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

+ **CO.A(SB) 56/2014 & CA 369/2016**

DR. RAJ KACHROO Appellant

Through: Petitioner in person.

versus

D.S.M. HEALTHCARE PVT. LTD. & ANR. Respondents

Through: Mr. Neeraj Sharma and Ms. Archana
Lakhotia, Advs. for R2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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08.02.2016

1. This is an appeal against order dated 2.9.2014. The impugned order has been passed by the Company Law Board (CLB). The impugned order came to be passed in an execution application filed by the appellant, being: Execution Application No.47/2013.

2. The record shows that prior to the present proceedings, the parties had approached this court in an earlier round. At that juncture, the appellant had challenged order dated 21.12.2006, passed in Company Petition No.76/2004. The order dated 21.12.2006 was also passed by the CLB. Vide order dated 21.12.2006, inter alia, the following operative directions were passed by the CLB:-

“....Considering the fact that the company remains (sic) closed for over two years and that the machinery stand relocated and that the respondents have offered to hand over the company along with the machinery to the petitioners without any consideration, the petitioner may chose the

option of either taking the ownership/control of the company or file a petition for winding up of the company. No other relief can be granted in the facts of the case like asking the 2nd respondent to pay back the investments made by the petitioner as in a business venture, one has to take a risk and in the present case, both the sides appear to have lost their investment.....”

3. By order dated 21.12.2006, the CLB had disposed of the company petition. Inter alia, the CLB had given an option to the appellant herein to take over the ownership/control of the said company, i.e. D.S.M. Healthcare Pvt. Ltd. or, in the alternative, file a winding up petition qua the said company.

4. It is the appellant who had, thereafter, filed an application before the CLB being: CA 152/2007. This application was filed by the appellant on 1.3.2007. The said application came to be disposed of by order dated 3.9.2007.

5. The operative directions contained in this order are extracted hereafter for the sake of convenience:-

“....During the hearing held on 28.8.2007, the counsel appearing for the parties reiterated their stands in the application/reply. In my order dated 21.12.2006, I gave the option to the petitioner to take over the ownership and control of the company only because the respondents had agreed to hand over the company along with machinery without any consideration. When a person takes over the ownership/control of a company, he not only takes over the assets but also the liabilities. From the letters of the petitioners dated 1.1.2007 and 27.1.2007 (the receipt of which is denied by the respondents), I find that the petitioners had only sought for handing over of the machinery and documents with a list of machines and office equipments. There is no indication in these letters

that they would take over the company as a whole including the liabilities. Since the respondents have given personal guarantees, the petitioners should have also agreed to replace the personal guarantees of the respondents. These two letters do not talk of personal guarantees or taking over of liabilities. From the list of payments made by respondents, I find that in addition to Rs.16 lacs paid to the bank as an one time settlement, the respondents have also made payments before and after the order of this Board dated 21.12.2006. In so far as the payments made before the said, the respondents cannot make any claim on the petitioners as the petitioners were to take over the management and control of the company as on the date of the said order. In so far as the liabilities cleared by the respondents after the date of the said order is concerned, the petitioners, in case they desire to take over the ownership and control of the company, are bound to reimburse the respondents especially since the company has not been functioning since long and all the payments have been out of their personal funds of the respondents. In view of this, if the petitioners are still interested in taking over the control of the company, they should reimburse the respondents of all the amounts that they have brought in for discharging the liabilities of the company after the order dated 21.12.2006. The petitioners should communicate their decision to the respondents within 15 days from the date of this order whether they are prepared to reimburse the respondents of all amount brought in by them for discharging the liabilities of the company after 21.12.2006 and also take over the assets and liabilities as on date indicating the time schedule within which they would reimburse. In case they do so, the respondents should hand over the complete control and management of the company to the petitioners. In case, the petitioners are not interested in doing so, then nothing survives in the application and they may seek for winding up of the company.

