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

COMPANY APPEAL (L) NO.12 OF 2016
WITH
COMPANY APPLICATION (L) NO.10 0F 2016
WITH
COMPANY APPLICATION NO.119 OF 2015
WITH
COMPANY APPLICATION NO.297 OF 2014
IN
COMPANY PETITION NO.12 OF 2012

Supermax Personal Care Pvt. Ltd. ….Appellant

V/s.

Unique Properties & Securities Pvt. Ltd. & Ors. ….Respondents

WITH
COMPANY APPEAL (L) NO.13 OF 2016
WITH
COMPANY APPLICATION (L) NO.11 OF 2016
WITH
COMPANY APPLICATION NO.120 OF 2015
WITH
COMPANY APPLICATION NO.299 OF 2014
IN
COMPANY PETITION NO.11 OF 2012

Supermax Personal Care Pvt. Ltd. ….Appellant

V/s.

Transauto & Mechaids Pvt. Ltd. & Ors. ….Respondents

WITH
COMPANY APPEAL (L) NO.14 OF 2016
WITH
COMPANY APPLICATION (L) NO.12 OF 2016
WITH
COMPANY APPLICATION NO.121 OF 2015
WITH
COMPANY APPLICATION NO.298 OF 2014
IN
COMPANY PETITION NO.14 OF 2012

Supermax Personal Care Pvt. Ltd. ….Appellant

V/s.

Supermax International Pvt. Ltd. & Ors. ….Respondents

Dr. Birendra Saraf a/w. Mr. Ankit Lohia i/b. Argus Partners for the appellant in all appeals.

Mr. Mustafa Doctor, Senior Advocate a/w. Mr. Rohaan Cama i/b. M/s. Federal & Rashmikant for the respondents.

CORAM : K.R.SHRIRAM,J
RESERVED ON : 3rd MARCH, 2016
PRONOUNCED ON : 4th MARCH, 2016

P.C.:-

1 As the order impugned is common and facts are also common except that the properties covered under the three appeals differ, it would be convenient to dispose all the three appeals by this common order.

2 These three appeals are filed against an order dated 18th February, 2016 passed by the company law board (CLB) whereby the CLB rejected an application made by the appellants to (a) recall an order dated 2nd February, 2015 and (b) and/or for clarification of the order dated 2nd February, 2015. The recall portion, viz., (a), the counsel for the appellants stated was not being pressed and the only point which was contentious was on clarification, i.e., (b).

3 Therefore, the appellant has approached this court against an order which was passed on a clarification application and not against the main order. The main order dated 2nd February, 2015, so far as it relates to Unique Properties and Securities Private Limited (Unique), Transauto and Mechaids Private Limited (Transauto) And Supermax International Private Limited (SIPL), the respondents herein has never been challenged. The order so far as it related to Vidyut Metallics Private Limited (VMPL) was challenged and that

appeal was dismissed with costs by this court by a judgment pronounced on 30th November, 2015.

4 The appellant had moved for clarification in the order dated 2nd February, 2015 by filing three separate applications as mentioned above. The reliefs sought were as under :-

> *1. the delay (if any) in the filing of this application be condoned;*
>
> *2. the applicant be permitted to intervene in these proceedings for the purposes of grant of reliefs prayed for in this application;*
>
> *3. this Hon'ble Board be pleased to vacate and/or set aside the order dated 2nd February, 2015.*
>
> *4. this Hon'ble Board be pleased to clarify that the order dated 2nd February, 2015 does not apply to and cannot be implemented qua the assets and properties enlisted at Exhibit-1 (premises at Laxmi Co-operative Housing Society, Malhotra House, Begumpet-Hyderabad) hereto and all other assets and properties since the same are the subject matter of the Business Transfer Agreement dated 30th December, 2010 read with Supplemental Business Transfer Agreement dated 18th March, 2011 and/or in possession of the applicant and accordingly, restrain and prohibit the petitioner and respondent no.1 from doing so;*
>
> *5. that this Hon'ble Board be pleased to restrain and prohibit the petitioners, respondent no.1 and the additional respondent from in any manner whatsoever, seeking to implement the impugned order dated 2nd February, 2015 in respect of the properties set out in Exhibit – 1 hereto and/or any other property/s which have been transferred to and/or form a part of the Business Transfer Agreement dated 30th December, 2010 read with Supplemental Business Transfer Agreement dated 18th March, 2011 and/or in possession of the applicant and/or acting in furtherance of (i) the letter dated 29th June, 2015 addressed by the advocates of the petitioner; or (ii) the letter dated 9th July, 2015 addressed by the additional respondent."*

