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IN THE HIGH COURT OF DELHI AT NEW DELHI

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OMP 30/2015

Reserved on: July 3, 2015

Date of decision: August 3, 2015

SANJAY KAPUR & ORS

..... Petitioners

Through: Mr. Sudhir Chandra,
Senior Advocate with Mr.
Sudhir K. Makkar, Ms.
Meenakshi Singh and Mr.
Karan Lamba, Advocates.

versus

VIKRAM KAPUR & ORS

..... Respondents

Through: Mr. Salman Khurshid
and Mr. U.K. Chaudhary,
Senior Advocates with Mr.
Antony, Mr. Himanshu Vij, Ms.
Gitanjai Kapur, Ms. Shrshti
Singh, Advocates for R-1.

Mr. Anil Airi with Mr. Ravi
Krishan Chandna, Ms. Sadhna
Sharma, Mr. Aman Madan, and
Mr. Ishan Khanna, Advocates
for R-2.

AND

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OMP 31/2015

PRASHANT KAPUR & ANR

..... Petitioner

Through: Mr. Nitish Kumar,
Advocate.

versus

VIKRAM KAPUR & ORS

..... Respondents

Through: Mr. Salman Khurshid
and Mr. U.K. Chaudhary,
Senior Advocates with Mr.
Antony, Mr. Himanshu Vij, Ms.
Gitanjai Kapur, Ms. Shrshti
Singh, Advocates for R-1.

Mr. Anil Airi with Mr. Ravi
Krishan Chandna, Ms. Sadhna
Sharma, Mr. Aman Madan, and
Mr. Ishan Khanna, Advocates
for R-2.

Ms. Meenakshi Singh,
Advocate for R-6 to R-10.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

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03.08.2015

1. The challenge in both these petitions under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an Award dated 1st November 2014 passed by the learned sole Arbitrator in the disputes between the parties.

Background facts

2. The parties are all descendants of late Rai Bahadur Janki Dass Kapur. His three sons were Mr. Bishambar Dass Kapur, Mr. Jaidev Kapur and Mr. Jagdish Kapur. Mr. Sanjay Kapur, one of the sons of late Mr. Jagdish Kapur, Mr. Gautam Kapur and Mr. Girish Kapur, sons of late Mr. Jaidev Kapur and Mr. Rishav Kapur, son of Mr. Girish Kapur are the Petitioners in OMP No. 30 of 2015. Another son of Mr. Jagdish Kapur, namely, Mr. Salil Kapur is not himself a Petitioner. However, his two sons, Mr. Prashant Kapur and Mr. Ashwin Kapur, have filed OMP No. 31 of 2015.

3. The contesting Respondents in both petitions belong to the family branch of late Mr. B.D Kapur. The first two respondents, Mr. Vikram Kapur and Mr. Rajiv Kapur are the sons of late Mr. B.D. Kapur. The eldest son of Mr. B.D. Kapur, namely, late Mr. Arun Kapur, passed away during the pendency of the arbitration proceedings and his wife, Mrs. Rashmi Kapur and their sons, Mr. Akshay Kapur and Mr. Ashwath Kapur are Respondents 3, 4 and 5 respectively.

The 1999 MoU

4. After the death of late Rai Bahadur Janki Dass Kapur, his three sons had decided to split the management, ownership and control of the companies and assets jointly owned by the family

in three equal shares and award one share to each of the unit/families. A Memorandum of Understanding dated 8th January 1999 ('1999 MoU') was entered into between them. The relevant preamble clauses of the MoU read as under:

“Whereas the parties hereto have been carrying on business by owning, managing and/or controlling various assets in their individual names or in the names of different companies, private companies, partnership firms, charitable trusts and joint properties, firm, other than personal assets acquired by own savings or personal/wives business:

And whereas with the growth of the family during subsistence of complete amity between all the members of the family, it is considered prudent to split the ownership, management and/or control of the companies and the assets in three equal share and to allot each share to the three units of the family which will help in the exercise of better management controls and further augment the business of the reconstituted units and business enterprises.”

5. It requires to be mentioned that the principal company that is the subject matter of the 1999 MoU is Atlas Cycles (Haryana) Limited. It had three bicycle units. One was in Sonapat, Haryana, the second in Sahibabad (Uttar Pradesh) and the third in Malanpur (Madhya Pradesh). There were, of course, other

firms, companies and properties, including five trusts that have been jointly managed by the family.

6. The 1999 MoU recorded the agreement that the division of the three lots should be made in such a manner that one bicycle unit falls in the share of each of the three groups such that the production facility including machinery, painting and plating plants etc., and that of services including tool room, maintenance, electrical, generators, research and development, heat treatment etc. of each cycle unit is more or less equally divided. It envisaged that the market areas for sales in India and exports for each separate unit “shall be clearly identified, demarcated and equated.” In case any benefit was to be given to any group/groups it could be given in the form of net worth/assets. The valuation was to be done by Mr. K.N. Memani of M/s. Ernst and Young, Chartered Accountants.

7. The 1999 MoU further stated that each of the three groups would be entitled to the use of the ‘Atlas’ brand as well as the ‘logo’ on products with “an additional name for identification and differentiation as may be permissible under legal regulations.” The three names were to be chosen and placed in three baskets before the draw of lots. Clause 3 (f) of the 1999 MoU acknowledged that “the names of the companies falling to the shares of the parties hereto may acquire certain changes to identify their ownership by the three reconstituted groups.

However, as may be permissible by law, each party retains the name of 'Atlas' as a prefix and make a distinction in the brand name and to that of the companies concerned, which should be decided before the draw of lots.”

8. As regards the residential property situated at 3, Aurangzeb Lane, New Delhi, Clause 3 (g) of the 1999 MoU envisaged that equal built up area was to be given to each group which was required to be identified and declared before the draw of lots. It was further provided that the Dalhousie property [Clause 3 (h)], the Rim Rolling lines [Clause 3 (i)] and the pedal making machinery as well as manufacturing machinery of saddles [Clause 3 (j)] were to be divided equally among the three groups. Clause 4 of the MoU states that its essence was that “all the assets and the companies referred to above, shall be divided in the three equal baskets after the same has been properly evaluated at the present market price.” As regards the valuation of all the assets, companies, trusts and firms, Mr. Memani was to follow the accepted principles of accountancy and confer jointly with the three groups in declaring the value. Mr. Memani’s valuation was to be ‘final and unchallengeable by the parties or even the Arbitrator.’

9. Clause 6 of the 1999 MoU stated that in the event of “any dispute on any matter, the matter would be referred to the arbitration of Justice A.M. Ahmadi, retired Chief Justice of

India who has been unanimously selected by the three groups as the sole Arbitrator.” The three parties were to prepare three baskets on the basis of the valuation of Mr. Memani which was to then be distributed amongst the three groups by a draw of lots in the presence of the sole Arbitrator. A similar exercise was to be undertaken in respect of the charitable trusts. While the management and control was to be handed over “the same instance after the lots are drawn”, the formal ownership was to change hands legally “as early as possible.” To ensure a smooth transition and to avoid misappropriation, a system was to be devised for the interim period prior to the draw of lots with the assistance of Mr. K.N. Memani. Clause 10 of the 1999 MoU stated that the award of the Arbitrator would be given without assigning reasons thereof and would be final and binding on all the parties and the venue of the arbitration was to be New Delhi.