The application is disposed of in the above terms....”
(emphasis is mine)

6. Aggrieved by the said order, the appellant preferred an appeal to this court, as indicated above, which was numbered as Company Appeal (SB) 43/2007. The record shows that on the very first date, the appellant was able to persuade this court to issue notice and stay the order dated 3.9.2007 passed by the CLB on his execution application. At that juncture, the appellant had raised, it is submitted inter alia, an issue of law, which was, that the CLB could not have, vide order dated 3.9.2007, passed in a contempt petition, an order which modified the order dated 21.12.2006.
7. It appears that while the appeal was pending, the then learned Single Judge of this court attempted to have the matter resolved. In support of this contention, the appellant, who appears in person, has drawn my attention to the order dated 24.8.2009 and 24.8.2010, passed by the learned Single Judge. A reading of the order would show that the matter was also referred to Delhi High Court Mediation and Conciliation Centre.
8. Evidently, the attempted mediation, failed. The said appeal, i.e. Company Appeal (SB) 43/2007, came to be disposed of, on 26.7.2012.
9. The learned Single Judge passed a detailed order dismissing the said appeal.
10. The appellant, instead of carrying the matter further by way of an appeal to a superior court, rested with the order dated 26.7.2012.
11. It is in this background that the appellant moved the CLB, once again, by way of an execution application.
12. In sum, the appellant contended both before the CLB and before me that the order dated 3.9.2007 ought to be enforced as he had exercised his

option within two days of having received a certified copy of the order dated 26.7.2012. The CLB, however, by virtue of the impugned order dismissed the execution application.

13. The appellant before me, as indicated above, has contended likewise. It is his submission that on, the order dated 26.7.2012, having being passed, he had immediately, applied for issuance of a certified copy on the very next date, i.e. on 27.7.2012 and, on having received a certified copy on 14.8.2012, he exercised, his option on 16.08.2012.

14. It is, therefore, the appellant's contention that he had within the fifteen-day window-period exercised the option, granted by the CLB. The apparent delay was sought to be explained by the appellant by putting forth the fact that there was a stay operating qua the order dated 3.9.2007, and hence, he could not have exercised the option prior to the disposal of the appeal and receipt of the certified copy of the order.

14.1 The CLB, as indicated above, vide the impugned order has rejected the contention of the appellant that he had exercised the option granted within the fifteen days period granted to him. The relevant observations made in the CLB's order are called out hereafter:

“...6. After hearing the Ld Counsel for the parties, I find merit in the contention of the Ld. Counsel for the Respondents. In view of the fact that Shri Rohan Thawani, Ld. Counsel of the petitioner was present before the Company Law board on the date of the order dated 3.9.2007 passed in CA 152/2007, and before the High Court of Delhi on 26.7.2012 i.e. the date of the order dismissing the appeal, the knowledge thereof on such dates to the petitioner can safely be attributed. Similarly, since the order dated 26.7.2012 passed by the High Court of Delhi was an oral order dictated in open

Court, the knowledge of such order must be attributed to the petitioner on the same day in view of the fact that Shri Rohan Thawani, Counsel for the petitioner, was present before the High Court on the date of such order and represented the petitioner from the very beginning till date. Since no appeal was preferred by the Petitioner against the order dated 26.7.2012, the date when he received a certified copy of the said order loses (sic) significance. Therefore, in any case, the exercise of option on 16.8.2012 by the petitioner, Dr. Raj Kachroo, was beyond the period of 15 days contemplated by the order dated 3.9.2007. Therefore, it must be held that the petitioner, having failed to exercise the option within 15 days from the date of the order dated 3.9.2007 and in the worst case scenario from 26.7.2012 i.e. the date of the final order passed by the High Court of Delhi in Appeal, is not entitled to any relief.

Accordingly, the Execution Application No. 47/2013 is dismissed.....”

16. Having heard the appellant, according to me, what is standing in his way is the order dated 26.7.2012. The appellant having not carried the matter further, he would have to rest with the observations and findings made in that order. The appellant’s contention, however, being that he wants the implementation of the order dated 3.9.2007, and that, the fifteen days period granted to him to exercise the option, as provided therein, was available to him, in my view, is a submission which is, untenable, given the fact that the appellant had obtained a stay qua the said order, on 20.11.2007. To my mind, it was always open to the appellant to approach the court at any point in time for vacation of the stay and/or disposal of the appeal rather than rest his fate with the order dated 3.9.2007. Apart from anything else, much time has passed and since then, the respondent, appears to have

changed his position. In fact, there is a criminal proceeding, I am told, also pending in the matter qua which respondent No.2, i.e. Sumeer Misri had to approach this court by way of a proceeding under Section 482 of the Cr.P.C. I need not comment on the said proceeding, as it is not before me. This fact is being noted only to highlight the fact that there is much bad blood between the parties.

17. Having heard the submissions of both sides, I am of the view that no interference is called for qua the impugned order passed by the CLB.

18. Accordingly, the appeal is dismissed.

RAJIV SHAKDHER, J

FEBRUARY 08, 2016

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