5 In view of the statement made by the counsel for the appellants as recorded in paragraph 2 above, the issue that was argued related to only prayer clause - (4) quoted above. The clarification that the appellants sought in the order dated 2nd February, 2015 was in respect of paragraph 9 of the said order, which reads as under :-

> *"9. It is, however, clarified that any "immovable assets" transferred by virtue of*

the BTA to the SPCPL, referred to herein above, shall not be covered by this order. It is also clarified that this order will be subject to any order to be passed in the pending petition before the Hon'ble High Court."

6 The clarification of the CLB in the impugned order dated 18th February, 2016 is contained in paragraph 13 and the same reads as under :-

"13. On perusal of that BTA, it is evident that it is an agreement to transfer the assets to SPCPL, but it is not a conveyance or instrument transferring the assets in the annexure to the BTA. SPCPL has not placed any material either transferring those assets to SPCPL or at least delivery of possession of these assets to BTA, it is settled proposition of law agreement to transfer will only give a right to sue, it cannot directly claim any title over any of the asset admittedly belonging to somebody. The whole exercise CLB as well as Hon'ble High Court of Bombay, put in is to ensure the management of all five Indian Companies and their properties come back to the control of RKM from erstwhile directors. When the endeavour of the courts is correction recourse from the coup d'etat attempted by Rakesh, what legal right has SPCPL to seek restraint order against the commissioner from taking inventory? When Rakesh already failed in all fronts to obliterate correction recourse, he devised this sinister plan of putting SPCPL in front to obtain an order which he could not get directly. Moreover, it is on record that he himself gave an affidavit before England court saying that SPCPL was not given possession of any of the properties shown in the Exhibits of these applications. For it was already held by Hon'ble High Court of Bombay that SPCPL is nothing but a mask put up by Rakesh to get something which he could not get as Rakesh. Therefore, it is hereby held that SPCPL cannot be seen as separate from Rakesh, especially when Rakesh is a party to the order dated 2.2.2015. For him only recourse available was to file appeals over the order dated 2.2.2015 but not by seeking review of the order which was already passed. Even if any inherent jurisdiction is assumed as conferred upon CLB to clarify its own order, it could be possible only when a party files clarification before appeal filing time is expired. Here this applicant moved an appeal over the same order in respect of one of the applications, meaning thereby this applicant was in the knowledge that he was to file appeals over the other applications as well, but it has not done so. This applicant tested the waters before Appellate Forum, when he could not get any order from the Appellate Forum; it reverted back to CLB seeking a clarification over the same order in the other applications upon which no appeal was filed. If these kind of masked applications are considered, it will become an encouragement to unscrupulous elements haunting the aggrieved in one or other form."

7 It was submitted by the counsel for the appellant that the CLB should have analysed each and every document based on which the appellant claimed to have been in possession and come to a conclusion in their favour and ought not to have passed a cryptic order by stating SPCPL has not placed any material either transferring those assets to SPCPL or atleast delivery of

possession of these assets to SPCPL. SPCPL (Supermax Personal Care Private Limited) is the appellant. I have later in brief mentioned the background of the matters and what this BTA (Business Transfer Agreement) was. It was also submitted that the appellants were in possession of the assets and the CLB erred in concluding that the appellant did not have title over the assets and therefore, they were not in possession under the BTA. The counsel also went through various documents to show that they were in possession of all those assets and as the appellants were in possession by virtue of the BTA, the CLB could not have concluded in a cryptic manner that the appellant did not have any possession. The counsel also relied on a judgment of the Supreme Court in the matter of ***Lallu Yeshwant Singh vs. Rao Jagdish Singh & Ors.***[1] to submit that a party in possession cannot be dispossessed otherwise in due process of law.