The separate MoU of the BD Kapur branch

10. Mr. Bishambar Dass Kapur died sometime in August 2000, while Mr. Jaidev Kapur and Mr. Jagdish Kapur passed away during the pendency of the arbitration proceedings. Soon after the death of Mr. Bishambar Dass Kapur, disputes arose between the family members and the three sons filed an application before the learned Arbitrator on 27th August 2000 under Section 17 of the Arbitration and Conciliation Act, 1996. The learned Arbitrator did not pass any order on the said application. However, various meetings were held regarding implementation

of the MoU and the parties exchanged information regarding the units and departments under their control as well as other properties and assets.

11. On 10th September 2000 certain terms of settlement for an interim arrangement were arrived at between the senior most members of the three groups i.e., Arun Kapur, Jaidev Kapur and Jagdish Kapur. In terms of the interim arrangement, a Joint Management Committee comprising of these three persons was constituted to facilitate the effective functioning of Atlas Cycles pending implementation of the 1999 MoU. A separate MoU was entered between the members of the B D Kapur group, i.e., Arun Kapur, Vikram Kapur and Rajiv Kapur on 28th August 2000. At the relevant time Arun Kapur was managing the Malanpur unit of Atlas Cycles and he was designated as Senior Vice President.

Arun Kapur removed by the BoD

12. As there were allegations that Mr. Arun Kapur had siphoned off huge amounts of money, he was, in March 2001, under the decision of Board of Directors ('BoDs'), excluded from the management and affairs of the Malanpur unit of Atlas Cycles. On 4th April 2001 he telephoned the learned Arbitrator stating that he apprehended his removal by the BoDs on the following day. He prayed that a *status quo* order be made under the 1999 MoU. The learned Arbitrator by a note dated 4th April 2001

recorded that he had informed both Mr. Sudhir Makkar, representing Jaidev Kapur and Mr. Mehta representing Jagdish Kapur of Mr. Arun Kapur's request. The learned Arbitrator further noted that he had impressed upon Mr. Makkar that, as far as possible, family peace should be maintained. He was aware that the reference under the 1999 MoU was limited and "it may not be possible for me to issue any directive to the Board but since his clients are on the Board, they should exercise restraint to avoid aggravation of the dispute unless Mr. Arun Kapur has not been candid and is found to be acting against the interest of the company." He recorded that Mr. Makkar had told the Arbitrator that in case there was anything against Mr. Arun Kapur he would be given an opportunity to explain himself.

13. It appears that on 5th April 2001 the BoDs of Atlas removed Mr. Arun Kapur and his sons from the management of the affairs of the Malanpur unit. The challenge to the said decision by Mr. Arun Kapur by an application under Section 9 of the Act was negated.

Challenge to Mr. Memani's valuation report

14. Mr. Memani prepared a valuation report dated 31st March 2002 which was then circulated to the family members in January 2003. Mr. Arun Kapur and his two sons, Akshay Kapur

and Ashwath Kapur, filed CS (OS) No. 77 of 2003 in this Court challenging the said valuation report. On 14th January 2003 an interim order was passed in the said suit restraining the Defendants, i.e., Jagdish Kapur and Jaidev Kapur as well as Rajiv Kapur and Vikram Kapur from taking any step pursuant to the said valuation report.

15. An application was also filed in the said suit under Section 8 of the Act by Mr. Gautam Kapur and Mr. Girish Kapur objecting to the maintainability of the suit in view of the arbitration clause. By an order dated 30th May 2003 in ***Akshay Kapur v. Rishav Kapur 105 (2003) DLT 467*** the application was dismissed on the ground that the reliefs claimed for, i.e., injunction against the valuation report, “would not fall within the subject matter of the arbitration agreement subsisting between the parties.”

The BoD resolution of 31st August 2003

16. On 31st August 2003 the BoDs of Atlas Cycle (Haryana) Limited passed a resolution in which it was noted that in view of the litigation initiated by Mr. Arun Kapur, the performance of the company had suffered a setback in terms of production, turn-over, profitability and reputation. The BoDs had a joint meeting with the various members of the Kapur family on 30th July 2003 to take stock of the regressing state of affairs of the company and had decided that the management of the company

should be restructured in a manner that would be conducive to better growth of the company.

17. The preamble of the BoD resolution stated that for the purpose of restructuring of authority and responsibility Atlas Steel Tube Industries, Atlas Auto Industries and Numero Uno were treated as separate units in addition to the three bicycle manufacturing units of Atlas. It was unanimously resolved that “subject to general superintendence and control of the Board of Directors, the following restructuring shall be made with effect from 1st September 2003:

“That the overall control in relation to Sonapat unit of Atlas shall be entrusted to Sh. Vikram Kapur jointly with Sh. Rajiv Kapur & Sh. Angad Kapur [(Collectively referred to as the Management Committee (Sonapat))].

That the overall control in relation to Sahibabad unit of Atlas shall be entrusted to Sh. Jai Dev Kapur jointly with Sh. Girish Kapur & Sh. Gautam Kapur [(Collectively referred to as the Management Committee (Sahibabad))].

That the overall control in relation to Malanpur unit of Atlas shall be entrusted to Sh. Salil Kapur jointly with Sh. Sanjay Kapur [(Collectively referred to as the Management Committee (Malanpur))].

That the overall control in relation to Atlas Steel Tube Industries shall be entrusted to Sh. Salil Kapur jointly with Sh. Sanjay Kapur [(Collectively referred to as the Management Committee (ASTI))].

That the overall control in relation to Atlas Auto Industries shall be entrusted to Sh. Salil Kapur jointly with Sh. Sanjay Kapur [(Collectively referred to as the Management Committee (Auto))].

That the overall control in relation to Numero Uno Unit shall be entrusted to Sh. Jai Dev Kapur, Sh. Girish Kapur and Sh. Gautam Kapur [(Collectively referred to as the Management Committee (NUMERO))].”

18. It was further resolved by the BoD *inter alia* that with a view to avoid duplication and interpolation of the work and exercise of authority or functions “all the units shall have complete autonomy of operations subject to the overall control of the Board of Directors.” It was further resolved that all the bank operations in respect of each unit were to be exclusively handled by the respective management committees singly or jointly. The existing bank limits were apportioned over the six units on the basis of a table set out in the BoD’s resolution itself. The Board also resolved on the transfer of funds *inter se* the various units. It is required to be noticed that in the resolution of the BoD dated 31st August 2003 it was resolved that the company would have a common balance sheet and the units’ accounts, though prepared separately, would be merged and consolidated and duly certified by the statutory auditors in accordance with the applicable regulations. The company would have a centralised company law department at Sonapat and the

Management Committee (Sonepat) was to keep the Management Committees of the other two bicycle units fully informed about the functioning of the company law department.

