

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

Date of Decision: 23rd April, 2012

CO.A.(SB) 16/2007

V.L.S. FINANCE LTD. Appellant

Versus

\$ SUNAIR HOTELS LTD. & ORS. Respondents

APPEARANCES:

Mr. Pinaki Misra, Senior Advocate with Ms. Rakhi Ray & Ms.Bina Gupta, Advocates for the Appellant

Mr. Jayant Bhushan, Senior Advocate with Mr. Nitesh Jain, Advocate for R-1, 3 and 4

Mr. Chetan Sharma, Senior Advocate with Mr. Atul Sharma, Advocate for R-2 and 5.

Mr. Sudhir Nandrajog, Senior Advocate with Mr. Abhishek Aggarwal, Advocate for R-6 to 11.

CORAM:

*** HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN,J:

This appeal under Section 10-F of the Companies Act, ('the Act' in short) has been filed by the appellant Company (hereinafter to be referred as 'VLS') against the order dated 16.05.2007 passed by the Company Law Board('CLB' in short) whereby two applications were dismissed. One of the two dismissed applications was filed by the Central Government(being C.P.No. 01 of 2004) seeking permission of the CLB, as required under Section 235(b) of the Act, to investigate the affairs of respondent no.1 Company(hereinafter to be referred as 'SUNAIR'). The other one was filed under Section 340 of the Code of Criminal Procedure by VLS(being C.A. No.172 of 2003) for proceeding against respondents no. 3-5 herein, for their having forged one Memorandum of Understanding(MoU) dated 10th March, 1995 and using it in their defence in the petition under Sections 250/397/398 of the Act(being C.P.No.45/1998) in which they were impleaded being the Directors of SUNAIR and in control of its affairs and management.

2. VLS's business association with SUNAIR and respondents no.3-5 herein, out of whom respondent no. 3 is the father of respondents 4 and 5(reference to them shall hereinafter be made collectively as 'Guptas'), had started in the year 1995 under an MoU dated 11th March, 1995 but that association did not last long and litigation started between them with the filing of C.P.No. 45/98 before the CLB by VLS because of the non-fulfillment of the obligations by Guptas under the MoU dated 11th March, 1995 and acts of oppression and mismanagement by them.

3. The relevant contents of the MoU dated 11th March, 1995 are as under:-

"THIS MEMORANDUM OF UNDERSTANDING (M.O.U.)- AGREEMENT is made at New Delhi this 11th day of March, 1995 between and amongst VLS FINANCE LTD.,.....SUNAIR HOTELS LTD.....AND Shri Satya Pal Gupta, S/o Late Shri Hari Ram Gupta, Shri Kaveen Gupta, S/o Shri S.P. Gupta & Shri Vipul Gupta, S/o Shri S.P.Gupta....the main promoters and Directors of SUNAIR

WHEREAS, the Promoters have incorporated Sunair Hotels Ltd., for the purpose of constructing and running a Five Star Hotel in Delhi and are also Directors thereof; AND WHEREAS, the Promoters & Sunair have acquired on licnece a plot of land admeasuring 80,000 sq. ft. from New Delhi Municipal Committee..... for the construction of a Five Star Hotel.....

AND WHEREAS, SUNAIR & Promoters have entered into a Management Contract dated 09.09.1994 with APPC Asia Pvt. Ltd., a Limited Company organized under the laws of Singapore.....

AND WHEREAS, for the purposes of constructing the hotel part of the project, and running it on profitable basis, the Promoters & SUNAIR have to make arrangement for the finance and other related matters;

AND WHEREAS, VLS is a Non-Banking Finance Company with sufficient funds and infrastructure available for arranging finances, has given its consent to join the Promoters and SUNAIR as Financial Collaborators.....

NOW THIS MEMORANDUM OF UNDERSTANDING-AGREEMENT WITNESSETH AS UNDER:

2) That the Authorized Share Capital of the company shall be ₹40 crores (Rupees Forty Crore only) and out of which, the initial Paid Up Capital shall be ₹30 crore....

3) That the initial Paid Up Share Capital in Equity Shares shall be held/subscribed in the following manner by the parties:-

(i) ₹22 crore(Rupees Twenty two crore only) shall be subscribed by the Promoters or their nominated companies by way of subscribing to 2,20,00,000 shares of RS.10/- each for cash at par.

