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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 8th May, 2018

+ O.M.P.(I) (COMM.) 107/2018

SPORTZ & LIVE ENTERTAINMENT PRIVATE LIMITED

..... Petitioner

Through Mr.Anish Dayal, Mr.Siddharth Vaid,
Ms.Rupam Sharma and Ms.Vishakha,
Advs.

versus

VOLLEYBALL FEDERATION OF INDIA Respondent

Through Mr.Sachin Dutta, Sr. Adv.with
Mr.Jayant Kumar and Ms.Shalini
Kaul, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

1. This petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the Act) has been filed by the petitioner *inter-alia* seeking the following reliefs:

“(a) Pending the appointment of the Ld. Sole Arbitrator, the commencement of the arbitration proceedings and final disposal of the arbitration proceedings including execution of the order passed therein, an Order be passed restraining the Respondent from granting any rights (including but not limited to) the right to set up, organize, manage, market and operate the Indian Men's, Women's and Beach Volleyball (both Men and Women) Leagues in India to any third party

apart from the Petitioner;

(b) Pending the appointment of the Ld. Sole Arbitrator, the commencement of the arbitration proceedings and final disposal of the arbitration proceedings including execution of the order passed therein, an Order be passed staying the operation of any rights which may have already been granted by the Respondent in relation to the Indian Men's, Women's and Beach Volleyball (both Men and Women) Leagues in India to any third party apart from the Petitioner;

(c) Pending the appointment of the Ld. Sole Arbitrator, the commencement of the arbitration proceedings and final disposal of the arbitration proceedings including execution of the order passed therein, an Order be passed staying the operation of any agreements which may have already been executed by the Respondent in relation to the Indian Men's, Women's and Beach Volleyball (both Men and Women) Leagues in India with any third party apart from the Petitioner;

(d) Pending the appointment of the Ld. Sole Arbitration, commencement of the Arbitration proceedings and final disposal of the arbitration proceedings including execution of the order passed therein, an Order be passed directing the Respondent to maintain status quo in relation to the rights of Indian Men's, Women's and Beach Volleyball (both Men and Women) Leagues in India qua the Petitioner and the sole and exclusive rights of the Petitioner in relation to the Leagues.”

2. It is the case of the petitioner that the respondent had entered into three Agreement(s) all dated 02.01.2016 with the petitioner through its President Chaudhary Avadhesh Kumar *inter-alia* assigning the exclusive rights to setup, arrange, manage, market, monetize and operate the Indian

Men's Volleyball League, Women's Volleyball League and Indian Beach Volleyball League (both men and women) respectively. As the consideration for these Agreement(s), the petitioner had paid a sum of Rs.9.54 crores to the respondent by way of demand drafts, all dated 29.12.2015. A sum of Rs.54 lacs out of this 9.54 crores rupees is stated to have been transferred by way of RTGS transfer in favour of the respondent on 10.06.2016. The receipt of this last payment of Rs.54 lacs is denied by the respondent.

3. Relying upon the Clause 1.1, 1.2 and 1.3 of the Agreement(s), learned counsel for the petitioner submits that in terms of these Agreement(s), the petitioner has been assigned the sole and exclusive rights with respect to the Volleyball League and the Agreement(s) further provide that the respondent shall not grant any approval, consent, permission or right relating to the establishment or operation of such League to any third person. Learned counsel for the petitioner submits that in view of such negative covenant, the petitioner is entitled to relief of an injunction restraining the respondent from entering into any agreement with a third party with respect to holding of or conducting such Volleyball League in India.

4. Relying upon the judgment of Supreme Court in ***Adhunik Steels Ltd. v. Orissa Manganese and Mineral Pvt. Ltd.***, AIR 2007 SC 2563, learned counsel for the petitioner submits that the grant of relief under Section 9 of the Act is governed by the well known rules with respect to the grant of injunction that is the concept of balance of convenience, *prima facie* case, irreparable injury and concept of just and convenient. He submits that as the respondent is the only association recognized for the conduct of the sport of Volleyball in India, the breach of rights granted in favour of the petitioner

under the Agreement(s) cannot be remedied by way of damages.

