

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 20.01.2014

+ **CO. A (SB)46/2013**

M/S SETH HOTELS PVT. LTD.

..... Appellant

versus

LATE MAHINDER KUMAR SETH & ORS. Respondents

Advocates who appeared in this case:

For the Appellant : Mr Atul Sharma, Mr Nitesh Jain and
Mr. Suman Sethi, Advocates.

For the Respondents : Mr Atul Bandhu, Advocate for R-1.
Mr R.S. Sharma, Advocate for R-2 and R-3.

CORAM:-

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. The present appeal has been preferred by the appellant company impugning the order dated 12.09.2013 passed by the Principal Bench, Company Law Board, whereby the Company Law Board has declined to vacate/modify the interim order dated 19.09.2006 passed earlier. By the interim order dated 19.09.2006 the Company Law Board had directed that status quo, with regard to the shareholding and the assets of the company, as of that date be maintained.

2. Indisputably, the principal asset of the company is a plot of land allotted by the DDA. It is stated that a firm under the name and style of

Seth fashions was constituted by the five sons of Shri Late K.C. Seth in 1992. The said brothers participated and were successful in an auction of a plot of land conducted in 1992. Subsequently, the appellant company was incorporated on 26.10.1993 where all the five Seth brothers were directors and shareholders. At the instance of the said Seth brothers the DDA transferred the entitlement to the said plot being plot no. 17 in District Centre Laxmi Nagar in the name of the appellant company. The DDA also executed a lease deed dated 15.10.1996 for the said plot in favour the appellant company. It is stated that subsequently in 2004 an adjoining plot was also allotted to the company. Although, there is some controversy with respect to the allotment of this adjoining plot, the same need not detain this court in the present proceedings.

3. It is not disputed that the said plot of land leased by the DDA for purpose of construction and operating a hotel. As the said object was not met the DDA has sought to cancel the lease. It is not disputed that in the event immediate steps are not taken to restore the lease deed and commence steps for construction, the said asset of the appellant company would be lost.

4. The appellant company in the present appeal is represented through one Mr Prem Bhutani who claims to be a Director of the Company. The learned counsel for the appellant also states that Mr Bhutani has the support of 99% of the shareholders who are supporting the present appeal appellant. This contention is stoutly refuted by the learned counsel for the respondent who states that the persons claiming to be shareholders at whose behest the present appeal has been filed, the Bhutani Group and Garg Group,

(hereinafter referred to as the rival group), have no rights and are not shareholders of the appellant company. They are also not parties in their individual rights before the Company Law Board. It is contended that the present appeal has been filed by the rival group who are attempting to usurp the control of the appellant company and thus the present appeal ought to be rejected at the threshold.

5. I have heard learned counsel for the parties.

6. It is apparent from the submissions made by the learned counsel for the appellant as well as the learned counsel for the respondent, that interest of the company is required to be protected. The only question of law that arises in the present appeal is whether the Company Law Board erred in ignoring the interest of the appellant company. It is settled law that the interests of the company are paramount in proceedings under Section 397/398 of the Companies Act, 1956. It is also apparent from the pleadings that in order to protect the interests of the company immediate steps are required for restoration the lease which has been terminated by the DDA. The company also needs to take steps for construction of a Hotel in order that the conditions of the lease are met. For this purpose the company would have to apply to the Delhi Development Authority and pay the requisite penalty or other charges that they may be demanded. Charges would also have to be deposited for revalidation of the sanctioned building plans. It is only after these steps are taken that there is any possibility of the lease being restored. The learned counsel for the appellant submits that these steps would require approximately `80 lakhs and the process is liable to take over two months. This court also asked the learned counsel for the

respondents whether they would be willing to deposit a sum of ` 80 lakhs for the said purpose without prejudice to their rights and contentions as well as the rights and contentions of the rival group. The learned counsel for the respondents responded in the negative. However, the learned counsel for the appellant has stated that the rival group supporting the appeal (who claim to hold 99% of shares) will out of their own funds deposit this requisite fee and take the necessary steps. They would claim no equities on account of any money spent by them for restoration of the lease, revalidation of the sanctioned building plans and construction of the hotel. Further, they would also not make any claims against the company for funds infused by them for the aforesaid purposes in the event, their claims as to share holding in the appellant company are not accepted by the Company Law Board.

7. I find that the rights of the respondent will not be prejudiced in any manner if this offer made by the learned counsel for the appellant is accepted. Accordingly, the interim order of status quo dated 19.09.2006 passed by the Company Law Board is varied to the limited extent as indicated below. The appellant company is entitled to apply to the DDA for restoration of the lease as well as apply for revalidation of the sanctioned building plans and carry out construction in accordance therewith. The funds required for these specific purposes will also be brought in by the rival group claiming to be the shareholders of the company at whose behest the present appeal has been filed. It is made clear that in the event the respondents were to prevail before the Company Law Board the appellant company will not be liable to repay any amount to the

said rival group or any other person from who any funds may be sourced by the rival group for the specified purposes.

8. It is also made clear that no charge or any lien will be created on the property of the company. It is clarified that the present order would not be read or construed as creating or accepting any rights or interest in favour of the Rival Group

9. The Company Law Board is directed to take up the final hearing of the company petition and dispose of the same within a period of two months. In the event that the hearing cannot be concluded within this period, the Company Law Board may pass any interim order that it deems fit and vary the interim directions passed herein.

10. With the aforesaid directions and observations the present appeal stands disposed of.

VIBHU BAKHRU, J

JANUARY 20, 2014

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