sg

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO.10 OF 2013
IN
CLB COMPANY APPLICATION NO.411 OF 2006
IN
CLB COMPANY APPLICATION NO.25 OF 2010
IN
CLB COMPANY PETITION NO.79 OF 2006

Shri Sanjay Gupta ...Appellant
vs
Tara Industries Ltd. ...Respondent.

WITH
COMPANY APPLICATION NO.27 OF 2013
IN
COMPANY APPEAL NO.11 OF 2013
IN
CLB COMPANY APPLICATION NO.411 OF 2006
IN
CLB COMPANY APPLICATION NO.25 OF 2010
IN
CLB COMPANY PETITION NO.79 OF 2006

WITH
COMPANY APPEAL NO.11 OF 2013
IN
CLB COMPANY APPLICATION NO.423 OF 2007
IN
CLB COMPANY APPLICATION NO.26 OF 2010
IN
CLB COMPANY APPLICATION NO.226 OF 2010
IN
CLB COMPANY PETITION NO.84 OF 2007

.....

Ms. Meenakshi Arora, Senior Advocate, a/w. Mr. Riyaz Chagla and Mr. Hemant Telkar, i/b. Haresh Mehta & Co., for the Appellants.

Mr. Zal Andhyarujina, a/w. Mr. Sharan Jagtiani and Ms. Purti Marwaha, i/b. Jyoti Singh, for Applicant Jagdish Lal Gupta in CAA/27/2013.

Mr. Rajnish Sinha, a/w. Mr. Vinit Mehta and Mr. Amrita Soni, i/b. S.S. Israni, for Respondent Nos. 2 to 5.

.....

CORAM : S.C. GUPTE, J.

AUGUST 31, 2015

P.C. :

. These appeals arise from an order passed by the Company Law Board, Mumbai Bench ("CLB") in two petitions under Sections 397 and 398 of the Companies Act, 1956 ("Act"). The parties to the petitions have arrived at a settlement and want the Court to dispose of the petitions by a consent order. Such disposal is, however, opposed by a third party intervener, who claims to have interest in the subject matter. To understand the controversy, a few facts may be stated as follows :

2. In these appeals, we are concerned with allegations concerning oppression and mismanagement with respect to Respondent No.1 Company – Tara Industries Ltd. ("Tara" or "Company"). The Company is held by two groups of shareholders, one group led by Nandlal Gupta ("Nandlal" and "Nandlal Group," as the context may require), and the other led by his brother, Prem Gupta("Prem" and "Prem Group"). Nandlal and Prem belong to the Gupta family, which has other members as well including one branch led by the third brother, Jagdishlal Gupta ("Jagdishlal" and "Jagdishlal Group"). There are two other branches led by 2 other brothers/heir of brother, namely, Subhash Gupta (brother) and Shivraj Gupta (heir of brother – late Somdev Gupta). There are other Companies including Sabina Woolen Mills Pvt. Ltd. ("Sabina") and Cameo Fabrics Pvt. Ltd.("Cameo"), shareholding wherein is held by some or the other

members of the Gupta family. In Sabina, Nandlal, Prem and Jagdishlal (or their group members) together with Subhash Gupta, are shareholders.

3. Company Petition No.79 of 2006 was filed by Prem Group against Nandlal Group, complaining of oppression and mismanagement in respect of Tara, whereas Company Petition No.84 of 2007 was filed by Nandlal Group against Prem Group, also alleging oppression and mismanagement concerning the affairs of Tara. Though both groups complained of oppression and mismanagement against each other, both groups *inter alia* claimed the relief of division of assets of Tara between the two groups. Prem Group, in its petition, prayed that Nandlal Group should take 50.01% of assets of the Company in consideration of sale of their shareholding and leave the remaining assets with complete management control of the Company to Prem Group. Nandlal Group, for its part, also prayed for an order of sale of shares held by Prem Group in Tara on such terms and conditions as may be deemed fit by the CLB to the former or in the alternative, a division of assets and property of Tara between the two groups.

4. At the hearing of the petitions, both sides were agreeable to resolve the disputes by division of assets. At that stage, Jagdishlal sought to intervene in the petitions, opposing the division on the ground that his interest also needed to be protected. He claimed that though he was not a shareholder of Tara, the Company being a part of family Companies, he should also have a share in the division. The CLB made a suggestion to the parties to the Company Petitions to consider granting 10% share to Jagdishlal from each of the two parties. The petitions were thereupon adjourned to enable the parties to consider the matter. The order of the

CLB dated 8 January 2008 recorded all this.

5. By a further order dated 5 February 2008, the CLB recorded an agreement between the parties to the original Company Petitions that inspite of the holding being 50.01% and 49.99% (as between Nandlal Group and Prem Group), the Company/assets would be divided between the parties at 50:50 and in the same way, the accounts of the Company would be examined from 2002 onwards and settled at 50:50; and so far as the interest of Jagdishlal as an Intervener was concerned, the same would be decided by the CLB after hearing the parties.