(ii) RS. 7 crore (Rupees Seven Crore only) shall be subscribed by VLS by way of subscribing to 70,00,000 shares of ₹ 10/- each for cash at par.

(6) VLS HEREBY COVENANTS AND UNDERTAKES TO DO:

e) To provide interest-bearing security deposit of RS.10 crore to SUNAIR for the project at an interest rate not exceeding 20% p.a...

7. SUNAIR & THE PROMTOERS, DO HEREBY COVENANT AND UNDERTAKE THE FOLLOWING OBLIGATIONS:-

(a) It will be the prime responsibility of SUNAIR and/or the Promoters to do the project planning and its implementation.... .”

4. The relevant facts as narrated by VLS in the memorandum of appeal which had led to the start of the present litigation between VLS and SUNAIR and which litigation is still pending and with no end in sight, are re-produced below:-

“4.(b) That inter alia, the principal allegation made in the said petition against the Company Sunair Hotels Ltd (Respondent No 1) and the other Respondents is that contrary to a tripartite MOU/Agreement dated 11.3.1995 entered into between Respondent No.1, Respondents No. 3 to 5 and the Appellants, the Respondents 3 to 27 have not contributed any cash towards the share capital of Respondent no.1 Company and instead by a clever device, rotated the said company’s funds 21 times, in a short span of 4 days, through bank accounts of entities controlled and owned by them, and thereby falsely depicted subscription to the equity share capital worth Rs.21 crores.....

.....

(d) That in the said petition the Appellant has made allegations and substantiated the same with evidence that the Respondents have fabricated the records of the Respondent No.1 and Respondent No. 2 companies and have got allotted 20991600 shares of Rs. 10/- each at par of the Respondent No.1 to the Respondent Nos. 3 to 27 without bringing in any cash consideration. It is alleged in the said petition that the Respondent No-3 in connivance with other persons rotated the Rs.1 Crore of Respondent No.1 Company, which included Rs. 70 lacs of the petitioner given as share application money, 21 times on 16.3.1995, 18.03.1995 and 20.3.1995.....”

5. The prayers made in C.P.No.45/98 which are relevant for the present purpose are as under:-

“i) direct investigation into the affairs of the respondent no. 1 company and the respondent no. 2 subsidiary to find out the relevant facts in respect of the purported allotment of 20991600 equity shares of the respondent no. 1 company to respondent nos. 3 to 27.....;”

“(ii) order an investigation into the financial affairs and dealings of the respondent no. 1 company and its subsidiary, the respondent no. 2 company;”

6. Guptas contested C.P.No. 45/98 and in their reply they refuted the allegation of VLS that 20991600 shares of SUNAIR had been allotted to themselves and their known people without any money actually having been contributed by any of those allottees. Guptas mainly relied upon another MoU dated 10th March, 1995 to show that that what VLS was alleging was not correct and shares were not allotted to anyone without consideration. The relevant contents of that MoU dated 10th March, 1995 read as under:-

“This memorandum of understanding is made on this 10th day of March, 1995 at New Delhi between Sunaero Ltd.(which Company is respondent no.2 in the present appeal)....hereinafter called the purchaser and the first party and H.J. Consultants(P) Ltd.....second party.....

WHEREAS the first party is willing to acquire several properties and the second party has offered several properties to the first party.....

1. The first party has agreed to purchase the properties listed in the Schedule-I attached hereto for a sum of ₹ 35 crores from the various sellers whose authority in favour of the second party as agent of the sellers has already been seen by the purchaser. The payment of the same shall be made as under:

a) An under advance of ₹ 21 crores shall be given by the first party to the second party for further disbursement to sellers as advance. This advance shall be given on or before 25/03/95.

b) Accordingly the balance payment will be made to the sellers against their properties before 30/09/2000.

2. Accordingly rights of the properties shall be transferred in favour of the first party nominees by the sellers only after 31/3/2000 but before 30/09/2000.....

4. The second party shall ensure that since all the properties belong to the same group, final price of each property shall be determined at the time of its conveyance by themselves and accordingly informed. However, the total consideration to be paid for all the properties listed in the Schedule I shall not be more than ₹ 35 crores excluding transfer charges.”

7. While contesting C.P.No.45/98 Guptas also came out with the circumstances under which the MoU dated 10th March, 1995 came to be executed. The CLB after examining the entire case had dismissed C.P.No.45/98 vide its order dated 13.06.2001. That order was then challenged by VLS before this Court by filing an appeal under Section 10-F of the Act (being Co.A.(SB) No.11/2001).