5. On the other hand, learned senior counsel for the respondent submits that the Agreement(s) dated 02.01.2016 have been executed by Chaudhary Avadhesh Kumar, who though was the President of the respondent Society, which is a Society registered under the Tamil Nadu Society Registration Act, 1975, was not authorized to execute such Agreement(s). Relying upon the Minutes of Meetings dated 02.01.2016, 09.01.2016 and 22.02.2016, learned senior counsel for the respondent submits that Chaudhary Avadhesh Kumar had represented to the respondent that he has not executed such Agreement(s) and based on such representation a Core Committee of Members was constituted in order to finalize the grant of the rights to conduct the Volleyball League in India, to a third party. He submits that even the Agreement(s) relied upon by the petitioner state that the Agreement(s) would come into force upon the encashment of the demand drafts purportedly submitted by the petitioner with Chaudhary Avadhesh Kumar. These demand drafts were deposited by Chaudhary Avadhesh Kumar only after the disputes had arisen *inter-se* amongst the office bearers of the respondent and Chaudhary Avadhesh Kumar had been expressly informed that he could not enter into any Agreements with the petitioner with respect to the rights to conduct the Volleyball Leagues. He submits that in spite of such instructions, not only did Chaudhary Avadhesh Kumar deposit these demand drafts in the account of the respondent but also immediately sought freezing of these bank accounts by issuing instructions to the bank in this regard. This led to a dispute amongst the members of the respondent Society which was referred for adjudication through a Sole Arbitrator.

6. The Sole Arbitrator, vide his Interim Order dated 03.10.2016 *inter-alia* held as under:

“9. Admittedly the Applicant association is a registered Society with Registration No.110/987 registered under the Tamilnadu Societies Registration Act, 1975. It has got registered byelaws for governing the conduct of the members of the Society. A perusal of the byelaws will clearly show that the President of the Society (The Respondent hearing) though was given certain emergency and residuary powers but it does not clothe him with the power of removing the Secretary General of the Society. Similarly though the Respondent claims that he has been authorized to enter into an agreement for the purpose of conducting Volleyball Premier league, subsequently, on questioning by the Executive members he initially disowned signing of any agreement and also was a party for forming a Core committee. In that meeting he had signed the Minutes. Therefore he cannot feign any ignorance about those proceedings. Further when his authority to enter into any agreement is withdrawn it is not open to him to sign an Agreement with third parties and make this issue a fait accompli.

10. The Argument of the learned senior counsel that since the factum of entering into an agreement has been established and it is more beneficial to the Society as well as to the volleyball players cannot be accepted. Unless it is shown that the Respondent as the president had the authority to enter into an agreement at the time of signing the same the question of giving a seal of approval to such agreement will not arise. Merely because third party interests have accrued that cannot be a ground to validate an illegal agreement. Further, it is for the persons who may be put at loss to move the appropriate machinery to establish their right and the Respondent need not canvas for their rights. On the other, hand, if the Respondent is allowed to Indulge in further activities pursuant to the

alleged agreement signed by him it will unnecessarily create further complications which should be avoided.

11. Under the said circumstances the applicant has established a prima facie case and the balance of convenience is for grant of an interim order. If such an interim order is not granted it may cause an irreparable loss to the Society. Under the said circumstances an interim injunction is granted to restrain the Respondent (Chaudhary Avadesh Kumar) or any person claiming to have been elected at any meeting conducted by the aforesaid Chaudhary Avadesh Kumar or any person acting directly or indirectly on their behalf, from conducting the Indian volleyball league meeting on 04.10.2016 and from conducting the Indian volleyball league tournament; or from conducting any other Volleyball tournament, under the banner of the volleyball federation of India or falsely representing that their tournament is recognized by the said federation or from conducting any meetings, public announcements, or events in the name of Volleyball Federation of India; and from signing any contract with any player, or organization or sponsors or any advertisement agency or any event management company or any media company on behalf of the Volleyball Federation of India pending disposal of the Arbitral proceedings.”

7. The above order was challenged by Chaudhary Avadhesh Kumar before the High Court of Madras by way of CMA No.2823 to 2825 of 2016. The same was however dismissed by the High Court of Madras vide its order dated 06.04.2017 *inter-alia* taking note of the various Minutes of Meetings and holding as under:

“29.1 The order passed does not in any way violate the interim order passed by the Patiala House Court that enabled the appellant to continue as President of VIF. However, does that by any token grant the appellant any

exclusive right to operate, or run VFI by sidelining the Executive Committee or General Council? At least not in terms of the Constitution and Bylaw of the VFI. Article VIII thereof deals with the Duties and Power of the Executive Committee. Article VIII(5) enjoins the Executive Committee with the power or duty “to conduct and administer the day to day work of the Federation and to form standing sub-committee and such other sub- committees as may determine reference be considered necessary and define and their powers, duties, scope and terms of unless otherwise provided for.” When compared with the Executive Committee, under Article XI Duties and Power of the President are chiefly emergency or supreme emergency powers, and Article XI(4) insists that they shall be exercised only in the interest of the Federation (i.e.VFI.) Under Article XI(2) and (6) such of the powers that the President exercises should be approved or confirmed by the Executive Committee. In otherwords, the Office of the president of VFI carries an implied duty to report to the Executive Committee to a substantial extent. It is therefore apparent that the President of VFI within the scheme of its Constitution and Bylaw has no greater authority or power than the Executive Committee, and wherever he is granted independent powers they have to be exercised only in case of emergency or supreme emergency as the case may be, and that too only in circumstances where the interest of the VFI is in peril, and not otherwise.

29.2 Nowhere, and at no time thus far, the appellant has attempted to explain or justify that his actions to which the respondents are taking exceptions to, were done in the best interest of the VFI nor has he explained the pre-dominant interest of the VFI that he was anxious to secure, and/or alleged that the arbitrator has faulted in overlooking the bonafides of the action that he had so taken.

29.3 In any democratically run institution, any office created by its constitution or bylaw to preside over its

affairs cannot ignore the spirit of the democratic principles that govern it. After all, VFI is not the personal property of its President or any of its other office bearers, or of the Committee created for its governance under its bylaw. It would have been appropriate if the appellant had attempted to convene the Executive Committee or the General Council, mustered support for his views or plan of actions and acted. Between an individual and the institution of which he is a member or an office bearer, the interest of the institution must always be considered paramount. Any position enjoined with duty to any democratically run body such as a Society, or a club, or any association of persons is fiduciary in character, and anyone who holds such position is bound by the obligations arising out of a fiduciary relationship. They are but trustees of the institution in general and of those members who have elected them in particular. They have been granted powers only for performing their duties to the institution whose affairs they manage for the time being. The order of the arbitrator reflects this principle broadly while granting prayer (B) of IA1/2016 and it is therefore in order, and it is not inconsistent with any of the principles that govern the grant of interim order by an arbitrator, more particularly in a case of individual Vs Institution.

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31.2 As to the justification for the aforesaid order of the arbitrator, the reasons discussed in paragraph 29.3 is valid here too. Further, the attitude and conduct of the appellant that was on display prima facie would not inspire confidence in the mind of the right thinking. They hardly reconcile with the responsibility that he owed the VFI by virtue of his office. Otherwise, how to explain why he informed the Executive Committee that he had not signed any contract with SLE why he suddenly pulled a surprise on the Executive Committee with his announcement that he had signed the contract at least a month before, why he participated in the decision to form a Core Committee to select a sponsor and why he dissolved it unilaterally without

taking the Executive Committee into confidence when the object for which the Core Committee was formed was in the final leg of its fulfillment, what is the emergency or supreme emergency that threatened the interest of VFI which warranted the unilateral exercise of Presidential powers within the scheme of the Constitution of VFI and what is the manifest interest of VFI that he, in his capacity as the President of VFI has pursued with his wild swinging patterns?

31.3 There are endless questions. They however, remain and continue to remain as an unresolved plot that the appellant has scripted and put up in exhibition. Now when it has all started? Was it not when the VFI contemplated on a JVL and searched for a sponsor? Why the JVL as an idea should inject faction? What is playing the spoilsport – Is it the sport, or the sponsorship? Why is the appellant hyper anxious to take on the Executive Committee of the Federation on the choice of the sponsor? Why is he hesitant to abide by the views of the majority in the Executive Committee? What is the rationale behind his actions? Not one was explained. It is this failure to explain any of them, and this inability to deny their factual content exposes the key to his cryptic puzzle and unravels the plot within. Why fault the arbitrator, when the appellant himself has unloaded unexplainable deeds of uninspiring quality before the arbitrator? The conduct of the appellant is not beyond blames and lacks bonafides.

8. In a parallel litigation with respect to the election for the office bearers of the respondent Society, this Court vide its order dated 08.04.2016 passed in FAO 146/2016, allowed the election to go on, however, the results thereof be not declared. Eventually by the order dated 27.04.2017 passed in FAO 203/2016, this Court held that the election results of the respondent be declared for the 28 posts, except the post of President of the respondent Society.

