IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CHAMBER SUMMONS NO. 1690 OF 2015
IN
ARBITRATION PETITION NO. 707 OF 2012

Ramsarup Industries Limited & Others .. Applicants

In the matter between

Tata Capital Financial Services Limited .. Petitioner

vs

Ramsarup Industries Limited & Others .. Respondents

Mr. Dipesh Siroya for the Applicants/Respondents in support.

Dr. B.B. Saraf, along with Ms. Nelly Mehta, instructed by M/s. MDP & Partners, for the Petitioner.

CORAM: S.J. KATHAWALLA, J.

DATED : 9th June, 2016

P.C.

1. The Respondents have filed the above Chamber Summons No. 1690 of 2015 for the following reliefs:

> "*(a) That this Hon'ble Court be pleased to direct Parties to maintain status quo order and stay all the requisite steps adopted by the Petitioner Company*

pursuant to the order dated 17th February 2014 passed in Appeal No. 41 of 2014 preferred in the above arbitration Petition No. 707 of 2012 and pending proceedings till disposal of BIFR reference preferred by the Respondent Company abovenamed;

(b) That this Hon'ble Court be pleased to stay all the pending proceedings against the Respondent till disposal of BIFR reference preferred by the Respondent Company abovenamed;

(c) That pending the hearing and final disposal of this chamber summons be pleased to direct to maintain status quo order in respect of the steps to be adopted by the Petitioner Company pursuant to order dated 17th February 2014 passed Appeal No. 41 of 2014 in the above arbitration Petition No. 70 of 2012"

2. The ground on which the Respondents have moved the application is that Respondent No.1 company is a sick company and the reference made by Respondent No.1 before the Board for Industrial and Financial Reconstruction (BIFR) under the Sick Industries Companies (Special Provisions) Act, 1985 ("SICA") has been registered by the BIFR as Case No. 67 of 2012 on 21st November 2012. The Respondents state that the reference before the BIFR is still pending and as such the

property should not be transferred in favour of the Petitioner till pendency of the BIFR reference.

3. The factual background leading to the application is as under.

4. The Petitioner had advanced financial facilities to Respondent No.1. One of the Directors of Respondent No.1 had furnished his personal guarantee for repayment of the outstanding dues of the Petitioner. Respondent Nos. 3, 4 and 5 executed Corporate Guarantees in favour of the Petitioner and also executed a mortgage of their properties in favour of the Petitioner.

5. The Petitioner thereafter came across a circular issued by Respondent No.1 for its shareholders thereby proposing to pass a resolution for approval of sale and transfer of the company's windmill located in Dhule, Maharashtra and some of its other assets. The Petitioner filed Arbitration Petition No. 707 of 2012 under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act")inter alia praying for appointment of court receiver, injunction and deposit of Rs. 25,30,32,482.69 in this court.

6. On 19th June 2012, Arbitration Petition No. 707 of 2012 was disposed of on the basis of consent minutes duly signed by the Advocates for the parties. The disputes and differences were referred to arbitration. By consent of parties, a private receiver was appointed in respect of properties described at Exhibit U to the said Petition which properties were owned by Respondent Nos. 3 to 5. Both the parties agreed that the receiver shall sell the properties by public auction or private treaty. The Respondents agreed not to create third party rights or part with possession of the mortgaged properties till such time as they were sold and to render all cooperation and assistance to the private receiver for expeditious sale of the properties. The sale consideration was to be deposited by the private receiver in court and was subject to further orders of the arbitrator.

7. Without prior notice to the Petitioner, the 1st Respondent filed a reference before the BIFR which was registered on 21st November 2012.

8. Thereafter the Respondents filed a Chamber Summons being Chamber Summons No. 60 of 2013 in Arbitration Petition No. 707 of 2012 contending that in light of the pending reference filed by

Respondent No.1 before the BIFR, the properties belonging to Respondent Nos. 3 to 5 which were furnished as security for repayment of the outstanding dues of Respondent No.1, could not be sold. The Respondents pleaded that the properties of Respondent Nos.3 to 5 should not be sold during the pendency of the reference before the BIFR. It was contended that since guarantees were given by Respondent Nos.3 to 5 guaranteeing repayment of loan of Respondent No.1 in favour of the Petitioner, no steps could be taken by the Petitioner even in respect of the personal properties of the guarantors which were mortgaged.