8. It appears that VLS felt that but for the introduction of the MoU dated 10th March, 1995 by Guptas in C.P.No.45/98 it would have succeeded in its petition and so without waiting for the disposal of its appeal against CLB's order dated 13.06.2001 VLS moved an application under Section 340 Cr.P.C. before the CLB in December,2003(being C.A.No.172/03) on the ground that Guptas had forged the MoU dated 10th March, 1995 and used the same in C.P.No.45/98 to refute the claim of VLS that 20991600 shares of SUNAIR had been allotted by them to themselves and their own people without any money actually having been invested by anyone of them.

9. VLS had impleaded the Central Government also in its C.A.No.172 of 2003 and relying upon the facts pleaded in that application moved a petition before the CLB(being C.P.No. 01/2004) for an order for investigation into the affairs of SUNAIR as provided under Section 237(b) of the Act. The relevant averments made in C.P.No. 01/2004 were as under:-

“M/s VLS Finance Ltd. served a copy of application no. 172/2003 filed u/s 340 of Criminal Procedure Code before the CLB to Central Govt. through their Advocate Ms. Bina Gupta vide letter dated

28.08.2003. The Central Government has examined the contents of the aforesaid application and submit as under:-.

i..... In this application the Petitioner Company has alleged series of irregularities and illegalities against M/s Sunair Hotels Ltd and its Directors. The application has further alleged that the owners of the properties mentioned in the MoU dated 10th March, 1995 never authorized any one to sell their properties..... and the MoU dated 10th March, 1995 is apparently false and fabricated document and the transaction recorded therein is bogus and sham.

The Applicant has further alleged in the said application that the Income Tax Department of Delhi had conducted search and seizure operations and consequent proceedings against the respondents and their related companies.....

An investigation under Section 237(b) is the genuine requirement of the time to discover the magnitude of the manipulation and irregularities and illegalities of the respondent company as it involves other bodies also. The criminal complaint pending before this Hon'ble CLB in CA No. 172/2003 points out the series of irregularities which raised doubt and suspicion as to the manner in which the affairs of the company are being conducted. That the allegations made in application are very grave and require full and in depth investigation.....”

10. While C.P.No.01/2004 and C.A.No.172/03 were pending disposal before CLB, this Court allowed the pending appeal of VLS vide judgment dated 16.12.2005 and after setting aside the order dated 13.06.2001 of CLB remanded back the matter to CLB for fresh decision. Non-consideration of the case with reference to the MoUs

involved in the litigation by the CLB in its order dated 13.06.2001 appears to be the main reason for remand of C.P.No.45/98 to CLB. After remand, C.P.No. 45/98 is still pending with no end in sight, the CLB has dismissed the Central Government's petition under Section 237(b) of the Act as well as the application under Section 340 Cr.P.C. filed by VLS vide its common impugned order dated 16th May, 2007. The relevant paras of the impugned order of CLB containing the submissions made by the parties and the findings of the CLB are re-produced below:-

“2.UOI's petition (CP NO.1/04) is nothing but VLS's CA No.172/03 annexed to it and made the basis of CP seeking order under Section 237(b) of the Companies Act, 1956 into the affairs of the respondent company i.e. the Sunair Hotels Ltd. In support of the case for investigation, the Central Government relied upon para Nos.8,11,12,16,17 and 23 of VLS Finance Ltd.'s CA NO.172/03..... In the said petition the applicant had made allegations against the respondents that they have fabricated the records of the R-1 namely Sunair Hotels Ltd. and R-2 namely Sun Aero Ltd. (subsidiary company of R-1) and got allotted 20991600 (Two Crore Nine lacs Ninety One Thousand Six Hundred) shares of ` 10/- each at par, of the Respondent No. 1 to the Respondent Nos. 3 to 27(all of whom are respondents no. 3-27 in the present appeal also) without bringing in any cash consideration as alleged in the books of account of the R-1. It was alleged in the said petition that after getting Rs.70,00,000 (Rupees Seventy lakhs only) from the petitioner, the Respondent No.3 in connivance with other persons rotated Rs.1 crore, 21 times between 16.3.1995 to 20.3.1995 and thereby showing as if the cash contribution had been brought into the accounts of M/s Sunair Hotels Ltd towards the share allotment/subscription money, and got allotted 20991600(Two Crore Nine lacs Ninety One

