

\$~
*

IN THE HIGH COURT OF DELHI AT NEW DELHI

*Judgement reserved on 10.04.2019
Judgement pronounced on 09.12.2019*

+ **EXECUTION PETITION No. 79/2014 & EXECUTION APPLICATION (OS) Nos. 833/2015, 837/2015, 1122/2015, 167/2016, 68/2017 & 363/2017**

JAYANT GHADIA

..... Petitioner

Through: Mr. Ankit Jain & Mr. Siddhant Nath,
Advocates.

versus

HINDUSTAN TRADEX & MANUFACTURING PVT LTD AND
OTHERS

..... Respondents

Through: Mr. Dinesh Agnani, Senior
Advocate with Mr. Shohit
Chaudhry, Advocate, for judgment
debtor no. 1
Mr. J.S. Lamba, Advocate, for
objector Kuldeep Singh Dalal.
Ms. Kajal Chandra with Ms. Perna
Chopra, Advocates, for Objector
Ms. Amna Bi.
Mr. Sandeep Sharma with Mr.
Mrinal Srivastava, Advocates, for
objector VP Gupta.

**CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER**

RAJIV SHAKDHER, J.:

Preface

1. Principally I have been called upon to adjudicate upon Ex. P. 79/2014 (in short “Execution petition”). This execution petition has been filed by one Mr. Jayant Ghadia (in short, “Ghadia”). Ghadia has filed an

application in the execution petition i.e. EA 363/2017. Via this application Ghadia has sought a direction to summon documents from the concerned Debt Recovery Tribunal. In the execution petition, Ghadia seeks enforcement of the award dated 28.1.2009 (in short “award”) passed by the Learned Arbitrator in the matter titled "Jayant Ghadia versus Hindustan Tradex & Manufacturing Private Limited and Ors."

1.1 The execution of the award is opposed by four persons who have filed separate applications in this behalf. These applications are numbered as EA 833/2015, EA 837/2015, EA 1122/2015, and EA 167/2016.

1.2 EA 833/2015 has been filed by one Mr. V.P. Gupta (hereafter referred to as “objector No. 1”). EA 837/2015 has been filed by Amna Bi (hereafter referred to as “objector No. 2”). EA 1122/2015 has been filed by a person by the name Kuldeep Singh Dalal (hereafter referred to as “objector No. 3”). EA 167/2016 has been filed by judgment debtor No. 1 i.e. Hindustan Tradex Manufacturing & Private Limited (hereafter referred to as HTML).

1.3 Besides EA 363/2017, Ghadia has filed another application in which the relief sought is directed against objector No. 1. This application is numbered as EA(OS) 68/2017.

2. Therefore, the tenability of the objections filed by various objectors and the applications filed by Ghadia, is in a sense, dependent on the conclusion that I would reach with regard to the sustainability of the execution petition.

Backdrop

3. Thus, in order to reach a conclusion either way, the following broad facts are required to be noticed.

4. The record shows that HTML (which had on its board at one point in time, one, Mr. Anil Shah as the managing director), secured a loan from State Bank of India. In lieu of the loan offered by State Bank of India, the following seven properties were offered as security:

(i) Flat no. 1209 & 1210, 12th Floor, 26, Kailash Building, K.G. Marg, New Delhi-110001 (hereafter referred to as “K.G. Marg Property no. 1”);

(ii) Flat no. 309, 3rd Floor, Kanchanjunga Building, 18, Barakhamba Road, New Delhi -110001 (hereafter referred to as “Barakhamba Road Property”);

(iii) Property No. 2139, Old Bus Stand, Ganesh Pura-B, Tri Nagar, New Delhi (hereafter referred to as “Tri-Nagar Property no. 1”);

- (iv) Property no. 1211, Kailash Building, 26, K.G. Marg, New Delhi-110001 (hereafter referred to as “K.G. Marg Property No. 2”);
- (v) Sub-Plot No. 1480/1, Holding No. 116(D), Ward No. 17, Village Konka, S.K. Sahai Road, Circular Road, Ranchi (hereafter referred to as “Ranchi property No. 1”);
- (vi) Sub-Plot No. 1480/2, Ward No. 17, Village Konka, S.K. Sahai Road, circular Road, Ranchi (hereafter referred to as “Ranchi property No. 2”); and
- (vii) Property No. 2134, Old Bus Stand, Ganesh Pura, Tri Nagar, New Delhi (hereafter referred to as “Tri Nagar Property No. 2”)

5. There are claims and counter claims concerning the ownership of some, if not, all the properties referred to above.

5.1 Ghadia claims that HTML owned K.G. Marg Property No. 1 and Barakhamba Road Property.

5.2 Likewise, it is claimed by Ghadia that Tri Nagar Property No. 1 is owned by a company by the name Aqua Cross Enterprises Private Limited (in short “ACPL”).

5.3 It is also the claim of Ghadia that K.G. Marg Property No. 2 is owned by a company by the name Yogi Trading Company Private Limited (in short YTPL).

5.4 Insofar as Ranchi Property No. 1 is concerned, it is claimed by Ghadia that the same is owned by an individual by the name Ms. Bibha Ranjan, who as per the record at one point in time was apparently appointed as an additional director in HTML, ACPL and YTPL.

5.5 Insofar as the remaining two properties are concerned, i.e. properties referred at serial No. (vi) and (vii), these were owned by, one, Mrs. Sangeeta Shah, wife of Mr. Anil Shah.

