

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CAPP No. 44 of 2015 (O&M)

Date of decision : 03.11.2015

The Comedy Store Limited

...Appellant

Earthwise Hospitality and Entertainment Holding Private Limited and
others

...Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Baljit Jamwal, Advocate, for the appellant.

Rajesh Bindal, J.

Challenge in the present appeal is to the order dated 15.5.2015 passed by the Company Law Board, New Delhi (for short, 'the Board'), vide which the application filed by the appellant under Section 8 of the Arbitration and Conciliation Act, 1996, (for short, 'the Act') was dismissed.

In the case in hand, Earthwise Hospitality and Entertainment Holdings Private Limited, Amar Agarwal and Uma Agarwal filed petition under Section 397 and 399 read with Sections 402 and 403 of the Companies Act, 1956 against The Comedy Store Limited and Horseshoe Entertainment and Hospitality Pvt. Ltd. It was in that petition that the application bearing CA No.123-C of 2013 was filed by the appellant before the Board for referring the dispute to the arbitration. The same having been dismissed, the order has been impugned before this Court.

Learned counsel for the appellant submitted that the Share Subscription and Shareholders Agreement (for short, 'the SSSA') was

executed on 13.11.2008 between Horseshoe Entertainment and Hospitality Pvt. Ltd. (First Part), Amar Agarwal (Second Part), Uma Agarwal (Third Part) and The Comedy Store Limited (Forth Part). The appellant and respondents No.2 and 3 were to hold 50% shareholding in respondent No.4 i.e. Horseshoe Entertainment and Hospitality Private Limited. Respondents No.2 and 3 incorporated new company named as Earthwise Hospitality and Entertainment Holding Private Limited (respondent No.1). After incorporation, respondents No.2 and 3 in gross violation of terms and conditions of SSSA, transferred their share holding to the extent of 36.81% held by them in respondent No.4 i.e. Horseshoe Entertainment and Hospitality Private Limited to the new company floated as Earthwise Hospitality and Entertainment Holding Private Limited. Having come to know about this, the appellant terminated the agreement (SSSA) by notice dated 18.6.2012. On 1.4.2013, arbitration clause No.31 of the SSSA was invoked by the appellant. The arbitration proceedings between the signatories to the agreement (SSSA) dated 13.11.2008 are at the stage of evidence. It was thereafter that the petition under Section 397 and 399 read with Sections 402 and 403 of the Companies Act, 1956 was filed by Earthwise Hospitality and Entertainment Holding Private Limited, Amar Agarwal and Uma Agarwal before the Board. The issue involved before the Arbitrator and the relief claimed in the petition pending before the Board are same. Thereafter, application was filed by the appellant under Section 8 of the Act for referring the dispute to the Arbitral Tribunal, and the same having been dismissed by the Board on 15.5.2015, the order has been impugned before this Court.

After hearing learned counsel for the appellant, I do not find any reason to interfere with the impugned order. It is not in dispute that the agreement (SSSA) dated 13.11.2008 was entered into between Horseshoe Entertainment and Hospitality Pvt. Ltd., Amar Agarwal, Uma Agarwal and The Comedy Store Limited, which contains the arbitration clause No.31. Only the parties to the agreement may be bound by the conditions laid down therein. The matter in dispute is pending before the Arbitrator. Before the Board, one of the party is Earthwise Hospitality and Entertainment Holding Private Limited, which is shareholder to the extent of 36.81% in the

Horseshoe Entertainment and Hospitality Private Limited. The aforesaid company i.e. Earthwise Hospitality and Entertainment Holdings Private Limited is not a party to the agreement, for alleged violation of which, arbitration proceedings have been invoked by the appellant. Considering the aforesaid fact, in my opinion, there is no error in the order passed by the Board dismissing the application, as the matter could not possibly be referred to the Arbitrator in the absence of the arbitration agreement between the parties.

The appeal is accordingly, dismissed.

(Rajesh Bindal)
Judge

3.11.2015

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