Thousand Six Hundred) shares against alleged cash receipt. That in the garb of the above referred transaction the respondent Nos. 3,4 and 5 got issued shares of the Respondent No.1 to themselves and their family members worth Rs.21 crores, without actually contributing any cash. That in their replies the respondents justified the transaction and also claimed that 20991600 shares of the R-1 were allotted to them and their family members against cash. In support of their claim they also submitted that one Memorandum of Understanding (MOU) dated 10.3.1995 was executed between M/s Sun Aero Ltd. and M/s H.J. Consultants Pvt. Ltd. for the purchase/sale of 13 properties of the respondent Nos.3 to 27. That throughout the proceedings of the above said petition the respondents had a clear cut stand that M/s Sun Aero Ltd. had made an advance sum of Rs.21 crores to the owners of the 13 properties and have legitimized their claim before this Hon'ble Board on the basis of the said. Memorandum of Understanding (hereinafter referred to as the MOU) dated 10.3.1995.

.4. Counsel for VLS Finance Ltd argued that from the submissions of the respondent themselves, it is apparent that had there been no Memorandum of Understanding dated 10.3.1995.....During the block assessment proceedings of the above persons and their associates the statement of Shri B.C. Gupta, Shri K.C. Gupta, Shri S.K. Gupta and Shri Robin Gupta were recorded on oath under Section 131 of the Income Tax Act. All these persons voluntarily made their statement and stated that Shri S.P.Gupta, alongwith one Shri V.K. Bindal who is nephew of Shri S.P. Gupta and also their Chartered Accountant and also the Auditor of the Respondent No.1, was managing the books of accounts, for all of them has done all these transactions in their books of accounts. They further stated that they neither got their respective properties valued in the year 1995 nor entered into any agreement or agreed to enter into any agreement to sell with M/s H.J. Consultant Pvt. Ltd. or to authorize it or sell their properties or agree to sell their properties to any one. They were not even aware about the number of shares allotted to them or from where the money was arranged for to get these shares allotted.....These facts reflect that the Memorandum of Understanding dated 10.3.1995 is a forged and fabricated document.....

7. Counsel for Respondent Nos. 1 to 9 argued.....that it is not understood as to how this petition is maintainable.....The promoters had brought in Rs.21 crores, how does it concern VLS..... It was the concern of Sunaero to see the title of the properties being acquired by it as per MOU dated 10.3.95. MOU dated 10.3.95 is not a part of MOU dated 11.3.95 to which Sunaero/H.J. Consultants are not parties to. MOU dated -10.3.95 is beyond the approach of VLS. The grievance of VLS that MOU dated 10.3.95 is not been mentioned in MOU dated 11.3.95 whereby the so called highly professional financial consultant (VLS) joined hands with Sunair Hotels Ltd. vide the MOU for financial assistance to finance the Hotel project, is not understood.....As regards the contentions of R21 to R-23, it was argued that they had collided with VLS.....”

10. As on date when I am passing this order, hearing of in CP No.45/98 remanded by Hon’ble High Court is still to be concluded as the petitioner has been seeking long adjournment insisting on disposal of CAno.172/03 first.

In CA No. 172/03 VLS Finance Ltd.’s case is that of perjury- “MOU dated 10.3.95 is a false and fabricated document” and hence also order for inquiry under Section 237(b).

i. Similar prayer for inquiry is the main prayer in CP No. 45/98 to be decided.....

ii. The case for the impact of MOU dated 10.3.95 and MOU dated 11.3.95 is yet to be made out and passed.

11. In view of the foregoing and looking at the economic realities no case has been made out for ordering investigation under Section 237(b) of the Act.....The facts and circumstances of the present case, to my mind, prima facie do not demonstrate and establish the existence of pre-requisite necessary to form my opinion in terms of Section 237(b) of the Act.....

12. CP No.1/04 of U.O.I. and C.A.No.172/03 of VLS Finance Ltd. are dismissed.....”

11. VLS felt aggrieved with the said order of CLB and so this appeal was filed by it. The Central Government, however, has not challenged the rejection of its petition under Section 237(b) of the Act.

