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

% *Date of Decision : September 05, 2016*

+ **FAO (OS) COMM 59/2016**

RITIKA AWASTYAppellant

Represented by: Mr.Jaspal Singh, Advocate

versus

HASSAD NETHERLANDS BV & ORS.Respondents

Represented by: Mr.Samar Kachwaha, Advocate
with Mr.Ashok Sagar and
Mr.Suryadeep Singh, Advocates
for R-1 and R-2

CORAM:

HON'BLE MR.JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J. (Oral)

Caveat No.685/2016

Since counsel as above appears for the caveator, the caveat is discharged.

CM No.28001/2016

Allowed subject to just exceptions.

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1. Objections filed by the appellant to the award dated May 31, 2016 have been dismissed by the learned Single Judge vide impugned order dated July 21, 2016.

2. Ritika Awasty : the appellant, and her husband : Virkaran Awasty respondent No.3, incorporated a company Bush Foods Overseas Pvt. Ltd. (hereinafter referred to as 'Bush Foods') in the year 2005 under the
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Companies Act, 1956. Virkaran Awasty held 98.16% shares in the Company at the time of its incorporation and also was its Managing Director and Chief Executive Officer. Ritika Awasty held 1.84% of the shares in the Company and was its Director.

3. Hassad Netherlands B.V. and Hassad Food Company : respondent Nos.1 and 2 respectively, are companies based in Netherlands. Respondent No.1 is a wholly owned subsidiary of respondent No.2 and was registered as a special purpose vehicle by respondent No.2.

4. The undisputed facts are that vide an agreement dated March 30, 2011, Standard Chartered Private Equity (Mauritius) II Ltd and Standard Chartered Private Equity (Mauritius) III Ltd, investment companies based in Mauritius, purchased 29% shares of Bush Foods, with Virkaran Awasty holding 69.63% and Ritika Awasty holding 1.37% shares of Bush Foods.

5. In March 2013, respondent No.1 executed various 'transaction documents' with respondent No.3, the appellant and Bush Foods, resulting in an investment of US\$ 120.35 million and acquisition by it of 69.5% shares in Bush Foods. Respondent No.2 also furnished a corporate guarantee to a bank consortium securitizing 70% of the loans availed by Bush Foods.

6. Briefly noted, the aforesaid transaction documents were :

i) A share purchase agreement dated March 09, 2013 which was executed between respondent No.2, the appellant and respondent No.3 vide which the appellant sold 1.37% of the shares held by her in Bush Foods to the respondent No.1 and the respondent No.3 sold 39.13% of the shares held by him in Bush Foods to respondent No.2 for a sum of US\$ 47,737,768

- ii) An existing share purchase agreement vide which Standard Chartered Private Equity (Mauritius) II Ltd and Standard Chartered Private Equity (Mauritius) III Ltd (SCPE) sold 29% shares held by them in Bush Foods to respondent No.1 for a sum of US\$ 50,486,815
- iii) A share subscription agreement dated March 28, 2013 for purchase of additional shares in Bush Foods for a sum of US\$ 22,130,200 by respondent No.1
- iv) A shareholders' agreement dated March 28, 2013 vide which the respondent Nos.1 and 2, inter-alia, agreed to retain respondent No.3 as the Managing Director-cum-CEO of Bush Foods
- v) A letter agreement dated March 28, 2013 vide which respondent No.2 agreed to give guarantee for 70% of Bush Foods' debts to a consortium of banks.

7. It is the claim of respondent Nos.1 and 2 that they were induced under false and misleading representations into making investment in Bush Foods and allege that at the time of the transaction Bush Foods was represented to be a financially stable company. In reality, Bush Foods was on the verge of bankruptcy and the respondent Nos.1 and 2 lost their entire investment in sum of US\$ 120.35 million and further suffered loss of ₹441.68 crores plus US\$ 8.14 million on account of invocation of the corporate guarantee furnished towards loans obtained by Bush Foods from a bank consortium.

8. Respondent Nos.1 and 2 initiated arbitration proceedings before LCIA India, invoking the arbitration clause in the agreement simultaneously and jointly in respect of the all the transaction documents, claiming reliefs on account of fraud, misrepresentation and tortious deceit by the appellant and respondent No.3.

9. Vide its award dated May 31, 2016 the Arbitral Tribunal declared the share purchase agreement dated March 09, 2013 void under Section 19(1) of the Indian Contract Act, 1872 and awarded damages to respondent Nos.1 and 2 in the sum of US\$ 284,943.83 and US\$ 2,171,951.86, with interest @ 12% per annum from the date of the award to the date of payment with liability fastened upon the appellant and respondent No.3 jointly and severally.

10. From a perusal of the impugned judgment dated July 21, 2016 it is apparent that before the learned Single Judge, the appellant firstly contended that the impugned award was without jurisdiction because it had been delivered beyond the stipulated period of three months from the date of the constitution of the Arbitral Tribunal under Clause 10.14.2 of the share purchase agreement.