9. By a detailed order dated 13th February 2013, this court after considering the law as placed by both the parties, held that proceedings under section 9 of the Arbitration Act cannot be equated with a suit under section 22 of the SICA. This court further held that since consent terms were arrived at and an order was passed by this court in terms of consent terms, the amendment to Section 22 (1) of the SICA does not bar enforcement of an order passed by a court in terms of the consent terms. It was further held that implementation of consent orders cannot

be stayed under Section 22 of SICA. The court also held in para 38 that while a Sick industrial company has a wider protection against any proceedings for winding up, execution, distress or like against any of the properties of the industrial company or for appointment of a receiver in respect thereof, only a limited protection is granted in case of guarantors in respect of a suit for recovery of money or for enforcement of any security against industrial company or any guarantee in respect of any loan or advance granted to the industrial company. The sale of a property pursuant to an interim consent order under Section 9 of the Arbitration Act does not in any manner fall within the protection granted to guarantors under Section 22 of the SICA.

10. Thereafter, the Respondents moved another application by way of Chamber Summons (Lodging) No. 754 of 2013 seeking stay of the sale of the property by the private receiver. The Respondents contended that the mortgaged properties were not valued correctly.

11. By an order dated 1st April 2013, the court allowed the sale of property by private treaty. The court made it clear that both parties

would be permitted to offer their bids or to submit bids of any third parties for the purpose of effecting sale by private treaty.

12. By an order dated 24th July 2013, this court rejected the application under Chamber Summons (L) No. 754 of 2013 leaving all objections open to be raised at the time of confirmation of sale.

13. Before the private commissioner, only one bid from the petitioner was received. The Respondents failed to make any bid or get a higher bidder. By an order dated 27th November 2013, the court granted to the Respondents an opportunity to bring an offer higher than Rs. 4 crores which was offered by the Petitioner failing which the offer made by the Petitioner would be confirmed.

14. By an order dated 19th December 2013, this court after considering various objections of the Respondents accepted the offer of Rs. 4 crores made by the Petitioner. The Respondents filed an appeal from the order dated 19th December 2013.

15. By an order dated 17th February 2014, the Division Bench confirmed the sale. This court however gave an opportunity to the

Respondents to get a higher bid on or before 15th April 2014 failing which the sale in favour of the Petitioner was to stand confirmed on 15th April 2014. The Petitioner was directed to furnish a bank guarantee in the sum in which the sale was confirmed which was to remain valid pending the arbitration proceedings.

16. The Respondents filed a Special Leave Petition against the order dated 17th February 2014 which was dismissed on 2nd May 2014. Thus, the sale in favour of the Petitioner stood confirmed. The Petitioner has furnished a bank guarantee in accordance with the order dated 17th February 2014. Only the ministerial act of executing the conveyance in favour of the Petitioner has remained. The Respondents have raised objections for the execution of the conveyance. The Petitioner has filed a separate application seeking directions in that regard which has been considered by a separate order.

17. The learned counsel for the Respondents submitted that after the judgment dated 13th February 2013 passed by this court rejecting the application of the Respondents for stay of sale on ground of reference of the Respondents being pending before the BIFR, there have been

subsequent judgments which would require further proceedings for sale to be stayed. In this regard, the Respondents relied upon an unreported judgment of this court in Arbitration Petition No.1359 of 2010 dated 8th September 2015 in the case of ***Armada (Singapore) Pte. Ltd. vs. Ashapura Minechem Ltd.*** and in particular paragraphs 42 of the said judgment where the court observed that in view of the pendency of the proceedings before the BIFR, the petitioner in that case would not be entitled to take steps in execution of the award and seek any relief without the permission of the BIFR. The learned counsel for the Respondents also relied upon a judgment of the Delhi High Court in the case of ***Shri Rakesh Madan and Anr. Vs. Rajasthan Financial Corporation & Ors.*** (in I.A. No. 14090/2008 in C.S. (OS) No. 513 of 2008) delivered on 13th January 2009 to contend that the application could be made because of changed circumstances, which according to the learned counsel for the Respondent in the present case is the subsequent judgment in the case of Armada (Singapore) Pte. Ltd.

