay Rs. 3 lacs to the petitioner for her 1000 shares. Accordingly, I direct the respondent, as agreed to by him during the hearing on 22.7.2009, to pay Rs.3 lacs to the petitioner on or before 15.9.2009. On payment of the said amount, the 1000 shares of the petitioner shall be deemed to have transferred to the 2nd

respondent, who will rectify the register of members of the company by removing the name of the petitioner and inserting his name in respect of the 1000 shares.

3. *The petition is disposed of in the above terms.”*

(emphasis supplied)

3. Ms. Malavika Rajkotia, learned counsel for appellant submits that the valuation is entirely based on a report furnished by M/s. Vipin Aggarwal, Chartered Accountant, who in turn has not observed principles of natural justice inasmuch as no opportunity of hearing was given to the appellant.

4. Ms. Rajkotia further submits that the basis of the valuation should have been the Balance Sheet as on 31st March, 2005 and not 31st March, 2008. She states that the respondent with an intent to reduce the share valuation, deliberately under-estimated the assets and over-estimated the losses in the Balance Sheets that were finalized between the years 2005 and 2008. In this connection, she relies upon the Profit and Loss Account and the Balance Sheet for the year ended 31st March, 2006 at pages 167 and 168 of the paper book as well as the investment schedule annexed to the aforesaid balance sheet at page 172.

5. Ms. Rajkotia also states that the valuer M/s. Vipin Aggarwal, Chartered Accountant in its valuation report dated 27th March, 2009 has blindly relied upon the report filed by M/s. Neeraj and Associates while determining the value of fixed assets. According to her, M/s. Vipin Aggarwal had not made any independent valuation of the land and building owned by the respondent company. She points out that M/s. Vipin Aggarwal had been appointed as a valuer only because the appellant had not agreed to the initial valuation of the land and building furnished by the respondent's valuer.

6. On the other hand Mr. Adhip Iyer, learned counsel for respondent states that M/s. Vipin Aggarwal, Chartered Accountant had been appointed as the valuer by CLB at the instance of both the parties with a specific mandate to determine the price of shares on the basis of balance sheet as on 31st March, 2008. He points out that an application for modification of the order dated 11th February, 2008 had been dismissed by the CLB and the said order has attained finality inasmuch as it was not challenged by the appellant.

7. Mr. Iyer points out that initially the appellant-petitioner had objected to the valuation report filed by the respondent's valuer M/s.

Arora & Chaudhary & Associates on the ground that the said valuer had arbitrarily placed a value of Rs.1,44,00,000/- on land and building owned by the respondent company without giving any basis for such valuation.

8. Mr. Iyer states that in response to the said objection, respondent had filed a reply before the CLB stating that the valuation of Rs.1,44, 00,000/- for land and building in the report of M/s. Arora & Chaudhary & Associates was in turn based on the report of M/s. Neeraj & Associates, a Chartered Engineer and a Government approved valuer. He points out that not only was Mr. Neeraj Sharma's report placed on record, but also the basis for valuation done by Mr. Neeraj Sharma was stated in the said reply affidavit.

9. Mr. Iyer repeatedly emphasized during the course of arguments that no contrary report to M/s. Neeraj & Associate's report had been placed on record before the CLB by the present appellant-petitioner.

10. Mr. Iyer, learned counsel for respondent lastly submits that as the valuer had been appointed with consent of parties, his decision

cannot be challenged in the present proceedings. In this connection, he relies upon the judgment of the Bombay High Court in ***Dr. Vijaypat Singhania & Ors. vs. Hari Shankar Singhania & Ors.*** 2009 (6) Bom. CR 303 and ***Ashwin Vanaspati Industries vs. Commissioner of Income-tax, (2002) 255 ITR 26 (Guj)***, wherein it has been held as under:-

A. In Dr. Vijaypat Singhania & Ors. vs. Hari Shankar Singhania & Ors. (supra):-

“44. The submission with regard to the valuation of the property in the present facts and circumstances, is unacceptable, as admittedly the valuer was appointed by the consent of the parties and before preparing the report the valuer had taken note of the rival submissions of the parties, as agreed. It is final and binding. And once the valuer report is filed, I see that there is no reason now, to allow the petitioners to reopen the issue of cross examination, as to the valuation of the property, again in the present Petition. The issue was concluded. It has been decided rightly by the Arbitrator in view of agreement dated 20/03/2007.

