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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 274 of 2012

MORGAN SECURITIES & CREDITS PVT LTD Petitioner
Through: Mr. Simran Mehta with Ms. Inkle Roy
and Ms. Yogita Sunaria, Advocates.

versus

BPL LIMITED Respondent
Through: Mr. Subrat Birla, Advocate.

With

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O.M.P. 865 of 2012

MORGAN SECURITIES & CREDITS PVT LTD Petitioner
Through: Mr. Simran Mehta with Ms. Inkle Roy
and Ms. Yogita Sunaria, Advocates.

versus

BPL LIMITED Respondent
Through: Mr. Subrat Birla, Advocate.

And

32
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O.M.P. 956 of 2012

MORGAN SECURITIES & CREDITS PVT LTD Petitioner
Through: Mr. Simran Mehta with Ms. Inkle Roy
and Ms. Yogita Sunaria, Advocates.

versus

BPL LIMITED

..... Respondent

Through: Mr. Subrat Birla, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

04.12.2012

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1. These are three petitions by the Petitioner, Morgan Securities & Credits Pvt. Ltd., under Section 9 of the Arbitration and Conciliation Act, 1996 ('Act') filed against the Respondent, BPL Limited. The petitions arise under a common set of facts and are accordingly being disposed of by a common order.

2. The facts in OMP No. 274 of 2012 are that the Petitioner and the Respondent entered into bill discounting arrangements by sanction letters dated 27th December 2002 and 11th June 2003. The letter dated 27th December 2002 was addressed by the Petitioner to BPL Display Devices Limited ('BDDL') whereby the Petitioner sanctioned BDDL the facility of bills discounting limited to an extent of Rs. 6 crores. The Drawer was BDDL and the Drawee was the Respondent. Clause 3 of the said letter reads as under:

"3. Bill of Exchange/Hundi shall be with recourse to Drawer. Therefore, the liability to repay amount to Morgan Securities & Credits Private Limited (hereinafter referred to as "the

4

Discounting Company”) on the due date shall be of Drawer and Drawee jointly and severally. In case the Drawee does not make payment on due date of any bill of exchange/hundi, the Drawer shall make the payment of all the amount due thereon to without any notice or demand or presentment from the payee or the holder in this behalf.”

Under Clause 5 the repayment was to be made to the Petitioner by way of crossed cheque/demand draft payable at New Delhi. Clause 6 of the said letter reads as under:

“6. In the event of any amount remaining overdue on any hundi/bill of exchange under this facility neither of the Drawer and Drawee shall without the prior written permission of the Discounting Company pass any resolution for its winding up for its amalgamation/merger or otherwise or for amalgamation/merger of any other company into the Drawer or Drawee (enter directly or indirectly into any new area/field of business/operation) or dispose off or sell or encumber any of its undertaking or business of any of its investments in shares etc. register/recognize any transfer of its shares by any of its present promoters group; change its paid up share capital or redeem any security; appoint or reappoint or modify any term and condition of appointment of any whole time or managing director; pay any remuneration to any of its managing directors, whole time directors or the chairman; or pay any dividend on any shares.”

3. Under the subsequent letter dated 11th June 2003 a further bill discounting facility was sanctioned to the extent of Rs. 6.5 crores by the Petitioner to BDDL whereby the arrangement was similar. One difference was that in the said letter it was stated that the bill discounting facility was at a concessional

5

rate of 22.5% per annum and that “in case of delay or default in making payment of principal or overdue bill discounting charges/interest or any part thereof on its due date, the concessional rate will be withdrawn and the normal rate of bill discounting charges/interest of 36% per annum monthly rests, shall be payable by the Drawee/Drawer from its due date.”

4. On 2nd February 2007 the Chairman & Managing Director (‘CMD’) of the Respondent addressed the following letter to the Petitioner:

“Dear Sirs,

Re: Pending Payments.

This is with reference to the discussions we had today at our Office with your representative Mr. Madhukar Dodrajka regarding outstanding dues pertaining to BDDL account.

At the outset, I would like to thank you for your patience and understanding during the really trying phase of BPL Limited.

As you may be aware, BPL Limited has restructured its businesses and has formed a joint venture company for its Colour Television business with our JV partners, SANYO. After the formation of the JV, BPL has been striving hard to get back to normalcy and is in touch with various financial institutions for sanction of required funds for our working capital requirements and settlement of all outstanding dues. I am constantly monitoring the situation and rest assured we will settle your outstandings within the next 6 months.

Looking forward to your support, as always and thank you once again for your patience and understanding.

