

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

% *Reserved on: 4th October, 2013*
Date of Decision: 7th October, 2013

+ CO. A. (SB) 38/2013

MANAKTALA CHEMICALS PVT.
LTD. & ORS.

.....Appellants
Through: Mr. Abhinav Vasisht, Sr.
Advocate with Mr. Ritin Rai and
Mr. Sidhartha Jha, Advocates.

versus

MR. PAWAN MANAKTALA & ORS.

..... Respondents
Through: Mr. U.K. Chaudhary, Sr.
Advocate with Ms. Nalini, Mohd.
Saif Abbasi, Advocates for R 1
and 2.

CORAM:
MR. JUSTICE R.V. EASWAR

JUDGMENT

R.V. EASWAR, J.:

1. This is an appeal filed under Section 10F of the Companies Act, 1956, impugning the order passed by the Company Law Board on 17.05.2013 clarified by the order dated 23.07.2013.

2. The appeal has been filed in the following circumstances. The respondents in the appeal, who may be referred to as the Pawan Group,

held a minority shareholding in the appellant-company, the majority shares being held by the Vipin Group. There was only a slender margin in the percentage of holding. It is not necessary to go into much detail about the circumstances in which the Pawan Group filed company petition No.43(ND)/2013 before the CLB; suffice to note that the petition was filed under Sections 397-398 of the Companies Act alleging oppression and mis-management against the Vipin Group. A property had been acquired by the company in Noida at D-11, Sector-18. This property was sold in November, 2011. The sale proceeds were used to acquire some other properties. The balance amount was credited to the fixed deposit account of R-1, Mr. Pawan Manaktala, belonging to Pawan Group. This was as on 08.04.2013. Some withdrawals had already been made and there was a balance of ₹13.68 crores in the fixed deposit account as on 04.04.2013. On the date of the filing of the company petition, the balance available in the fixed deposit account in the name of R-1 was ₹13.68 crores.

3. An application in Company Application No.186/2013 was filed by the Pawan Group before the CLB in the main company petition with an interim prayer as follows: -

“i. To protect ₹13.5 crores approximately funds of Respondent No.1 company from the misuse by Respondents, by directing that the said funds shall not be utilized by any party and shall remain in FDR with Yes Bank Ltd. during the pendency of the petition.”

4. When the application was heard on 17.05.2013, the Vipin Group had no objection if the entire amount of ₹13.5 crores was reinvested in fixed deposit for such term as may be deemed fit. It would appear that on maturity of fixed deposit the YES Bank had transferred the proceeds i.e. ₹13,69,23,310/- to the current account in which no interest was payable. Since the company was losing heavy interest, the CLB directed as follows: -

“8. In the above facts and circumstances above and considering the interim prayer sought by the Petitioner, in my considered opinion, it is appropriate to direct YES Bank R-8 to invest ₹13.5 crores today in Fixed Deposit for a period of 45 days as it would earn a maximum interest @ 8.10% as projected by the Bank in its email dated 10/05/2013. The interest of the Petitioners is well protected and no prejudice is caused to them because in any case they claim entitlement only to 50% of the actual proceeds of the Fixed Deposit. By putting a sum of ₹13.5 crores in Fixed Deposit the alleged claim of the Petitioner will always remain protected.

9. I therefore direct R-8 to deposit ₹13.5 crores from the balance lying in the Current Account No.001484100001625 of R-1 as Fixed Deposit for a period 45 days from today. In the absence of any further directions, the said Fixed Deposit shall keep rolling over

for a further period of 45 days. The remaining amount lying in the above-mentioned Current Account is permitted to be utilized for the business of R-1 company with a direction that full particulars of each withdrawal from the said balance amount lying in the Current Account shall be furnished to this Board on every hearing.”

5. Apparently the Vipin Group thought that at the end of the 45 days period, the interest accumulated in the fixed deposit could be withdrawn and it was only the principal amount of ₹13.5 crores which would be reinvested for a further period of 45 days. It, therefore, wrote to the bank to pay the interest. The bank refused stating that the direction of the CLB was to reinvest the principal as well as the accumulated interest for a further period or periods of 45 days each.

6. The Vipin Group, therefore, filed Company Application No.13/C No.1/2013 before the CLB. In a brief order passed on 23.07.2013, the CLB clarified as under: -

“CA No.13/C.No.1/2013 mentioned.

Heard.

I am not inclined to grant the prayer sought in CA No.13/C.No.1/2013 as in the order dated 24.5.2013 while directing that the fixed deposit would be rolled over on prevalent applicable rate of interest after 45 days it was always intended that the amount of fixed deposit alongwith

interest shall be rolled over. CA No.13/C.No.1/2013 is accordingly dismissed.

It was informed at the Bar that the parties are making efforts for a settlement. The matter is already listed for final hearing on 26.8.2013 at 10.30 a.m.

*Sd/-
(Justice D.R. Deshmukh)
Chairman”*

7. The present appeal is directed against the orders of the CLB dated 17.05.2013 as clarified by the order dated 23.07.2013.

