IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 32 OF 2013
IN
CLB / COMPANY PETITION NO. 79 OF 2010

Diastar Jewellery Pvt.Ltd. & Ors. …Appellants
vs.
Mr.Pravin Jain & Ors. ...Respondents

Mr.B.B. Parekh with Mr.A.W. Ansari for Appellants.
Mr.Harish Pandya i/b. Sheela Mistry for Respondents.

CORAM : S.C. GUPTE, J.

14 OCTOBER 2015

P.C. :

The appeal impugns an order of the CLB directing appointment of a facilitator-cum-observer of the first Respondent company in a petition complaining of oppression and mismanagement. The facilitator-cum-observer is expected to sort out "*the allegations of the Petitioners and grievances of the Respondent*" and "*ensure smooth functioning of the R-1 Company till further orders".* He is to be paid "*a fixed remuneration of Rs.2 lakhs per month besides other facilities to which the Directors at present are entitled in this Company which shall be payable by the R-1 Company regularly".* His specific mandate is said to be the following :

> *"27. Shri Hari Sankar Acharya shall ascertain through an independent Company Secretary to be appointed by him for the specific purpose as to whether or not there has been proper compliance of the provisions of the Act and the AOA of the R-1 Company in increasing of the shareholding of the Respondents to 72.51% of the issued and subscribed capital of the R-1 Company. Shri Acharya shall also engage an independent Chartered Accountant to verify and ascertain*

> *the huge losses and siphoning off R-1's funds. Search Report be submitted at the earliest possible to enable the CLB to pass further orders in this regard and dispose off the CP. Meanwhile Shri Hari Shankar Acharya shall ensure that the Meetings of the R-1 Company are held at regular intervals and the Statutory Compliances are made on scheduled dates.”*

And for all this, he is to be given “*complete immunity from any kind of civil and criminal proceedings already launched or to be launched anywhere in the country against the company and its Directors for all acts prior to and subsequent to the date of appointment.”*

2 The impugned order is delightfully vague. It does not show any purpose to be served by appointment of such facilitator-cum-observer. The person appointed has no clear-cut role to play in the management of the company. If ever the idea was to investigate the affairs of the company, a special auditor alone would have fitted the bill. There is no reason why a facilitator is appointed for engaging “*an independent Chartered Accountant to verify and ascertain the huge losses and siphoning off R-1's funds.”* Besides engaging such Chartered Accountant, the facilitator has no concrete role to play other than ensuring “*that the meetings of the R-1 company are held at regular intervals and the statutory compliances are made on scheduled dates.*” Rest everything is as vague as can be.

3 Indeed, the Respondent's Counsel made no effort to sustain such unusual order. Instead, what he submitted, and rightly so, was that a special auditor may be appointed and current stock of goods may be inventorized in the presence of both parties and that the consortium of banks may be asked to furnish security documents including stock statements submitted / forming part of them for this purpose. Learned Counsel for the Appellants has no abjection in principle to these measures being granted.

4 The appeal is, accordingly, disposed of by setting aside the impugned order dated 30 November 2012 passed by the CLB and substituting it with the following order.

> "M/s.K.C. Jain & Co. are appointed as special auditor to investigate the financials of the first Respondent company. The special auditor shall also prepare an inventory of the current stock of goods lying with the company in the presence of both parties. The consortium of banks, who are secured lenders of the first Respondent company, are directed through the lead bank, Bank of India, to render all assistance to the auditor including making available copies of the security documents executed by the company in their favour including stock statements forming part of, or submitted in pursuance of, such security documents. The auditor shall make a report in this behalf to the CLB within a period of four months from today. The cost of the auditor's work to be borne by the first Respondent company."

(S.C. Gupte, J.)