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

Decided on: 19.11.2018

+ **FAO(OS) (COMM) 253/2018 & CM APPL.Nos.46198-46201/2018**

M/S RENAISSANCE BUILDCON
CO. PVT LTD & ORS

..... Appellants

Through: Mr. Sachin Chopra, Mr. Gaurav
Rana & Ms. Aastha Dhawan,
Advocates.

versus

M/S S.E. INVESTMENTS LTD & ORS

..... Respondents

Through: Mr. P. Nagesh, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

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1. In this appeal under Section 37(1)(C) of the Arbitration & Conciliation Act, 1995 [hereafter referred to as 'Act'], the judgment and order of the learned Single Judge dated 2nd February, 2018, rejecting the petition under Section 34 of the Act is impugned.

2. The brief facts are that the appellant No.1 [hereafter referred as 'Renaissance'] had entered into a Shareholder's Agreement, sometime in May, 2007 with D.B. Zwirn Mauritius Trading No.2 Limited [hereafter

referred to as ‘foreign investor’], and others, including DD Global Capital Ltd. and one Mr.Sanjay Gambhir. In between, the foreign investor withdrew from equity participation and sold its shareholding to the Bansal Group [collectively referred to as ‘Appellants No.2 to 4’]. Concededly, on 08.07.2008, the Respondent No.1 [hereafter referred to as the ‘creditor’] advanced ₹3.2 crores to DD Global. M/s Renaissance Buildcon Company Pvt. Ltd. stood guarantor to the loan and also furnished mortgage security. The appellants No.2 to 4 acquired shareholding in M/s Renaissance Buildcon Company Pvt. Ltd. on 25.10.2010. At that point in time they became aware of the proceedings initiated by the Respondent No.1/creditor for recovery of the amount advanced. The appellant and the Bansal Group were impleaded in the arbitration proceedings. Their principal defence to the creditor’s action seeking enforcement of the guarantee [furnished by M/s Renaissance Buildcon Company Pvt. Ltd.] was that the loan contract for the enhancement of credit limits that took place on 30.07.2010 was unauthorised. In this regard the appellants urged that the Articles of Association especially Article 26(a), (f) & (g) accepted certain matters to require the affirmative consent of the investor viz. D.B. Zwirn Mauritius, the foreign investor which include encumbering the company’s property in any manner whatsoever.

3. The Arbitral Tribunal considered the pleadings of the parties as well as the oral deposition of the witnesses. The Tribunal concluded that the appellant’s objection with respect to the enforceability of the guarantee, as against the Bansal Group, which was indeed against M/s Renaissance Buildcon Company Pvt. Ltd. was not substantial. Consequently the Tribunal held M/s Renaissance Buildcon Company Pvt. Ltd. liable jointly and severally with the principal borrower Respondents No.2 to 4, [i.e. M/s

DD Global Capital Private Limited and its Directors]. Learned counsel relied upon Clause 26 (f) & (g). It was contended that the Articles of Association are public documents which bound the creditor and that its lack of inquiry into question as fundamental as the power or authorization granted to the Directors to enter into the transaction vitiated it, because the document *ipso facto* disclose that the permission was not obtained, and that in the absence of the investor's director in the meeting the Board resolution relied upon, had no valid legal existence.

4. The learned counsel reiterated the submission made before the learned Single Judge and also relied upon the judgment reported as *MRF Ltd. Vs. Manohar Parrikar & Ors.*, (2010) 11 SCC 374, especially on the following extracts:

“67. The doctrine of indoor management is also known as the Turquand rule after the case of Royal British Bank v. Turquand [1856] 6 E. & B. 327. In this case, the directors of a company had issued a bond to Turquand. They had the power under the articles to issue such bond provided they were authorized by a resolution passed by the shareholders at a general meeting of the company. But no such resolution was passed by the company. It was held that Turquand could recover the amount of the bond from the company on the ground that he was entitled to assume that the resolution was passed. The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to the rule of constructive

notice. It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in memorandum and articles have been properly observed. therefore doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However suspicion of irregularity has been widely recognized as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.”

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111. The doctrine of indoor management is in direct contrast to the doctrine or rule of constructive notice, which is essentially a presumption operating in favour of the company against the outsider. It prevents the outsider from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. The doctrine of indoor management is an exception to the rule of constructive notice. It imposes an important limitation on the doctrine of constructive notice. According to this doctrine, persons dealing with the company are entitled to presume that internal requirements prescribed in the memorandum and articles have been properly observed. Therefore, doctrine of indoor management protects outsiders dealing or contracting with a company, whereas doctrine of constructive notice protects the insiders of a company or corporation against dealings with the outsiders. However, suspicion of irregularity has been widely recognized as an exception to the doctrine of indoor management. The protection of the doctrine is not available where the circumstances surrounding the contract are suspicious and therefore invite inquiry.”

5. Learned counsel also relied upon the Supreme Court's judgment in *Vodafone International Holdings Vs. Union of India* 2012 107 CLA 63 (SC).

6. The Single Judge went back to the principles of 'Indoor Management' and also noticed the judgment in the case of *MRF* (supra). According to the impugned judgment, the doctrine of 'Indoor Management' protects the outsiders dealing or contracting with a party and constitutes an exception to the doctrine of 'Constructive Notice'. In so holding, the learned Single Judge extracted the decision in the case of *MRF* (supra). The relating portions of the discussion and observations of the Single Judge in the order are as follows:

"17. It is pleaded by the petitioners that this doctrine of indoor management would have no application to the facts of this case as there was grave suspicion of irregularity in the conduct of the affairs of petitioner No.1 by respondents No. 3 and 4. Accordingly, the said suspicion would create an exception to the plea of the respondent No. 1 that the conduct of respondent Nos.3 and 4 is related to internal management of petitioner No.1. The plea is that the Acknowledgment and Agreement dated 05.03.2010 had been executed between petitioner No.1 and respondents No. 3 and 4 and the Investor. Mr.Sanjay Gambhir, respondent No. 4 has clearly admitted his guilt of having siphoned off funds from petitioner No. 1 Company. A similar plea has already been made regarding the legality and validity of the Board Resolution of respondent No.2 dated 30.7.2010 and the execution of the guarantee agreement dated 31.7.2010. The same pleas are somewhat repeated here, namely, that respondent No.1 should have known that there is something suspicious and should not have entered into the transaction. As noted above, no argument was raised before the Learned Arbitrator that respondent No.1 was aware of any internal issues amongst the Directors/promoter of petitioner No.1. Reliance of learned counsel for the petitioner on the above noted judgment of the Supreme Court

in MRF Ltd. vs. Manohar Parrikar & Ors. (supra) is misplaced and misconceived.”

7. This Court is of the opinion that the view expressed by the Single Judge cannot be said to be unreasonable and cannot be characterized as being contrary to law, as to warrant interdiction of the award in terms of the law declared by the Supreme Court. What the appellant argues in this regard is that the creditor, or someone who is in the same position, is required to discern whether any authority relied upon exists or not. This is not only with reference to the documents shown, but also with reference to other material to be sourced from the public domain such as the Articles of Association. In the given facts in this case, which clearly disclose that the liability to the extent of Rs.3.2 crores was in the knowledge of the investor who stepped in to control the shares of the guarantor company, and furthermore the enhancement of the credit limit took place in July 2010, and was even noted as a charge in the Register of Companies [which is a public document]. The conclusions recorded by the Single Judge in the opinion of the Court do not call for interference.

8. The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

PRATEEK JALAN
(JUDGE)

NOVEMBER 19, 2018
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