12. The main points raised in the memorandum of appeal and also urged during the course of hearing of this appeal by Shri Pinaki Misra, learned senior counsel for the appellant, are as under:-

“That throughout the proceedings of the Company Petition No. 45/1998 the Respondents had a clear cut stand that M/s. Sun Aero Limited (R-2) had made an advance of Rs.21 crores to the owners of the 13 properties and have legitimized their claim before the Company Law Board on the basis of the Memorandum of Understanding dated 10.3.1995, whereas no evidence has been produced to show the payment by Sun Aero Ltd. to H.J. Consultant or the property owners. Keeping in view, that there was in fact no transfer of land rights in the first place by Respondent no.1 Company to Respondent No.2 Company, it is a clear case of notional enhancement of value of land rights of the Company and issue of shares of the promoters against this asset i.e land rights, of the company, which is unlawful.

In the meanwhile, in November 2000, it had transpired that the Income Tax Department, Delhi, had conducted search and seizure operations and consequent proceedings against the Respondent Nos. 3 to 27 and all their related companies. During the block assessment proceedings, some of the Respondents made statements

that were recorded on oath under Section 131 of the Income Tax Act. Respondents 21, 22 and 23 voluntarily made their statement that Shri S.P. Gupta(who is respondent no.3 in the present appeal), alongwith one Shri V.K. Bindal who is relative of Shri S.P. Gupta and also their Chartered Accountant/Auditor of the Respondent no. 1 to 27, was managing the books of accounts, for all them and has done all these manipulations and false transactions in their books of accounts. These Respondents further stated that they neither got their respective properties valued in the year 1995 nor entered into any agreement or agreed to enter into any agreement to sell with M/s H.J.Consultant Pvt. Ltd. or to authorize it to sell their properties or agree to sell their properties to any one. They were not even aware about the number of shares allotted to them or from where the money was arranged to get these shares allotted.....This further evidenced the Appellants contention that the Memorandum of Understanding dated 10.3.1995 is apparently a false and fabricated document and the submissions made by the Respondents in their replies are not true statements with regard to the authenticity of the documents and the consequent transactions of rotation of money and issuance of the shares against cash.....

It is submitted that besides the said statements before the Income Tax authorities, the Respondent 23 and 21 i.e. Robin Gupta and B.C. Gupta have made similar statements independently before the Delhi Police during course of investigation of FIR No. 90 of 2000 registered at P.S Connaught Place (being investigated by Crime Branch) and the said statements have been recorded under section 161 Cr.P.C by the Police Authorities. Status reports and supplementary chargesheets were filed by the Delhi Police which evidence the said facts. This evidence was also offered by the Appellant as further prima facie evidence of the forgeries and fabrication of the documents which have been dishonestly adduced as evidence before the Company Law Board.

That further the said Respondents 21-23 have thereafter also filed replies/affidavits in the Company Law Board stating that the MOU dated 10.3.1995 is a false document and that they never intended to sell their properties.

It is submitted that the said document i.e the MOU dated 10.03.1995 is a fraudulent and fabricated document in as much as:

(i) There is no agreement with the owners of the properties and H.J. Consultants. There are no letters of authority also.

(ii) Some of the owners (Respondents 21-23) have denied agreeing to sell these properties in their reply to the petition U/s 397, 398 filed with Hon'ble Board, besides making statements confirming the above position before the Income Tax Authorities and the Delhi Police.

(iii) The MOU dated 10th March 1995 said to have been executed between Sun Aero Ltd. and H.J. Consultants Pvt. Ltd. is not even an Agreement to Sell and does not confer any rights on Sun Aero Ltd.

(v) The MOU dated 10.03.1995 was not mentioned in nor disclosed to the appellants at the time of execution or the MOU dated 11.03.2005, which was executed the very next day. Further, the said MOU dated 10.03.1995 evolved for the first time in the reply to the Company Petition. This only shows that MOU dated 10.03.1995 is an afterthought and a fabricated document which came into existence only as a defence to justify siphoning of funds mentioned in the Company Petition. Thus, the relevant information with respect to MOU dated 10.03.1995 was not disclosed to the petitioners."