MoU dated 31st August 2003

19. The BoD's resolutions were followed by an MoU entered into on the same date, i.e., 31st August 2003 ('the 2003 MoU'), between the members of the three branches except Mr. Arun Kapur and his two sons. Significantly, the 2003 MoU noted in the preamble itself that:

“And whereas the parties to this agreement are of the considered opinion that in order to have continuity of operations the parties have agreed to jointly request the Hon'ble Arbitrator that the structured arrangement of management of Atlas as reflected in resolution of Board of Directors dated 31st August 2003 shall be endorsed in the baskets to be prepared for the purpose of the draw.”

20. The 2003 MOU noted that the valuation report of Mr. Memani was the subject matter of a challenge by Mr. Arun Kapur. It recorded that all the members of the family who were senior executives of the company would exercise their powers in consonance with the resolution dated 31st August 2003 and would not use their voting rights in Atlas in any manner to dislodge or disturb the restructured arrangement of management as reflected in the terms of the said resolution. Further, the parties agreed to jointly represent before the learned Arbitrator that as and when the impediments to the implementation of the

1999 MoU were removed and all the parties were in a position to proceed with the implementation of the said MoU, he should ensure that the preparation of baskets and allocation be made in terms of the resolution of the BoD dated 31st August 2003.

21. It was emphasised that the 2003 MoU was in continuation of the 1999 MoU. It was further agreed that the share of Mr. Arun Kapur and his sons who had not signed the 2003 MoU had to be allocated out of the basket allocable to the Mr. B.D. Kapur Group subject to the balancing of baskets. It was also agreed that a sum of Rs. 10.43 crores was recoverable by the company from the share of Mr. Arun Kapur in terms of the valuation report of Mr. Memani and after the adjustment of tax liability, the recovered amount was to be apportioned in equal shares amongst the three baskets.

22. It is the case of the parties that pending the ultimate decision of the Arbitrator, *de facto* the three branches took control of the respective cycle units and other units in terms of the resolution of the BoDs. It was stated that similar resolutions were passed in respect of the other entities which included Dewan Harnam Das Saraswati Devi Trust and the Dewan Harnam Das Saraswati Devi Trust (Regd. Society) of which Mr. Vikram Kapur and Mr. Rajiv Kapur were appointed as Managing Trustees. They were to run the affairs of the Trusts, subject to

overall supervision of the Board of Trustees ('BoT'). These MoUs were not signed by Mr. Arun Kapur and his two sons.

Excepted matters

23. There were certain specific excepted matters on which any decision by the concerned unit was to require 'prior approval' of the BoDs of the company. These were specified in clauses (A) to (M) and included decisions pertaining to the availing of loans, credit facilities from banks including enhancement, re-scheduling or revision of any existing loan, credit facility and/or bank limit; any decision pertaining to sale, mortgage, lease, licence, gift or alienation of any immoveable property, plant and machinery, movable assets as well as the written down value of the plant and machinery or part of the movable assets that individually did not exceed Rs. 1 lakh for an individual item and Rs. 5 lakh in the aggregate in the same financial year; writing off any amount/recoverable debt of the value over Rs. 1 lakh or writing off any amount/debt where the combined value of the written off amount in any financial quarter exceeds Rs. 3 lakh; decision pertaining to the appointment of any employee(s) or auditors, "sale, transfer, alienation or creating a third party interest in any manner which was statutorily required to be referred to the BoDs." In other words, the overall control of the three units vested in the company.

24. As regards the two Trusts similar resolutions were passed appointing Mr. Vikram Kapur and Mr. Rajiv Kapur as Managing Trustees but retaining the overall control of the trusts in the BoT. There were excepted matters on which prior approval by way of resolution passed by the majority of the BoT had to be taken, which included any decision pertaining to sale, mortgage, lease, licence, gift or alienation of any immovable property belonging to the trusts.

25. In the resolution of the BoT dated 31st August 2003 it was stipulated that the clauses relating to the excepted matters would be operative for a period of two years from the date of the resolution and upon expiry of the said period decisions relating to the excepted matters would be taken by the Managing Committee comprising Mr. Vikram Kapur and Mr. Rajiv Kapur. However, by a resolution dated 2nd April 2005 the Board extended the aforementioned two year period.

26. This led to Vikram Kapur filing a suit being CS (OS) 941 of 2005 in the Court of the Additional Civil Judge, Sonapat challenging the aforementioned resolution. A *status quo* order was passed by in the said suit on 18th May 2005. However, this *status quo* was not renewed when the case was heard on 14th June 2005. However, it was ordered that 15 days advance notice be given to all trustees prior to the convening of any meeting of the Trust.

The judgment dated 2nd May 2006

27. Meanwhile, as far as CS (OS) 77 of 2003 was concerned, a learned Single Judge of this Court passed a detailed judgment on 2nd May 2006 vacating the interim injunction granted on 14th January 2003. The conclusions in the said judgment are summarized as under:

(i) The report of Mr. Memani had been accepted by the two groups, i.e., Jaidev Kapur group and Jagdish Kapur group. As far as the B.D. Kapur group was concerned, it had been accepted by 2/3rd of this group, i.e., by Vikram Kapur and Rajiv Kapur but only Arun Kapur and his sons did not accept the said report. *Prima facie* the report did not seem to be absurd so as to make it unacceptable.

(ii) Since most members of the Kapur family had acted upon the family settlement by going through and concluding the valuation process and thereafter by accepting the impugned report of Mr. Memani, it should be implemented and “some members of one group family should not be permitted to unsettle the entire family arrangement.”

(iii) The allegation of bias against Mr. Memani for suggesting that a sum of Rs. 10.45 crores would be

recoverable from Mr. Arun Kapur was negatived. It was held that Mr. Memani had merely stated his opinion without forming a view on the genuineness of the allegations made against Mr. Arun Kapur. Mr. Memani only suggested that at the time of basket formation, the said amount, which was parked in the Malanpur unit then under the management of Mr. Arun Kapur, should be appropriately be taken into consideration.

(iv) Only the valuation given by Mr. Memani was final and binding. Any expression of opinion by Mr. Memani on other issues “is not final and binding.”

28. The learned Single Judge by his judgment dated 2nd May 2006 disposed of several applications filed in the suit. One of them was an application for amending the plaint seeking to make averments directed against the company Atlas Cycles. While rejecting the said applications, the learned Single Judge held that the attempt by the Plaintiffs “is to unnecessarily rope in Atlas Cycles into the controversy”. However, that entity was a completely independent legal and juristic entity that has nothing to do with the MoU entered into between the groups of the Kapur family. If the attempt were to be permitted, “over a dozen entities with which the Kapur family is concerned would also have to be roped into the litigation.”

29. The application to implead Atlas Cycles as Defendant No. 12 in the suit was also rejected. It was held that Atlas Cycles was neither a necessary nor a proper party to the proceedings and was being dragged in by the Plaintiffs without any valid justification.

30. The Court then went on to the issue of balance of convenience and observed that by halting implementation of the impugned report, “the damage and injury that is likely to be caused to the whole family would be far greater, long term and more widespread than it would be if the impugned report is allowed to be implemented. There are a vast majority of shareholders of Atlas Cycles who must be anxiously looking for an amicable resolution of the disputes between the Kapur Family groups so that business can go on as usual rather than to have it settled by a handful of disgruntled members of the Kapur family.”