Thanking you and with regards.”

5. Since there were continued defaults in making payment, the Petitioner by its letter dated 28th June 2007 invoked the arbitration clause. Thereafter, the disputes were referred to the learned sole Arbitrator. The arbitration proceedings are pending.

6. The reasons for the Petitioner approaching this Court by way of OMP No. 274 of 2012 are set out in the order dated 23rd March 2012 passed by this Court, which reads as under:

“1. Although the parties are before the learned Arbitrator and an interim order was passed by the learned Sole Arbitrator on 12th July 2007 which is subsisting, the immediate provocation for the Petitioner to file the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 is a notice dated 14th February 2012 has been issued by Respondent BPL Limited for an extra-ordinary general meeting (‘EGM’) to be held on 29th March 2012. In the explanatory statement issued under Section 173 (2) of the Companies Act, 1956 under Item No. 1 it is stated that BPL Limited has already invested about Rs. 115 crores in the equity of BPL Power through its subsidiary and it proposes to further invest in the equity share capital of the subsidiary company up to the extent of Rs. 40 crores. The Petitioner states that as on date BPL Ltd. owes it Rs. 1,46,78,11,065 and therefore, BPL Ltd. should be restrained from making any further investment as indicated in the above notice.

2. Issue notice to the Respondent, returnable on 23rd April 2012.

3. Till the next date of hearing, the Respondent is restrained from transferring a sum of Rs. 40 crores to its subsidiary company Bharat Energy Ventures Limited or BPL Power Limited, in any manner, whether directly or indirectly.

4. Order be given dasti to learned counsel for the Petitioner under signature of the Court Master.”

7. Subsequent to the above order, the Petitioner filed an application IA No. 14329 of 2012 seeking to place on record the order dated 10th December 2007 passed by the Court in an earlier OMP No. 485 of 2007 (*BPL Limited v. Morgan Securities & Credits Pvt. Ltd.*). The said application was allowed on 8th August 2012.

8. The facts relevant to OMP No. 865 of 2012 are set out in the order dated 12th September 2012 passed in the said petition by this Court, which reads as under:

“1. The disputes between the Petitioner and the Respondent arising out of the sanction of bill discounting facilities by the Petitioner in favour of the Respondent by document dated 27th December 2002, are already pending before a sole Arbitrator.

2. Mr. Simran Mehta, learned counsel appearing for the Petitioner refers to the Clause (6) of the bill discounting document which states that in the event of any amount remaining overdue, the Respondent will not without prior written permission of the Petitioner pass any resolution “for its winding up for its amalgamation/merger or otherwise or for amalgamation/merger of any other company into the”

8

Respondent either directly or indirectly into any new area/field of business/operation or dispose of any of its undertaking or business or any of its investments in shares etc. He refers to a letter dated 2nd February 2007, written by the Chairman & Managing Director of the Respondent acknowledging that there were outstanding dues owing to the Petitioner. According to the Petitioner, the Respondent owed it, as on 31st August 2012, over Rs.172.5 crores.

3. The Petitioner states that recently it came across a notice issued by the Respondent to its shareholders, regarding resolutions to be passed at a meeting of the shareholders held on 3rd August 2012. Part of the agenda for the meeting concerned the transfer of the Respondent's health care business to its wholly owned subsidiary financed by the Respondent. The resolution further proposed that the assets of the Respondent would be encumbered for that purpose. This was being done without prior permission of the Petitioner. It is stated that although the parties are before the learned Arbitrator, given the urgency of the relief being sought, the Petitioner is constrained to file the present petition.

4. Issue notice to the Respondent, returnable on 4th December 2012. *Dasti* in addition.

5. Till the next date of hearing, the Respondent is restrained from taking any further action pursuant to the decisions taken or resolutions passed at the meeting of the Respondent's shareholders held on 3rd August 2012.

6. Copy of this order be given *dasti* under signature of the Court Master."

9. The Petitioner filed OMP No. 956 of 2012 stating that the Respondent was diverting a sum of Rs. 50.05 crores to its subsidiary companies as was