5.6 It may also be relevant to note that along with Mrs. Bibha Ranjan, Anil Shah and P.K. Srivastava were apparently appointed as directors on the board of ACPL and YTPL apart from HTML.

5.7 What is however important to note at this stage is that properties referred to in serial nos. (i) to (v) are subject matter of the award. While properties in serial no. (i) to (iv) are subject matter of the Execution Petition, the property referred to in serial no. (v) though part of the award is curiously, not included in the execution petition.

5.8 Thus, the properties mentioned in the award will be collectively referred to as the “award-properties” while the remaining three properties (the details of which are given in serial no. (v) to (vii) in Paragraph 4 above), would be collectively referred to as “non-award” properties.

6. It appears that HTML defaulted in payment of its dues. This led to SBI filing a recovery action i.e. O.A. 127/2002 in the concerned Debt Recovery Tribunal (DRT). In this recovery action not only the borrower company i.e. HTML was arrayed as a defendant but even the guarantors and the mortgagors of the properties referred to hereinabove which formed the security for the loan advanced to HTML were made part of the recovery action.

7. Mr. Anil Shah, who, as indicated above, was one of the directors on the board of the borrower company (i.e. HTML) passed away on 1.12.2003.

8. The record seems to suggest that Mr. Anil Shah and his wife Mrs. Sangeeta Shah at some point in time acquired a Non-Resident Indian (“NRI”) status and were located in the USA.

9. It appears that while the recovery action filed by SBI was pending adjudication, it assigned the debt owed to it by HTML and its guarantors to Standard Chartered Bank (hereafter referred to as “SCB”).

9.1 The SCB, thereafter, entered into a “One Time Settlement” (OTS) with HTML and its guarantors. The OTS amount was pegged at Rs.9.60 crores, which was required to be paid in three monthly instalments with effect from 5.6.2008.

9.2 The fact that OTS had been arrived at between SCB and HTML is reflected in SCB's letter dated 25.4.2008.

10. Apparently, in order to garner funds, a Memorandum of Understanding dated 4.5.2008 (in short 2008 MOU No. 1) was executed between HTML, ACPL, YTPL and Ms. Bibha Ranjan on one side and Ghadia on the other. Pertinently, HTML, ACPL and YTPL executed the 2008 MOU No. 1 via Mr. P.K. Srivastava based on three separate board of directors' resolutions dated 3.5.2008, all of which, have been attested by Ms. Bibha Ranjan.

10.1 Parallely, Ghadia had on the very same date i.e. 4.5.2008 entered into another Memorandum of Understanding (in short 2008 MOU No. 2) and an addendum with Mrs. Sangeeta Shah and her family (which included her children and her father) in respect of the following properties:

- (i) X-6B, Hauz Khas Enclave, New Delhi (hereafter referred to as "Haus Khas Property")
- (ii) Plot No. 148/02, Holding No. 1186(C), Ward No. 17, Village Konka, S.K. Sahai Road, Circular Road, Ranchi (hereafter referred to as "Ranchi Property No. 3")

[To be noted that except for the plot number the other indices which describe Ranchi Property No. 2 are identical to Ranchi Property No. 3. There is no clear indication in the record as to whether

Ranchi property No. 2 and 3 are the same properties or are separate properties]

(iii) Plot no. 2134/166 and 2139/166, Old Bus Stand Road, Ganesh Pura-B, Tri Nagar, Delhi-110035 (hereafter referred to as “Tri Nagar Property No. 3”)

[This property also replicates in description, except for the property number, the properties referred to as Tri Nagar Property No. 1 and Tri Nagar property No. 2. There is once again no clarity in the record as to whether Tri Nagar Property No. 3 is a separate property or a combination of Tri Nagar Property No. 1 and 2]

11. Interestingly, in and about 12.1.2009, Ghadia filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (in short “1996 Act”) in this Court seeking an injunction against HTML, ACPL, YTPL and Ms. Bibha Ranjan in relation to the following properties: i.e. K.G. Marg property No. 1, Barakhamba Property, Tri Nagar Property No. 1, K.G Marg property No. 2 and Ranchi Property No. 1.

12. The substantive prayer made in the Section 9 Petition was as follows:

“a) pass ex-parte ad interim injunction restraining the respondents, their servants, agents etc. from in any manner creating any third party rights in the properties detailed in para 1 of this petition;”

13. It appears that while the Section 9 petition was pending adjudication, a joint application under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 (in short “CPC”) was filed by the parties herein for recording the terms of compromise; this application was accompanied by the 2008 MOU No. 1. Evidently, on 20.1.2009 the court appointed a Retired Judge of this Court as an arbitrator in the matter qua persons and entities who were parties to the Section 9 petition. Via the very same order, the Court also directed the parties to appear before the learned arbitrator on 22.1.2009.

13.1 Before the arbitrator, Ghadia filed a Statement of Claim (“SOC”) on 22.1.2009. In the SOC, Ghadia adverted to the 2008 MOU No. 1 and prayed that an award be passed in his favour in terms of the said MOU. In other words, he sought specific performance of the 2008 MOU No. 1. The respondents who were also represented on 22.1.2009 before the learned arbitrator conveyed to him that they would require a short accommodation to seek instructions, although, they had almost settled the disputes with Ghadia. The learned arbitrator, accordingly, adjourned the proceedings to 23.1.2009.