The counsel for the respondents naturally opposed this appeal and also raised a preliminary issue of maintainability.

8 The Apex Court in the matter of ***Purnima Manthena and another vs. Renuka Datla & others***[2] has analysed in detail and laid down the principles to decide the scope of jurisdiction under section 10(F) of the Companies Act, 1956. Paragraphs 49 and 50 of the judgment read as under :-

> *"49. The unequivocal legal propositions as judicially ordained, to ascertain the emergence and existence of a question of law, the scope of examination thereof by a court of appellate jurisdiction and the balancing of the competing factors in the grant of interlocutory remedy, hallowed by time, indeed are well settled. A question of law, as is comprehended in Section 10F of the Act, would arise indubitably, if a decision which is the foundation thereof, suffers from perversity,*

1. AIR 1968 Supreme Court 620

2. (2016) 1 SCC 237

following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or non-germane determinants. A decision however, on the issues raised, is a sine qua non for a question of law to exist. A decision logically per-supposes an adjudication on the facets of the controversy involved and mere deferment thereof to a future point of time till the completion of the essential legal formalities would not ipso facto fructify into a verdict to generate a question of law to be appealed from. However, an omission to record a finding even on a conscious scrutiny of the materials bearing on the issues involved in a given case, may be termed to be one. Be that as it may, in any view of the matter, the appellate forum though exercising a jurisdiction which otherwise may be co- ordinate with that of the lower forum, ought to confine its judicial audit within the layout of the adjudgment undertaken by the forum of lower tier. This is imperative, more particularly in the exercise of the appellate jurisdiction qua a decision on discretion rendered at an introductory stage of any proceeding, otherwise awaiting final adjudication on merits following a full contest. It is settled that no adjudication at the preliminary stage of a proceeding in a court of law ought to have the attributes of a final verdict so as to prejudge the issues at that stage, thereby rendering the principal determination otiose or redundant. This is more so, if the pleadings of the parties are incomplete at the threshold stage and the lower forum concerned seeks only to ensure a working arrangement vis-a-vis the dissension and postpone fuller and consummate appreciation of the rival assertions and the recorded facts and the documents at a later stage.

50. Section 10F of the Act engrafts the requirement of the existence of a question of law arising from the decision of the CLB as an essential pre-condition for the maintainability of an appeal thereunder. While the language applied therein evinces that all orders, whether final or interlocutory, can be the subject-matter of appeal, if it occasions a question of law, in our comprehension, the Section per se defines the perimeters of inquisition by the appellate forum conditioned by the type of the order under scrutiny. The nature and purport of the order i.e., interlocutory or final, would thus logically present varying canvases to traverse and analyse. These too would define the limits of adjudication qua the appellate forum. Whereas in an appeal under Section 10F from an order granting or refusing interim relief, being essentially in the exercise of judicial discretion and based on equity is an appeal on principle and no interference is merited unless the same suffers from the vice of perversity and arbitrariness, such constrictions may not necessarily regulate and/or restrict the domain of examination in a regular appeal on facts and law. Section 10F, thus, statutorily demarcates the contours of the jurisdictional exercise by an appellate forum depending on the nature of the order impugned i.e. interlocutory or final and both cannot be equated, lest the pending proceeding before the lower forum, if the order impugned is purely of interlocutory nature, and does not decide any issue on a consideration of the rival assertions on merits, stands aborted and is rendered superfluous for all intents and purposes.

