

IN THE HIGH COURT OF BOMBAY AT GOA**MISC.CIVIL APPLICATION NO. 716 OF 2019****IN****MISC.CIVIL APPLICATION NO. 386 OF 2019**

MUKTAR MINERALS PVT. LTD., THR.
ITS AUT. REP., PRASHANT DAMU
NAYAK.

... Applicant

Versus

SWISS SINGAPORE OVERSEAS
ENTERPRISES PTE LTD.

... Respondent

Ms. Dipti Arolkar, Advocate for the Applicant.

Mr. Jatin Ramaiya, Advocate for the Respondent.

Coram:- M. S. SONAK, J.

Date:- 3rd January, 2020

P.C.

Heard Ms. D. Arolkar, learned counsel for the Applicant and
Mr. J. Ramaiya, learned counsel for the Respondent.

2. This Civil Application seeks the following reliefs :

“(a) Pass an order modifying the order dated 3rd May, 2019 thereby vacating the direction to the Respondent not to alienate the movable and immovable assets in order to enable the Respondent to function in ordinary course and the striking down the order not to erode the shareholders' corpus, for the reasons stated in the application;

(b) Any other or further reliefs deemed appropriate in the nature and circumstances of the present case.”

3. Ms. Arolkar submits that the order dated 3rd May, 2019, to the extent, it restrains the Applicant from eroding the shareholders' corpus is unenforceable as, under the Companies Act, it is not permitted to erode the shareholders' corpus. She therefore submits that this portion of the order is untenable and is required to be struck down.

4. Ms. Arolkar submits that when this order dated 3rd May, 2019 was made, the Applicant had not produced the documents before the Court. She submits that now the Applicants are in a position to produce the documents before the Court and this is also an additional ground for which the order should be modified in the aforesaid terms.

5. Mr. Ramaiya reiterates what is set out in the reply and submits that this application should be dismissed. He points out that though this application for modification was filed on 8th July, 2019 to modify the order dated 3rd May, 2019 when the learned Judge who actually made the order was very much available, the Applicant repeatedly applied for adjournments in the matter.

6. Upon perusal of the Misc. Civil Application as well as the

records, it is true that the Applicant has delayed the matter and not taken up the matter before the learned Judge who actually made the order dated 3rd May, 2019. That apart, in the application seeking modification, it is not permissible for the Applicant to raise contention that any portions of the order are "*untenable and may be strike down*". These are in fact precise pleadings in the Misc. Civil Application.

7. The contention that the Applicant has now obtained the documents is neither here nor there. In any case, certainly no ground for modifying the order has made out. The Applicant has not made out any case of change of any circumstances and on that basis applied for variation of the order.

8. The contentions of hardship raised by the Applicant are also misconceived. On the one hand, there is no compliance with the decree and on the other hand there is a complaint of hardship. This application is quite misconceived and therefore, the same is dismissed with costs which are quantified at Rs.10,000/-.

M. S. SONAK, J.

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