

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

% *Judgment delivered on: January 30, 2013*

+ **OMP No.218/2011**

D.E. SHAW COMPOSITE INVESTMENTS (MAURITIUS) LTD
..... Petitioner

Through Mr.Sandeep Sethi, Sr.Adv. with
Mr.Shankh Sengupta & Mr.Parinay
D.Shah, Advs.

versus

AMAR UJALA PUBLICATIONS LIMITED & ORS
..... Respondents

Through Mr.Vibhu Bhakru, Sr.Adv. with
Mr.Arun Kathpalia, Mr.P.R.Rajhans
& Mr.Neeraj Kapoor, Advs. for
R-1 to R-6.
Mr.Saket Sikri, Adv. with
Mr.Hitesh Sachar, Adv. for R-7 to
R-9.

+ **OMP No.801/2011**

D.E. SHAW COMPOSITE INVESTMENTS (MAURITIUS) LTD
..... Petitioner

Through Mr.Sandeep Sethi, Sr.Adv. with
Mr.Shankh Sengupta & Mr.Parinay
D.Shah, Advs.

versus

AMAR UJALA PUBLICATIONS LIMITED & ORS
..... Respondents

Through Mr.Vibhu Bhakru, Sr.Adv. with
Mr.Arun Kathpalia, Mr.P.R.Rajhans
& Mr.Neeraj Kapoor, Advs. for
R-1 to R-6.

Mr.Saket Sikri, Adv. with
Mr.Hitesh Sachar, Adv. for R-7 to
R-9.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

I.A.No.783/2013 in OMP No.218/2011 and
I.A.No.851/2013 in OMP No.801/2011

1. The abovementioned two applications have been filed by the petitioner under Order XXIII, Rule 1 read with Section 151 CPC for withdrawal of the petitions, on the ground that the petitioner has transferred its investment in Amar Ujala Publications Limited, respondent No.1, to third party and the petitioner no longer holds any shares in the said company. In view thereof, there remains no dispute between the petitioner and the respondents. The present petitions have become infructuous. Therefore, the petitioner be allowed to withdraw the said petitions.
2. The withdrawal is only opposed by respondents No.7 to 9 i.e. Agarwal Family who directly hold 14.49% shares in Amar Ujala Publications Limited and indirectly hold 24.15% shares of the said respondent No.1-Company as alleged by them in various pleadings.
3. Before further discussion to the objections raised by learned counsel appearing on behalf of respondents No.7 to 9, it is necessary to refer few facts in the matters.
4. In OMP No.218/2011, the following prayers were made by the petitioner against the respondents:
 - a. Pass an ad interim ex-parte order of injunction restraining the respondents, their legal heirs, officers, servants, agents,

representatives, and/or anyone claiming under or through the Controlling Shareholders from selling, gifting or otherwise transferring or alienating or creating security interests or other encumbrances or declaring a trust in or over any equity shares held by the Controlling Shareholders in the company.

- b. Pass an ad interim ex-parte order of injunction restraining the Respondent No.1 company, their officers, servants, agents, representatives, and/or anyone claiming under or through the respondent No.1 from selling, encumbering, transferring and/or alienating the assets, tangible and/or intangible owned by the Company, in any manner whatsoever.
- c. Pass an ad interim ex-parte order of injunction restraining the respondents, their officers, servants, agents, representatives, and/or anyone claiming under or through the respondents from selling, encumbering, transferring and/or alienating the assets, tangible and/or intangible owned by the Controlling Shareholders, in any manner whatsoever.

5. When the petition was listed before the Court first time on 18th March, 2011, the respondents No.1 to 6 through counsel made the statement that they shall not sell, gift and otherwise transfer or alienate or create any encumbrances in the equity shares held by them in the respondent No.1-Company.

6. In OMP No.801/2011 filed by the same petitioner, the following prayers were made:

- a. Pass an order restraining respondents No.2 to 9 from exercising their voting rights as a shareholder in the company in breach of the term of the investment documents, including clause 11.11 of the Investment Agreement.
- b. Pass an order restraining the respondents, their directors, officers, employees, representatives, servants and agents, from giving any effect or further effect to the resolution purporting to amend the Articles passed at the annual general meeting on October 22, 2011.

- c. Pass an order restraining the filing of the resolutions passed on in the annual general meeting held on 22nd October, 2011 with the Registrar of Companies, in relation to the deletion of the relevant provisions of the investment documents from the Articles of the Company.
- d. Pass an order restraining the Respondent No.1 Company from passing or giving effect to any resolution contrary to clause 11.5.3 read with Schedule 8 of the Investment Agreement in relation to the “Affirmative Voting Items.”
- e. Pass an order directing the respondent No.1 Company to provide information and reports required under clause 17.3 of the Investment Agreement.
- f. Pass an order directing the respondent No.1 Company to allow the petitioner and/or its agents or representatives to examine the books, accounts and records of the company and its subsidiaries in accordance with clause 11.2.9 of the Investment Agreement.