9 Therefore, a question of law, as is comprehended in Section 10F of the Act, would arise indubitably, if a decision which is the foundation thereof, suffers from perversity, following a patent error on a fundamental principle of law or disregard to relevant materials or cognizance of irrelevant or

non-germane determinants. Dr. Saraf, counsel for the appellants submitted that the CLB having disregarded documents relied upon by the appellants and not analysed each of the documents to explain why they are not acceptable, there was perversity in the order and the question of law is deemed to exist.

10 It must be remembered that the main petitions, viz., company petition no.11 of 2012, 12 of 2012, 13 of 2012 and 14 of 2012 are still pending. The order dated 2nd February, 2015 came to be passed in an interlocutory application. The order challenged today in this appeal is an order passed in a clarification application filed by the appellants to clarify certain portion of the order dated 2nd February, 2015 passed in the interlocutory application. Once an order is clarified, it becomes part of the original order.

11 Therefore, the order that should have been challenged is not the order of clarification, viz., the impugned order passed on 18th February, 2016, but the order dated 2nd February, 2015, which has not been challenged at all. Even this order of 2nd February, 2015 is a decision on discretion rendered at an interlocutory stage of the proceedings awaiting final adjudication on merits following a full contest. The impugned order only clarifies the contents of the interlocutory order dated 2nd February, 2015.

12 The clarification in the impugned order as to which are the properties covered under the order dt. 2.2.2015, is not by any means a question of law. It is a question of the intention of the CLB and such intention was clarified by the CLB in its order dt.18.2.2016. In this order it is clarified by the

CLB that only such properties which have been handed over to the appellant pursuant to Business Transfer Agreement (BTA) are excluded and the properties which were the subject matter were not handed over. Once the clarification was given, that was the end of the matter so far as what the CLB intended and that cannot give rise to any question of law. On this point alone the appellants have to fail.

On the various submissions of the counsel for the appellants including that the CLB should have analysed each of the documents submitted by the appellants to decide whether appellants already had possession under the BTA or not instead of passing a cryptic order stating that the appellants have not proved that they had possession, as I have already concluded that no question of law arises in a clarificatory order, I see no reason why we should go into the details of the various documents shown by the counsel for the appellants or other factual matrix that were raised by the counsel for the appellants.

13 The order dated 2nd February, 2015 of CLB as corrected by the order dated 4th February, 2015 has attained finality and it was only when in pursuance of this order, the local commissioner was about to make an inventory with a view to make over the property to the current directors of Unique, Transauto and SIPL, that SPCPL (Rakesh Malhotra) for the first time, applied to the CLB to keep the subject assets out of the list of immovable properties of the companies. Therefore, no question of law, can arise in respect of the interim relief granted by the CLB concerning the subject properties.

14 Moreover, in any event Rakesh Malhotra himself has, in a list of documents – standard disclosure signed on 4th September, 2014 and filed in the High Court of Justice Queen's Bench Division Commercial Court, confirmed that the four assets (subject matter of these appeals) were not with SPCPL. If it is the case of SPCPL (Rakesh Malhotra) that these properties were in possession of SPCPL pursuant to BTA, Rakesh Malhotra on 4th September, 2014 stating that these assets were not with SPCPL does not arise. In the disclosures to the UK Court, Rakesh Malhotra has admitted that the four assets which are the subject matter of these appeals are with the respondents, as under :-

Sr. No.	Company	Property
1	Unique Properties and Securities Private Limited	Laxmi Co-op. Housing Society, Malhotra House, Hyderabad – 500 016.
2	Supermax International Private Limited	(a) Premises at 1E/12, Jhandewalan Extension, New Delhi. (b) 9th Floor, 905 Sriniwas Tower Begumpet, Hyderabad – 500 016.
3	Transauto and Mechaids Private Limited	Plot No.a-292, Road NO.16, Lane-2, Wagle Indl. Estate, Thane – 400 604.

It is also not anybody's case that post 4th September, 2014 the possession of these properties were transferred to SPCPL.