11. The learned Single Judge has rejected the said contention and has held that vide Clause 10.14.2 of the share purchase agreement the parties had also agreed that the arbitration proceedings shall be governed by the LCIA Rules and Article 4.7 of the said Rules empowers the Arbitral Tribunal to extend any period of time prescribed under the arbitration agreement for conduct of the arbitration.

12. Same contention concerning jurisdiction as was urged before the learned Single Judge has been urged in the appeal and we reject the same for the reason given by the learned Single Judge which is sound and we need not re-pen the same.

13. The second contention was that the role of the appellant in Bush Foods was passive and she had no role to play in the operation and management of Bush Foods, including any representations made to investors. The appellant contends that she was party to only the share purchase agreement dated March 03, 2013 and not to the other transaction

documents relating to acquisition of shares by the respondent Nos.1 and 2 in Bush Foods. The appellant relies on Article 22.1(g) of the LCIA Rules to contend that her consent had not been obtained before she was impleaded in the joint arbitration proceedings.

14. Upholding the view taken by the Arbitral Tribunal, the learned Single Judge has referred to Clause 2.4 of the share purchase agreement which, inter-alia, provides for ‘promoters acknowledgement’ of entry of purchasers into the agreement as also clause 7 of the agreement which mentions about ‘representations and warranties’ made by the promoters to the purchasers and has concluded that by virtue of being a promoter of Bush Foods and being undisputedly a party to the share purchase agreement the appellant would be liable for any misrepresentations made in the agreement. The learned Single Judge has further agreed with the Arbitral Tribunal wherein it has been held that even though the agreement had been signed by her husband : respondent No.3, but it was on the strength of a power of attorney executed by the appellant in his favour and thus the appellant would be liable for the acts done under her authorization. The learned Single Judge has held that reliance on Article 22.1(g) of the LCIA Rules by the appellant was misplaced since it is applicable only where persons who are not parties to the arbitration agreement are sought to be joined as parties. Once again agreeing with the Arbitral Tribunal, the learned Single Judge has referred to Clause 1.1 of the share purchase agreement which defined ‘transaction documents’ to include *‘this Agreement, the Shareholders Agreement, the Subscription Agreement, the Exiting Investor SPA, the Disclosure Letter, the Employment Agreement and all other agreements contemplated by this Agreement or the Shareholders Agreement to be entered into by the Parties or any of them on the Execution Date or upon or prior to*

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Completion', and has held that that no further consent of the appellant was required to be joined as a party to the arbitration proceedings governing disputes arising out of all the transaction documents.

15. Same contentions which were advanced before the learned Single Judge have been advanced before us and all we have to say is that the view taken by the learned Arbitral Tribunal and as affirmed by the learned Single Judge cannot be faulted. We are not to sit in appeal and re-appreciate each and every contention advanced. It would suffice if we note the factual backdrop, the determination in the award and the reason given by the learned Single Judge and conclude by holding that the contention does not fall within the sweep of Section 34 of the Arbitration and Conciliation Act, 1996 warranting any interference with the award on said aspect.

16. It was lastly urged by the appellant before the learned Single Judge that in any event the appellant could only be held liable to the extent of shares held by her in Bush Foods, (which was only 1.37%) and further that she could not be held liable for the consideration received by respondent No.3 for sale of his shares in Bush Foods.

17. The learned Single Judge has noted that admittedly the appellant was a party to the share purchase agreement dated March 09, 2013 and has held that therefore she would be bound by the representations, warranties and indemnities as expressly made under the said agreement and has thus rejected the aforesaid contention. The learned Single Judge also rejected the contention that the appellant had only received US\$ 1,787,379 as consideration for the shares sold and, therefore, the impugned award was excessive and unsustainable because the amount awarded against the appellant was not for refund of the consideration

received by her but the loss/damage suffered by the respondent Nos.1 and 2; a finding with which we agree.

18. As regards the contention that there is a positive finding in favour of the appellant in para 99 of the award that the appellant had not played an active role concerning the misrepresentations and warranty breaches, held established against her husband and therefore the award is perverse, we simply note that as noted above the liability fastened upon the appellant is on account of the power of attorney executed by the appellant in favour of her husband who made the false representations. In paragraph 100 of the award the Arbitral Tribunal has referred to Section 238 of the Indian Contract Act, 1872 which fastens liability upon the principle for frauds committed by the agent.

19. All contentions advanced have been recorded by the learned Single Judge and we have summarized the same as above with the factual backdrop and the reasoning by the learned Single Judge and for the principle of law extracted by us in para 15 above, we hold that none of the contentions merit an interference with the award dated May 31, 2016.

20. The appeal is dismissed in limine but without any order as to costs.

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Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

SEPTEMBER 05, 2016

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