13. Though in the memorandum of appeal the appellant had formulated many questions of law for the decision of this

Court but during the course of hearing Shri Pinaki Misra had submitted that the reasoning of the learned CLB in the impugned order for rejecting the petition of the Central Government that no prima facie was made out for ordering investigation into the affairs of SUNAIR was absolutely perverse because the record of the CLB was bristling with circumstances, reference to which has been made in the preceding paragraph and earlier thereto as well, and those circumstances actually had made out a very strong prima facie case for allowing the petition of the Central Government. Mr. Misra strongly urged that there could not be a better case than the present one for ordering investigation into the affairs of SUNAIR. Learned senior counsel further contended that the perversity of the impugned order by itself was sufficient to set aside the impugned order and not only that this was a fit case where this Court as an appellate Court should exercise the power and discretion which the CLB had failed to exercise, by ordering here itself investigation into the affairs of SUNAIR as had been prayed for not only by the Central Government but also by VLS in C.P.No.45/98. In support of this submission, Mr. Pinaki Misra cited one judgment of the

Supreme Court in the case of **“Dale & Carrington Invt.(Pvt.) Ltd. V. P.K.Prathapan”, (2005) 1 SCC 212.** Mr. Misra then took up each one of the reasons pleaded in this appeal by VLS for showing that Guptas had forged and fabricated the MoU dated 10th March, 1995 and that lakhs of shares of SUNAIR had been allotted without receipt of any share money and elaborated each of those reasons in great detail during the course of marathon hearing of the appeal.

14. From the side of some of SUNAIR and Guptas Shri Jayant Bhushan, learned senior advocate argued. For respondents 6-11 Shri Chetan Sharma, learned senior advocate advanced arguments and for others their learned senior counsel Shri Sudhir Nandrajog defended the impugned order of CLB. All of them had also argued the matter at great length. During their arguments these three learned senior counsel had contended that VLS had no right to file this appeal against the rejection of the petition of the Central Government and to pray for an order of investigation under Section 237(b) of the Act before this Court when the Central Government itself had not felt aggrieved; no question of law was involved in the matter and that in any event, no case

could be made out by the Central Government for an investigation into the affairs of SUNAIR. In support of these submissions various judgments of the Supreme Court were also cited.

15. In order to meet the legal objections raised by the learned senior counsel for the respondents judicial precedents were then cited by Mr. Pinaki Misra regarding the appellant's *locus standi* as an aggrieved person to file this appeal and the scope of Section 237(b) of the Act. During the pendency of this matter other cases also between VLS and SUNAIR had come to this Court and in one of those cases, reported in ILR (2003) II Delhi 463, this Court had upheld the *locus standi* of VLS to approach this Court and, therefore, Mr. Misra relied upon that judgment also in particular. Great emphasis was also laid by Mr. Misra, learned senior counsel, on the fact that when Guptas, who are the main contesting parties, had sought quashing of criminal cases against them lodged by VLS they themselves had taken the plea before this Court in W.P.(Crl.) 1163/2003(decided on 24.03.2002), "S.P.Gupta & ors. Vs The State", that criminal case was not the remedy against them and if VLS was aggrieved by their taking shelter under

the MoU dated 10th March, 1995 it should have taken resort to the remedy of investigation under Section 237(b) of the Act. Mr. Misra drew my special attention to para no.6 of the order of this Court in the said case where the submission of Guptas that investigation under the Companies Act was the proper remedy with VLS was noticed. Reply to this argument of Mr. Misra from the side of the Guptas was that since this Court had rejected their stand in this regard VLS cannot take advantage of that stand now and in any case there could be no estoppel on the point of law and Guptas are not estopped from contending in the present litigation that Section 237(b) of the Act is not attracted in the facts and circumstances of the case.

16. Before proceeding further it may be noticed here that during the course of lengthy arguments before me, learned senior counsel for the appellant-VLS had been very strongly submitting that this Court itself now should take upon the task of appreciating the various circumstances highlighted by VLS before the CLB as well as before this Court which justify an investigation against SUNAIR as contemplated under Section 237(b) of the Act and it should not be left to

CLB again to go into that aspect while disposing the main C.P.No.45/98 after its remand by this Court in VLS's appeal. However, I find from the record that on 25th January, 2010 short written synopsis of the submissions was filed by VLS through its advocate Ms. Bina Gupta and in that synopsis it was submitted on behalf of VLS that in view of the fact that original C.P.No.45/98 had since been ordered by this Court to be decided afresh by CLB the present matter should also be remanded back for fresh consideration after setting aside the order under challenge in the present appeal. In fact, it was one of the submissions made on behalf of some of the respondents also before me that since CLB is yet to form a final opinion in C.P.45/98 as to the existence or non-existence of circumstances for an order of investigation the matter in that regard should be left to CLB itself for appropriate decision to be taken while disposing of C.P.No.45/98 after remand.