15 I must add here that the counsel for the appellants proceeded on the basis that Rakesh Malhotra and the appellant - Supermax Personal Care Pvt. LTd. (SPCPL) are one and the same, though with a rider that he does not concede this fact. Whether the counsel concedes or not, this court in its order dated 30th November, 2015 in Company Appeal (L) No. 10 of 2015 in Company

Application No. 296 of 2014 in CLB Company Petition No. 13 of 2012 (which was the appeal filed by the appellant herein impugning the order dated 2nd February, 2015 of the CLB in relation to VMPL) has held that Rakesh Malhtora and SPCPL are one and the same, Rakesh Malhotra was an alter ego of SPCPL and he is in control of SPCPL so much that even all the litigations of Rakesh Malhotra against the respondents herein and his father (Rajinder Kumar Malhotra) has been funded by SPCPL without even a board resolution in place. The court made very scathing observations in its order and judgment dated 30th November, 2015 against SPCPL/Rakesh Malhotra. Infact there are quite a few orders and judgments, where courts have observed that Rakesh Malhotra and SPCPL are in effect one and the same and the highly deplorable conduct of Rakesh Malhotra. He has also been held guilty of contempt of this court.

16 This matter has had a chequered history. It is basically a fight between one Rajinder Kumar Malhotra (RKM) (the father) and his elder son Rakesh Malhotra.

In 2008-2010, RKM decided to restructure and hand over control of the Super Max Group, to his eldest son Rakesh. Accordingly, on 4th November, 2010 a Share Subscription Deed ("SSD") was executed between the parties mentioned therein. The said SSD was subsequently modified by a Supplemental Share Subscription Deed dated 4th March, 2011 ("SSSD"). As part of restructuring, SPCPL was registered as a new Company with Rakesh in charge of its management. A Foreign Pvt. Equity Investor – ACTIS, subscribed to 25-30% of the Holding Company against payment of

US$ 225 Million = Rs.1018 Crores. Of this, an amount of US$ 53 million (approx. Rs.240 Crores) was to be paid by SPCPL to the 5 RKM Indian Companies as consideration for the transfer/lease/utilization of their Business Assets. Of this amount, VMPL was to receive Rs.110 Crores.

On 30th December, 2010, a Business Transfer Agreement (BTA) was executed between VMPL and SPCPL for transfer of VMPL's business to SPCPL. RKM in the aforestated manner handed over control of the 5 RKM Indian Companies to his elder son Rakesh and trusted him totally. A Supplementary BTA as well as Job Work Agreement, the Staff Secondment Agreement and the Equipment Lease Agreements were all executed on 18th March, 2011. One Vyas and one Chaudhari, who were the two Directors of VMPL had now become employees/Consultants of SPCPL. However, since they had been the Directors of VMPL since 1993 and 2001 respectively, RKM believed that they would continue to protect the interest of VMPL and therefore, allowed them to continue as Directors of VMPL. Similarly, the Directors of the other RKM Indian Companies remained unchanged. However according to RKM his son Rakesh misused the trust reposed in him by RKM and used his influence over the Directors of the RKM Indian Companies including VMPL (now employees/Consultants of SPCPL) to exclude RKM who held 99.99% of the shares of the five Companies. According to RKM, the Directors of the 5 Companies acting upon Rakesh's instructions refused to give RKM, who was the effective owner of the said 5 RKM Indian Companies, information and access to records, registers and accounts. Through these pliant Directors, Rakesh also sought to utilize the funds, assets and properties of the five

Companies (including VMPL) for the benefit of SPCPL/himself. The company petitions filed by RKM before the CLB are still pending hearing and final disposal.

17 Orders have been passed by this court and CLB against Rakesh Malhotra to hand over properties/assets to RKM and also make payment of monies due. The entire attempt of Rakesh Malhotra is to some how or the other thwart the orders passed by the various forums in favour of his father. In a recent matter also he has been held guilty of contempt of court. He is one of those unscrupulous litigants, who by dishonest means uses the court for his sinister motives.