9. Pursuant to the declaration of such results, the Ministry of Youth Affairs and Sports, Government of India vide its order dated 20.07.2017 has accepted the results of the election and has taken the office bearers, that is the Secretary General and Treasurer who have succeeded in the said election on the records of the Ministry. I may at this stage, note that the learned counsel for the petitioner has submitted that the provisional suspension of the respondent Society by the International Volleyball Federation has not been withdrawn.

10. From the submissions of the learned senior counsel for the respondent and the various Minutes of Meetings and orders to which my attention has been drawn, it is evident that the execution of the Agreement(s) dated 02.01.2016 on behalf of the respondent is a highly disputed and contentious matter. Whether Chaudhary Avadhesh Kumar had been authorized to enter into such agreement(s) by the respondent Society is not only disputed by the respondent Society but has been adversely commented upon by the Arbitrator and by the Madras High Court against him. *Prima facie*, therefore, at this stage, it cannot be said that these agreement(s) have been genuinely and validly executed on behalf of the respondent in favour of the petitioner.

11. Another important factor in this whole scenario is the fact that the agreement(s) themselves record that they shall come into operation upon the deposit of the demand drafts. From the various orders passed by the Courts and by the Arbitrator, it is *prima facie* getting established that these demand drafts had been deposited by Chaudhay Avadhesh Kumar only after he had been expressly informed that he cannot enter into such Agreement(s) with the petitioner on behalf of the respondent. The contention of the petitioner

that being a third party, it is not in any manner, privy to such internal dispute of the respondent may be correct, however, in the present case, this would certainly have an important bearing. Only due to an unauthorized deposit of an amount into the bank account of the respondent, the respondent cannot, even as an interim measure, be prevented from parting with rights to conduct Volleyball Leagues.

12. Another important aspect in this whole mess that has been created by the factional fight amongst the office bearers of the respondent, which would have a vital bearing on the relief claimed by the petitioner is that the respondent, by its Press Release dated 03.10.2016 had issued a notice claiming that Chaudhary Avadhesh Kumar is not authorized to represent the respondent and to enter into any agreement(s) with respect to the Volleyball League. The petitioner vide its letter dated 26.10.2016, claiming that it had rights under the Agreement(s), called upon the respondent to keep the amount of Rs.9.54 crores paid by it along with accrued interest in a no lien escrow account with a reputed bank. Clearly, the petitioner did not assert its rights under the Agreement(s), otherwise there was no necessity for the petitioner to have called upon the respondent to keep this amount in a separate no lien account. If it would have been sure of its rights under the agreement, it would have asserted them with full rigour. The respondent on the other hand, by the letter dated 09.11.2016, claiming that the Agreement(s) had been unauthorizedly executed by Chaudhary Avadhesh Kumar and the amount had been deposited in respondent's bank account without its permission, returned the amount of Rs.9 crores, which it claimed to have been so deposited in its account. As noted above, the respondent has denied the receipt of further amount of Rs.54 lacs from the petitioner.

13. The petitioner, in response to the refund of money, vide its letter dated 16.11.2016, accepted the refund of the said amount though without prejudice to its rights. Admittedly, the petitioner at that stage and till filing of the present petition, did not assert or seek enforcement of its rights in the alleged agreement(s).

14. Counsel for the petitioner submits that as there was a fight between the office bearers of the respondent and the respondent Society had been provisionally suspended by the International Volleyball Federation, the petitioner did not seek enforcement of its rights through legal remedy, however, in my opinion, this would have a vital effect on the prayer of interim injunction now been sought by the petitioner. By its own conduct, in my opinion, the petitioner has disentitled itself from claiming any interim relief of injunction against the respondent at this stage.

15. Counsel for the petitioner further submits that the respondent is granting the rights to conduct the Volleyball Leagues in India to a third party without inviting any bids and in a non-transparent manner. In my view, the same would have no bearing as far as the present petition is concerned. In fact, the Agreement(s) under which the petitioner is claiming its rights were executed in an equally non-transparent manner. I may hasten to clarify that this Court, in the present proceedings, is not concerned with the manner and authority of the respondent to grant such rights in favour of a third party. This cannot be the scope of investigation in a petition under Section 9 of the Act, which is only for seeking interim protection as far as the subject matter of the arbitration is concerned, based on the asserted contractual rights and not publication rights.

16. In view of the above, I find no merit in the present petition and the same is dismissed, with no order as to costs.

17. I may hasten to add that none of the observations made by me in the above order would in any manner bind or influence the Arbitrator that may be appointed for adjudicating the disputes that have arisen between the parties.

NAVIN CHAWLA, J

MAY 08, 2018/Arya