13.2 On 23.1.2009 the respondents filed a written statement admitting Ghadia’s claim. The respondents also conveyed to the learned arbitrator that an award be passed in terms of the compromise arrived at between the

parties before him in respect of the properties referred to in the 2008 MOU No. 1.

14. The learned arbitrator, accordingly, after noting the fact that the parties had arrived at a settlement passed an award on the terms agreed to between the parties. This award as noted above, was rendered on 28.1.2009.

14.1 Pertinently, in the award, the learned arbitrator noted the fact that Ghadia had paid at the time of execution of the 2008 MOU No. 1, Rs.60 lacs out of a total amount of Rs.6.35 crores.

14.2 The learned arbitrator also recorded, that at the time of rendering the award, out of the balance amount of Rs.5.75 crores, Ghadia had paid a further amount of Rs.3.75 crores to SCB and that what remained to be paid at that point in time, was an amount of Rs.2 crores. The dispute, according to the learned arbitrator, arose on account of respondents refusing to sell the K.G. Marg property No. 1 and the Barakhambha Road property to Ghadia despite having arrived at consensus amongst themselves as per the terms incorporated in the 2008 MOU No. 1. This disagreement have been resolved, led to the passing of the award based on the compromise arrived at by the parties.

14.3 Significantly one of the terms of the compromise which formed part of the award required Ghadia to pay the balance amount of Rs.2 crores to the SCB within ten (10) days of the passing of the award.

15. Insofar as Ghadia's 2008 MOU No. 2 was concerned, it required Ghadia to pay a total sum of Rs.5.50 crores in the following manner:

(i) Rs. 2 crores to be paid directly to SCB on behalf of Mrs. Sangeeta Shah and her family.

(ii) Out of the balance amount of Rs.3.50 crores, a further amount equivalent to Rs. 1.25 crores was required to be paid by Ghadia directly to SCB for liquidating the liability of Sangeeta Shah and her family in terms of SCB's letter dated 25.4.2008.

(iii) The remaining amount equivalent to Rs.2.25 crores was required to be paid by Ghadia to Mrs. Sangeeta Shah and her family at the time of execution and registration of sale deeds in respect of the Haus Khas property, the Ranchi Property No. 3 and the Tri Nagar Property No. 3.

15.1 The addendum, to the 2008 MOU No. 2, to which I have made a reference above, only adverted to the fact as to how the persons who are parties to 2008 MOU No. 2 valued the properties comprised therein. Thus, as per the addendum, out of the total consideration of Rs.5.50 crores, an amount equivalent to Rs.4.50 crores was ascribed as consideration for the

Haus Khas property. Insofar as Ranchi Property No. 3 and Tri Nagar Property No. 3 were concerned, under the addendum, the consolidated value was pegged at Rs.1 crore.

16. At this juncture, it may be important to note that Mrs. Sangeeta Shah and family had appointed, one, Mr. Manohar Meshram as their power of attorney. It is also pertinent to note that Mrs. Sangeeta Shah, on 01.03.2009, revoked Mr. Manohar Meshram's power of attorney. However, on 5.3.2009, Mr. Manohar Meshram executed a power of attorney in favour of Ghadia in respect of Ranchi Property No. 3.

16.1 The record shows that Mr. Manohar Meshram received an e-mail dated 15.3.2009 from Mrs. Sangeeta Shah informing him about revocation of the power of attorney executed in his favour.

16.2 On 19.3.2009, Mr. Manohar Meshram sent an e-mail to Ghadia informing him that his power of attorney had been revoked by Mrs. Sangeeta Shah.

17. However, the SCB upon receiving payments, amounting to Rs.10.75 crores, issued a "No Dues Certificate" (in short "NDC") to HTML on 13.8.2009. The NDC issued was in the form of a communication, which, as indicated above, is dated 13.8.2009. This was preceded by a letter dated 1.8.2009 which was also addressed by SCB to HTML. This letter was

issued in anticipation of the demand drafts handed over towards OTS being encashed. Once the bank drafts were encashed, the NDC was issued as noticed above vide letter dated 13.8.2009.

17.1 Interestingly, all this while Ghadia did not take any steps for the execution of the award. What makes it even more curious, is that, Ghadia thereafter entered into another Memorandum of Understanding dated 21.10.2010 (2010 MOU) with Mrs. Sangeeta Shah. This MOU was followed by of a Settlement Agreement dated 10.11.2010 (in short “2010 SA”) being executed between himself and Mrs. Sangeeta Shah.

18. A perusal of the recitals contained in the 2010 SA would show that it not only refers to the seven immovable properties referred to in paragraph 4 above, i.e. the award and non-award properties but it also refers to the award which was passed in favour of Ghadia based on the 2008 MOU No. 1.

18.1 Furthermore, the 2010 SA not only adverts to the company petitions filed by Mrs. Sangeeta Shah i.e. Company Petition no. 18 (ND) of 2009 and two other company petitions pertaining to 2010 but also to the FIR No. 207/2010, registered at P.S. C.R Park, which was registered based on Ghadia’s complaint against Mrs. Sangeeta Shah. Interestingly, both Mr. P.K. Srivastav and Ms. Bibha Ranjan were confirming parties to the 2010 SA.

19. In furtherance of obligations undertaken under the 2010 SA, Mrs. Sangeeta Shah has, admittedly, withdrawn her company petitions which were filed at the relevant point of time in the Company Law Board.

