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

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Judgment Pronounced on: 10.12.2018

+ CO.A(SB) 20/2013

NEERU KAPOOR

..... Appellant

Through Ms.Maneesha Dhir, Mr.K.P.S.Kohli,
Mr.Rakesh Wadhwa & Ms.Hancy
Wadhwa, Advocates

versus

M/S BLUE STAR INFOTECH PVT LTD & ORS Respondents

Through Mr.Arvind Sah, Advocate

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This appeal is filed seeking to impugn the order dated 21.01.2013 of the Company Law Board (CLB) whereby the proceedings in the company petition filed by the appellant under Section 397 and 398 of the Companies Act, 1956 were stayed under Section 10 CPC on account of the suit also filed by the appellant. The application filed by the appellant seeking interim orders was disposed of not granting any interim relief to the appellant.

2. Some of the relevant facts as stated by the appellant that the appellant and respondent No.2 have known each other for more than two decades. They entered into various businesses together. They also started respondent No.1 company in the year 2005 for carrying on business of laying telecommunication optical fiber cables, business of outsourcing and other business relating to information technology. The registered office of the

company was in Delhi and the two became Directors with 50% each shareholding in the company. Over a period of time differences cropped up between them. In August 2011 to avoid differences they discontinued the relationship. As per the understanding arrived at they agreed to partition/transfer the assets and liabilities of respondent No.1, an MOU dated 9.11.2011 was prepared. The properties in Uttam Nagar and Pitam Pura were to be exchanged. Giving effect to the understanding the appellant executed a sale deed on 8.11.2011 in favour of respondent No.2 transferring the properties in Uttam Nagar. The grievance of the appellant is that respondent No.2 failed to register the sale deed of the Pitampura properties in favour of the appellant. The appellant also pleads that respondent No.2 has forged her signatures on the documents. Allegations of siphoning of funds from the respondent No.1 company has also been made. It is also urged that Board Resolution and resignation letter of the appellant from the Board of Directors were also allegedly forged by respondent No.2.

3. The respondent No.2 has refuted the contentions of the appellant. He has pleaded that in terms of the MOU executed between the parties on 8/9.11.2011 the ownership and management of respondent No.1 company stands vested with the said respondents w.e.f. 15.8.2011. Further, the appellant herself handed over banking operations of respondent No.1 company to the respondent on 17.8.2011 in a Board Meeting that was held which was chaired by the appellant and a Board resolution was passed to open two new current accounts. The appellant has also herself relied upon the MOU dated 8/9.11.2011 before various authorities including BSNL Jalandhar, Registrar, West District, Ram Pur, Delhi etc. The appellant also tendered her resignation from the Board of Directors vide letter dated

8.11.2011 and also executed the Board resolution for induction of Mrs.Shanti Talwar as a Director in her place.

4. Based on the above allegations, the appellant filed a suit before this court for declaration, permanent injunction and rendition of accounts and mandatory injunction being CS(OS) 1632/2012. In the plaint various reliefs were sought including a decree of declaration declaring the unsigned MOU dated 09.11.2011 as rescinded, injunction to restrain respondent No.2 from creating third party interest in the Uttam Nagar property and Pitam Pura property. Various other reliefs were also sought. The suit was filed in May 2012 and is pending adjudication.

Thereafter the appellant has filed the company petition under Sections 397 and 398 read with Sections 235, 402 and 403 of the Companies Act, 1956 seeking the relief of permanent injunction to restrain respondent No. 2 from interfering, disturbing and changing the existing equal shareholdings in the Board of Directors of respondent No. 1 Company or from dealing with the assets of the said company. Mandatory injunction was also sought to direct respondent No. 2 to refund the money siphoned off by him. The petition was filed sometimes in June 2012.

5. The learned Tribunal by the impugned order notes that the appellant has transferred the management of the respondent No. 1 Company to respondent No. 2 and has also transferred property in furtherance of the MOU though she has not signed the original MOU. It also holds that the issues in the Company petition do not emanate from the conduct of respondent No. 2 administering the affairs of respondent No. 1 Company but appear to have started as the terms of MOU have not been carried out as agreed upon by respondent No.2. The learned Tribunal took the view that

though the reliefs in the suit and the company petition may be different but the subject matter of the suit and the company petition are identical. It also holds that if CLB were to exercise jurisdiction, it would bring one court's order in conflict with another court's order. The order further holds that the acts alleged to have been conducted by respondent No.2 would have to be viewed whether such acts happened pursuant to the MOU or were on account of oppressive acts done by respondent No. 2 to cause prejudice to the appellant and the Company. If latter was to follow, then the case would fall under the ambit of Sections 397 and 398 of the Companies Act. If former was to follow, then the appellant would not be entitled to any relief sought as the conduct of the respondent would be based on the MOU entered into and acted upon. Accordingly, the CLB noted that the subject matter of the company petition is the same as that of the suit and stayed the proceedings before the CLB under Section 10 CPC.

