Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4952 OF 2021

Ambey Iron Pvt Ltd & Anr ...Petitioners
Versus
The State of Maharashtra & Ors ...Respondents

Mr Rahul Gaikwad, *with Bhavesh Parmar and Nikita Abhyankar, i/b Gravitas Legal, for the Petitioner.*
Mr Rahul Sarda, *with Ruchika Indulkar, i/b Jay & Co, for Respondent No.2-MIDC.*

CORAM: G.S. Patel & Madhav J. Jamdar, JJ.
DATED: 23rd November 2021

PC:-

SHEPHALI SANJAY MORMARE

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Date: 2021.11.24 14:29:03 +0530

1. The Petition is by two companies seeking to quash and set aside two circulars of 12th May 1998 and 1st January 2013 issued by the 2nd Respondent, MIDC. There is also a prayer to quash an undated letter addressed by the 2nd Respondent to the Advocates of the Petitioners. We reject the second prayer straight-away because we do not quash correspondence.

2. MIDC imposed transfer charges in the amount of Rs. 38,09,600/- on the basis of the two impugned circulars. According to the learned Advocate for the Petitioners, these circulars do not apply the Petitioners. They only contemplate a case where 51% of a corporate entity's equity has changed hands voluntarily.

3. What happened this in this particular case is that the 1st Petitioner was subjected to a Corporate Insolvency Resolution Process or CIRP before the NCLT. The 2nd Petitioner was the successful resolution applicant. It took over 100% of the equity of the 1st Petitioner.

4. At this stage, we are shown an order of the NCLT made on 1st October 2021 which deals with precisely this charge of Rs.38,09,600/- towards differential premium and transfer charges. The NCLT bench took the view that since the resolution plan had been approved on 14th October 2019, and there was a consequent change in constitution of the 1st Petitioner by a takeover of the 1st Petitioner (corporate debtor) by the 2nd Petitioner, and therefore a 100% change in its shareholding, the 2nd Petitioner, the successful resolution applicant, was required to pay the differential premium and transfer charges.

5. We must, we believe, defer to the considered and reasoned view of the NCLT. Apart from that, we are not persuaded that this transfer is involuntary, and is of the nature of a change in the name of a proprietary concern without changes in individual proprietorship. It is clear to us that the entire shareholding of the 1st Petitioner has in fact shifted hands to the 2nd Petitioner. The transfer charges and differential premium are thus clearly payable.

6. We see no substance in the Petition. It is rejected. There will be no order as to costs.

7. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J.) **(G. S. Patel, J)**