19.1 An order in this behalf was passed by the Company Law Board on 19.11.2010.

19.2 Insofar as FIR No. 207/2010 was concerned, there is on record an order dated 31.3.2017 passed by the Metropolitan Magistrate, South-East District, New Delhi (in short "M.M."). Via this order Mrs. Sangeeta Shah was discharged by the Learned M.M. The Learned M.M. in this order concluded, that no offence of criminal breach of trust or cheating under Section 406 and 420 of the Indian Penal Code, 1860 (in short "IPC") was made out against Mrs. Sangeeta Shah.

19.3 However, contrary to the terms of 2010 SA whereunder Ghadia was required to assist Sangeeta Shah in having the said FIR quashed, she had to go through the full rigor of law for seeking a discharge qua the aforementioned offences.

20. As would be evident from the narration of events set forth hereinabove, in the interregnum, i.e. in and about 4.03.2014, Ghadia moved this Court for execution of the award.

20.1 On 7.3.2014, in the Execution Petition, an interim order was passed qua the judgment debtors, (i.e. HTML, ACPL, YTPL and Ms. Bibha Ranjan) whereby they were enjoined from dealing, in any manner, with the following four properties:

- (i) K.G. Marg Property no. 1
- (ii) Barakhamba Property
- (iii) Tri-Nagar Property 1
- (iv) K.G. Marg Property No. 2

21. In the Execution Petition, the other substantive order which was passed, was the order dated 21.4.2015. Via this order on account of non-appearance of the judgment debtors warrants of attachments were issued *vis-a-vis* the four properties referred to above, which formed part of the Execution Petition.

22. The record also shows that fresh warrants of attachment were, once again, issued on 6.2.2018 as it was not clear as to whether or not the warrants of attachment issued on 21.4.2015 had been executed.

22.1 The record also shows that since process fee was not filed, on 6.4.2018, for the third time, fresh warrants of attachment were issued. In the interregnum, objections to the Execution Petition were filed by various persons; an aspect which I have referred to hereinabove.

Submissions of the Counsel:

23. Given this background, arguments on behalf of the decree holder (i.e. Ghadia) were advanced by Mr. Ankit Jain, Advocate. Likewise submissions on behalf of objector No. 1, 2 and 3 were advanced by Mr. Sandeep Sharma, Ms. Kajal Chandra, and Mr. J.S. Lamba respectively. HTML was represented by Mr. Dinesh Agnani, Sr. Advocate, instructed by Mr. Shohit Choudhry.

24. The submissions made by Mr. Ankit Jain can, broadly, be summed up as follows:

- (i) The award was based on a compromise arrived at between Ghadia, on one side, and the judgment debtors, on the other, which included HTML, ACPL, YTPL, and Ms. Bibha Ranjan and therefore, it was binding on those who were parties to the consent-award.
- (ii) The objections which have been filed only relate the K.G. Marg property no. 1, Barakhamba Road property and Tri Nagar property No. 1. No objections have been filed vis-à-vis K.G. Marg property No. 2. Furthermore, while objections have been filed by HTML, no objections have been filed by ACPL and YTPL. Thus, there was no impediment in the execution of the award vis-à-vis K.G. Marg property No. 2.

(iii) The argument advanced on behalf of HTML that the award was superseded by the 2010 SA does not find a mention in the objections filed with the Court. This is an argument which has been advanced on behalf of HTML across the bar. In any event, Mrs. Sangeeta Shah, who is the majority shareholder in HTML and is a signatory to the 2010 SA did not deem it fit to mention this fact in the 2010 SA, which is, that the award had been superseded even though there is a reference to the same. The 2010 SA refers to Ghadia as the decree holder which is suggestive of the fact that since the award had not been challenged by HTML, despite having acquired knowledge of the same, it had morphed into a decree.

(iv) Clause (viii) of the terms of agreement of the 2010 SA clearly provides if the properties referred to therein were not sold within nine months, then they shall vest in the decree holder (i.e. Ghadia), and thus, the objections of HTML are untenable.

(v) The objection raised by HTML that the 2008 MOU No. 1 was executed on its behalf by persons who were not vested with the requisite authority is a contention which ought to be rejected as the application filed under Order XXIII Rule 3 of the CPC with this Court was accompanied by Board of Directors resolution of not only HTML but other two judgment debtors as well i.e. ACPL and YTPL.

(vi) Insofar as the objection raised that Rs. 2 crores was not paid by Ghadia within the time span of ten (10) days as per the terms of the consent-award, it was an objection which cannot be sustained for following reasons:

(a) Ghadia after making the necessary payments had obtained a NDC from SCB on 1.8.2009/13.8.2009.

(b) HTML did not take out any proceedings on account of alleged non-compliance with the terms of the award.

(c) The plea raised on behalf of HTML i.e. non-payment of Rs. 2 crores within the time prescribed in the award was self-destructive of the other plea that the award was passed without its consent.

(d) The 2010 SA to which, Mrs. Sangeeta Shah is a signatory clearly adverts to the fact that Ghadia had made payments and obtained a NDC. Mrs. Sangeeta Shah being a majority shareholder in HTML would, in a sense, bind HTML as well.

24.1 Insofar as the submissions that Mr. Jain made on behalf of the decree holder i.e. Ghadia qua the issues raised by Objector no. 1 and Objector no. 3 are concerned, the same can be summed up as follows:

(i) The sale has been effected via documents such as General Power of Attorney (GPA), agreement to sell and purchase, affidavit, receipt, and

possession letter dated 30.8.2012. None of these documents can convey title. Reliance in this behalf was placed on ***Suraj Lamp & Industries Pvt. Ltd. Vs. State of Haryana***, AIR 2012 SC 206.

