IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2017

Coram

THE HON'BLE MR.JUSTICE RAJIV SHAKDHER
&
THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

O.S.A.Nos.319 to 321 of 2017

and C.M.P.Nos.19853 to 19855 of 2017

Ind Barath Thermal Power Limited
Rep. By its Managing Director
Having its registered office at
No.20, Chamiers Road
Nandanam, Chennai 600 035. ... Appellant in all O.S.As'

Vs.

1.Trimex Industries Pvt. Ltd.,
Rep. By its Vice President- Legal
Mr.S.Sudhakaran
Trimex Towers, No.1,
Subbaraya Avenue
CP Ramaswamy Road
Alwarpet, Chennai 600 018. ... 1st respondent in O.S.A.No.319/2017

2.Millemnium Steels India Pvt. Ltd
Rep. By its Managing Director
Mr.D.Hari Prasad Reddy
No.98, Halls Road, 3rd Floor,
Kilpauk, Chennai - 600 010. ... 1st respondent in O.S.A.No.320/2017

3.Black Burn Fuels Pvt. Limited
Formerly known as M/s.Maheswari Brothers
Coal Limited
Rep. By its Director and authorised Signatory
Mr.D.Hari Prasad Reddy
No.7, Temple Street, New Avadi Road,
Kilpauk, Chennai - 600 010. ... 1st respondent in O.S.A.No.321/2017

4.Star Thermal Power Private Limited
Rep. By its Director
Having Registered office at
Old No.3, New No.5,
Brahamdambal Street,
Nungambakkam, Chennai 600 034. ... 2nd Respondent in all O.S.As'

Appeals filed under Order XXXVI Rule I of the O.S.Rules, against the order dated 07.11.2017 made in O.A.No.1110 of 2017 in C.S.No.303 of 2017, O.A.No.1111 of 2017 in C.S.No.401 of 2017 and O.A.No.1112 of 2017 in C.S.No.403 of 2017 respectively.

For Appellant (In all O.S.As') : Mr.Anirudh Krishnan

For 1st respondent (In O.S.A.No.319/2017) : Mr.T.V.Ramanujam, S.C. for M/s.AAV Partners

For 1st respondent (In O.S.A.No.320/2017) : Mr.P.H.Aravind Pandian, S.C. for M/s.AAV Partners

For 1st respondent (In O.S.A.No.321/2017) : Mr.R.Krishnamoorthy, S.C. for M/s.AAV Partners

COMMON JUDGMENT

(Judgment of the Court was delivered by RAJIV SHAKDHER, J)

1. These are the appeals preferred against the interim orders of even date, i.e., 07.11.2017, passed by the learned Single Judge in O.A.No.1110 of 2017, filed in C.S.No.303 of 2017, O.A.No.1111 of 2017, preferred in C.S.No.401 of 2017, and O.A.No.1112 of 2017, filed in C.S.No.403 of 2017 respectively.

2. The prayer made, in effect, is common to all applications and reads as follows:

> "... to pass an order of interim injunction restraining the 1st respondent, its Shareholders/Directors from dealing with the movable and immovable assets of the 1st respondent including the shares of the 1st respondent either to the 2nd respondent or any other entity/persons pending disposal of the suit..."

3. To be noted, while the appellant has no difficulty with the first part of the prayer, its objection is to the second

part of the prayer, whereby, in effect, respondent No.1 is injuncted from, dealing with its own shares.

4. Briefly, it may be noted that respondent No.1, has filed suits for recovery of money against the appellant.

5. Respondent No.2 has entered into a transaction of transfer of shares with the shareholders of the appellant.

6. During the pendency of the suits, the garnishee, that is, TANGEDCO has deposited, we are told, the following sums of money; on the dates given hereafter:

(i) Rs.28.46 crores to the credit of C.S.No.303 of 2017, on 11.07.2017.

(ii) Rs.39.94 crores to the credit of C.S.No.401 of 2017, on 06.11.2017

(iii) Rs.24.45 crores to the creid to C.S.No.403 of 2017, on 06.11.2017.

7. Learned Single Judge via the impugned order has, in effect, stayed the registration of transfer of shares by the shareholders of the appellant in favour of respondent No.2. According to us, the creditors of the appellant that is, the plaintiffs in various suits can only seek enforcement of money decrees, if any, obtained by them only against the assets of the appellant.

8. Mr.T.V.Ramanujam, Mr.Aravindpandiyan and Mr.Krishnamoorthy, learned Senior Advocates, who appear for the contesting respondents in the captioned appeals concede that there is no averment in the plaint that the promoter Directors of the appellant have defalcated funds or, that, the corporate veil of the appellant should be lifted.

9. In these circumstances, according to us, prima facie, the injunction granted via the impugned judgment and order is against the principle of law that a company is a juridical entity separate and distinct from its shareholders.

9.1. In this connection, regard may be had to the following observations of the Supreme Court in Bacha F.Guzdar Vs. Commissioner of Income Tax (AIR 1955 SC 74):

> "7. It was argued by Mr Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest [8 Tax Cases, p 704 at 710] that an investor buys in the first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also buys the right to participate in any profits which the company

may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder vis-a-vis the company was explained in the Sholapur Mills Case [(1950) SCR 869, 904] . That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the, sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act (12th Edn.), p. 894 where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the Question 1s to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up but not in the assets as a whole as Lord Anderson puts it.

8.xxxxx

9. It was argued that the position of shareholders in a company is analogous to that of partners inter se. This analogy is wholly inaccurate. Partnership is merely an association of persons for carrying on the business of partnership and in law the firm name is a compendious method of describing the partners. Such is, however, not the case of a company which stands as a separate juristic entity distinct from the shareholders. In Halsbury's Laws of England, Vol. 6 (3rd Edn.), p. 234, the law regarding the attributes of shares is thus stated:

> "A share is a right to a specified amount of the share capital of a company carrying with it certain rights and liabilities while the company is a going concern and in its winding up. The shares or other interest of any member in a company are personal estate transferable in the manner provided by its articles, and are not of the nature of real estate."

> 10. In Borland's Trustee v. Steel Brothers & Co. Ltd. [LR (1901) 1 Ch 279] Farwell J. held that "a share in a company cannot properly be likened to a sum of money settled upon and subject to executory limitations to arise in the future; it is rather to be regarded as the interest of the shareholder in the company, measured, for the purposes of liability and dividend, by a sum of money …".....'' (emphasis is ours)

10. Accordingly, we were inclined to stay the impugned order and allow the learned Single Judge to dispose of the applications on merit. However, when we indicated this to the learned counsels for the contesting respondents, they submitted that the impugned orders be set aside and the appeals be disposed with liberty given to them to take recourse to an appropriate remedy, albeit, before the learned Single Judge and, in addition thereto, keep open their right to agitate their respective stands in the pending applications.

11. Accordingly, the impugned orders are set aside. The appeals are disposed of. The learned Single Judge, as indicated above, will adjudicate upon the applications. Liberty is also granted to the contesting respondents to take recourse to an appropriate remedy, albeit, in accordance with law and to profess their respective stand in the pending applications. Consequently, connected pending applications shall stand closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To
The Sub Assistant Registrar,
Original Side, High Court,
Madras.

+ 3 cc to Mr.Anirudh Krishnan Advocate,SR.82282,82281,82280

+ 3 cc to M/s.AAV Partners Advocate,SR.82602,82601,82600

O.S.A.Nos.319 to 321 of 2017
and C.M.P.Nos.19853 to 19855 of 2017

NRI(CO)
NR 27/11/2017