7. Upon hearing on first date, i.e. 24th November, 2011, the Court passed an interim order restraining the respondents from taking any further action in relation to the resolution passed on 22nd October, 2011 purporting to amend the Articles of Association of the Company.

8. The averments of the petitioner in both the petitions are that the petitioner had invested ₹117 crores in the equity shares of, (i) the Company and (ii) A and M Publications Limited (a related entity controlled by the respondents, which was merged into the Company in 2008, subsequent to the investment by the petitioner). The relationship between the parties is governed by the Investment Agreement and the Exit Rights Agreement. Under the Investment Agreement, the Company and the Controlling Shareholders provided the petitioner, inter-alia, with the following investment:

- (i) The right to nominate two directors on the Board and one nominee director on all committees of the Board;

- (ii) The right to veto certain matters that may have a significant impact on the value of the applicant's investment including a right to veto any amendment of the Articles of Association and a change in statutory auditors of the Company;
- (iii) The right to receive periodic reports containing information with respect to the operations and performance of the Company; and
- (iv) The right to send its representatives to examine the books, accounts, and records of the Company.

9. As a condition precedent to the petitioner investing this amount of ₹117 crores into the Company, the terms of the Investment Agreement and the Exit Rights Agreement (collectively, the "Investment Documents") were incorporated into the Articles of Association of the Company.

10. Several disputes have arisen between the parties under the Investment Agreement and the Exit Rights Agreement on account of various wilful and fundamental breaches of the contractual safeguards and obligations undertaken by the respondents, as set out in the Investment Documents. The petitioner states that the aforesaid contractual safeguards and other terms set out in the Investment Documents formed the very basis on which the Investor agreed to invest ₹117 crores in the Company and are critical for the petitioner to be able to monitor its investment in the Company and the performance of the Company.

11. As mentioned earlier, respondents No.7 to 9 earlier filed various applications including I.A.No.18303/2012 and a contempt petition being CCP(O) No.4/2013. Common facts in all the applications are that they are apprehending malafide conduct on the part of the petitioner and respondent

No.1, as the petitioner has sold the shareholding of respondent No.1 to third party in terms of some settlement arrived between them, the other respondents must be aware of the same. Thus, the present respondents No.7 to 9 are entitled to know the terms of the settlement. Learned counsel appearing on their behalf has referred the order dated 21st March, 2012 which was passed in I.A.No.5264/2012 filed by respondents No.7 to 9 when the non-applicants including the petitioner and respondents No.1 to 6 informed the Court that the talks for settlement are in progress, however, there has been no finality till date and the terms of the settlement would be placed before the Court. Learned counsel submits that since the settlement has arrived, they must produce a copy of the said settlement before this Court.

12. Mr.Sandeep Sethi, learned Senior counsel appearing on behalf of the petitioner submits that when the order dated 21st March, 2012 was passed, there was a talk for settlement between the parties, therefore, the statement was made before the Court to the effect that the same would be placed on record. He further submits that since the petitioner has transferred the investment of Amar Ujala Publications Ltd. (respondent No.1) to third party and the petitioner no longer holds any share with respondent No.1, the question of showing the terms of transfer of investment in Amar Ujala Publications Ltd. by the petitioner does not arise. He further states that respondents No.7 to 9 have already initiated proceedings before the Company Law Board against respondent No.1 in this regard. According to him, as far as the present petition is concerned, the same has become infructuous, as no dispute remains between the petitioner and the respondents.

13. After having considered the rival submissions of the parties and the facts and circumstances of the case, I am of the view that the submission made by the petitioner's counsel is reasonable and correct. As far as the order dated 21st March, 2012 is concerned, it appears that at that time, there was no finality of settlement between the parties, therefore, such statement was made by the non-applicants to place on record the terms of settlement. As petitioner has transferred its investment to the third party, therefore, the present petition has become infructuous. Under these circumstances, both the applications are allowed. The present petitions have become infructuous and the same are disposed of as such. However, respondents No.7 to 9 are not precluded to continue with the proceedings before the Company Law Board against respondent No.1, Amar Ujala Publications Ltd. which would be decided as per their own merits.

14. In view of the above, all other pending applications have also become infructuous and the same are not maintainable and disposed of as such. No costs.

(MANMOHAN SINGH)
JUDGE

JANUARY 30, 2013/ka