45. Once the report is placed on record the Arbitrator has accordingly distributed the property, I am not inclined to accept the submission that no full opportunity was given to the parties as contemplated under Section 26 of the Act, merely because one of the party wants to cross examine the said valuer again, contrary to the agreed terms. The point is that full opportunity was given to the parties before submitting the valuation report. In the present case, the valuer being an expert and as the Arbitrator had appointed the valuer by the

consent of the parties and as the parties participated and submitted their say before the valuer, thus considering this background, I am not inclined to interfere either with the valuer's report or the reasonings so given by the learned Arbitrator on this count."

B. In Ashwin Vanaspati Industries vs. Commissioner of Income-tax (supra):

"24. The assessee having made a claim for depreciation on enhanced cost, which is the actual cost in its hands, it was necessary for the authority who wanted to determine the "actual cost" (as required by Explanation 3 to Section 43 of the Act) to place some evidence on record. It could not have substituted its opinion and adopted the book value or the written down value in the hands of the assessee-company. As can be seen from Explanation 3 to Section 43(1) of the Act, the Income Tax Officer is required to determine the actual cost to the assessee having regard to all the circumstances of the case and if in his opinion the written down value was the actual cost, he ought to have supported the same by placing sufficient evidence so as to dislodge the valuation report of the registered valuer. On his having failed to do so, even if the earlier portion of the provision, viz., the condition of the assets having been used by another person before the date of acquisition stands fulfilled the provision cannot be applied."

11. Having heard the parties at length, it is apparent to this Court that the independent valuer M/s. Vipin Aggarwal, Chartered Accountant had been appointed by the CLB at the instance and with

the consent of both the parties. The appellant-petitioner had specifically given her consent for the date of valuation as 31st March, 2008. The order of the CLB dated 11th December, 2008 is reproduced hereinbelow:-

“The petitioner has agreed to go out of the company on the receipt of fair consideration for her shares. Both the sides have agreed that a valuer could be appointed by me to determine the fair value of shares. Accordingly, I appointed M/s. Vipin Aggarwal, Chartered Accountants tel. No.9810128254, 011-41552060 to determine the air price of these shares on the basis of the balance sheet as on 31.3.2008. Both the sides will be at liberty to make both oral/written submissions before the valuer company will negotiate the fee payable to the valuer and pay the same. The valuation report should be submitted by 31.3.09.”

12. In the opinion of this Court, it is not open to the appellant now to wriggle out of the consent given by her for appointment of M/s. Vipin Aggarwal as well as for determination of the share price as on 31st March, 2008. In fact, the appellant-petitioner is estopped from now contending to the contrary. The conclusion of the CLB that the appellant-petitioner ‘cannot go back out on its consent’, is correct and the same calls for no interference.

13. In the opinion of this Court, the determination of an expert valuer like the one appointed by the CLB for determination of share price should not to be lightly interfered with.

14. It is settled law that if a valuer honestly and in good faith fixes a value, then both the parties are bound by it. It has also been held that even if a valuer makes a mistake, both parties would still be bound by it because the parties have agreed to be bound by the decision of an expert valuer. It is only if there is fraud or collusion, that the result would be different. Fraud or collusion unravels everything. [See: *Campbell vs. Edwards (1976) 1 All ER 785*]. Even strict principles of natural justice do not apply to a valuer as an expert, unless it is agreed otherwise, makes his own inquiries, applies his own expertise and decides on the basis of his own expert opinion.

15. In fact, the report of M/s. Vipin Aggrwal has not been impeached, even in the present appeal, on the grounds of fraud, collusion or partiality.

16. Further, in the opinion of this Court, just because M/s. Vipin Aggarwal, Chartered Accountant relied upon the valuation of land

and building of M/s. Neeraj and Associates would not render the valuation report of M/s. Vipin Aggarwal as either null and void or illegal. As an expert, M/s. Vipin Aggarwal, Chartered Accountant, was entitled to rely on any report placed on record by either of the parties. It is pertinent to mention that prior to furnishing of the valuation report by M/s. Vipin Aggarwal, Chartered Accountant, there was no challenge by the appellant-petitioner to the valuation report of land and building of M/s. Neeraj & Associates.

17. Consequently, present appeal being bereft of merits is dismissed and the interim orders stand vacated.

18. At this stage, Mr. Adhip Iyer, learned counsel for respondent on instructions of Mr. Neeraj Bhasin, fairly states that the Car being Maruti Baleno Vxi, Model 2005 bearing Registration No. DL 9CJ 7067 can be retained by the appellant. The statement made on behalf of the respondent is accepted by this Court and the respondent is held bound by the same.

MANMOHAN, J.

December 19, 2011
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