18. The learned Advocate for the Petitioner opposed the said application and contended that the issues raised by the Respondents in

the present application stood concluded by the judgment of this court dated 13th February 2013 in Chamber Summons No. 60 of 2013 filed by the Respondents. The said order has attained finality between the parties. Pursuant to the said order, the order on the consent terms for sale of the properties have been implemented and acted upon and the sale in favour of the Petitioner has been confirmed by this Hon'ble Court. It is now not open to the Respondents to reagitate the same issues which already stand concluded between the parties. It is submitted that once a matter stands concluded and attains finality between the parties, it is not open for parties to keep reopening the same on the basis of subsequent judgments. In any case, it is submitted on behalf of the Petitioner that there is no changed circumstances as asserted by the Respondents. The judgment of this court in the case of ***Armada (Singapore) Pte. Ltd. (supra)*** does not in any manner alter the position of law as laid down by this court in the judgment dated 13th February 2013.

19. I have considered the material on record and the rival submissions of the parties. The Petitioner had earlier filed Chamber

Summons No. 60 of 2013 seeking a stay on the sale of the properties on the ground of pending reference made by Respondent No.1 before the BIFR. This court dismissed the said application considering the legal position as applicable to the facts of this case. The court held that proceedings under section 9 of the Arbitration Act were not barred under Section 22 of the SICA. That was not the only ground on which the court rejected the application. The court also held that implementation of consent terms between the parties in proceedings under Section 9 of the Arbitration Act are not stayed under Section 22 of the SICA. This court further held that though a wider protection is granted to the sick company against any proceedings for winding up, execution, distress or the like against any of the properties of the industrial company or for the appointment of the receiver in respect thereof, a limited protection is granted in case of guarantor only in respect of a suit for recovery of money or for enforcement of any security against the industrial company or of any guarantee in respect of any loan or advances granted to the industrial company. The said order attained finality between the parties. Thereafter, this court confirmed the sale of the said properties in favour of the Petitioner. Only the ministerial act of the confirmation of the sale remains to be executed. Since the Respondents have not executed the conveyance, the Petitioner has filed a separate application which is being considered as a separate order. Once an issue has been raised by the parties to a litigation and the decision on the said issue has attained finality, it is not open to the parties to keep reagitating the said issue again as is sought to be done by the Respondents.

20. In any case, the judgment in the case of ***Armada (Singapore) Pte. Ltd. (supra)*** does not in any manner assist the Respondents and is not applicable to the facts of the present case. In the said case, there was a reference under section 22 of the SICA pending against the company against whom the award was passed. It was in these circumstances that the court held that the enforcement of the award was not permissible during the pendency of the reference. The facts of the present case are entirely different. In the present case, the properties mortgaged by guarantors are being sold pursuant a consent order under Section 9 of the Arbitration Act. The position of law as laid down by this court in the judgment dated 13^{th} February 2013 is in no manner affected

or altered by the judgment of this court in the case of ***Armada (Singapore) Pte. Ltd. (supra).*** There is therefore no merit in the contention raised by the Respondents.

21. The judgment in the case of ***Rakesh Madan and Anr. (supra)*** has no applicability to the present case. In the said case it was held that an application for injunction under order 39 of CPC could be made again in changed circumstances. The said judgment has no applicability to the facts of the present case.

22. In these circumstances, there is no merit in the application made by the Respondents. The present application is a continuation of the persistent attempts on the part of the Respondents to obstruct the implementation of a consent order.

23. The application is dismissed.

(S.J. KATHAWALLA, J.)