IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1024 OF 2019

Rajesh Prakash Timblo .... Petitioner

V/s

Milestone Minerals Pvt. Ltd.
Repr. by its Managing Director
Praveen Bethapudi .... Respondent

Shri A.D. Bhobe and Ms. Annelise Fernandes, Advocates for the Petitioner.
Shri Y.V. Nadkarni with Ms. D. Shirgam, Advocate for the Respondent.

Coram:- DAMA SESHADRI NAIDU, J.

Date:- 11th December 2019

ORAL ORDER:

Facts:

A Company—Milestone Minerals Pvt. Ltd.,—represented by its Managing Director, took out arbitration proceedings against an individual: Rajesh Prakash Timblo, the petitioner. Through the award, dated 11.01.2019, the Arbitral Tribunal directed Rajesh to pay to Milestone Minerals ₹13.00 crores with 10% interest. Besides, it also wanted him to bear the costs of arbitration: ₹7.05 lakh.

2. Aggrieved, in April 2019, Rajesh filed a statutory appeal under Section 34 of the Arbitration and Conciliation Act, 1996 ("the Act"), before the Principal District Court, South Goa, Margao. In that appeal, Rajesh has sought no interim relief to have the award stayed. So Milestone Minerals, in the first week of August 2019, laid execution

proceedings. In the same month, it also applied under Order 21 Rule 41(1) of CPC for a direction to Rajesh, the judgment debtor, to disclose his assets. In the first week of October 2019, Rajesh filed his reply. Among other things, he objected that the Managing Director was not authorised to represent Milestone Minerals in the execution proceedings. In that context, on the merits, the executing Court, which is also incidentally the appellate Court, passed the impugned order, dated 19.11.2019.

3. The executing Court has noticed that Rajesh has raised the same objection in the Arbitration Appeal as well. As the Court would be deciding that issue in the appeal, it has reckoned that the issue needed no re-agitation in the execution proceedings. The Executing Court, it seems, felt that disclosing assets is only an interlocutory step; so it could be ordered without a finding on authorization—a technical objection, at best. Further aggrieved, Rajesh has filed this Writ Petition.

Submissions:

Petitioner:

4. Shri Bhobe, the learned counsel for the petitioner, has submitted that if at all the executing Court felt that the appellate Court has already been seized of that issue, it would have stayed the execution until the appeal was decided. He has also submitted that in the index to the execution petition, there was no mention about any resolution said to have been passed by Milestone Minerals authorising the Managing Director to

represent it in the execution proceedings. According to him, for the first time, before this Court Milestone Minerals produced a resolution and has maintained that it was placed even before the executing Court. So Shri Bhobe contends that the resolution, if ever passed, has never been part of the executing Court's record.

5. Shri Bhobe has also submitted that nowhere, either before the executing Court or before this Court, do the pleadings refer to the resolution. Nor has there been any averment as required under Order 29 Rule (1) of CPC that the Managing Director knew of the case or aware of the proceedings. So Shri Bhobe strenuously contends that on both counts the execution proceedings should fail.

6. Drawing my attention to this Court's judgment in *Ashok Bampto Pagui v. Agencia Real Canacona Pvt. Ltd.*[1] and also the Supreme Court's in *State Bank of Travancore v. Kingston Computers India Private Limited*[2], Shri Bhobe stresses that a company as a juristic person must always speak through a human agency. According to him, that human agency should have a proper authorisation to represent the company, besides being aware of the company's affairs, especially the litigation. Here the execution petition has been silent on all counts, he concludes.

Respondent:

7. On the other hand, Shri Nadkarni, the learned counsel for

1 (2007) 6 Mah LJ 94
2 (2011) 11 SCC 524

Milestone Minerals, has submitted that Section 36 (2) of the Act treats any award in arbitration as if it were a money decree. To stay its operation in the proceedings under Section 34 of the Act, the Civil Court must have due regard to the provisions for staying a money decree under the CPC. According to him, as Rajesh has no intention to honour the award, he has wanted no stay, for that will compel him to comply with conditions such as those under Order 41, Rule 5 of CPC—say, depositing a part of the award.