6. By a further order dated 20 February 2009, the CLB appointed Shri R. Nagpal of M/s. R. Nagpal and Associates to verify the accounts of the Company from 1 April 2002 onwards. The CLB also recorded that one of the main allegations of Nandlal Group was that Prem Group had leased out a property of Tara to one M/s. APS International Private Ltd. on a meager lease rental and APS International Private Ltd., in turn, had sub-leased the property to various entities at exorbitant rentals and that these rentals should also be taken into account while determining 50:50 sharing between the parties. The parties were directed to furnish all information, accounting or otherwise, as may be needed by the Chartered Accountant in respect of M/s. APS International Private Ltd., so that the rental issue could be taken into account by the Chartered Accountant. The parties were at liberty to make oral and written submissions before the Chartered Accountant in relation to making up of accounts as directed by the CLB.

7. In between, there was a mediation proceeding between the parties but the attempts at mediation failed. Thereafter, by an order dated

25 April 2011, the CLB recorded a consensus amongst Counsel appearing for all parties *inter alia* that the impleadment application of Jagdishlal should be heard first and accordingly, the Company Applications of Jagdishlal in both the original petitions were kept for hearing. Before the applications could be heard, another application was moved by Jagdishlal before the CLB, praying *inter alia* that in view of the directions passed by the CLB earlier, the issue of impleadment of Jagdishlal had already been decided and he had stood impleaded in both the Company Petitions. In the alternative, it was prayed that the two Company Petitions should be heard after the adjudication in pending company petitions in respect of Sabina and Cameo. (Subhash Gupta had already filed Company Petition No.21 of 2010 in respect of Sabina, whereas Jagdishlal Gupta had filed Company Petition No.70 of 2006 in respect of Cameo. Shivraj Gupta and Prem Gupta had also filed their own company petitions in respect of Cameo.) In the alternative, it was prayed that all the Company Petitions including petitions concerning Tara, Sabina and Cameo should be heard together. The latter two prayers were on the footing that in view of the allegations that the funds of Cameo and Sabina were diverted for acquiring the assets of Tara, it was necessary that either the petitions pertaining to Cameo and Sabina be heard and decided before hearing the issues in Tara or all matters pertaining to the three Companies be clubbed and heard together.

8. By its impugned order dated 23 November 2011, the CLB noted that there was no question of impleadment of Jagdishlal, Shivraj and Subhash to Company Petition Nos. 79 of 2006 and 84 of 2007 since they were neither shareholders of Tara nor any relief had been claimed against them and also since settlement efforts between Nandlal Group and Prem Group had failed. The CLB directed the parties to these two Company

Petitions to complete pleadings and adjudicate the matter finally. This part of the order of the CLB is challenged by the Appellants herein.

9. On the part of Jagdishlal, he also separately challenged the order of 23 November 2011 in an appeal filed under Section 10F of the Act by seeking leave of the Company Court. The Company Court, in its order dated 12 January 2012, dismissed the appeal *inter alia* on the ground that the Appellant Jagdishlal would have to establish and prove that he was a shareholder of Tara in distinct and substantive proceedings and that the present matter before the CLB could not be converted into a proceeding for determination of that right of Appellant Jagdishlal. The Company Court also made it clear that the observations made in its order would not affect the proceedings that are instituted in the CLB by Jagdishlal himself in respect of other companies and that all contentions of the parties in that behalf were kept open. This order was carried by Jagdishlal before the Supreme Court in an SLP. Jagdishlal's SLP was, however, dismissed by the Supreme Court.

10. In the meantime, the Appellant herein filed an application before the CLB for modification of the order passed by the CLB on 23 November 2011 in Company Petition No.79 of 2006. It was the case of the Appellant that the CLB, while dismissing Jagdishlal's impleadment application, had travelled beyond the scope of that application. It was submitted that in view of the order dated 5 February 2009, the parties to Company Petition Nos. 79 of 2006 and 84 of 2007 had already settled the disputes inter se and the matter was now required to be heard only for execution of that order and the observations of the CLB that settlement could not be reached between the parties and that, in the premises, it would

be appropriate to direct the parties to complete the pleadings and adjudicate the matter finally, were out of place and not warranted. The Appellant, accordingly, prayed for clarification/modification of the order dated 23 November 2011. On this application, the CLB, by its order dated 24 January 2012, held that the order of 23 November 2011 was a reasoned and speaking order and that the CLB was not inclined to modify the order as prayed. Once again, it was Jagdishlal who challenged this order. His appeal under Section 10F was beyond time. He, therefore, took out an application (Company Application (L) No.32 of 2013) for condonation of delay in filing the appeal. This Court refused to condone the delay and also held that Jagdishlal was not "any other person concerned" within the meaning of regulation 29(4) of the CLB Regulations. Thus, all attempts of Jagdishlal to either seek impleadment or to have his so called share or interest in the assets of Tara decided, ended in a failure.