6. I have heard learned counsel for the parties.

7. Learned counsel for the appellant has vehemently argued that Section 10 CPC is not applicable to CLB. She further submits that there is no identity of the reliefs sought by the appellant before the CLB and before this court in the suit. She reiterates that respondent No. 2 is guilty of having committed fraud on the appellant, he has been in judicial custody for some time on account of criminal case filed by the appellant, he has forged documents for which an FSL report is awaited. She further relies upon the judgment of the Andhra Pradesh High Court in the case of ***RDF Power Projects Ltd. & Ors. Vs. M.Muralikrishna & Ors., (2004) SCC Online AP 692*** to contend that Section 10 CPC would have no application to CLB.

8. Learned counsel for the respondent has reiterated about the applicability of Section 10 CPC. He relies upon the judgment of the Madras High Court in the case of *M.S.D.Chandrasekar Raja vs. Jay Bharath Textiles (P) Ltd., (2014) 2 Comp. L.J. 145 (Mad.)*.

9. The issue that arises is as to whether the CLB can pass orders under Section 10 CPC as has been done in the present case.

10. I may note that the Supreme Court in *National Institute of Mental Health and Neuro Sciences vs. C. Parameshwara, AIR 2005 SC 242* has held that normally, Section 10 is referable to a suit instituted in a civil court and would not apply to proceeding of other nature instituted under any other statute. The Supreme Court held as follows:-

“8. The object underlying Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the -same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two Courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil Court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res-judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly and substantially in issue" are used in contra-distinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning

thereby, that the whole of subject matter in both the proceedings is identical.”

11. The Calcutta High Court in *Anup Agarwalla & Ors. vs. Castron Mining Ltd. & Ors.*, (2012) 111 CLA 405 (Cal) on the issue held as follows:-

“1. This appeal has been filed by Anup Agarwalla and his group from the order dated 17th April, 2009 passed by the Company Law Board (CLB). Sections 397 and 398 proceedings were filed by the appellant before the CLB on grounds of oppression. An interim order was passed on 8.5.2007 restraining the respondents from using the name of the Company or acting on its behalf. On an application for vacating the interim order the proceedings before the CLB has been stayed till disposal of the Title Suit filed in Alipore Court. The interim order dated 8.5.2007 although extended it is stay of the CLB proceedings by which the appellants are aggrieved. As mere filing of the suit cannot be a ground for stay of the proceedings under Sections 397 and 398 of the Companies Act, therefore the CLB ought not to have stayed its proceedings, especially as there is no prospect of the suit filed being decided as till date no writ of summons has been served. Section 397 read with Section 402 of the Companies Act expands the jurisdiction of the CLB and therefore reliefs though not prayed can also be granted to the Company by CLB. The proceedings before the CLB is not in abuse of process of law. The stay granted is under Section 10 of the CPC which does not empower the Tribunal to stay its proceedings as Section 10 is not to apply to Tribunals. Therefore the first question that arises for consideration is the competence of the CLB to stay its proceedings. It has been held in the order dated 17th April, 2009 that the proceedings before the CLB is maintainable though the same has been stayed till the disposal of the Title Suit filed before the Alipore Court. By virtue of Section 10 of the CPC trial of a suit can be stayed but as the requisites of Section 10 has not been satisfied therefore the proceedings before the CLB could not have been stayed and the reason for staying the proceedings is based on an incorrect conclusion. The identity must be

complete as also the subject matter and the parties. In the Title Suit, there are 150 defendants, therefore for lack of identity of subject matter or parties as held in AIR 1985 Cal. 154 there has been illegal exercise of powers as the CLB has indefinitely stayed the proceedings filed before it. A question of law has arisen and therefore this appeal under Section 10 of the 1956 Act is maintainable. When the conditions of Section 10 is not fulfilled, there can be no stay as Section 151 is not to apply as held in AIR 1962 SC 527 and CLB could not have stayed its proceedings.

