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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO.11 OF 2009
IN
CLB COMPANY APPLICATION NO. 95 OF 2008
IN
CLB COMPANY APPLICATION NO. 101 OF 2007

Vivek Verma ...Appellant.
vs
M/s Tristar Airconditioning Pvt. Ltd. ...Respondent.

WITH
CROSS OBJECTION NO. 6 OF 2010
IN
COMPANY APPEAL NO.11 OF 2009
IN
COMPANY APPLICATION NO.95 OF 2008
IN
COMPANY PETITION NO.101 OF 2007

Bhupinder Singh Machre & Anr. ...Appellants
vs
Vivek Verma & Anr. ...Respondents.

.....

Mr Ashwin Shanker a/w Bimal Rajasekhar the the Appellants.
Mr Rajiv Kumar, Sr. Advocate a/w K.G.Munshi & Ms Neeta Solanki i/b Kiran Jain & Co. for Respondent Nos.2 and 3.

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CORAM : S.C. GUPTE, J.

AUGUST 06, 2015

P.C. :

The Appeal impugns an order passed by the Company Law Board ("CLB") in an application under Section 634A of the Companies Act, 1956 ("the Act") for enforcement of an earlier CLB order

2 Company Petition No.107 of 2007 was filed by Respondent No.2 herein against the Appellant and his wife before the CLB under Sections 397 and

398 of the Act. The Petition concerned the affairs of Respondent No.1 and impugned various alleged acts of omission, commission and mismanagement of Respondent No.1, which was under the management and control of the Appellant and his wife. The Appellant and Respondent No.2, respectively, belonged to two groups, Verma group comprising of the Appellant, his wife and one Manoj Sachdeva, and Bhupinder Singh group comprising of Respondent No.2 and his wife Mrs Rajinder Kaur**.** Verma group and Bhupinder Singh group were, respectively, holding 36 % and 64 % of the equity shareholding in two companies, M/s Tristar Air conditing Pvt. Ltd., Respondent No.1 ("Tristar" **),** and M/s Haikawa Industries Pvt. Ltd. **("**Haikawa"**)**. During the pendency of the Company Petition, the two groups entered into an arbitration agreement, under which the disputes between them were referred to the arbitration of two arbitrators, one each to be appointed by the two groups. In the reference which followed, on 7 August 2008, a consent award came to be passed by the arbitral tribunal. Broadly, the award provided that Verma group would divest its 36 % equity in Tristar and Haikawa in favour of Bhupinder Singh group for a total consideration of Rs.50 lacs (net of taxes**)** and Rs.380 lacs, respectively. Out of first named consideration of Rs.50 lacs, a sum of Rs.25 lacs was to be paid to Verma group forthwith upon passing of the award, whilst the remaining Rs.25 lacs was to be deposited immediately upon passing of the award in a joint account maintained by the arbitrators, to be released to Verma group at the time of dispatch of all finished as well as incomplete goods by Verma group to Bhupinder Singh group. The later named consideration of Rs.380 lacs was to be paid by a post-dated cheque to be handed over to the arbitrators, which was to be deposited by the arbitrators in an interest bearing joint account and paid to Verma group latest by 30 November 2007 along with accrued interest. The award also made certain other provisions such as retirement of members of Verma group from Tristar and Haikawa**.** Verma group was also to handover to Bhupinder Singh group all papers held by it relating to both companies and also forms for transfer of shares in both companies duly signed in favour of Bhupinder Singh group. The liabilities of both companies were to be taken over by Bhupinder Singh group. The award provided for an application to be made to the arbitrators in the event of there being any reservation or misunderstanding or clarification required concerning any matter

