IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.09.2016

Coram

The Honourable Mr.Justice RAJIV SHAKDHER

C.P.Nos.325 and 326 of 2015 and
Comp.A.No.802 of 2015

1. Ashok Bajaj
2. Mohit Bajaj
3. Jyothi Bajaj ... Petitioners in both CPs

VS

SISCO Medicals Device Private Limited,
No.117/65, Wallajah Road,
Chennai-600 002. ... Respondent in C.P.No.325 of 2015

South India Surgical Company Ltd.,
No.117/65,Wallajah Road,
Chennai-600 002. ... Respondent in C.P.No.326 of 2015

Prayer in C.P.No.325/2015: Petition filed under Sections 433(e), (f) and 434 (1)(a) of the Companies Act, 1956 read with rule 9 of the Companies (Court) Rules 9 of the Companies (Court) Rules, 1959 of the Companies Act, 1956 to order winding up of the respondent company, that is, M/s.SISCO Medicals Device Private Ltd, appoint the Official Liquidator as the Liquidator of the Company and direct the respondent company to pay the costs of this proceeding.

Prayer in C.P.No.326/2015: Petition filed under Sections 433(e),

(f) and 434 (1)(a) of the Companies Act, 1956 read with rule 9 of the Companies (Court) Rules 9 of the Companies (Court) Rules, 1959 of the Companies Act, 1956 to order winding up of the respondent company, that is, M/s.South India Surgical Company Ltd, appoint the Official Liquidator as the Liquidator of the Company and direct the respondent company to pay the costs of this proceeding.

For Petitioner : Mr.T.R.Rajagopalan,
Senior Counsel for M/s.T.Poornam

For Respondents : Mr.T.K.Bhaskar

COMMON ORDER

1. These are Company Petitions essentially filed under Section 433 (e) and (f) of the Companies Act, 1956 (hereafter referred to as the 1956 Act). These Company Petitions are pivoted, primarily, on a compromise arrived at amongst others, with the two respondent companies arrayed as parties in the captioned Company Petitions.

2. Briefly, it is the case of the petitioners in the captioned company petitions that the respondent companies along with other individuals, who form part of a group, are required to discharge the entire liability, which amounts Rs.7 Crores, towards them, under a Memorandum of Compromise, dated 31.10.2013 (in short "the MOC").

3. Pertinently, out of the total sum of Rs.7 Crores, Rs.4 Crores has already been received by the petitioners. The petitioners' claim is, therefore, restricted to the balance sum, which is a sum of Rs.3 Crores along with interest.

3.1. To be noted, the MOC was executed, essentially, amongst individuals, who are members of one family (i.e., the Bajaj Family), with companies controlled by them also being made parties to the said MOC.

3.2. In order to gain better understanding of individuals, who are parties to the MOC, it may be relevant to peruse the following family tree :

P.N.BAJAJ
(Father)

- Ashok Bajaj (Eldes son)
  - Jyothi Bajaj (Wife)
  - Mohit Bajaj (son)
- Dilip Bajaj (Son)
- Vivek Bajaj (Son)
- Prabha Talwar (married daughter)
- Sneha Rajpal (married daughter)

3.3. Besides the individuals, whose names are set out in the aforesaid family tree, there were three companies, which are party to the MOC. The three companies being : (i) SISCO Medical Device Private Limited (respondent in C.P.No.325 of 2015); (ii) South India Surgical Company Limited (respondent in C.P.No.326 of 2015); and (iii) SISCO Latex Private Limited.

4. As would be evident, what is noted above, the patriarch of the Bajaj family is, one, Mr.P.N.Bajaj. The Bajaj family apart from the father, P.N.Bajaj, comprises of Mr.Ashok Bajaj/petitioner No.1, Dhilip Bajaj and two daughters Ms.Sneha Rajpal and Ms.Prabha Talwar.