12. The Madras High Court has in this context in ***M.S.D.Chandrasekar Raja vs. Jay Bharath Textiles (P) Ltd.(supra)*** held as follows:-

“71. Therefore, it is clear that even where some of the principles enshrined in the Code of Civil Procedure are specifically excluded in their application to certain proceedings, the Courts have always made analogous principles applicable to those proceedings, if the foundation of those principles could be traced to public policy. Keeping this in mind, if we have a look once again at section 4(1) of the Code of Civil Procedure, (to which I have already made a reference in paragraph-above) it will be clear that the provisions of the Code do not limit or otherwise affect any special or local law or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law.

....

73. Therefore, I hold on the 2nd question of law that the power under regulation 44 of the CLB (Regulations) 1991, would include a power to stay its own proceedings pending the adjudication of a dispute in a previously instituted suit. This is due to the fact that one test for the applicability of Section 10 of the Code is whether or not, the final decision in the previous suit would operate as res judicata in the subsequent suit. Therefore, if principles analogous to res judicata could be applied to proceedings to which CPC would not apply, then on the same

analogy, the principles upon which the power under Section 10 of the Code is based, could also be invoked by the Tribunals, to which CPC would not apply. The absence in the Company Law Board Regulations 1991, of a provision similar to Section 10 of the Code, is not an indication of the restrictive nature of the inherent power under Regulation 44. The inherent power under Regulation 44 encompasses within itself, a power to do something, which finds an expression in specific terms in Section 10 of the Code.”

13. As per the above the judgment of the Madras High Court, there may arise situations where on account of a prior pending civil suit between the parties it may be necessary to stay the proceedings of the petition under section 397 and 398 of the Companies Act, 1956. On account of identity of parties and commonality of facts to avoid conflicting judgments the CLB could exercise this power under its inherent powers under Regulation 44.

14. Regulation 44 of the Companies Law Board Regulations reads as follows:-

“44. Saving of inherent power of the Bench - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.”

15. The above has been followed by the Company Law Board in *Dr.Mrs. Mrunalini Devi Puar and Anr. vs. Gaekwad Investment Corporation Pvt. Ltd. & Ors.*, MANU/CL/0008/1995. The CLB their held that it is well settled law that judicial authorities should avoid situations which may ultimately lead to conflicting decision and the provisions of Regulation 44 of the Company Law Board Regulations would empower a tribunal to pass orders akin to Section 10 CPC.

16. Learned counsel appearing for the appellant has strenuously relied upon the judgment of the Andhra Pradesh High Court in *RDF Power Projects Ltd. & Ors. vs. M.M.Muralikrishna & Ors. (supra)*. The facts of the case were different. In that case the court was dealing with a matter where a civil suit had been filed between the parties where the plaintiff No.2 who was appointed as the Managing Director of the plaintiff No.1 company sought an injunction to restrain the respondent from trying to interfere in the management of the first plaintiff. The respondent there had filed a company petition before the CLB under section 397, 398, 402 and 408 of the Act alleging alleged acts of oppression and mismanagement of the affairs of plaintiff No.1 company and also manipulation and fabrication of shareholding misappropriation of funds, contravention of statutory provisions etc. The court noted that the scope of enquiry in the Company Petition filed by the respondents was entirely different and distinct from the scope of enquiry in the suit previously instituted before the Civil Court. Hence, the court held that the proceedings before the CLB has nothing to do with the proceedings in the suit previously instituted and that the proceedings in the two forums are not even remotely identical. On those facts the court held as follows:-

“25. The scope of enquiry in the Company Petition filed by the respondents before the Company Law Board, in relation to the matters alleged therein, is entirely different and distinct from the scope of enquiry in the suit previously instituted by the appellants before the Civil Court, which rests on the resolution dated 29-12-2001. The proceedings before the Company Law Board, have nothing to do with the proceedings in the suit previously instituted by the appellants before the Civil Court. The proceedings before both the forums are independent and distinct of each other and are

not identical even remotely. In that the various reliefs sought for and the provisions under which such reliefs have been sought for by the respondents before the Company Law Board, relate to rectification of register on transfer, oppression and mismanagement, to regulate the affairs of the company and to prevent mismanagement, and whereas in the suit filed by the appellants, they sought injunction against the respondents from interfering with the management of the company. It is required to notice that under Sections 397, 398 and 402 of the Companies Act, the members of a company are entitled to approach the Company Law Board against any oppression or mismanagement, and if any such approach is made, the Company Law Board shall look into the same. The power of looking into the aspects of oppression and mismanagement having been exclusively vested in the Company Law Board, it cannot be said that the matter in issue before the Company Law Board is also directly and substantially in issue in the previously instituted suit before the Civil Court, warranting stay of the proceedings before the Company Law Board until the proceedings in the suit are concluded. In this context, it would suffice, if a reference is made to the judgment of the Calcutta High Court in *Piyush Kanti Guha v. West Bengal Pharmaceutical and Phytochemical Development Corporation Ltd.* (supra), wherein in somewhat similar facts situation, it was held thus:

“Where the main relief sought for in the company petition was on the ground of oppression and framing of a scheme and appointment of directors which was distinctly different from the relief asked for in the civil suit restraining some directors nominated by the Government from functioning, it was held that stay of the proceedings in the company petition could not be granted under Section 10.”