(ii) Furthermore, objector No. 3, if at all, could have claimed protection under Section 53A of the Transfer of Property Act, 1882, only if, the said documents were registered as provided in Section 17(1A) of the Registration Act, 1908. This amendment was brought in force on 24.9.2001 whereas the aforementioned documents were executed on 30.8.2012.

(iii) Doctrine of *lis pendens* as statutorily recognized under Section 52 of the Transfer of Property Act, (in short “T.P. Act”), trumps the argument of good faith and/or bona fide purchaser advanced by objector No. 3. Reliance in this behalf was placed on the judgment rendered in ***Bhim Singh vs. Amar Nath & Ors.***, 149 (2008) DLT 34.

(iv) The aforementioned documents in favour of objector No. 3 have been executed by one, Mr. Jitendra Mishra, whose wife Mrs. Neelam Mishra was a witness to the 2010 SA. The documents, thus, executed in favour of objector No. 3 were fraudulent.

(v) Objector No. 1 who claims to be a tenant has no standing in the eyes of law as his right in the subject property can only arise if the right of

Objector No. 3 in the Barakhamba Road property is sustained. Furthermore, the tenancy of objector No. 1 came to an end on 14.5.2016, and that thereafter, no fresh lease deed was executed in his favour.

24.2 Likewise Mr. Jain's submission on behalf of the decree holder i.e. Ghadia to the objections raised by Objector no. 2 vis-à-vis the Tri Nagar property No. 1, can be summarized as follows:

(i) In respect of this property, objector No. 2 claims a right based on a sale deed dated 18.3.2013 executed in her favour by, one, Mohd. Sajjad Ahmed Khan. A perusal of the said sale deed would show that Mohd. Sajjad Ahmed Khan claims right in the Tri Nagar property No. 1 based on a power of attorney. Power of attorney, in law, cannot confer ownership rights. Furthermore, Mohd. Sajjad Ahmed Khan has claimed that the power of attorney was executed in his favour by Mr. Anil Shah, who expired in 2003. Therefore, upon his death, Mohd. Sajjad Ahmed Khan's right to deal with the property came to an end and, thus, he could not have executed the aforementioned sale deed dated 18.3.2013.

(ii) In this context, it is required to be noted that this Court vide order dated 24.8.2017 had directed objector No. 2 to place on record the entire trail of title documents with respect to Tri Nagar Property no. 1.

(iii) Furthermore, Tri Nagar property no. 1 was mortgaged by its owner ACPL after SBI had carried out a title search. Therefore, the objections sought to be raised are both, factually and legally, unsustainable.

25. On the other hand, Mr. Agnani, learned Senior Advocate, on behalf of HTML submitted that HTML received information concerning the execution proceedings via objector No. 3 when he was served with the order of attachment dated 21.4.2015.

25.1 The other submissions made on behalf of HTML can be summed up as follows:

25.2 HTML upon becoming aware of the execution proceedings entered appearance in this Court via a counsel on 24.8.2015. A copy of the paper book was received by the counsel for HTML only on 26.8.2015.

25.3 On merits, Mr. Agnani contended that the award was a product of fraud played on the learned sole arbitrator by Ghadia and the then officers of HTML. The persons said to be representing HTML at that point in time had not been authorized by the Board of Directors of HTML. The said officers were thus, incompetent to either file a written statement or concede the case set up by Ghadia before the learned arbitrator. These officers could not have even consented to the appointment of an arbitrator in the matter.

25.4 In this context, it was emphasised that the counsel i.e. Mr. N.N. Aggarwal, who represented Ghadia before the learned arbitrator was also holding out himself to be the authorized representative of HTML before SCB. On this score, reliance was placed on letters dated 30.1.2009 and 9.8.2008 exchanged between SCB and HTML.

25.5 HTML had not authorized any person or director to enter into the 2008 MOU No. 1 with Ghadia. The consent on behalf of HTML was, purportedly, given by Mr. P.K. Srivastava and Ms. Bibha Ranjan, who had acted without the knowledge and due authorization of HTML. These two persons acted in concert with Ghadia in not only executing the 2008 MOU No. 1 but also in having the award being passed.

25.6 It was also contended that Ms. Bibha Ranjan was appointed as the additional director by HTML on 1.12.2003. The appointment was made without the shareholders resolution which had to be passed either at an AGM or an EGM. The appointment of Ms. Bibha Ranjan being a nullity in the eyes of law, she could not have acted on behalf of HTML. Therefore, Mr. P.K. Srivastava, acting alone, lacked the authority to execute the 2008 MOU No. 1 on behalf of HTML.

25.7 Assuming without admitting that the 2008 MOU No. 1 was a valid document in the eyes of law, the terms and conditions contained therein had not been complied with by Ghadia. As per the terms of the 2008 MOU

No. 1, Ghadia was required to pay Rs.2 crores within ten (10) days from the date of passing the award. The Execution Petition makes no mention as to the manner in which Ghadia paid Rs.2 crores to SCB. Ghadia has not placed on record any documents which would prove that he himself had paid the said sum to SCB. Besides this, no document has been placed on record by Ghadia to demonstrate the date and the manner in which the said sum was paid to SCB.