4.1. Insofar as the MOC is concerned, it is executed between the following persons/entities: The father i.e., Mr.P.N.Bajaj, the three sons, Ashok Bajaj, Dhilip Bajaj and Vivek Bajaj and one of the sister i.e., Mrs.Prabha Talwar, as also, the son and wife of Mr.Ashok Bajaj, i.e., Mr.Mohit Bajaj and Mrs. Jyothi Bajaj. Apart from the said persons, the other sister, Ms.Sneha Rajpal, has signed the agreement as a confirming party.

4.2. The two respondent companies, as indicated above, i.e., SISCO Medicals Device Private Limited (Respondent in C.P.No.325/15) and South India Surgical Company Limited (Respondent in C.P.No.326/15) are also parties to the MOC.

5. The MOC arrived at amongst the persons and entities, referred to therein, sets the contours of a global settlement, which, inter alia, dealt with various assets and liabilities.

5.1. Insofar as the captioned petitions are concerned, it is common ground that the petitioners claim is pivoted on the following two clauses of the MOC.

> ".... 6. After scaling down the value of trade debtors and stock-in-trade as well as gratuity and after adjusting certain claims due from the Exiting Group to the Continuing Group, **the net cash payment to the Exiting Group by the Continuing Group in addition to the aforesaid immovable properties has been agreed at Rs.7,00,00,000/- (Rupees seven crores only) which includes certain loans repayable and other liability payable by Continuing Group,** SISCO and SISCO Medicals to the members of the Exiting Group and SISCO Latex and also includes the salary and gratuity payable to the Exiting Group. However, the said Rs.7 crores does not take into account the issue relating to goodwill of the SISCO Group claimed by the Exiting Group.

7. **<u>The parties agree that the sum of Rs.7 crores shall be payable</u>** without any deduction for any reason whatsoever to the Exiting Group and/or Sisco Latex Pvt. Ltd. in the following manner.

a) A sum of Rs.75 lakhs shall be payable on the date of signing this Memo of Compromise.

b) In addition to the said sum of Rs.75 lakhs, the title documents of the Muttukadu property **<u>shall be handed over by the Continuing Group on the signing of this Memo of Compromise</u>** to the mediator, Mr.P.S.Raman and the said property shall be sold forthwith and the entire proceeds thereof shall be appropriated by the Exiting Group towards the above dues and the **<u>Continuing Group shall be given credit for 3/4th of the sale proceeds</u>** as against the amounts payable under this Memo of Compromise. All parties shall execute all necessary documents to give effect to the sale of the aforesaid property.

c. **<u>The balance sum shall be payable on or before 1st October, 2014 in monthly instalments which shall not be less than Rs.25 lakhs per month or 25% of the collections effected by the Continuing Group</u>** during the immediately preceding month from the trade debtors of South India Surgical Co Limited and SISCO Medical Devices Private Limited as on 30.11.2012, whichever is greater.

d. The aforesaid monthly instalments shall be tendered by post-dated cheques drawn in respect of the members of the Exiting Group proportionate to the amounts owed to them, the first of which shall be payable on 1st December, 2013 ending with the last payment on 1st October, 2014. PDC in respect of each month shall be for not less than Rs.25 lakhs. If during that month, 25% of the recoveries from trade debtors referred in sub-clause(c) supra exceeds Rs.25 lakhs, **the Continuing Group shall issue cheques for the same. For this purpose, the Continuing Group shall furnish to the Exiting Group. sundry debtors statement of SISCO and SISCO Medicals duly certified by the respective Companies.** The post dated cheques would be handed over to the mediator, Mr.P.S.Raman, who would release the relevant post dated cheques each month to the Exiting Group.

e) Depending on the quantum of payments effected in the initial instalments, the mediator shall be empowered to regulate the final payments such that the entire sum of Rs.7 crores is fully paid within the aforesaid period from the date of signing the MOC and if necessary, return the unused PDCs if any to the Continuing Group.

f. **Any failure or default by the Continuing Group to effect payment as envisaged in the above**

sub-clauses shall result in the Continuing Group paying the outstanding amounts together with interest at 18%p.a."

(emphasis is mine)

5.2. Based on the aforesaid clauses, it is argued on behalf of the petitioners that the obligations to defray the entire liability, in the sum of Rs.7 Crores, is placed, as indicated above, on not only the individuals, but also the respondent companies; whereas, the argument advanced on behalf of the respondent companies is to the contrary.