17. A perusal of the petition filed here shows that the case of the appellant is that a draft MOU dated 03.10.2011 was converted into MOU dated 09.11.2011 which was got printed on a stamp paper. In the meantime, the appellant transferred the properties being plot Nos. F-29 & F-30, F-117A, 5 & 5A total area measuring 507 sq. yards in Village-Aslatpur, Delhi present

in Jeewan Park, Uttam Nagar, New Delhi by a sale deed dated 08.11.2011. In return, respondent No. 2 was to transfer to the appellant shops in Vardhman Market Plaza, Ranibagh, Pitampura, New Delhi. The appellant also lists out various steps taken by her in implementing the MOU. The Uttam Nagar property and the Pitampura Property were both valued at identical amount of Rs.1.21 crores and hence, the transfers were being affected. The plea of the appellant is that respondent No. 2 took advantage of the said arrangement and attempted to usurp the Uttam Nagar property. It is prayed that respondent No. 2 played a fraud on the appellant and the appellant became entitled to rescind the MOU. Further, till March 2012, respondent No. 2 misappropriated above Rs. 2 crores from the account of respondents No. 3 and 4. Based on these allegations, the acts of default/oppression/mismanagement have been stated in the petition which include siphoning of funds of respondent No. 1 Company, default in making payment of government revenues and illegal control and management of the respondent No. 2 Company.

18. I may only note that I have perused the file of the suit that is pending before this court being CS(OS) 1632/2012 titled as *Neeru Kapoor vs. Blue Star Infotech Pvt. Ltd. & Ors.* A perusal of the plaint shows that the appellant has sought the following reliefs:-

“PRAYER

It is, therefore, most respectfully prayed that the Hon’ble Court may be pleased to:

(A) pass a decree of **DECLARATION** in favour of the Plaintiff and against the Defendants thereby declaring that the final draft of the unsigned MoU dated 09.11.2011 stands

rescinded at the instance of the Plaintiff and the contents and/or arrangement contained in the said MoU and/or documents executed in accordance with and in terms of the contents whereof, are no longer binding on the Plaintiff and are rendered null and void;

(B) pass a decree of **PERMANENT INJUNCTION** in favour of the Plaintiff and against the Defendant nos. 2 & 3 thereby restraining the Defendant nos. 2 & 3, their agents, servants, employees, etc. from parting with possession or in any other manner creating any third party rights, title or interest in the properties bearing Plot nos. F-29 & F--30 (measuring approx. 257 Sq. Yards), Plot no. F-117-A (measuring approx. 100 Sq. Yards), and Plot no. 5 & 5A (measuring approx. 150 Sq. Yards), total area measuring 507 Sq. Yards out of Khasra No.10/1, Village Asalatpur, Delhi state, Delhi, Colony known as F-Block, Jiwan Park, UttamNagar, New Delhi;

(C) pass a decree of **PERMANENT INJUNCTION** in favour of the Plaintiff an against the Defendant no.2 thereby restraining the Defendant no.2, his agents, servants, employees, etc. from parting with possession or in any other manner creating any third party rights, title or interest in offices bearing No. 278, 279 & 280, on second floor and the entire third floor (with roof rights) in Vardhman Market Plaza, Plot No. 30, Community Centre, Rani Bagh, Road NO. 44, Pitam Pura, Delhi;

(D) pass a decree of **PERMANENT INJUNCTION** in favour of the Plaintiff and against the Defendant no. 4 thereby restraining the Defendant no.4, his agents, officers, servants, employees, etc. from registering the Sale deed dated 08.11.2011 executed by the Plaintiff in favour of the Defendant nos. 2 & 3 in respect of properties Plot nos. F-29 & F--30 (measuring approx. 257 Sq. Yards), Plot no. F-117-A (measuring approx. 100 Sq.Yards), and Plot no. 5 & 5A (measuring approx. 150 Sq. Yards), total area measuring 507 Sq. Yards out of Khasra

No.10/1, Village Asalatpur, Delhi state, Delhi, Colony known as F-Block, Jiwan Park, Uttam Nagar, New Delhi;