25.8 As is evident upon perusal of the letter dated 30.1.2009 issued by SCB to HTML, the OTS arrived at with HTML was cancelled. Therefore, the original title deeds were not released by SCB. Given these circumstances, HTML could not have executed sale deeds in favour of Ghadia, as contended. In sum, the award had become unenforceable and void. The fact that the earlier OTS stood cancelled is evident by virtue of the fact that the NDC was issued by SCB in favour of HTML only on 13.8.2009.

25.9 Before issuance of the restraint order by this Court on 21.4.2015, the Barakhamba Road property stood sold to objector No. 3 on 30.8.2012. Insofar as the K.G. Marg property No. 2 is concerned, the same has already been attached by Canara Bank.

25.10 In the Execution Petition, the prayer made by Ghadia is that the award should be enforced. In other words, sales deeds should be executed

in his favour by the judgment debtors i.e. HTML, ACPL, YTPL and Ms. Bibha Ranjan. Therefore, attachment and sale of properties would not satisfy the award which according to Ghadia, has morphed into a decree. Thus, the mode of assistance sought by Ghadia for enforcement/execution of the award is contrary to the terms of the award.

25.11 The 2010 SA has neither any bearing nor does it relate to the captioned petition insofar as HTML is concerned. Lastly, the award is, insufficiently stamped and hence cannot be executed.

26. Mr. Sandeep Sharma, who appeared on behalf of objector No. 1 made the following submissions:

26.1 Objector No. 1 who is the tenant/lessee of Barakhamba Road property claims that he became aware of the order of restraint dated 21.4.2015 only on 3.8.2015.

26.2 It was also contended that objector No. 1 had entered into a lease agreement qua the Barakhamba Road property and a hire agreement vis-à-vis the furniture and fixtures placed therein. These agreements were executed between Objector No. 1 and Mrs. Sangeeta Shah. These agreements were executed on 1.10.2001. The lease was executed between Hindustan Polychem Private Limited, the predecessor-in-interest of HTML

while the hire agreement was executed between Objector No. 1 and Mrs. Sangeeta Shah.

26.3 The fact that there was a change in name of the lessor i.e. from Hindustan Polychem Private Limited to HTML was communicated to Objector No. 1 vide letter dated 18.4.2002. Likewise, Mrs. Sangeeta Shah vide letter dated 18.4.2002 requested objector No. 1 that the rent qua furniture and fixtures should be paid to the account of her husband i.e. Mr. Anil Shah and that she had assigned her rights in the hire agreement dated 29.9.2001 in his favour.

26.4 The lease agreement dated 1.10.2001 and the hire agreement dated 29.9.2001, according to the objector No. 1 were executed for an initial tenure of three years spanning between 1.10.2001 and 30.9.2004.

27. Objector No. 1 has stated in his application that vide letter dated 23.12.2003 he was communicated that the rent cheque which was earlier issued in favour of HTML should be made out in the name of YTPL on account of the fact that Mr. Anil Shah had expired.

27.1 It is also contended that on 9.8.2011, Mrs. Sangeeta Shah wrote to Objector No. 1 that she should be paid the rent for furniture and fixtures which were due since November 2004. According to Objector No. 1, after the death of Mr. Anil Shah, both the lease rent and the hire charges

between 1.12.2004 and 14.11.2011 were paid to Mrs. Sangeeta Shah in respect of which Mrs. Sangeeta Shah issued an indemnity bond in favour of the Objector no. 1.

27.2 Objector No. 1 also avers that a fresh lease was executed between him and HTML on 3.2.2012. This lease had a tenure of four years and six months. It commenced on 15.11.2011 and expired on 14.5.2016.

27.3 Likewise, according to objector No. 1, a fresh hire agreement was executed on 15.11.2011 with Mrs. Sangeeta Shah, which expired on 14.5.2016.

27.4 Furthermore, on behalf of objector No. 1, it was pointed out that in August 2012 he was informed by HTML that the demised premises i.e. Barakhamba Road Property had been transferred by HTML to objector No. 3 via an agreement to sell and, therefore, he should attorn to objector No. 3 with effect from 1.9.2012. It was also contended on behalf of Objector No. 1 that it had not executed a fresh lease deed with objector No. 3 as he had already attorned to objector No. 3 in terms of clause 16 of the lease deed dated 3.2.2012.

27.5 In sum, the argument advanced on behalf of objector No. 1 was that Barakhamba Road property did not belong to judgment debtor No. 1 or any of the other judgment debtors i.e. ACPL, YTPL or Ms. Bibha Ranjan. The

Barakhamba Road property having been sold to objector No. 3 on 30.8.2012, prior to its attachment, could not form the subject matter of the present execution proceedings.

27.6 Therefore, the contention advanced on behalf of objector No. 1 was that the attachment order was passed vis-à-vis the Barakhamba Road property in the absence of the information that the property in issue had already changed hands. It was, thus, submitted on behalf of objector No. 1 that the attachment order passed qua the Barakhamba Road property should be lifted.

27.7 In the alternative, the prayer made was that in case the Barakhamba Road property is attached, the objector No. 1 being a lawful lessee, he should not be dispossessed without following due process of law.

28. On behalf of objector No. 3, arguments were advanced by Mr. J.S. Lamba who contended that the Barakhamba Road property had been purchased by objector No. 3 on 30.8.2012 via GPA, agreement to sell, and purchase, affidavit and receipts; all dated 30.8.2012.