17. After having given my thoughtful consideration to the submissions advanced at the bar from both the sides I have unhesitatingly come to the conclusion that this appeal is liable to be dismissed.

18. As noticed already, at one stage C.P.No.45/98 of VLS had stood rejected after full hearing vide order dated 13.06.2001 of CLB. It appears that VLS had a strong grievance against the Central Government also that it was intentionally not coming into action for having an order of investigation into the affairs of SUNAIR and despite the fact that at one stage it itself had also decided to initiate proceedings under Sections 397/398 of the Act against SUNAIR that was not done on the ground that its files had gone missing which later on were recovered from the office of Guptas. Though not specifically alleged on behalf of VLS, but from the tenor of the points raised by it in the memorandum of appeal it appears to me to be its grievance that there was collusion between the Central Government and SUNAIR. It also appears that the Central Government in order to avoid any kind of adverse observations in this regard, either from the CLB or this Court during the pendency of various matters between VLS and SUNAIR and to save itself from the shots being fired on it also by VLS, it decided to take shelter under the application of VLS under Section 340 Cr.P.C. and only relying upon the case put forth unsuccessfully by VLS it sought an order from the CLB for

investigation into the affairs of SUNAIR without in fact having any weapons in its own armory for being used against SUNAIR. That is evident from its application itself in which it had simply pleaded what VLS had pleaded in its application under Section 340 Cr.P.C. Even the CLB had also observed in the impugned order, which observations have been highlighted by me in the extracted portion of the impugned order, that the application of the Central Government was verbatim copy of VLS's application under Section 340 Cr.P.C. Prima facie, it appears to this Court that the Central Government had jumped into the battle between VLS and SUNAIR, after VLS had failed in getting an order of investigation in its own petition, in order to silence VLS and VLS decided to support the Government as it might have thought that the CLB might get swayed by the fact that since it was the Central Government which was asking for an order under Section 237(b) there must be something really wrong in the management of the affairs of SUNAIR by Guptas. But the CLB rightly did not get swayed by that circumstance and has rightly left its final decision to be given in C.P.No.45/98 as far as the prayer for an order for investigation is concerned.

19. The Central Government rightly appears to have not challenged the impugned order since it itself had no material to press into service in support of its petition under Section 237(b) of the Act and it also must have realised that since VLS itself had failed to get an investigation ordered into the affairs of SUNAIR on the basis of allegations made by it in the first round of the battle before the remand of the case by this Court in VLS's appeal how could the Government get the same relief on the basis of same very allegations. And as far as the right of VLS to have an order of investigation is concerned, the CLB itself has clearly observed in the impugned order that C.P.No.45/98 is yet to be decided afresh after remand. It is thus clear that the CLB has not really gone into those allegations made by VLS in respect of the two MoUs in question and which allegations only were the basis of the Government's petition under Section 237(b), while passing the impugned order, and everything is still open.

20. In my view, the CLB cannot be said to have really rejected the allegations of VLS against SUNAIR and Guptas as being not well founded and final decision has been kept pending there cannot be any perversity in the impugned

order. So, all the allegations made by VLS are yet to be decided afresh by CLB while disposing of C.P.No.45/98 and since VLS shall have all the opportunity of substantiating the same before the CLB it cannot have any grievance against the impugned order nor can it have any effect on its case since the CLB has not at all gone into the merits of the allegations of VLS while rejecting the Government's petition under Section 237(b) of the Act.

21. In these circumstances, this Court does not consider it to be appropriate to make any observations about any of the allegations made by VLS in the pending C.P.No.45/98 in which VLS is fighting its independent battle. There is no occasion for this Court in this appeal to undertake the exercise which CLB is expected to do and which it is yet to do.

22. In view of the aforesaid view formed by me, which is sufficient for rejection of this appeal, I need not go into various legal issues raised from both the sides during the course of hearing of this appeal.

23. This appeal is accordingly dismissed with the observation that as and when the CLB decides C.P. No.45/98 finally nothing observed in the impugned order shall be kept in mind as also the dismissal of this appeal since this Court has also not gone into the merits of the allegations made by VLS against SUNAIR and Guptas.

P.K. BHASIN, J

APRIL 23, 2012