31. The Court also dealt with an application under Order XXXIX Rule 2 A of the Code of Civil Procedure, 1907 (‘CPC’) alleging violation of the interim injunction dated 14th January 2003 by the Defendants. In that context, the court observed that the interim injunction granted was not intended to completely paralyze the working of Atlas Cycles and all other concerns of the Kapur family. There was no transfer of ownership in terms of the report of Mr. Memani and there was no violation of any

order passed by the Court. It was held that the contemnors deserved the benefit of doubt inasmuch as they appeared to have acted in the best interests of the assets of the Kapur family.

32. With the above order, there was no impediment to the continuation of the proceeding before the learned Arbitrator. It may be mentioned that although an appeal FAO (OS) No. 338-340 of 2014 was filed against the aforementioned order dated 2nd May 2006, it was dismissed as withdrawn by the Division Bench of this Court on 15th April 2014.

33. Another round of litigation involving the Trusts commenced with Rajiv Kapur filing CS (OS) No. 104 of 2007 in this Court challenging the validity of Resolution dated 24th December 2005 passed by the BoT of the Dewan Harnam Das Saraswati Devi Trust. An interim order was passed on 23rd March, 2007 by the learned Single Judge in the said suit directing the prevailing arrangement for operation of the accounts of the Trust to continue.

Proceedings before the Arbitrator

34. An application was filed by Mr. Rajiv Kapur before the learned Arbitrator under Section 17 of the Act on 31st July 2007 seeking certain interim reliefs, *inter alia*, against Mr. Vikram Kapur and the BoD of Atlas Cycles. Since the said application was not being taken up, Mr. Rajiv Kapur filed OMP No. 72 of

2009 in which an order was passed by the learned Single Judge on 20th April 2009 directing the learned Arbitrator to consider the said application within six weeks. Pursuant thereto, the learned Arbitrator heard submissions and passed an order on 25th July 2009 holding that the dispute raised fell outside his jurisdiction since the appropriate forum for the Applicant was either to go in for arbitration under the MoU which was entered into between the members of the B.D. Kapur group dated 28th August, 2000 or before the Company Law Board (CLB).

35. On 16th November 2009 a hearing took place before the learned Arbitrator on the request of Mr. Vikram Kapur on the prayer that the parties should be directed to maintain *status quo* so that the 1999 MoU may not be disturbed. The learned Arbitrator noted that apart from filing a reply to the said application, Mr. Arun Kapur had also filed a separate application under Section 17 of the Act. After granting time to the parties to file a complete pleading in the said application, the learned Arbitrator observed that he would “expect the parties to maintain the *status quo* so that the baskets prepared pursuant to the MoUs of 1999 may not be disturbed. If any party disturbs the *status quo*, he will bear the consequences flowing therefrom.”

Proceedings in the suits

36. The Civil Judge, Sonapat on 14th June 2010 dismissed CS (OS) 941 of 2005 which challenged the resolution of the BoT dated 2nd April 2005. Mr. Rajiv Kapur, a defendant in the suit, joined several of the defendants in filing an application under VII Rule 11 CPC for rejection of the plaint. The said application was allowed by the learned Civil Judge on the ground that the procedure under Section 92 (1) of the CPC was not followed and the suit did not disclose any cause of action.

37. In CS (OS) No. 104 of 2007, related to the resolution passed by the BoT, an application was filed with the prayer that the vacancy created as a result of the passing away of Mr. B.D. Kapur, one of the trustees, should not be filled up. On 18th April 2012 the Court passed an order in IA No. 7008 of 2002 to the effect that any resolution that may be passed by the BoT in the meeting to be held on 21st April 2012 in relation to the above issue of filling up the vacancy, would not be given effect to before the next date of hearing. The Court dealt with the application filed by the Defendants in the said suit viz., Mr. Vikram Kapur, Mr. Jagdish Kapur and Mr. Jaidev Kapur seeking vacation of the interim order. The Court by its order dated 18th July 2014 observed that the MoU dated 31st August 2003 had not been signed by Mr. Arun Kapur. The decision as to how the vacancy is to be filled up could be taken only in a meeting of the BoT, and not informally. It was observed that the 2003 MoU could not be implemented in part. Either it had to be

implemented in its entirety with the induction of all the trustees, or not at all. It was held that it was not open to Defendant No. 1 to claim that the 2003 MoU should be implemented in part by induction of only Mr. Angad Kapur, Defendant No. 2 as a managing trustee. Consequently, the *status quo* order was vacated. By an order dated 11th July 2014, this matter was referred to mediation.

38. On 19th June 2013 the BoD of the company passed a resolution regarding a proposed expansion of the BoD and inviting nominees from the different branches of the family. Thereafter on 29th August 2013 the BoD passed a resolution by circulation noting that induction of employee directors from all three groups may not be possible and all the three groups for the present were requested to forward names of independent persons who were also employees of the company for consideration for appointment as director. On 19th December 2013 the BoD passed a resolution inducting Mr. Kartik Roop Rai, Mr. Vikram Khosla and Mr. Surendra Mohan Mehra as directors of the company.

Vikram Kapur's application before the Arbitrator

39. On 12th August 2013 an application was filed by Mr. Vikram Kapur before the learned Arbitrator which was duly supported by Mr. Rajiv Kapur praying for a series of declarations including that the three lots that have been created

and agreed to by the three groups are valid and subsisting and binding on all the groups and signatories to the 1999 MoU and that the respective lot which had been allocated to the group shall remain in exclusive management, control and operation of the group company.

40. A reply to the said application was filed by the Jagdish Kapur and Jaidev Kapur groups refuting the contention of Mr. Vikram Kapur that the assets stood divided amongst the three branches. It was further insisted that while they did not have any objection to the implementation of the 1999 MoU, the current valuation of the assets should be reflected in the division at the time of passing of the award and any other interpretation would lead to anomalous and inequitable results. It was pointed out that more than ten years had passed since the restructuring of management and controls of the various entities, and “the valuation report of Mr. Memani which was given in 2002, does not hold good anymore.” While the said application was pending, Mr. Girish Kapur, Mr. Gautam Kapur and Mr. Rishav Kapur filed an application along with Mr. Sanjay Kapur seeking directions from the learned Arbitrator regarding revaluation of the assets.

41. On 13th September, 2014 arguments were heard on the application of Mr. Vikram Kapur and orders were reserved. According to the Petitioners, Mr. Sanjay Kapur, Mr. Gautam

Kapur, Mr. Girish Kapur and Mr. Rishav Kapur, their application for revaluation was not heard. Consequently, they sent an e-mail dated 2nd October, 2014 to the learned Arbitrator for hearing their application but the said request was turned down by a reply e-mail dated 5th October 2014 of the learned Arbitrator.

The resolution to shut down the Malanpur unit

42. A resolution was passed by the BoD of the company at a meeting on 5th October 2014. It was noted that the Malanpur unit had been running in losses and it was directed to be shut down. Consequently, this unit is no longer relevant to the portioning of the three baskets. Accordingly, an application was filed by Sanjay Kapur before the learned Arbitrator praying that the aforementioned development be taken on record for the implementation of the 1999 MoU and opportunity be granted to the Applicant to make submissions on the same. According to the Petitioners, no order was passed in the said application. On 15th October 2014 an e-mail was received from the learned Arbitrator informing the Petitioners that the said application was dismissed. Another application filed on 14th October 2014 by Prashant Kapur seeking similar relief was also dismissed on 15th October 2014.