28.1 Reliance in this behalf was also placed on the possession letter dated 30.8.2012 to establish that pursuant to execution of the aforementioned documents, objector No. 3 had obtained possession of the Barakhamba Road property. The argument was that objector No. 3 was a bona fide

purchaser of the Barakhamba Road property. It was further contended that objector No. 3 had no knowledge of the award and that in any case the award stood superseded by 2010 SA.

28.2 It was also be pointed out that the 2010 SA incorporated an arbitration agreement and, therefore, Ghadia could exercise his rights, if any, vis-à-vis the Barakhamba Road property only by taking recourse to the arbitration agreement which stood incorporated in clause 18 of the 2010 SA and not via the instant execution petition.

28.3 Since, admittedly, the payments under the award were not made within time as stipulated in the award, the instant execution petition was not maintainable.

28.4 In any event, the 2010 SA has been acted upon by Mrs. Sangeeta Shah as she had withdrawn the company petitions filed by her. Furthermore, Mrs. Sangeeta Shah stood discharged by the concerned court vide order dated 31.3.2017 in respect of the proceedings which emanated from FIR No. 207/2010, dated 28.9.2010, which in turn, was based on a complaint filed by Ghadia. Although the 2010 SA required Ghadia to assist Sangeeta Shah in having the said FIR quashed, she was needlessly required to go through the rigour of law as Ghadia refused to extend the necessary assistance.

28.5 The concerned court after examining the matter in great detail had commented on the conduct of Ghadia. Reference in this behalf was made to the observations made in paragraphs 23 and 24 of the learned MM's order dated 31.3.2017.

28.6 It was further contended that even otherwise Ghadia had not paid Rs.2 crores to SCB as stipulated in the award within ten (10) days as required and that this payment was made later on by, one, Ms. Sulochana Goyal upon sale of an immovable property owned by the father of Mrs. Sangeeta Shah. In sum, it was contended that Ghadia was not entitled to seek execution in the award which was superseded by the 2010 SA.

Analysis and Reasons:

29. I have heard contentions of the counsel for the parties and also perused the record. The narration of facts and events as noted hereinabove would show that the transaction with regard to award and non-award properties and two properties belonging to Sangeeta Shah are entwined.

29.1 As indicated hereinabove, there are five properties referred to in the award. These are property bearing Nos. (i) to (v) as mentioned in paragraph 4 above. The Execution Petition, however, refers to and/or seeks enforcement of the award only vis-à-vis the first four properties. Insofar as

the fifth property is concerned, i.e. Ranchi property No. 1, the owner, even according to Mrs. Sangeeta Shah, is Ms. Bibha Ranjan.

29.2 Though the award was passed as far back as on 28.1.2009, Ghadia for some reason did not seek execution of the award, and, instead entered into the 2010 SA in which, there is not only a reference to the award properties and the non-award property but there is also a reference to two other properties, over which, ownership is claimed by Mrs. Sangeeta Shah.

29.3 Therefore, in all, the 2010 SA refers to seven properties, which includes as indicated above the award properties, which are four in number, one property which apparently is owned by Ms. Bibha Ranjan and two properties which are, apparently, owned by Mrs. Sangeeta Shah.

29.4 The 2010 SA has been executed between Ghadia and Mrs. Sangeeta Shah and the confirming parties to the said agreement are Mr. P.K. Srivastava and Ms. Bibha Ranjan.

30. The award, on the other hand, is based on the 2008 MOU No. 1. This MOU was executed on 4.5.2008. On that very date, Ghadia executed another MOU i.e. 2008 MOU No. 2 with Mrs. Sangeeta Shah concerning three properties i.e. Hauz Khas Property, Ranchi Property No. 3 and Tri Nagar Property no. 3 (as mentioned in

10.1 above). These are properties which are, apparently, owned by Mrs. Sangeeta Shah and her family.

30.1 Under the award, which was pivoted on the 2008 MOU No. 1, Ghadia was required to pay a total amount of Rs. 6.35 crores to SCB. There was, admittedly, a delay as Mr. N.N. Aggarwal, Advocate, who represented Ghadia in the arbitration proceedings, acted as the authorized representative of HTML and sought extension of time for making the deficit payment to SCB. This extension of time was sought via letter dated 9.8.2008.

30.2 SCB, however, terminated the OTS vide communication dated 30.01.2009 addressed to HTML (marked to N.N. Aggarwal), on the ground that the balance OTS amount aggregating to Rs.2,45,20,929/- had not been paid by the end date i.e. 26.12.2008. SCB via this very letter also communicated that the amount already paid towards OTS would stand forfeited and that the liability of HTML and its guarantor(s) as per the loan agreements would stand restored.

30.3 The record shows that, thereafter, on 01.8.2009 SCB issued a letter which, effectively, demonstrated that towards the loan taken by HTML a total amount of Rs.10.75 crores had been paid.

30.4 Consequently, a NDC was issued in favour of HTML on 13.8.2009.

30.5 The aforementioned letters i.e. letters dated 1.8.2009 and 13.8.2009 were marked to Mr. P.K. Srivastava in his capacity as the director of HTML.

30.6 Ordinarily, Ghadia should have been satisfied with this outcome, as the amounts under the OTS had been paid, as per his assertion, entirely by him, and therefore, the properties referred to in the award should have come to him. However, Ghadia chose to execute the 2010 SA with Mrs. Sangeeta Shah and as alluded to above, with regard to not only the award properties, non-award property but also two properties owned by Mrs. Sangeeta Shah.

31. It appears that because the Shah's were not, perhaps, based in India at the relevant point of time, the affairs of HTML were somehow being managed by Mr. P.K. Srivastava and Ms. Bibha Ranjan.