8. To elaborate, Shri Nadkarni has submitted that the award requires Rajesh to pay close to ₹13.00 crores. Rajesh being an individual with little asset base, Milestone Minerals has apprehended that Rajesh would make all efforts to dilute the assets and thus frustrate the award. Only to prevent that eventuality, has Milestone Minerals wanted Rajesh to produce before the Court, at least, an inventory of his assets. Eventually, Shri Nadkarni has submitted that so long as the execution petition is pending, the Court seized of the matter is competent to take all interlocutory steps. And disclosure of assets, he stresses, is one such measure. According to him, it causes no prejudice to Rajesh. In the alternative, Shri Nadkarni has submitted that even if the Court were to eventually hold that the Managing Director had no proper authorization, it is still a curable defect.

9. Heard Shri A.D. Bhobe, the learned counsel for the petitioner and

Shri Y.V. Nadkarni, the learned counsel for the respondent.

Discussion:

10. Under Section 34 of the Arbitration and Conciliation Act, 1996, Rajesh challenged the arbitral award. Section 36 of that Act speaks of "enforcement." An arbitral award can be enforced as if it were a decree of the court. The appeal under Section 34, as Section 36 clarifies, "shall not by itself render that award unenforceable." There ought to be an order of stay from the appellate court. Sub-section (3) of Section 36 holds the key on the stay:

> Section 36 (3): Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:
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> Provided that the court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

11. The appellate court may stay the operation of the arbitral award, but it should be "subject to such conditions as it may deem fit." The proviso to this provision mandates that if the stay concerns an arbitral award for payment of money, the court should have "due regard to the provisions for grant of stay of a money decree" under the CPC. Rajesh has never intended to take advantage, or suffer the disadvantage, of Section 36 of the Act. Instead, he wanted, it seems, to achieve the same purpose—that is, getting the arbitral award

stayed—through a collateral method: by questioning the locus of the Managing Director to represent Milestone Minerals in the execution proceedings.

12. True, Rajesh's counsel has made herculean efforts before the Court to impress upon it that the execution proceedings ought to be stayed until the MD's standing is decided in the proceedings under Section 34 of the Act. In the alternative, he insists that at least the executing Court should have ruled on that before it ordered Rajesh to submit a list of his assets to the Court. Rajesh, I may note, wanted to make a mountain of dispute out of a molehill of a fact. He has failed, though.

13. Before the Arbitral Tribunal, when Milestone Minerals took out the arbitration proceedings, Rajesh, admittedly, raised the same objection. Of course, he maintains that it is not the same objection but only a similar one. For the objection concerns referring the dispute to arbitration. Then, the Arbitral Tribunal ruled that issue in Milestone Minerals' favour. Thus, throughout, the Managing Director represented Milestone Minerals.

14. Pending the appeal, in the absence of any stay, Milestone Minerals legitimately wanted to have the award executed. Therefore, it filed the execution application. Incidentally, the statutory appeal and the execution petition are before the same Court; the Principal District Court, South Goa, Margao. Granted, in the proceedings under Section 34 of the

Act, again Rajesh has raised that issue. Now, in the appeal, too, he has raised the same issue.

15. That said, Rajesh's principal contention is that the execution Court ought to have ruled on his objection rather than defer it to be decided in the appeal. To elaborate, Rajesh asserts that once the executing Court has felt that standing or maintainability could be decided in the appeal, then until the appeal is decided, the execution court ought to have stayed the execution.

16. But let me examine the issue on the merits. First, it is about authorisation. I reckon, on facts, indisputably the same MD has pursued the arbitration before the Arbitral Tribunal. At the earliest, when the MD referred the dispute to arbitration, Rajesh questioned MD's standing. The Arbitral Tribunal rejected the objection.

17. Viewed from another perspective, a company as a juristic person always acts through a human agency. Usually, the board of directors authorizes the managing director in that regard. Even otherwise, the managing director, as the principal employee of the company, enjoys certain inherent and implied rights—once such right being his representing the company in judicial proceedings.

18. In *Wasava Tyres v. Printers (Mysore) Ltd.*[3], the appellant has contended that a person to sue on behalf of the company should have the authorisation from the Board, lest the suit should be bad in law. There, it

3 (2007) 139 Comp Cas 446

was the managing director that filed the suit. To answer this assertion, the High Court of Karnataka has referred to Section 2 (26) of the Companies Act, 1956, which defines the word "Managing Director" thus:

> (26) "managing director" means a director who, by virtue of an agreement with the company or of a resolution passed by the company in general meeting or by its Board of directors or, by virtue of its memorandum or articles of association, is entrusted with (substantial powers of management) which would not otherwise be exercisable by him, and includes a director occupying the position of a managing director, by whatever name called.
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> *Provided that the power to do administrative acts of a routine nature* when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share, shall not be deemed to be included within substantial powers of management.
>
> Provided further that a managing director of a company shall exercise the powers subject to the superintendence, control and direction of its Board of Directors.
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> (italics supplied)

19. According to *Wasava Tyres*, the words "substantial powers of management" specifically excludes certain acts from its preview. Therefore, except for the excluded acts, the MD has the power and privilege of conducting the business of a company under the Memorandum and Articles of Association of the company. The institution of a suit for the company by the MD is deemed to be within the meaning of "substantial powers of management" since such a power is necessary and incidental for managing the day-to-day affairs and business of the company. *Wasava Tyres*, it seems, has regarded that an MD representing the company in legal proceedings as an administrative act of

a routine nature.