6. This apart, the record shows that the petitioners have filed a suit i.e., in Suit No.389 of 2013 for permanent injunction in which the following reliefs have been sought :

"a. **Grant a permanent injunction restraining the Second to the Fourth Defendants from acting in contravention of the terms of the Family Settlements**;

b. Grant a permanent injunction restraining the Second to the Fourth Defendants from removing the plaintiffs from the offices of Managing Directors/Directors of the First, Sixth and / or Seventh Defendants pending the complete implementation of the Family Settlements;

c. Directing that the Second to Fourth Defendants to ensure that the bank accounts of the First, Sixth and Seventh Defendants be operated in freely and without any encumbrance and interference in any manner whatsoever pending the complete implementation of the Family Settlements;

d. Directing the Second to Fourth Defendants to pay the Plaintiffs the costs of the above suit.

e. And pass such other orders in the interest of justice as this Hon'ble Court deems fit."

(emphasis is mine)

7. In the Suit filed by the petitioners, interim applications have been filed i.e., O.A.Nos.433 and 434 of 2014, in which, the petitioners have claimed the following reliefs :

"(i) ...... to issue an order of interim injunction restraining the second to the fourth defendants, or any other person acting upon their instruction from removing the applicants from the offices of Managing Directors/Directors of the First, Sixth and / or seventh respondents pending the disposal of the present suit .....

(ii) ..... to issue an order of interim mandatory injunction directing the second to the fourth defendants to take necessary steps to defreeze the bank accounts of the sixth respondent pending the disposal of this suit ....."

8. It is conceded before me by Mr. Rajagopal, learned Senior

Advocate, who appears for the petitioners, that the respondent companies are parties in the aforementioned suit filed by the petitioners.

8.1. In addition, in the very same suit, the parties have filed applications bearing No.Nos.8096 to 8098 of 2014, in which, amongst other reliefs, one of the reliefs sought is, with regard to the payment of the sums claimed in the present petitions.

8.2. For the sake of convenience the prayers made in the said application are set forth hereinbelow :

> "…. a. **Paying the Applicants forthwith a sum of Rs.3.5 crores along with interest at the rate of 18% per annum in terms of clause 7(c) and 7(f) of the MOC**;
>
> b. Releasing the personal guarantees and securities given by the Applicants in relation to Respondent No.1 Company and Respondent No.7 Company to HDFC Bank, Radhakrishnan Salai Branch and Punjab and Sind Bank, Anna Salai Branch;
>
> c. Take steps to convey to the Applicants the properties more fully set out in the MOC;"

9. Moreover, in so far as the respondent company, in C.P. No.326 of 2015 (i.e. South India Surgical Co. Ltd) is concerned, it has along with P. N Bajaj, Ashok Bajaj, Dhilip Bajaj and Vivek Bajaj filed a suit, which is, numbered as C.S.No.356 of 2014.

9.1. This suit is, a suit for damages and injunction, which is premised on the alleged infringement of the trade mark said to be owned by the plaintiff No. 1 company i.e South India Surgical Co. Ltd.

9.2. I am informed that the entire case of the plaintiffs in the suit is based on the MOC.

9.3. It is averred in the suit that the trade mark “SISCO” came to the share of plaintiff No 1 company i.e., South India Surgical Co. Ltd.

10. Based on the aforesaid, broad facts, it is argued before me by Mr.Bhaskar, learned counsel for the respondent companies, that the aforementioned company petitions are not maintainable, as parties are at lis with regard to their respective rights and obligations,

which emanate from the MOC.

10.1. On the other hand, Mr.Rajagopal, who appears for the petitioners, says that the liability of the respondent companies flows, *inter alia,* from clauses 6 and 7 of the MOC.

11. I have heard the learned counsel for the parties and perused the record.

12. As indicated above, this petition is filed under section 433 (e) and (f) of the 1956 Act.

12.1. What is, therefore, required to be examined by me, is : whether defence to the claim set up in the petition is completely untenable.