relating to or arising out of the award. Immediately after the award was passed, the parties jointly took the award before the CLB and sought an order for disposal of the Company Petition in view thereof. By its order dated 9 August 2007, the CLB disposed of the Company Petition in terms of the award, which was taken on record as an exhibit. In pursuance of the order, a sum of Rs.25 lacs was duly deposited by Bhupinder Singh group with the arbitrators in terms of the award towards the balance consideration payable for the exit of Verma Group from Tristar. (The first installment of Rs.25 lacs was already paid on the date of the award in terms thereof.) Correspondence ensued between the parties thereafter concerning the compliance and implementation of the award. The Appellant addressed letters to the arbitrators for expedition of the remittance of Rs.380 lacs in terms of the award (which had to be remitted latest by 30 November 2007). Since there was no payment, Verma group approached the CLB by a company application, being Company Application No.95 of 2008, for execution and enforcement of the CLB order dated 9 August 2007 under Section 634A of the Act read with Regulation 44 of the CLB Regulations. The Respondent filed several objections to the application. The objections were on the ground of both jurisdiction of the CLB and merits of the application. It was submitted by the Respondent before the CLB that it had no jurisdiction to execute an award passed by an arbitral forum. Secondly, it was submitted that the main prayer in the execution application concerned Haikawa, which was a foreign company and not even present before the CLB and that the CLB had, accordingly, no jurisdiction to pass any order concerning Haikawa. It was also submitted that assuming without admitting that the CLB could enforce the award, under the terms of the very award, the CLB ought to direct the parties to apply to the arbitral forum for the necessary clarification in respect of their *inter se* disputes on implementation of the award. On merits of the execution application, the main dispute between parties, as noted by the CLB in its impugned order, was that Verma group was to remove the defects in the goods to be handed over by it to Bhupinder Singh group in pursuance of the award and could not demand payment of the consideration of Rs.380 lacs without first complying with this obligation. By its impugned order dated 26 June 2008, the CLB, whilst rejecting the jurisdictional objections raised by the Respondent, nevertheless directed the parties to approach the arbitrators for a clarification concerning the defective goods belonging to Tristar. The CLB held that the parties could approach the CLB for execution of the order only after this clarification was sought from the arbitrators. Aggrieved by this order, the Appellant has presented the present appeal. The Respondents have submitted cross-objections in the appeal challenging the findings of the CLB in the impugned order concerning its jurisdiction over the matter.

3 The Appeal was admitted on 17 March 2010. The learned Single Judge of this Court held that it would be necessary to determine the following questions of law in the present Appeal:

> "(a) Whether the Company Law Board was right in its conclusion that the Award can be enforced by means of an application made to it. Assuming the Application was maintainable, then instead of giving effect to the Award as it is, whether it erred in directing the parties to seek clarifications from the Arbitrators who rendered the Arbitral Award.
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> (b) The second question of law would be as to whether, the Company Law Board could have given any such direction and more particularly, as issued in Para 11, once the arbitral proceedings had concluded and in any event whether that jurisdiction can be exercised only by a Court, competent to do so, under the Arbitration and Conciliation Act, 1996."

4 It is submitted by learned Counsel for the Appellant that the Appellant had asked for enforcement of the CLB order and not the arbitral award which had already become part of the CLB order. It is submitted that the CLB alone had jurisdiction to enforce its own order and which it had refused to exercise. It is submitted that the disputes between parties did not call for any clarification but concerned only the execution of the arbitral award.

5 On the other hand, it is submitted by learned Counsel for the Respondents that the parties had approached the CLB merely for withdrawal of

the original Company Petition in view of the settlement between the parties. The original order passed on the Petition did not have the effect of incorporating the award therein; what was effectively needed to be implemented was the award of the arbitrators, which the CLB had no power to do. Secondly, it is submitted that the parties have actually approached the arbitrators for the requisite clarifications accepting the order of the CLB. Learned Counsel relies upon the post award correspondence between, and conduct of, the parties in this behalf. It is submitted that the CLB has no jurisdiction to pass any order in respect of Haikawa, which was a foreign company and which was neither a party before the CLB in the original Company Petition nor in the present Company Application. Learned Counsel also submits that there is no compliance on the part of Verma group and no execution could have been asked for in the circumstances.

6 The order of the CLB dated 9 August 2007 on the original Company Petition makes it very clear that the parties had sought disposal of the Petition in terms of the arbitral award and at the request of the parties, that is to say, by mutual consent, the Company Petition was disposed of in terms of the award, which was taken on record by the CLB. Learned Counsel for the Respondents in this behalf refers to the original application for disposal of the Petition presented by the parties jointly, namely, Company Application No.314 of 2007. Learned Counsel points out that the prayer was for disposal of the Petition as withdrawn in view of the arbitral award dated 7 August 2007. Though the original application contained this prayer, we cannot today go behind by the order passed by the CLB, which refers to the joint request of the parties for disposal of the Petition in terms of the arbitration award, and proceeds to dispose of the Petition in terms of the said award. This order has attained finality and is no more open to any contest. Secondly, it is pertinent to note that in the affidavits filed by the respective parties before the CLB, which were in identical terms, the request was to dispose of the Petition in terms of the award dated 7 August 2007. It is clear, therefore, that even the parties understood the joint application as an application for disposal of the Company Petition in terms of the award. The CLB accordingly having disposed of the Company Petition in terms of the award which was taken on record by CLB in the order, with directions to the parties to strictly abide by the

terms of the award, the award forms part of the order and we are now concerned with the order of the CLB passed in terms of the award. The application for execution of the order dated 9 August 2007 is, thus, clearly maintenable before the CLB in accordance with Section 634A of the Act.