8. The contention put forth on behalf of the appellants is this. The interest from the fixed deposit had always been used for the purpose of the business of Manaktala Chemicals Ltd. In fact, the interest amount on the deposit of ₹13.5 crores was substantial and was used to revive the company business. Even according to the order passed by the CLB on 17.05.2013, the interest of the Pawan Group was well protected by the deposit of ₹13.5 crores in the fixed deposit account because, as noted by the CLB, in any case the Pawan Group claimed entitlement only to 50% of the proceeds of the fixed deposit. Therefore, the Pawan Group would be entitled to the deposit of ₹6.75 crores and the interest accruing thereon. Therefore, there was no prohibition on the interest accruing to the principal amount (i.e. ₹13.5 crores) being paid over to the appellants.

In fact, in terms of the order dated 17.05.2013 passed by the CLB, only the principal amount of ₹13.5 crores shall be rolled over for a further period of 45 days. In view of these clear directions of the CLB, there is no question of the interest amount also being rolled over, without being paid to the appellants. In any case, the interest on 50% of the principal (i.e., on ₹6.75 crores) can be paid over, as the Pawan Group is at best entitled only to 50% of the principal amount, as noted by the CLB.

9. The respondents have raised four points before me in defence of the impugned orders. The first submission is that the order based on 17.05.2013 is a consent order and no appeal against the same is maintainable. The second contention is that in any case, no question of law can be said to arise out of the orders of the CLB and under Section 10F of the Act, an appeal to the High Court against the order passed by the CLB would lie only on a question of law. Thirdly, there is no authority to file the appeal and the resolution of the board upon which reliance is placed as giving the authority to do so, is actually only a draft resolution which is not even signed. Lastly on merits, it is contended that the claim of the appellants, if accepted, would de-value and erode the asset-base of the company and would drastically bring down the

value of the shares, prejudicially affecting any buy-out proposals which may be made by the CLB in the main petition filed under Section 397-398; at any rate, there is no evidence brought on record by the appellants to show that but for the interest accruing on the fixed deposit the company is cash-starved.

10. In the brief rejoinder, it was submitted on behalf of the appellants that the consent given by them was only for depositing the amount of ₹13.5 crores in fixed deposit and that there was no consent given for the further direction of the CLB that both the fixed deposit and the interest accrued thereon shall be rolled over for a further period or periods of 45 days each. As regards the authorisation to file the appeal, it was clarified that the draft resolution was erroneously filed along with the appeal and that the final resolution authorising Vipin Kumar Manaktala to file the appeal would be filed immediately after the hearing.

11. The preliminary points taken on behalf of the respondents may be first taken care of. As undertaken before the Court, the final and duly signed resolution adopted by circulation by the board of directors on 14.11.2013 authorising Vipin Kumar Manaktala to file the appeal was filed immediately after the hearing of the appeal. The appeal is,

therefore, in properly authorised and the objection to the contrary taken by the respondent is rejected. The other preliminary objection to the effect that the appeal involves no question of law is to my mind well-founded. Section 10F permits an appeal to be filed before the High Court against the order passed by the CLB only on a question of law. I do not see any question of law arising out of the impugned orders. These orders were passed in interim proceedings in applications filed by the Pawan Group before the CLB seeking interim protection of its interests as minority shareholders in the appellant-company. The CLB taking note of all the background facts and circumstances leading up to the sale of the Noida property and the receipt of the sale proceeds and with a view to protecting the interests of the Pawan Group, passed the interim order protecting the amount of ₹13.5 crores. The question whether the CLB intended that only the principal amount should be reinvested on maturity of the fixed deposit or whether the principal and the interest accrued should be reinvested, is not by any means a question of law. It is a question of the intention of the CLB and such intention was clarified by the CLB in its order dated 23.07.2013. In this order, it was clarified by the CLB that it meant and intended that both the

principal and the interest accrued shall be reinvested. When once the clarification was given, there was an end of the matter so far as what the CLB intended and that cannot give rise to any question of law. On this point alone the appellants have to fail.

12. There is also force in the contention of the respondents that no appeal is maintainable against a consent order. It is perhaps realising this difficulty that in the rejoinder, it was submitted on behalf of the appellants that they were not denying their consent for the deposit of ₹13.5 crores and for the said amount to be rolled over, but they had not consented for the rolling over of the above amount along with the interest accrued thereon. Even assuming this to be correct, the clarification made by the CLB should close the matter. Once the CLB has clarified that not only the principal amount, but also the interest accrued thereon should be rolled over, there is no scope for interference with such an order, given the parameters of Section 10F. It is an interim order passed with a view to protecting the interest of the parties and unless it is shown that the discretion was improperly or irrationally exercised or was exercised in a wholly untenable manner, there is little scope for interference with such orders under Section 10F of the Act. It

has not been so shown by the appellants. These considerations are themselves also sufficient to answer the points sought to be raised by the appellants on the merits of the direction/ clarification of the CLB. In the anxiety to examine the impugned orders with a microscope and to find fault with the CLB, it should not be forgotten that the impugned orders were passed as an interim measure to protect the interest of the parties before the Court. I do not think such a myopic or hair-splitting view should be taken of the impugned orders.

13. In the result the appeal is dismissed with no order as to costs.

(R.V. EASWAR)
JUDGE

OCTOBER 7, 2013

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