Other applications before the Arbitrator

43. On 24th October 2014 a resolution was passed by the BoT of Dewan Harnam Das Saraswati Devi Trust appointing Mr. Gautam Kapur, Mr. Sanjay Kapur and Mr. Akshay Kapur as Managing Trustees. On the very next date, i.e. 25th October 2014 the learned Arbitrator passed an order pursuant to an application of Mr. Vikram Kapur staying the above resolution.

44. On 30th October 2014 and 1st November 2014 applications were filed by the three members of B.D. Kapur branch, i.e., wife and two sons of late Mr. Arun Kapur and by the Petitioners in OMP No. 30 of 2015 under Section 13 (1) of the Act challenging the learned Arbitrator on the ground of lack of impartiality. However, these applications were not disposed of and the final Award was passed on 1st November 2014.

The impugned Award of the Arbitrator

45. The impugned Award dated 1st November 2014 of the learned Arbitrator began by noticing the various clauses of the MoU dated 8th January 1999, and in particular, that “the award of the Arbitrator will be given without assigning reasons thereof and shall be final and binding on the parties.” The learned Arbitrator, however, preferred to give his reasons since he was more than convinced from the bitterness manifested during the hearings that the decision would be challenged in Court.

46. The learned Arbitrator noted that after the 2003 MoU, which stipulated the segregation of assets in accordance with Mr Memani's report, "the management and control in line with respective MoUs have been honoured by each group." The learned Arbitrator noted that even way back on 4th April 2001 it was observed that Atlas Cycle Industries Limited was not a party to the MoU and therefore, the learned Arbitrator was not in a position to issue any directive to the BoDs. The learned Arbitrator then referred to the proceedings in CS (OS) 77 of 2003 in this Court.

47. Next, the learned Arbitrator referred to the applications filed by Mr. Vikram Kapur. The learned Arbitrator discussed the precise preambles of the 1999 MoU and noted that restructuring and control of the businesses in terms of the 1999 MoU and agreed upon on in the 2003 was in fact in place for more than a decade. The learned Arbitrator observed as under:

"Any slight change will upset the whole foundation of the MoU given the number of years that have passed by now. Further, the groups are attuned to their respective businesses and have handled them for better or worse on their respective merits and other conditions for a long time."

48. The plea of the Petitioners that the valuation report of Mr Memani could no longer be relied on as a basis for the division of assets due to the considerable passage of time since its

preparation was rejected. The learned Arbitrator was of the view that as it was clearly stipulated in the 1999 MoU that the valuation report of Mr. Memani shall be final and cannot be questioned or tinkered with even by the learned Arbitrator, it is beyond the scope of the arbitration. The learned Arbitrator accepted the plea of Mr. Vikram Kapur that there was no express authorization in terms of Section 28 (2) of the Act to decide the present aspect of preparation and allocation of lots in accordance with the MoUs. The learned Arbitrator accepted the plea that in terms of the law explained in ***Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad (2005) 11 SCC 314*** the principles of quasi-partnership are to be applied to a family company even if it was a public limited company. He observed that “the true character of the company, the business realities of the situation should not be confined to a narrow legalistic view.”

49. On the aspect of trusts, the learned Arbitrator observed as under:

“It is also clear from several and various instances of the MoUs that charitable trusts were part of the assets and were to be divided. Trusts, being Trusts will be governed by law relating to them and it is expected that they are not used for the purposes of profiteering or making money. The principles enshrined in the Indian Trust Act would govern such public trusts and it would be for the parties to work out the modus for giving effect to the parent MoU in this behalf. Mr. Khosla was right that public

trusts are not in the nature of business entities and cannot be divided as such since they are created to benefit the beneficiaries, albeit the trustees can be replaced.”

50. The learned Arbitrator was of the view that shares of late Mr. Arun Kapur and his sons can be determined through a separate exercise once the final division in terms of 1999 MoU has been effected. The final directions issued by the learned Arbitrator were as under:

A. The three lots though not finally divided through the MoU(s) have been under the respective Groups-as per the MoUs who have followed it thus far. Final division be done without disturbing the set up in any manner.

B. The lot allocated to each group shall remain in exclusive management, control and operation thereof and that group shall be entitled to hold the same and no other group will have any right or entitlement to any part of that lot or burden It for any liability incurred by the other group in managing its lot.

C. The profit and loss of the lot since 31st Aug 2003 shall remain the profit and loss of that lot and that no liability of that lot shall befall on any other lot.

D. Any loss or claim against the Assets arising because of a particular group, shall be met and settled by the group managing, operating and controlling the said lot;

E. None of the groups to the MoU shall breach or cause to breach the baskets so caused while dividing the management and control of the assets;

F. All the groups shall jointly and severally perform their part of obligations as per the MoU in implementing and executing the understanding in splitting the ownership as per law;

G. The residential building shall be used for the residence of each group on as is basis and shall not induct any third party in the part in its possession and shall pay the taxes and other out goings for the area in their occupation: repair cost will be met on as is basis.

I thus conclude the arbitration and dispose of Mr. Vikram Kapur's application accordingly. The cost incurred in prosecuting the said application shall be shared equally by all the groups. “

51. The learned Arbitrator reiterated that the challenge to the decision of the BoDs of Atlas Cycles fell outside his purview and that the parties would be at liberty to approach the appropriate forum in respect of the matters falling outside his jurisdiction.

52. It must be mentioned at the outset that the Petitioners have made it clear that they are not questioning the division already effected on the residential buildings or other units other than the company and the trusts in terms of the 1999 and 2003 MoUs.

The challenge in these petitions to the impugned Award is confined to the extent that it pertains to management and control of the company and the two trusts.

Suit 3510 of 2014 and proceedings in the CLB

53. To complete the narration it must be noticed that resolution passed by the BoD on 5th October 2014 to shut down the Malanpur unit and the company was challenged by Vikram Kapur and Rajiv Kapur by way of CS (OS) No. 3510 of 2014. Initially an interim order was passed on 19th November 2014 directing that the said resolution not be implemented in a manner that adversely affects the Plaintiff. However, by a detailed order dated 28th January 2015 the said interim injunction was vacated after holding that the MoUs did not bind the company as such and that whatever may have been agreed to between the different groups of the family that could not bind the shareholders of the company.