31.1 It is quite obvious that there were legal lacunas in the 2008 MOU No. 1 as it was based on an authority given to Mr. P.K. Srivastava by Ms. Bibha Ranjan when she was in law, not a director on the Board of HTML. Ms. Bibha Ranjan was appointed as an additional director in 2003. There is no document placed on record as to whether her appointment as the director was confirmed in the following AGM of the shareholders, as per

the provisions of Section 260 of the Companies Act, 1956¹. Therefore, the 2008 MOU No. 1 could not have been executed by Mr. P.K. Srivastava based on a resolution, to which, Ms. Bibha Ranjan was a party.

31.2 It is not Ghadia's case that Mrs. Sangeeta Shah was either present or her consent was taken when the Board of Directors resolution was passed authorizing Mr. P.K. Srivastava to act on behalf of HTML.

31.3 It is, perhaps, for this reason that Ghadia entered into the 2010 SA. There was otherwise no good reason for Ghadia to enter into 2010 SA with Mrs. Sangeeta Shah concerning the properties which were already the subject matter of the award.

31.4 The argument advanced on behalf of Ghadia that there was reference to the award in the 2010 SA, to my mind, only goes to show that Ghadia was aware of the legal untenability of the award and the 2008 MOU No. 1 of which formed the basis of the award.

31.5 The very fact that till March, 2014 Ghadia chose not to seek execution of the award points to the direction that the award, even according to him, was flawed and was a product of manipulation to which he, Mr. P.K. Srivastava and Ms. Bibha Ranjan were parties.

¹ **260. Additional directors.** -Nothing in section 255, 258 or 259 shall affect any power conferred on the Board of directors by the articles to appoint additional directors.
Provided that such additional directors shall hold office only up to the date of the next annual general meeting of the company.
Provided further that the number of the directors and additional directors together shall not exceed the maximum strength fixed for the Board by the articles.

31.6 That being said, it also emerges from the record that Ghadia has paid monies to SCB. There is no denial by the judgment debtors i.e. HTML, ACPL, YTPL, Ms. Bibha Ranjan or by Mrs. Sangeeta Shah that Rs. 4.35 crores was paid by Ghadia in pursuance of the 2008 MOU No. 1.

31.7 Insofar as the balance amount of Rs.2 crores is concerned, it cannot be disputed that Ghadia was required to pay within the timeline stipulated therein under the award.

31.8 In this context the argument advanced on behalf of the objector No. 3 that Rs.2 Crores was not paid within ten days of the passing of the award, as agreed between those who were parties to the award, attains significance as Ghadia has failed to even make an assertion as to the date and the manner in which Rs.2 crores was paid by him to SCB.

32. Although it is not connected with the execution of the award, Ghadia under the 2008 MOU No. 2, has paid only Rs.2 crores against a total amount of Rs.3.25 crores which he was required to pay to SCB. The balance amount, i.e. Rs.2.25 crores was required to be paid to Mrs. Sangeeta Shah.

33. Therefore, while the award had lost its efficacy, even according to Ghadia, which is the reason why there was a reference to the same in the 2010 SA, the objector Nos. 2 and 3 may not have any legal title to the

properties over which they lay claim. Insofar as objector No. 3 is concerned, he claims title based on GPA, agreement to sell etcetra, none of which have been registered. Insofar as the objector No. 2 is concerned, even though she claims right to property based on a sale deed dated 18.3.2013, her predecessor-in-interest Mohd. Sajjad Ahmed Khan bases his right on a power of attorney, agreement to sell, and a Will dated 5.5.1998. The Will which is dated 5.5.1998 does not bear signatures of two witnesses, as required under section 63(c) of the India Succession Act, 1925. Therefore, the Will which is stated to have been executed by Anil Shah in favour of Mohd. Sajjad Ahmed Khan is not valid in the eyes of law.

33.1 As correctly argued by Mr. Ankit Jain, the power of attorney came to an end with the death of Mr. Anil Shah. The power of attorney which formed the basis of the agreement to sell after Mr. Anil Shah's death lost its efficacy in the eyes of law.

33.2 Insofar as objector No. 1 is concerned, the material on record does show that he entered into the property in the capacity of a lessee and thereafter continues in possession of the subject property though the last lease agreement and the hire agreement ended in 2016. Therefore, the fact that he is in lawful occupation of Barakhamba Road Property cannot be

doubted. Objector No. 1 is, therefore, right in his assertion that he can be evicted from the said property only after following the due process of law.

34. Thus, for the foregoing reasons I am of the view that the Execution Petition qua the aforementioned award would not lie. This, however, will not foreclose Ghadia from taking recourse to an appropriate remedy in accordance with the law to agitate his rights qua the properties which are subject matter of the award and/or in respect of monies paid by him to SCB qua the debt of HTML.

35. Consequently, Execution Petition No. 79/2014 is dismissed. Resultantly, EA No. 363/2017 and 68/2017 shall stand closed. Objections of Objector Nos. 2 and 3 i.e. EA 837/2015 and EA 1122/2015 respectively are also dismissed. EA No 833/2015 filed by objector No. 1 is disposed of in terms of the observations made in paragraph 33.2 above. Objections of HTML are also disposed of having regard to the fact that the Execution Petition has been dismissed. Costs will follow the result.

(RAJIV SHAKDHER)
JUDGE

DECEMBER 09, 2019
VKR