evident from its letter dated 12th September 2012 addressed to the Manager – Listing, Bombay Stock Exchange Limited ('BSEL'). The said letter stated that in the Annual General Meeting ('AGM') of the shareholders of the Respondent held on 12th September 2012 resolutions approving the investment in the proposed Wholly Owned Subsidiary ('WOS') of the company and investment in the equity share capital of BPL Techno Vision Private Limited ('BTVPL') as well as in the equity/redeemable preference share capital of BPL Telecom Private Limited ('BTPL') were approved. It was further stated by the Petitioner that the above letter dated 12th September 2012 read with the notice for the AGM made it clear that the Respondent proposed to transfer a sum of Rs. 50.05 crores to its three subsidiaries namely BTVPL, BTPL and one unnamed WOS. It was further stated that a perusal of the latest Annual Report of the Respondent for the year 2011-2012 revealed that the Respondent was disposing of valuable immovable properties in violation of Clause 6 of the letter dated 27th December 2002, which included its land at Dobastpet at Hosur Road. It was apprehended that with BDDL already before the Board for Industrial & Financial Reconstruction ('BIFR') and with the Petitioner's claim being Rs. 177.20 crores as on 30th September 2012, even if the Petitioner succeeded in

the arbitral proceedings it might not be able to recover the claimed amount.

10. In OMP No. 956 of 2012 an interim order was passed by this Court on 9th October 2012 restraining the Respondent from taking any further action pursuant to the letter dated 12th September 2012 addressed to BSEL.

11. This Court has heard the submissions of Mr. Simran Mehta, learned counsel for the Petitioner and Mr. Subrat Birla, learned counsel for the Respondent.

12. Mr. Subrat Birla, learned counsel for the Respondent first submitted that since the parties were already before the learned Arbitrator, the Petitioner could well seek interim reliefs in proceedings under Section 17 of the Act. In reply, Mr. Simran Mehta, learned counsel for the Petitioner contended that with the Respondent repeatedly diverting monies to the unnamed WOS and other subsidiary units/sister concerns, there was a real apprehension that the Petitioner may not be able to recover the claimed amount.

13. As far as the above submissions are concerned, this Court is of the view that the Petitioner is right in its contention that frequency with which the Respondent has sought to make investments in its subsidiaries/sister

concerns or unnamed WOS, gives rise to a reasonable and justifiable apprehension that the Respondent will present the Petitioner with a *fait accompli* by the end of the arbitral proceedings. *Prima facie* it appears that the Respondent is acting in contravention of Clause 6 of the letter dated 27th December 2002 whereby the Respondent was extended bill discounting facilities on certain terms and conditions.

14. It was then contended by learned counsel for the Respondent that whereas in the first letter dated 27th December 2002 there was Clause 6 which prevented the Respondent from taking action without the permission of the Petitioner, there was no similar clause in the subsequent letter dated 11th June 2003. This submission overlooks the fact that under the bill discounting facility, the liability of BDDL and the Respondent to repay the amount to the Petitioner was joint and several. Indeed, given the amount claimed by the Petitioner, the balance of convenience is in its favour in restraining the Respondent from alienating its assets, both immovable and movable, or making further investments in its subsidiaries.

15. It was then contended by learned counsel for the Respondent that as regards the first bill discounting facility the entire liability has already been

discharged by BDDL. A reference is made to certain post-dated cheques ('PDCs') issued in favour of the Petitioner for over Rs. 5 crores. Although learned counsel for the Respondent repeatedly stated that the 'payment' was made, he was unable to show any document to substantiate his plea that the PDCs issued were in fact encashed by the Petitioner.

16. On the other hand, Mr. Mehta pointed out that the Petitioner was able to realize payment only against some of the PDCs. The Petitioner did not present most of the PDCs at the request of the Respondent since there was insufficient balance in its accounts. Mr. Mehta further stated that far from the liability being discharged, the Respondent owed the Petitioner huge amounts as outstanding against the bill discounting facility.

17. Lastly it was then contended by learned counsel for the Respondent that the claims of the Petitioner were time barred. On the other hand Mr. Mehta placed reliance on the letter dated 2nd February 2007 written by the CMD of the Respondent acknowledging liability. In the considered view of the Court, the question whether any of the Petitioner's claims against the Respondent are time barred will be decided in the arbitral proceedings.

13

18. After considering the submissions of learned counsel for the parties, this Court directs that the interim orders dated 23rd March 2012 in OMP No. 274 of 2012, the interim order dated 12th September 2012 in OMP No. 865 of 2012 and the interim order dated 9th October 2012 in OMP No. 956 of 2012 shall continue during the pendency of the arbitral proceedings. It is however clarified that the said orders may be modified by the learned Arbitrator if the Respondent is able to demonstrate by way of an appropriate application and affidavit before the learned Arbitrator that the entire liability owed to the Petitioner has been fully discharged.

19. The petitions are disposed of in the above terms. Order be given *dasti* to learned counsel for the parties.



S. MURALIDHAR, J

DECEMBER 04, 2012

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