(E) pass a decree of **PERMANENT INJUNCTION** in favour of the Plaintiff and against the Defendant no.2 thereby restraining the Defendant no.2, his agents, servants, employees, etc. from operating or further making unilateral, unexplained and unauthorised withdrawals from bank accounts of the defendant No.1 Company having following accounts at (a). State Bank of Hyderabad, Dwarka Branch, New Delhi having account no. 62196208367, (b) UCO Bank, Tagore Garden Branch, New Delhi having account no. 06100200000412, (c) HDFC Bank Ltd., Rani Bagh, Delhi having account no. 0152560007771 and (d) ICICI Bank, Rjouri Garden, New Delhi having account no. 629305037873 and those of the order business entities namely M/s Blue Star Travels (India), having bank accounts State Bank of Hyderabad, Dwarka having account no. 62228295234 and also from opening any new bank accounts on behalf of/in the name of any of the said business entities including in the name of Defendant no.1 company;

(F) pass a decree of **MANDATORY INJUNCTION** in favour of the Plaintiff and against the Defendant no. 2 thereby directing the Defendant no.2 to return (i) cheque books, (ii) documents executed in terms of final draft of the unsigned MOU dated 09.11.2011 (which was subsequently rescinded by the Plaintiff vide Legal Notice dated 27.03.2012);

(G) pass a decree of **DECLARATION** in favour of the Plaintiff and against the Defendants thereby declaring that Sale deed dated 08.11.2011 rescinded at the instance of the Plaintiff and is rendered null and void;

(H) pass a decree of **RENDITION OF ACCOUNTS** against the Defendant nos. 2 & 3 thereby directing the said Defendants to render true and complete up-to-date accounts of the Defendant no.1 company and that of various proprietorship firms, namely

M/s Blue Star Travels (India), M/s Diamond Travels, M/s Blue Diamond Constructions and M/s Star Construction Company to the Plaintiff for the period from 15.08.2011 till date and to appoint a RECEIVER to ensure recovery of the amount held to have been illegally withdrawn by the Defendant nos.2 and 3;

(I) pass a decree of **PERMANENT INJUNCTION** in favour of the Plaintiff and against the Defendant no.2 thereby restraining the said Defendant from representing and declaring himself to be the proprietor of M/s Blue Star Travels (India) or to be in any way connected with the said firm;

(J) pass any such order or further as may be deemed fit and proper in facts and circumstances of the present case.”

19. This court in the aforementioned suit has directed respondent No. 2 to maintain status quo regarding the title and possession in respect of the Pitampura Property. The above order was also confirmed in view of the undertaking given by respondent No. 2 not to change the title or possession of the aforesaid property without prior permission of the court on 16.01.2013.

20. A perusal of the impugned order would show that the learned Tribunal noted that litigation started between the parties only when the terms of the MOU were not carried out as agreed upon between them. Most of the allegations made in the petition are on the ground of forgery. The learned Tribunal also noted that the appellant had filed a suit before the High Court assailing the MOU agreed upon between them and the seeking the same relief. The order also held that the tribunal has to see as to whether the acts committed by respondent No.2 would be dealt with as the acts in pursuance to the MOU or qua oppression to cause prejudice to the petitioner and the Company. If the acts noticed were independent of the MOU

executed, then the allegations would squarely fall within Sections 397 and 398 of the Companies Act, 1956. If not, then it would be mere breach of the MOU and would not be covered under Sections 397 and 398 of the Companies Act. Learned Tribunal further held that if tomorrow this court were to uphold the validity of the MOU in the suit, then the appellant would obviously not be entitled to any reliefs sought now. Based on these aspects, the Tribunal held that the subject matter before this court in the suit and before the Tribunal was the same and the parties were the same. Hence, the Tribunal exercised its discretion and stayed further proceeding in the petition.

21. It is clear from the nature of pleadings in the petition and in the suit that there is commonality of facts running through two matters. The crux of the issue is the MOU dated 09.11.2011 under which the parties have taken steps. If the MOU is upheld, the steps taken by respondent No. 2 would be in terms of the MOU. If for some reason the MOU is struck down then the issue about oppression and mismanagement would arise for consideration. The issue of legality and validity of the MOU dated 9.11.2011 is pending in the civil suit. The impugned order has rightly stayed the proceedings before the CLB under principles akin to section 10 of CPC. The view taken in the impugned order appears to be a plausible view. Accordingly, I see no reason to interfere in the present appeal. The same is dismissed.

(JAYANT NATH)
JUDGE

DECEMBER 10, 2018
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