54. A petition, being CP No. 18 (ND)/2015 was filed by Mr. Vikram Kapur and his son Mr. Angad Kapur before the CLB under Sections 397, 398, 399 and 402 of the Companies Act, 1956 alleging oppression and mismanagement by the Jagdish Kapur and Jaidev Kapur family groups in their capacities as shareholders of the company, Atlas Cycles (Haryana) Ltd. In particular, it was urged that the company was closely held and in the nature of a quasi partnership wherein each family group is

“operating an independent and separate unit” pursuant to the 1999 and 2003 MoUs. Specific allegations of mismanagement and oppression were raised, *inter alia*, in relation to payment of liabilities of the Malanpur unit out of the profits obtained by the other units. A series of reliefs were prayed for including a declaration that the petitioners, i.e., Mr. Vikram Kapur and his son Mr. Angad Kapur, “have independent management and control of the Sonapat unit pursuant to memorandum of understanding signed and executed by the members of the Kapur family,” an order dissolving the BoD and appointing administrators in their place and an order seeking the demerger of the Sonapat unit as a separate company with all its assets, liabilities, obligations and rights, claims, interest, entitlements and properties. An interim relief appointing an administrator in place of the BoD and restraining the BoD from acting in any way to impede the independent management of the Sonapat unit was also prayed for.

55. By an order dated 27th March 2015, the CLB decided the issue of interim relief and found the petition not maintainable in view of the inadequacy of the consent letters obtained by the petitioners from the other shareholders in terms of Section 399 of the Companies Act, 1956. On merits the CLB found that the Sonapat unit is “not a wholly autonomous unit and acts under the supervision and control of the company”. Thus the

petitioners had failed to make a prima facie case of oppression and mismanagement.

Submission of learned counsel for the Petitioners

56. Mr. Sudhir Chandra, learned Senior Advocate and Mr. Sudhir Makkar, learned counsel appearing for the Petitioners submitted that the learned Arbitrator had no jurisdiction over the Company, i.e. Atlas Cycles (Haryana) Limited and despite acknowledging this in the impugned Award has proceeded to put a stamp of approval on the division of the assets of the Kapur family into three baskets which included the manufacturing units of the Company. It was pointed out that there are 12,000 shareholders of the Company besides the members of Kapur family and that the majority shareholding is in public hands. The Company was run and managed by an independent BoD. None of the members of the Kapur family were Directors. The consistent stand of all groups before the learned Arbitrator was that the Company was not a party to the 1999 MoU and, therefore, to the arbitration proceedings. In other words, the Award could not bind the Company. Since there was a fundamental error of jurisdiction, the Award was against the fundamental policy of Indian Law and, therefore, deserved to be set aside under Section 34(2)(b)(ii) of the Act.

57. It was further submitted that initially the learned Arbitrator was inclined to accede to the request of Mr. Memani to update

the valuation as at the end of 2013 and submit an additional valuation report “for it to remain relevant, preferably within a month or thereabouts.” After having made the above observations in his order dated 20th November 2013, the learned Arbitrator erred in dismissing the application filed by the Petitioners for revaluation. It is pointed out that in the judgement dated 2nd May, 2006 of this Court made it clear that the 1999 MoU would not bind the Company. The conclusion of the learned Arbitrator that Profit & Loss of any one lot as of 31st August, 2003, which included the bicycle unit of the Company, shall remain the Profit & Loss of that lot alone would have anomalous results particularly since the three manufacturing units, although stated to be under the control of respective management companies, has a common balance sheet, a common Company Secretary, a common CEO and a centralised Company Law Department. The profits and losses of the three units were merged in the final balance sheet.

58. It was further submitted that on the one hand the learned Arbitrator concluded that the Trusts could not be divided and had to be managed according to the respective Trust Deeds and applicable laws, but on the other hand, in the operative portion, the learned Arbitrator failed to mention that the Trusts were not to be included in the lots referred to in the Award. To that extent the Arbitrator’s Award was self-contradictory. The learned Arbitrator had no authority to direct removal or

replacement of Trustees since the Trusts in any event would be governed by the conditions of the Trust Deed. Any observation regarding removal of the Trustees by the learned Arbitrator was without jurisdiction.

59. It was submitted that the learned Arbitrator misconducted the proceedings in dismissing the application filed by Mr. Sanjay Kapur and that filed by Mrs. Rashmi Kapur, Mr. Akshay Kapur and Mr. Ashwath Kapur under Section 17 of the Act in a summary casual manner without issuance of notice, much less a hearing. These applications expressed serious doubts about the impartiality and independence of the Arbitrator. On the one hand, these applications were dismissed without any hearing but thereafter on 25th October, 2014, the applications filed by Mr. Vikram Kapur and Mr. Rajiv Kapur for a stay of the resolutions passed by the Trust were immediately taken up and a stay order also granted. It is submitted that the learned Arbitrator simply endorsed the prayer in the application of Mr. Vikram Kapur without assigning any reasons. Further, the learned Arbitrator also dismissed an application that had been filed by Mr. Arun Kapur under Section 16 (3) of the Act *in limine*, without issuance of any notice thereon. This application was for declaring the 1999 MoU as null and void inasmuch as it dealt with the splitting of various public limited companies and public trusts and that, therefore, the learned Arbitrator lacked

the jurisdiction to deal with those issues. Finally it was submitted that the Award was incapable of being implemented.

Submission of learned counsel for the Respondents

60. On behalf of the Respondents, submissions were made by Mr. Salman Khurshid, Mr. Raju Ramachandran and Mr. U.K. Chaudhary, Senior Advocates and Mr. Anil Airi, Advocate. It was submitted that even under the 1999 MoU, there was a conscious decision taken by the three branches of Kapur family that the entire assets including the Company and the Trusts would be divided equally. As a first step it was decided that there would be three baskets and it was towards that end that a valuer was named and his report was submitted in January 2003. It was only on account of the litigation commenced by Mr. Arun Kapur that the said report could not be given effect to immediately. It is also on account of Mr. Arun Kapur committing serious financial irregularities that he had to be removed as the Vice President of the Company and, therefore, was not a party to the 2003 MoU.

61. It was emphasised that it had been agreed to by the parties that they would separately manage and run the three units that fell to the respective shares and it was also agreed not to disturb or interfere with the functioning of each other's separate units. A reference was made to the application filed by Mr. Vikram Kapur by the learned Arbitrator for directions in which it was

categorically stated in para 4 that the three groups of the Kapur family mutually agreed that “they shall on their own prepare three baskets based on the valuation made by Mr. Memani and the same shall be distributed among the three groups by draw of lots.” After the said order was vacated on 2nd May, 2006 by a learned Single Judge of this Court there was no fetter placed on the division of the assets into three lots. This was already given effect to under the BoD Resolution of 31st August, 2003. Para 14 of the said application specified lots A, B and C, i.e., the Sonapat Division, Sahibabad Division and Malanpur Division respectively. It was accordingly submitted that the three groups would be bound by the said BoD Resolution and 2003 MoU and should not be permitted to resile therefrom. It was submitted that the correct way to understand the impugned Award of the learned Arbitrator was that the MoUs were held to be binding on the parties and they were now bound in law to take further steps to effectuate the division brought about by the 2003 MoU and it was too late to put the clock back.

62. It was submitted that having taken advantage of the division brought about by the 2003 MoU, the Petitioners cannot be permitted to palm off the liability accrued as a result of the mismanagement of the unit that fell to the members of the B.D. Kapur Group which had done far better. The three groups had already performed their respective obligations and the reciprocal promises and obligations were required to be

performed. Even in the reply filed to the application by Mr. Vikram Kapur the above facts were not denied by the Petitioners. They too wanted the 1999 MoU to be given effect to. No objection was raised that the division of the assets of the Company was outside the jurisdiction of the Arbitrator.