12.2. In other words, whether the defence of the respondent companies is moonshine or, illusory or, a complete sham which would not pass muster of any court.

12.3. Before I proceed further, I must note that the sense, I get after hearing the learned counsel for the parties, is that, the real grievance of the respondent companies emanates from the use of trade mark "SISCO" by the petitioners. According to the respondent companies, with the execution of the MOC, the petitioners could not have used the trademark "SISCO".

13. The petitioners on the other hand, submit that since, as per the terms of the MOC, SISCO Latex Limited came under their sway, it would be sufficient indication that the petitioners are entitled to use the trade mark "SISCO".

13.1. This apart, it is the case of the petitioners that, since, the liability to pay Rs.7 crores is of the respondent companies amongst others, as set out in clauses 6 and 7 of the MOC, the captioned petitions are viable.

14. Having considered the arguments advanced by both counsels and perused the record, I am of the view that the instant Company Petitions filed would not be viable, for the reasons that the defence set out by the respondent companies needs to be adjudicated upon before the forums, where their respective actions have been filed.

15. A perusal of clause 6 of MOC would show that they were two groups to the MOC, the “Exiting Group” and, the “Continuing Group”. Both groups comprise of individuals, the Exiting Group comprises of the three petitioners, whereas, the Continuing Group comprises of Mr.P.N Bajaj, Mr.Dhilip Bajaj and Mr.Vivek Bajaj.

15.1. According to Mr.Bhaskar, a plain reading of Clause 6 of the MOC would show that it places the liability to pay the entire amount of Rs.7 Crores on individuals, who form part of the Continuing Group and not the respondent Companies against whom, albeit, erroneously, the captioned petitions are directed. In support of his contention, Mr.Bhaskar, lays emphasis on the following words contained in Clause 6 :

> “6. .... **the net cash payment to the Exiting Group by the Continuing Group in addition to the aforesaid immovable properties has been agreed at Rs.7,00,00,000/- (Rupees seven crores only) which includes certain loans repayable and other liability payable by Continuing Group** .....”

15.2. On the other hand, it is the contention of the petitioners, that if, clause 6 is read along with clause 7, it would clearly emerge that the two respondent companies, who are parties to the MOC are also liable for payment of the entire sum of Rs.7 crores, along with the individual members of the Continuing Group.

16. This aspect is, admittedly, pending consideration in C.S.No.389 of 2013, wherein, the petitioners, in order to seek interim relief did file O.A.Nos.8096 - 8098 of 2014. By virtue of this application release of balance sum of Rs.3.5 Crores along with interest was sought. Concededly, a prayer has been made for payment of money to the petitioners, who are plaintiffs in C.S.No.389 of 2013.

16.1. Mr.Bhaskar has made grievance that the fact that such an application though filed was not disclosed in the company petition, even though, the said application was filed prior in point of time.

16.2. This aspect is not disputed by Mr.Rajagopal.

17. Insofar as I am concerned, while the lack of candour is evident, and therefore, is not appreciated, my reason for rejecting the petitions does not rest solely on that ground. The reason I am not inclined to entertain the petitions is more substantive, which is, that the contentions raised by the two sides perhaps, requires, a trial. The parties may have to lead evidence to satisfy the appropriate forum as

to the facts and circumstances which got them to agree to incorporate clauses 6 and 7 in the MOC. The defence raised is neither moonshine nor illusory as is sought to be contended on behalf of the petitioners.

18. Therefore, in my view, the company petitions cannot be sustained. They are, accordingly, dismissed. Connected, company Appln.No. 802 of 2015 is also dismissed.

19. It is, however, made clear that any observations made in the Company Petitions will not come in the way of the parties agitating their rights before the relevant forums. The observations made herein above are restricted to the captioned petitions and, set out, only, in support of the conclusions arrived at by me in the instant proceedings. Accordingly, the petitions are consigned to record.

kua 22.09.2016

RAJIV SHAKDHER,J.

kua

C.P.Nos.325 and 326 of 2015 and
Comp.A.No.802 of 2015

22.09.2016