

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

% *Date of Judgment: 11.07.2012.*

+ **CO.A(SB) 32/2009**

SH VIVEK BANSAL Appellant
Through Mr. Vibhu Bhakru, Sr. Advocate
with Mr. Rahul Sharma, Adv.

versus

RM ISPAT PRIVATE LTD. & OTHERS Respondents
Through Mr. Hemant Chaudhri, Adv. for
R-2.
Mr. Avtar Singh and Ms.
Meenakshi Sharma, Advocates
for respondents No. 3 to 6.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1 This appeal has assailed the order of the Company Law Board (CLB) dated 09.06.2009 wherein the petition filed by the petitioner (Vivek Bansal group and hereinafter referred to as the 'petitioner') under Sections 397 & 398 of the Companies Act whereby directions qua the main reliefs prayed for by the petitioner had been deferred in view of

the defence set up by the respondent (Anil Bansal group and hereinafter referred to as the 'respondent No. 2') that a family settlement dated 21.02.2006 had been entered into between the parties pursuant to which the petitioner group had given up all rights in the company in dispute (R.M. Ispat Pvt. Ltd and hereinafter referred to as the 'company') and this family settlement admittedly being sub-judice and the subject matter of an appeal pending before the Allahabad High Court; the Company Law Board did not think it fit to pass any order on the reliefs claimed by the petitioner.

2 Record shows that the company (M/s R.M. Ispat Pvt. Ltd.) was a company incorporated under the provisions of the Companies Act, 1956 having its registered office at 4973/21, Phatak Badal Beg, Hauz Qazi, Delhi. The authorized share capital of the company was Rs.75,00,000/- made up of 7,50,000 equity shares Rs. 10/- each; the issued subscribed and paid up capital of the company was Rs. 71,06,000/- made up of 7,10,600 equity shares of Rs.10/- each all fully paid up. The object of the company was to set up rolling and rerolling mill plants both cold and hot and also the business of manufacturer/dealers/traders of all varieties of steel, low carbon mild and plain carbon.

3 Contention of the petitioner is that he has more than 1/10th shares in the company and as such a petition under Sections 397 & 398 of the Companies Act was maintainable; he was a promoter director of the company and was looking after the financial affairs of the company. The allegations are largely leveled against respondent No. 2; contention is that respondent No. 2 (cousin brother of the petitioner) has been taking advantage and has unlawfully and illegally siphoned off the funds of the company by under invoicing the goods; cash sales have remained unaccounted; the petitioner was constrained to write a letter to the Bankers of the company i.e. State Bank of Bikaner and Jaipur (C-72, Connaught Circus, New Delhi) where the bank at the request of the petitioner had frozen transactions in the said account; records of the company are being fabricated and unauthorizedly respondent No. 2 in connivance with respondent No. 3 has altered the composition of the Board of Directors by inducting their nominees; contention being that since 16.07.2005 there are in fact only two directors in the company namely the petitioner and respondent No. 2. All these acts of the respondent No. 2 amount to a oppression and mis-management qua the petitioner; present petition was accordingly filed.

4 In the reply filed to the said petition (by respondent No. 2), at the outset, the defence of the respondent was that the parties had arrived at a family settlement which was incorporated in a Memorandum of a Family Settlement dated 21.02.2006. Attention has been drawn to the aforementioned document. This document has been allegedly entered into between respondent No. 2 and the father of the petitioner namely Arjun Das Bansal. In terms of this settlement, the shares of respondent No. 2 and his family in Kunal Pipes (India) Pvt. Ltd. stood transferred in the name of Arjun Das Bansal and his family and the factory at Durg would belong exclusively to him for which Mr.Arjun Das Bansal and his family would pay Rs. 40 lacs to respondent No. 2; the factory in Ghaziabad in the name of R.M. Ispat Pvt. Ltd. shall belong exclusively to respondent No. 2 and his brother Sunil Bansal. Attention has also been drawn to the Award dated 26.06.2006 which had been pronounced by the sole Arbitrator Suresh Chand Garg which was an adjudication of this family settlement dated 21.02.2006; in terms of this Award, Arjun Das Bansal and his family members would transfer their shares in the Company M/s R.M.Steel Pvt. Ltd) in the name of Mr.Anil Kumar Bansal or his nominated person.

5 Respondents No. 3 to 6 have supported the stand of respondent No. 2.

6 Admittedly both the family settlement and the Award are the subject matter of an appeal before the Allahabad High Court. Cross appeals have been filed by both the parties. The Allahabad High Court had passed an interim order qua the assets of the company. Today this Court has been informed that the sole asset of the company in fact has since been sold at the behest of the secured creditors; the monies of the company are lying in the current A/c of the company in its Bank. Both the rival parties are at ad-idem on the submission that this fund of the company, till the final disposal of the inter-se disputes between the parties, be directed to be kept in a fixed deposit account in order that it can earn interest which would be beneficial to either party who is entitled to the said amount. Accordingly, the Manager, State Bank of Bikaner and Jaipur, C-72, Connaught Circus, New Delhi is directed to keep the money lying in the above said account i.e A/c No. 51055448052 in an interest bearing FDR till further orders.

7 It is an admitted position that in the proceedings pending before the Allahabad High Court, the family settlement dated 21.02.2006 is the

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subject matter of challenge; the objections filed against the Award dated 26.06.2006 had been allowed by the first Court and an appeal against the allowance of the said objections is also the subject matter of hearing before the Bench of the Allahabad High Court. The proceeding pending before the said court contain evidence led before the first Court. The Allahabad High Court would thus be in a better position to appreciate the controversy between the parties relating to the family settlement on which evidence has also been led as also the objections against the Award which was also qua this family settlement whereby the petitioner had agreed to transfer his share-holding his share in the company (R.M. Ispat Pvt. Ltd.) in favour of respondent No.2. It is not in dispute that if this family settlement dated 21.02.2006 is up-held by the Allahabad High Court, the present petitioner would have no locus in the company; he would remain an outsider, petition under Sections 397 & 398 of the Companies Act would not be maintainable.

8 In this factual scenario, the order of the Company Law Board holding that till the disposal of the appeals pending before the Allahabad High Court (where the said issue is pending) are decided no relief can be granted, does not in any manner suffer from any infirmity.

9 The scope of Sections 397 & 398 of the Companies Act has come under judicial scrutiny on various occasions. In order that the Court may make an order under Section 397 of the Act, the Court must be satisfied, firstly that the company's affairs are being conducted in a manner oppressive to any member of members, secondly that the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up and thirdly that a winding up order would unfairly prejudice the applicant or applicants. A mere inefficient or a careless conduct of a director cannot give rise to a claim for relief under Section 397. Mere unfairness would also not constitute an oppression. In the present case, as has been noted supra a private agreement (i.e. the memorandum of family settlement) alleged by respondent No. 2 qua the petitioner which was also the subject matter of an Award and both the aforementioned documents i.e. the private agreement as also the Award being the subject matter of cross appeals pending before the Allahabad High Court in which proceedings extensive evidence has been led by the parties, the CLB in this factual background had rightly noted that the main reliefs claimed for by the petitioner cannot be granted; the defence of respondent No. 2 qua the Co. A. (SB) No.32/2009

family settlement dated 21.02.2006 would necessarily have to be answered and if this is done, the entire proceedings before the Allahabad High Court where the evidence has been led on this issue would become infructuous. The order of the CLB not in this background suffers from no infirmity.

10 Appeal has no merit. Dismissed.

INDERMEET KAUR, J

JULY 11, 2012

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