63. As regards the Trusts, it was submitted that at no point of time since 31st August, 2003, had the Petitioners evinced any interest whatsoever in the question of jurisdiction over the Trusts and have woken up only in 2014 to deny Mr. Vikram Kapur and Mr. Rajiv Kapur the right to continue as Managing Trustees. This was contrary to the 2003 MoU and resolutions of the BoT of that date which were binding on the parties. It is pointed out that grave prejudice would be caused to the Respondents if at this stage the 2003 MoUs were not carried to their logical end. It is pointed out by Mr. Airi that with the intention of de-merger and allocation of three separate units the Company in fact incorporated three subsidiaries on 28th May 1999, viz., Atlas Cycles (Sonepat) Limited, Atlas Cycles (Sahibabad) Limited and Atlas Cycles (Malanpur) Limited. Therefore, formalising the arrangement for transfer of the assets had to take place and that would be done in terms of the Companies Act, 1956. What the impugned Award ensures is that it is carried out in terms of the 2003 MoU which in effect was an implementation of the 1999 MoU. The Company had to go along with this as it was throughout aware of both MoUs.

Rejoinder submissions of the Petitioners

64. In rejoinder it was pointed out by Mr. Makkar that there was no answer to the principal objection that the Company was not bound by the 1999 and 2003 MoUs or the Award. It was pointed out that the sequence of events supported this argument since the BoD resolution passed on 31st August, 2003 was followed by the 2003 MoU. He pointed out that the 2003 MoU expressly refers to the resolution passed by the BoD earlier on the same day. Therefore, for all practical purposes the BoD resolution would prevail. It delegated the management and control of units being to different branches of Kapur family but always subject to the general supervision and control of the BoD. He also referred to the order dated 2nd May, 2006 of this Court which acknowledged that the Company was not bound by the MoU. He referred to the minutes of the meeting of the BoD and in particular to the minutes of the meeting held on 31st July 2010 where it was noted that “the Board referred to the letter written to it by Mr. Vikram Kapur drawing its attention to the MoU signed by the three groups.” The BoD was of the view that the reference to the said MoU was misconceived and the BoD had to act in the larger interest of the Company “without being governed by any such internal arrangement amongst the shareholders or groups of shareholders.” It was noted that “the Board is not concerned with any such internal understanding that may have been arrived at amongst groups of shareholders.”

Legality of the directions concerning the units of Atlas Cycles

65. The first issue that the Court proposes to deal with is the legality of the directions of the learned Arbitrator concerning the division of the assets of the company into the three lots or baskets.

66. The learned Arbitrator directed that the final division is to be done as per the 1999 MoU “without disturbing the set up in any manner”. In para 2 of the operative directions the learned Arbitrator held that “the lot allocated to each group shall remain in exclusive management, control and operation thereof.” The learned Arbitrator was obviously referring to the lots mentioned in the application filed by Mr. Vikram Kapur where in para 14 he set out the three lots. In the reply to the said application it was pointed out by the Petitioners that the final preparation of baskets was still to be accomplished and had to factor in the current valuation of various assets. According to the Petitioners, the 2003 MoU only sought to restructure the management and control to augment the business of various entities jointly controlled by the parties. It was contested that there had been any final decision of the ownership in assets as envisaged in the 1999 MoU.

67. It appears that even according to the Petitioners the three groups were bound by the 1999 MoU and the resolutions passed

by the BoD and had also agreed that they should not use their voting powers to dislodge or disturb the restructured management in terms of the resolution of the BoD. However, there is nothing in the reply which can be understood as the Petitioners having agreed to give a go by to the legal regime concerning the restructuring of the Company.

68. The Company is a separate entity and is governed by the provisions of the Companies Act, 1956 (and presently by the Companies Act, 2013). The essential legal position that the shareholders of the Company are not the owners of its assets and that there cannot be an agreement between the shareholders for any group to divide the assets of the Company does not appear to have been acknowledged by the parties at the time of entering into either the 1999 or the 2003 MoU. The Kapurs have a cumulative shareholding of 45% of the company Atlas Cycles (Haryana) Limited, which is a public limited company which has over 12,000 shareholders. It is not a private limited company or a closely held company as was the case, for instance, in *Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad* (*supra*). The observations in that judgement that the principles of quasi partnership can be applied even to a public limited company have to be understood in the context of the facts of that case. In the same decision in para 226 it was observed that a clear distinction is to be made between a family company, a private company and a public limited company.

69. In *Reliance Natural Resource Limited v. Reliance Industries Ltd. (2010) 7 SCC 1* the Supreme Court held that an internal family arrangement and an MoU signed between family members were not legally binding on the Company. It was observed by the majority:

“The MoU was signed as a private family arrangement or understanding between the two brothers, Mukesh and Anil Ambani, and their mother. Contents of the MoU were not made public, and even in the present proceedings, they were revealed in parts. Clearly, the MoU does not fall under the corporate domain - it was neither approved by the shareholders, nor was it attached to the scheme. Therefore, technically, the MoU is not legally binding.”

70. In the concurring opinion of Sudershan Reddy J., it was observed:

"It is absolutely clear that the MoU was executed in the private domain, with the help and aid of a lawyer and then marked confidential. Further, the individuals, from all indications have only executed it in their individual capacity and it was not purported to be in exercise of their positions in RIL or any other company of the Reliance Group. It is also very clear that the MoU itself recognizes that the reorganization that the promoters sought would have to be routed through the Board...

In as much as the terms and conditions of gas supply, as specified in the MoU, were not specifically informed to all the shareholders and stakeholders, including in this

case the GoI (as a party to the PSC), we simply fail to see how the MoU can be read into the Scheme itself. It doesn't matter whether one calls MoU the guiding light or a tool for interpretation or a foundation - the sheer fact that the terms of gas supply contained in the MoU were withheld from the shareholders implies that it cannot now be imported into the Scheme.”

71. In *Vodafone International Holdings BV v. Union of India* (2012) 6 SCC 613, it was held as under:

“64. Shareholders can enter into any agreement in the best interest of the company, but the only thing is that the provisions in the SHA shall not go contrary to the Articles of Association. The essential purpose of the SHA is to make provisions for proper and effective internal management of the company. It can visualize the best interest of the company on diverse issues and can also find different ways not only for the best interest of the shareholders, but also for the company as a whole. In *S. P. Jain v. Kalinga Cables Ltd.* (1965) 2 SCR 720, this Court held that agreements between non-members and members of the Company will not bind the company, but there is nothing unlawful in entering into agreement for transferring of shares. Of course, the manner in which such agreements are to be enforced in the case of breach is given in the general law between the company and the shareholders. A breach of SHA which does not breach the Articles of Association is a valid corporate action but, as we have already indicated, the parties aggrieved can get remedies under the general law of the land for any breach of that agreement.”

72. What is relevant for the purposes of the present case is that any scheme of restructuring of the Company will necessarily have to abide by the provisions of the Companies Act. Chapter V of Part VI of the Companies Act, 1956 contained provisions relating to compromises, arrangements and reconstructions. In the Companies Act 2013 these provisions are in Chapter XV which is titled 'Compromises, Arrangements and Amalgamations'. It includes Sections 230 to 240. This corresponds to Sections 390 to 396A of Chapter 5 of the Companies Act, 1956.

