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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CO.A(SB) 15/2014 & CAs.674, 675, 1499, 2059 of 2014, 1297, 1300, 1313, 2733, 3164 and 3165 of 2015

VIKAS PROMOTERS PVT. LTD. & ORS. ..... Appellants

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Siddharth Sharma and Mr. Aakash Lodha, Advs.

versus

SHRI ABNASH CHANDER MAHAJAN & ORS ..... Respondents

Through: Mr. Vineet Malhotra, Ms. Niti Arora and Mr. Rahul Malhotra, Advs. for R1-4.
Mr. Manish Mohan, CGSC,
Mr. Shivam Chanana, Ms. Manisha and Ms. Pooja Mishra, Advs. for R48.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

O R D E R

% **10.02.2016**

1. This is an appeal which is directed against the order dated 16.1.2014 passed by the Company Law Board (CLB). While the order passed by the CLB purports to be a final order disposing of the company petition No.110/2009, it gave liberty to the parties to apply. Company Petition 110/2009 was filed by the respondents under Sections 397 and 398 of the Companies Act, 1956.

2. The CLB, while passing the order dated 16.1.2014 passed certain operative directions which are contained in paragraph 55 of its order.

2.1 For the sake of convenience, the same are extracted hereinbelow:-

> "..55. For the reasons stated above, this Bench directs the parties as follows:-
>
> 1. The allotment of 1,42,200 shares to the respondents is held valid.
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> 2. Mr Pankaj Jain, Charted Accountant, Mobile: 98102 86606 is appointed as auditor cum valuer. I hereby direct the parties to pay remuneration as agreeable to him. The petitioners group and respondents group in proportion to their shareholding shall pay the remuneration to him.
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> 3. This Bench has observed that these Respondents diverted the funds of the company interest free to other companies, and the persons close to them, therefore R2-5 are directed to pay up the commercial interest accrued upon the loans given to the other companies until the loan amount is paid to the Bank by R-I company, as calculated by the auditor cum valuer appointed in this case. The Auditor, on inspecting the records, will calculate how much fund was given as interest free loan to other companies and others, then R2-5 shall pay up interest over the said amount until the Bank loan of R-l company cleared.
>
> 4. I hereby direct the auditor-cum-valuer to inspect the records of the company to assess as to whether the respondents in the management sell or lease out the assets of the company at undervaluation, if so, calculate the same. I hereby direct R2-5 to bring back the difference of amount undervalued to the till of the company.
>
> 5. I hereby direct the valuer to assess siphoning of the funds of the company by Respondents 2-5 in relation to the transactions and expenditure in development of the project.
>
> 8. I hereby direct the valuer to assess the value of the shares of the petitioner as on 31.3.2013 on asset-based valuation taking market value of the assets as on the dates the spaces sold out, as to remaining,·assets assess the same as on 31-3-2013 taking

> the then market rates in the vicinity in to consideration, then provide exit to the petitioners.
> 9. I hereby direct the valuer to prepare valuation report within three months from the date order is made available.
> 10. I hereby direct the respondents 2-5 to pay up the value of the shares of the petitioners in two equal instalments, 1st instalment within 3months and second instalment within six months from the .date valuation report supplied to the parties.
> 11. I hereby reiterate the order dated December 23, 2011passed by Honourable High Court of Delhi that the respondents shall not create third party rights over 20% of total saleable assets of R-1 company until full payment is made to the shares of the petitioner.
>
> 12. The parties are liberty to apply..."

3. A perusal of the directions contained in paragraph 55 would show that the aspect concerning valuation with regard to shares was left to the auditor-cum-valuer appointed for that purpose by the CLB. As per direction no. 10, the appellants herein (original respondent nos. 2 to 5) are required to pay the value of shares, so determined in two (2) instalments.

3.1 The directions issued by CLB would also show that there were aspects pertaining to diversion and/or siphoning off of funds and under valuation of assets sold/leased, which, without doubt, if found correct would impact the valuation of shares. The determination vis-a-vis these aspects are also left to the auditor.

4. The appellants, however, not being satisfied with the order dated 16.1.2014, filed the instant appeal.

5. I am told that during the pendency of the appeal the auditor submitted its

report, which is, dated 4.2.2015.

6. Since, the report of the auditor was filed with this court, the appellants file their objections, which are part of CA 1313/2015.

6.1 The said application, is also on board, today.

7. I am also informed that both the appellants and respondents have filed their objections to the auditor's report before the CLB, as well.

7.1 This apart, respondents have also sought to execute the order dated 16.1.2014 as well as the valuation report dated 4.2.2015 before the CLB. This application is numbered as CA No. 293/2015.

8. To be noted the objections filed by the respondents before the CLB to auditor-cum-valuation report are registered as CA 58/2015, while those which have been filed by the appellants before the very same forum are numbered as CA 294/2015; an aspect to which a reference has been made hereinabove.

8.1 Therefore, the position, as it obtains today, is that, the CLB is seized of the objections. As indicated, right at the outset, the CLB disposed of the Company Petition filed by the respondents herein by virtue of the impugned order and gave liberty to the parties to apply to it. This liberty is contained in paragraph 12 of the impugned order. Therefore, quite clearly, the impugned order dated 16.1.2014 cannot be said to be a final order, disposing of all the issues pending between parties.

8.2. In fact, while the first direction contained in paragraph 55 is in favour of the appellants herein, there is no final determination qua issues pertaining to diversion and/or siphoning of funds or, even under valuation of assets. Undoubtedly, final adjudication vis-a-vis these issues had to be done by the

CLB. The report of the auditor can only be a recommendation, on which, the CLB is required to deliberate.

9. In these circumstances, counsels are agreed that the appeal can be disposed of with a direction to the CLB, to first, dispose of the objections to the audit-cum-valuation report dated 4.2.2015 raised by the appellants and the respondents herein via their respective applications filed before it. It is ordered accordingly.

9.1 As indicated above, the objections raised by the appellants are contained in CA 294/2015, while those filed by the respondents are contained in CA 58/2015. Once the CLB decides the tenability of the objections raised by both sides, it will then proceed to the next step, if necessary, which is, that, it would then deliberate upon the execution application C.A.293/2011 filed by the respondents to enforce the order dated 16.01.2014.

9.2. In case, either the appellants or the respondents are aggrieved with the order passed on their respective objections, they would then have liberty to take recourse to an appropriate remedy, albeit, in accordance with law.

10. The appeal is disposed of with the aforesaid directions.

11. Accordingly, all pending applications are also disposed of.

12. At this stage, Mr. Krishnan points out that there were certain applications which, when the order dated 16.1.2014 was passed, were not adjudicated upon by the CLB. For that purpose, he draws my attention to paragraph 56 of the very same order.

13. In these circumstances, CLB is requested to take up all other pending applications as well, after, as indicated above, it disposes of the objections filed

before it.

14. Needless to say, the CLB will decide the objections with due expedition, though not later than three months.

RAJIV SHAKDHER, J

FEBRUARY 10, 2016
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