7 Learned Counsel for the Respondents drew my attention to the order passed by the Supreme Court in case of **E Bapanaiah Vs K.S. Raju**[1]. The Supreme Court in this case has observed that by virtue of the amendment of Section 634A to the Act, which introduced a proviso to Section 634A, an order of the CLB cannot be executed as if it were a decree passed in a suit after commencement of the Companies (second amendment) Act, 2002. It is an admitted position that this particular amendment of Section 634A, which was brought in by the Companies (Second Amendment) Act, 2002 (11 of 2003), has not still been brought into force. It is conceded by Counsel on both sides that this proviso therefore has no application in our case and the CLB continues to have jurisdiction to execute its orders under Section 634A.

8 As for the Respondents' contention that the parties have already approached the arbitral forum for clarification and that orders have been passed in that behalf by Delhi High Court, it really pertains to something which has happened after the impugned order was passed by the CLB. The argument basically is that subsequent to the passing of the impugned order, the parties have accepted the impugned order and duly acted thereon. This aspect does not form part of the subject matter of the present appeal. It is not something which arises out of the impugned order. It is neither adverted to in the Memorandum of Appeal nor referred to in the cross objections. Any decision in that behalf will obviously have to be taken by the executing court, namely, the CLB, as and when it considers the application for enforcement of the order dated 9 August 2007.

9 Learned Counsel for the Respondents submits that the CLB had no jurisdiction to pass any order concerning Haikawa, at any rate, since Haikawa was a foreign company not ameable to its jurisdiction and also since Haikawa

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was not before the CLB when the original order was passed in the Company Petition or when its execution was sought by the Appellant. This contention has no merit. The original order deals with transfer of shares of Haikawa by Verma group in favour of Bhupinder Singh group as part of the consideration agreed to in the order of 9 August 2007 for exit of Verma group from Tristar. In fact, the award, which forms part of the order of the CLB, makes it clear that the transaction of exit of Verma groups from Tristar is interlinked with payment of Rs.380 lacs to it against exit from Haikawa and cannot be given effect to separately and independently. The execution of this part of the order of the CLB really seeks enforcement against the person of the Respondent and has nothing to do with any obligation on the part of the company Haikawa. So also, absence of Sachdeva before the CLB in the execution application makes no difference. The payment is to be made to Sachdeva in terms of the award and such payment would give a complete discharge to Bhupinder Singh group *qua* its obligations against Verma group. This is essentially a matter between Verma group and Bhupinder Singh group. It is immaterial that at the instance of Verma group the payment, forming part of its consideration, is to be made to a third party not before the executing court.

10 Learned Counsel for the Respondents makes various submissions concerning non-compliance of the original order on the part of Verma group. It is submitted that Verma group has not handed over papers concerning both Tristar and Haikawa to Bhupinder Singh group. It is also submitted that contrary to the terms of the award, Verma group has taken out proceedings. It is submitted that Haikawa has now been wound up and the equity shares of Verma group cannot now be transferred to Bhupinder Singh group. All these issues really concern the execution of the CLB order of 9 August 2007. The CLB has not applied its mind to these issues. It has rather relegated the parties to the arbitral forum first to seek a clarification concerning handing over of finished and unfinished goods under the terms of the award, before its jurisdiction in execution could be invoked under Section 634A of the Act. These matters shall be considered by the CLB at the hearing of the execution application.

11 On the merits of the CLB order, it is submitted that even if the CLB order is read as an order disposing of the Company Petition in terms of the arbitral award, the arbitral award itself requires the parties to apply to the arbitrators in the event of there being any reservation, misunderstanding or clarification arising out of the award. It is submitted that the CLB has rightly held that the matter concerning remedying of the defects in the goods to be handed over by Verma group must first be determined by the arbitrators before the CLB considers the execution application. It is difficult to see how the matter concerning remedying of any alleged defects in the goods gives rise to any reservation or misunderstanding or calls for any clarification. The arbitral award does not refer to defects in the goods or curing thereof by the Verma group. It is simply requires the finished goods lying in the factory of Tristar as well as the incomplete goods to be handed over by Verma group to Bhupinder Singh group. There is no ambiguity or equivocation in this behalf, which requires the parties to approach the arbitrators for a clarification. The question, whether or not the Verma group has fulfilled its obligations and can demand execution of the CLB order on that basis, is a matter which really concerns the execution of the order of CLB dated 9 August 2007. Even if such matter requires an interpretation of the award, that is something for the executing court to do and not for the arbitrators to clarify.

12 In that view of the matter, the Company Appeal is allowed and the directions passed by the CLB requiring the parties to approach the arbitrators for seeking a clarification are set aside. Company Application No.95 of 2008 is remanded to the CLB for fresh consideration in accordance with law. All contentions of the parties regarding merits of the execution application including the executability of the CLB order dated 9 August 2007 by reason of subsequent developments, are kept open. The cross-objections of the Respondents are also disposed of in terms of the present order.

(S.C.GUPTE J.)