73. The procedure involved in giving effect to any scheme of restructuring or arrangement requires applying to the Company Court, and under the Companies Act, 2013, to the National Company Law Tribunal. Specific directions have to be sought for the holding of meetings of different interested groups including the shareholders, the financial institutions and seek their approval to the scheme of arrangement. In other words, any decision taken consequent to an agreement arrived at in the form of an MoU between shareholders cannot be straightway given effect to unless it has received the imprimatur of the shareholders in an extraordinary general meeting apart from the approval of other interested parties including the creditors.

74. These provisions require proposals for arrangements, reconstruction or amalgamations to be placed before the

shareholders and creditors. The provisions mandate the minimum percentage of such groups of interested persons to approve the scheme of compromise, arrangement, reconstruction etc. The Registrar of Companies or the Official Liquidator as the case may be can object to the scheme. The Central Government can file an application that the scheme for amalgamation should be reconsidered. In other words, a decision to restructure the Company which is a public limited company and majority of shares in which are held by the public cannot be left to be determined by a private agreement between certain groups of shareholders.

75. There cannot be any estoppel against law. The restructuring of a Company has to happen mandatorily in accordance with the provisions of the Companies Act. It is not be open to any of the parties to insist that irrespective of the above legal position, the MoUs entered into between them must be given effect to.

76. The Court is of the view that the learned Arbitrator wholly overlooked the above legal position. This is perhaps also the reason the learned Arbitrator did not consider it a serious enough issue when it was raised in one of the applications filed by Mr. Arun Kapur questioning the very legality of the 1999 MoU. While it is true that in the reply filed by the Petitioners to the application filed by Mr. Arun Kapur they did not specifically urge the issue of the legality of the 1999 or the 2003

MoUs, insofar as the division of the units of the Company was concerned, it cannot be said that only on that score they are estopped from questioning the Award to the extent that it puts a seal of approval on the division of lots which includes the units of the Company.

77. The narration of facts reveals that the BoD of the company is fully in control of its management and affairs. The BoD have taken a consistent stand that the company is not bound by any internal arrangement between the groups of shareholders. While the 2003 resolution of the BoD may have brought about a change in the structure of management by putting the three units under the control of the respective management groups comprising different branches of Kapur family, that by no means resulted in the assets of the Company itself being transferred to the respective branches. While three subsidiary companies may have been incorporated, the transfer of the assets to those units is yet to take place. That can happen only in accordance with the procedure under the Companies Act, 2013.

78. It is not possible to anticipate what could be the outcome of proceedings, as and when initiated, under the Companies Act by any or all of the groups pursuant to the MoUs and the BoD resolution of 31st August, 2003. That stage is yet to be reached. The learned Arbitrator, therefore, could not have pre-empted the decision in such proceedings by putting a seal of approval on

the division of lots as set out by Mr. Vikram Kapur in para 14 of his application insofar as it involved the assets of Atlas Cycles (Haryana) limited or for that matter any other company to which the Companies Act applies. In the proceedings under the Companies Act 2013 it would be open to any group to contend that members of other groups are bound by the 1999 or the 2003 MoUs and cannot resile from it. Even that would not prevent the court or the tribunal from coming to a conclusion as to whether the arrangement or restructuring agreed upon by the members of different groups of Kapur family is in the best interests of the Company.

79. Viewed from any angle these were matters entirely outside the scope and ambit of the arbitration proceedings. It was impermissible in law for the learned Arbitrator to take upon himself a task which could be done only in accordance with the Companies Act and only by the authorities entrusted with such powers. The parties to the 1999 MoU could not have conferred a jurisdiction upon the learned Arbitrator which he did not have to begin with. Therefore, a patent error was committed by the learned Arbitrator in not dealing with the application of Mr. Arun Kapur under Section 16 of the Act questioning his very jurisdiction to examine the question of the division of the assets of the Company into baskets or lots.

80. Consequently, the Court is satisfied that the directions issued by the learned Arbitrator as regards the division of the assets and management and control of Atlas Cycles (Haryana) Ltd. is opposed to fundamental policy of Indian Law and, therefore, cannot be sustained under Section 34 (2) (b) (ii) of the Act.

Directions in the impugned Award concerning the two Trusts

81. As regards division of the two Trusts it is surprising that the learned Arbitrator has, despite acknowledging that the Trusts are governed by separate legal regime, remained silent in the operative portion on the division of the assets of the Trusts into three lots or baskets as set out in para 14 of the application filed by Mr. Vikram Kapur. Admittedly, these are public charitable trusts. One of them is a registered society.

82. The of management and control of the Trusts have to be in accordance with the Trust Deed and in terms of the procedure envisaged thereunder. Removal of the trustees also have to take place accordingly and if that is not satisfactory then through appropriate legal proceedings.

83. In the instant case, the resolution of the BoT dated 31st August, 2003 sought to give effect to the 2003 MoU by creating a managing committee comprising Mr. Rajiv Kapur and Mr. Vikram Kapur to oversee the operation of the trusts. However,

there were excepted matters in relation to which no decision could be taken without the prior approval of the majority of the entire BoT. Although that conditionality was to operate for a period of two years it was extended beyond two years by a resolution of the BoT dated 21st April, 2005. The challenge to the said resolution by Mr. Vikram Kapur failed with the decision of Sonapat Civil Court dated 14th June 2005 which decision has not been challenged and has, therefore, attained finality. The procedure for giving effect to the 2003 as far as the trusts are concerned is hedged in by the legal regime governing public trusts. In any event the division of assets of the trusts cannot be effected by a private agreement between certain trustees. Here again there cannot be any estoppel against law.

84. Consequently the directions of the learned Arbitrator to the extent it legitimises the division of the assets and properties of the two Trusts i.e. the Dewan Harnam Das Saraswati Devi Trust and the Dewan Harnam Das Saraswati Devi Trust (Regd. Society) into three baskets/lots falling to the shares of three branches of Kapur family are opposed to the fundamental policy of Indian law, are unsustainable in law and are hereby set aside.

Concluding observations

85. It is clarified that notwithstanding this order of the Court it would be open to the parties to seek remedies as envisaged in law in regard to the restructuring/arrangement as far as Atlas

Cycles (Haryana) Ltd. is concerned and as far as the two Trusts i.e. the Dewan Harnam Das Saraswati Devi Trust and the Dewan Harnam Das Saraswati Devi Trust (Regd. Society) are concerned. Whether the parties are bound by the 1999 and 2003 MoUs, whether the said MoUs should be given effect to and to what extent are left open to be decided in appropriate legal proceedings as and when initiated. The Court should not be understood as having pronounced on the legality of the 1999 or the 2003 MoUs in relation to the aforementioned Company and the Trusts. The remaining portions of the impugned Award so far as it relates to the division of the residential properties and other assets are not being interfered as that was not pressed before the Court.

86. The petitions are disposed of in the above terms but in the circumstances with no order as to costs.

S. MURALIDHAR, J

AUGUST 3, 2015

Rk/bh'nesh