20. In *H. M Sait v. South Indian Industries Ltd.*[4], High Court of Madras has held that managing the business of the company includes the institution of suits as well "when it becomes necessary in the course of management to recover moneys due to the company." In *All India Reporter v. Ramachandra D. Datar*[5], the respondent contended that under Articles 153(7) and 156 of the Articles of Association of the company, only the managing director of the plaintiff company had the power to institute suits and that it was nowhere shown that he had the power to authorise somebody else to sign pleadings for plaintiff No. 1. There, a managing director's agent signed for the company. He has also maintained that only the directors, under the seal of the company, could delegate to any person the powers they had as the directors and those powers include the power to institute and conduct suits.

21. A Division Bench of this Court in *Ramachandra D. Datar* has formulated this question: If the plaintiff presents a plaint without strictly complying with Order 6 of CPC affecting the signing, verifying, and presenting, should that presentation become bad because of the procedural defects or irregularities?

22. After referring to a plethora of precedents, *Ramachandra D. Datar*

4 (1938) 36 Comp.Cas.61

5 AIR 1961 Bombay 292

has held that "the signing and verification of pleadings is not a matter of substance but of procedure only." According to it, despite the procedural irregularities, "the plaint must be deemed to have been instituted on the date of its admission by the Court, and that such defects can be cured in appeal or even after the period of limitation." It has finally held that a plaintiff can orally authorize another person to sign a plaint for him. Pithily put, *Ramachandra D. Datar* has held that the defects in instituting civil proceedings are procedural and they can be cured at any stage—even in appeal and beyond limitation, too.

23. In *Hely-Hutchinson v Brayhead*[6], Roskill J, acknowledged that the question of the implied authority of a managing director was one of "considerable difficulty", as well as being "one upon which there appears to be little or no relevant authority". Roskill J has quoted a passage from *Gore-Browne on Companies*:

> [T]he exact status and powers of a managing director depend both upon the articles which confer a power on the board to appoint a managing director and upon the terms of the contract by which he is employed. *The failure of the board to intervene where the managing director has exceeded his authority may imply ratification.* Although he must be a director, his status as managing director derives from his appointment by the board to this office. He is thus both a director and, as managing director, an employee of the company."
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> (italics now supplied)

24. In the same judgment, Lord Denning MR has held that the board of directors, on appointing a managing director, "thereby impliedly authorise him to do all such things as fall within the usual scope of that

6 [1968] 1 QB 549 at 560

office." That is, the managing director's powers extend to carrying out those functions on which needs specific directions of the board. It is simply the default position.

25. Now, we may refer to *Philip John Smith v. James Carl Butler*[7], a decision rendered by the English Court of Appeals. There, the appellant owned 31.2% of shares and is the managing director of the company. The respondent owned the balance (68.8%) of the shares and is its chairman. The managing director removed the chairman. Then, the chairman applied to the court for a declaration that the managing director's action was outside his powers as a managing director. The Court has referred to the precedential position on the issue, before giving its ruling.

26. After referring to the above authorities of its own, *Philip John Smith* has held that "the test of what is within the implied actual authority of a managing director coincides with the test of what is within the ostensible authority of a managing director. According to it, the managing director has certain powers by implication from his office. Even in a small company "those powers will often include power to commence proceedings unless the board has expressly or by implication decided that such proceedings should not be taken or would be likely not to ratify the commencement of proceedings."

27. Thus, *Philip John Smith* has invoked the doctrine of implied

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[] *[2012] EWCA Civ 314*

authority, equated that with the doctrine of ostensible authority, and held that the powers such as commencing proceedings should be taken as the managing directions implied powers. In other words, unless such power is taken away from the managing director expressly or impliedly, the managing director always enjoys those powers as part of his essential or incidental powers of managing the company.