18 The whole exercise of the CLB as well as this court in its orders was to ensure the management of all RKM companies and their properties come back to the control of RKM from its erstwhile directors. When the endeavor of the courts/CLB is to correct the course adopted by Rakesh, Rakesh Malhotra having been stopped by courts/CLB in taking the course of destruction charted by him, devised a plan of putting SPCPL in front to obtain order which he could not get directly.

19 It is also to be noted that despite this court in its various orders holding that SPCPL and Rakesh Malhotra are one and the same, still, before the CLB, the submissions made were on the basis that they are totally different. That is quite explicit from the prayers of the application quoted above and from the impugned order. Even in the impugned order, it is also observed that SPCPL

is an alter ego of Rakesh Malhotra and SPCPL could not have filed these applications as Rakesh Malhotra was a party to all the company applications and the company petitions. Paragraph 11 of the impugned order reads as under :-

> *"11. It is a fact that Rakesh has been continuing as Chairman of Super Max Group, it is also a fact that he is the man who incorporated SPCPL. Since the Hon'ble High Court already held that SPCPL is an alter ego of Rakesh, this Company SPCPL could not have filed these applications on the ground the order dated 2.2.2015 is not binding upon it. Rakesh is a party to the proceedings in all the Company petitions, he completed his turn of litigation by filing appeal and clarifications over the order dated 2.2.2015. When he failed to obtain any order in his favour, he started this puppet show by puppeteering showing SPCPL as an independent entity. It is needless to say it is a coup within the palace. As I said already, it is father, two sons and mother solely controlling the business in several companies with different names. Here the concept of independent entity to a company is shallow, for name sake only, companies are pawns in the hands of them and the moves on this chess board of litigation are at the wish of one or other group of the family. It is needless to say that this concept of independent entity to a company has come into existence to give a stand to Company that it is a limited company with perpetual succession. By this status of independent entity, a company cannot do anything on its own without management comprised of natural persons. Since it is an admitted fact SPCPL is solely managed by Rakesh, there cannot be any doubt to say that SPCPLis at the beck and call of Rakesh. For that reason only, the doctrine of "Piercing of Corporate Veil" has come into existence to neutralise malafide actions in which natural person is indulged in behind the screen of independent entity of a company. If the Corporate Veil of SPCPL is taken out, here, the man pops up is Rakesh. Therefore Rakesh should not have tried this trick of filing these applications through SPCPL saying it is an independent entity. For Rakesh contested tooth and nail before passing order dated 2.2.2015, he could not raise the same now before this Bench. Moreover, when the order is common, though applications being separate, this SPCPL could have simultaneously assailed over the subject matter relating to Transauto, Super Max and Unique, when SPCPL had filed appeal in relation to the asset of Vidyut. .... SPCPL, having knowledge that common order was passed on other applications as well, the applicant does not deserve any merit to seek any relief now on the cover of clarification."*

20 The court should be alert in dealing with such speculative actions and shoot down such bogus litigation at an early stage. This action of the appellant, it is quite obvious is inspired by vexatious motives. I observe with regret the infliction of the ordeal upon the Courts by parties like the appellant/Rakesh Malhotra by presenting a case which was disingenuous or

worse. It may be a valuable contribution to the cause of justice if such speculative and frivolous litigations are dealt with a tough hand. Substantial judicial time will be saved if such parties are saddled with substantial costs so that they would not continue the onslaught on precious judicial time. In view of the past conduct of the appellant in engaging the respondents in contesting litigations which also had a strong bearing in not only this Court's time but also before the CLB, this is one of those cases where substantial costs have to be imposed on the appellant.

21 This appeal alongwith above mentioned appeals stand dismissed. Consequently all company applications also stand dismissed.

The appellant is directed to pay a sum of Rs. 10 lakhs as costs to the respondents within four weeks.

22 The counsel for the appellants seeks stay of the order. As I have concluded that the appeal itself is not maintainable, the question of granting any stay also does not arise. Stay refused.

(K.R.SHRIRAM,J)