11. Now, when Nandlal Group and Prem Group decide to settle the appeals herein and agree for an order by consent to be passed therein accepting a 50:50 settlement as between the two groups by way of division of properties and also making up of accounts of Tara, Jagdishlal opposes the settlement proposed on the ground that such settlement cannot be allowed without deciding the interest of Jagdishlal in the assets of Tara.

12. Jagdishlal evidently has no interest in Tara. He is not a shareholder of Tara and not in any way concerned with it. He, however, submits that the properties of Sabina were siphoned away from Sabina and monies were brought into Tara for purchase of properties. He submits that, therefore, either his objections will have to be heard first before the parties in the two petitions concerning Tara are allowed to settle their disputes, or

his interest in the properties of Tara should be determined. The properties of Sabina being siphoned away from Sabina, most certainly cannot be a subject matter of an oppression and mismanagement petition inter se between the two groups of shareholders of Tara. On the basis of his allegations in the Sabina petition, Jagdishlal cannot possibly be allowed to oppose any settlement or disposal of the petitions between the two groups of shareholders of Tara. As far as these petitions are concerned, Jagdishlal clearly has no locus and settlement of disputes between the parties to these petitions cannot be opposed by him.

13. Learned Counsel for Jagdishlal submitted that his intervention application was rejected only on the ground that the settlement between Nandlal Group and Prem Group could not go through and therefore there was no occasion to consider his interest. That is not quite correct. In fact, this Court, whilst hearing Jagdishlal's appeal, which was on a footing of his substantive interest in Tara and consequent right of impleadment, clearly held that Jagdishlal would have to establish and prove that he was a shareholder of Tara in distinct and substantive proceedings; that present petitions before the CLB could not be covered into proceedings for determination of that right of Jagdishlal. This Court further held that the earlier assurance of the CLB that it would take note of the intervener's rights could not prevent the parties to the petitions coming together and arriving at settlement. This order has become final after the Supreme Court dismissed Jagdishlal's SLP challenging it. There is, thus, no merit in Jagdishlal's opposition to the settlement between Nandlal and Prem Groups.

14. In the premises, the following order is passed :

(i) Appeal Nos. 10 of 2013 and 11 of 2013 are allowed by consent of parties thereto by quashing and setting aside the impugned order dated 23 November 2011 to the extent it directs the parties to Company Petition Nos. 79 of 2006 and 84 of 2007 to complete their respective pleadings and adjudicate the petitions.

(ii) It is declared that Company Petition Nos. 79 of 2006 and 84 of 2007 are compromised between the parties to the petitions by accepting the division of assets of Respondent No.1 in a 50:50 ratio between Nandlal Gupta Group (Petitioners in Company Petition No.84 of 2007) and Prem Gupta Group(Petitioners in Company Petition No.79 of 2006). The division of assets shall be accomplished within a period of three months' from today. It is clarified that the assets of Respondent No.1 shall include amongst its other assets the land leased by it to APS International Pvt. Ltd. It is also agreed between the parties to the two Company Petitions that the accounts of Respondent No.1 – Tara Industries Ltd. shall be made up from 2002 onwards and settled as between the parties at 50:50. It is clarified that such accounts shall include the rent received by APS International Pvt. Ltd. for sub-lease of the land of Respondent No.1.

(iii) M/s. V.S. Dastur & Company are appointed as independent Chartered Accountants to examine and make up the accounts of Respondent No.1 for this purpose. The fees of the Chartered Accountants shall be borne by Respondent No.1 Company.

(iv) After the accounts are so examined and made up, the Company Law Board shall hear the parties to the Company Petitions and pass appropriate orders for restitution of monies by any parties or distribution of monies as between the parties so as to dispose of Company Petition Nos.79 of 2006 and 84 of 2007.

(v) Objections of Jagdishlal Gupta, Appellant in companion Company Appeal No.14 of 2014, to the compromise between the parties to Company Petition Nos.79 of 2006 and 84 of 2007 are overruled.

(vi) It is made clear, however, that this order does not in any way prejudice the rights and contentions of Jagdishlal Gupta in Company Petition No.109 of 2013 filed by him and pending before the Company Law board.

(vii) Company Appeal No.14 of 2014 is adjourned to 22 September 2015, for hearing of the appeal along with other companion appeal, namely, Company Appeal No.12 of 2014.

(viii) Company Appeal Nos. 10 of 2013 and 11 of 2013 are disposed of accordingly with no order as to costs.

(S. C. GUPTE, J.)