28. Execution proceedings are in continuation of the original proceedings; in fact, the former fructifies the latter. A Division Bench of this Court in *Satguru Construction Co.Pvt. Ltd Vs Greater Bombay Co-operative Bank Ltd.*[8], has held that "the execution proceeding is a continuation of a suit." At any rate, Shri Bhobe has drawn my attention to Section 141 of CPC to contend that the procedure provided in Code of Civil Procedure "in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction." According to him, whatever applies to the institution of a suit should also apply to the execution proceedings. If that were so—in fact, it is not—the Division Bench of this Court in *Ramachandra D. Datar* has already answered this contention: Improper presentation is a curable defect. But as the Supreme Court has held in *Bhushayya v. Ramakrishnayya*[9], s. 141 applies to original proceedings and not to proceedings in execution.

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8 (2007)3 Mah LJ 843

9 AIR 1962 SC 1886

29. About applying CPC to the proceedings under the Arbitration and Conciliation Act, 1996, until *MTNL v. Applied Electronics Ltd.*, is decided by the larger Bench, to which it has been referred to, we should accept the proposition laid down in *I.T.I. Ltd. Vs. Siemens Public Communications Network Ltd.*[10]:

> "[T]here is always a strong presumption that the civil courts have the jurisdiction to decide all questions of civil nature, therefore, if at all there has to be an inference the same should be in favour of the jurisdiction of the court rather than the exclusion of such jurisdiction and there being no such exclusion of the Code in specific terms except to the extent stated in Section 37(2), we cannot draw an inference that merely because the Act has not provided the CPC to be applicable, by inference it should be held that the Code is inapplicable."

30. In fact, *Siemens Public Communications Network's* observation was in the context whether a revision petition under Section 115 of the Civil Procedure Code lies to the High Court against a civil court's order "in an appeal preferred under Section 37 of the Act." At any rate, the Code can be applied so long as it does not conflict with Arbitration and Conciliation Act, as has often been held."

31. Finally, let me turn to the authorities Rajesh has relied on. In *Ashok Bampto Pagui*, this Court has held that a director, as an individual director, has no power to act on behalf of the company. He is only one of a body of directors called the Board of Directors. He has no power except as may be delegated to him by the Board of Directors or by the articles of association of the company.

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10 [ ] AIR 2002 SC 2308

32. In *Kingston Computers India Private Limited.*, a company sued through a person who described himself as one of the Directors of the company and claimed that he was authorised by the chief executive officer of the company. The defendant took a preliminary objection. The matter finally reached the Supreme Court. On fact, the Court has held that the company's alleged representative has produced no evidence to prove that he was appointed as a director of the company and that the board of directors passed any resolution authorising him to sue the appellant, The letter the CEO is said to have issued "was nothing but a scrap of paper because no resolution was passed by the Board of Directors delegating its powers to" the alleged director. I am afraid neither decision helps Rajesh.

Back to Brass-tacks:

33. The Managing Director did file his wakalatnama for Milestone Minerals. Here, the bone of contention is whether any Milestone Minerals' resolution has accompanied that wakalatnama. According to Rajesh, the execution proceedings throw no light on this question. Milestone Minerals, on the other hand, contends that it has been the mandatory part of the wakalatnama; otherwise the execution proceedings would not have been numbered in the first place. About Milestone Minerals' producing the resolution before this Court, it has maintained that it has simply reproduced here whatever it has filed before the executing Court.

34. Technical as it may seem, first, I hold that a company can always

authorize any person, including the managing director, to represent the company. Here, Milestone Minerals has placed on record a resolution and asserts it was placed before the executing Court, too.

35. Second, the same MD represented Milestone Minerals before the Arbitral Tribunal; that Tribunal has, at the very beginning, rejected Rajesh's objection about MD's standing.

36. Third, execution proceedings are not original proceedings. They are a means to realise the fruits of the original proceedings. Thus, they are the continued original proceedings or, perhaps, collateral to those original proceedings. So the execution proceedings do not compel the person that carried the original proceedings to have a fresh authorization.

37. Fourth, as to company's instituting, prosecuting, and defending legal proceedings, the managing director as its principal employee always has the implied authority to represent the company unless the memorandum, or articles of association, or the board of directors denude the managing director of that authority.

38. And fifth, all the other contentions put aside, defects, if any, in a company's instituting, to be specific, execution proceedings through its managing director are curable defects.

Viewed from any perspective, Rajesh's objection fails. So I dismiss the Writ Petition.

DAMA SESHADRI NAIDU, J.

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