

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.1153 OF 2020
IN
COMPANY PETITION NO.511 OF 2016**

Sachin Corporation

....Applicant/Petitioner

V/s.

Kusuma Bhandary Developers Pvt. Ltd. & Ors.

....Respondents

Mr. Arif Bookwala, Senior Advocate a/w. Ms. Mahek Bookwala-Shetty i/b. Bimal Bhabhda for applicant/petitioner.

Mr. Nirman Sharma a/w. Mr. Sachin Chowdhari i/b. Dharam and Co. for respondent.

**CORAM : K.R.SHRIRAM, J.
DATED : 16th MARCH 2021**

P.C. :

1 This is an application for recalling the order dated 3rd July 2018 taking the consent terms dated 3rd July 2018 on record. Pursuant to the consent terms, parties have referred all their disputes to arbitration and arbitration process is still on.

2 At the outset, I made an observation to the applicant's counsel that if he succeeds in the application that would amount to derailing the entire arbitration proceedings in which applicant is also the claimant. I, therefore, expressed surprise as to why applicant would want to derail the arbitration proceedings in which his claims are being adjudicated.

3 Be that as it may, applicant has come with a specific case that on the date the consent terms were signed, i.e., 3rd July 2018 and taken on record by the Court, the Director, who signed for the company, viz., Suresh

Bhandary, was disqualified to be a Director of the company. Ofcourse Mr. Bookwala also argued that Kusuma Bhandary and Neha Shetty, who had also signed the consent terms, were disqualified to be Directors of any company on that particular date, i.e., 3rd July 2018. With the assistance of the counsel, I have gone through the relevant documents. First of all, the consent terms has been signed for Kusuma Bhandary Developers Pvt. Ltd. (KBDPL) and Kusuma Bhandary Construction Pvt. Ltd. (KBCPL) by Mr. Suresh Bhandary. Kusuma Bhandary and Neha Shetty have signed in their individual capacity and not as Directors of KBDPL or KBCPL. Mr. Bookwala relied upon an extract annexed at Exhibit “B” to the application to submit that Mr. Suresh Bhujanga Bhandary, having DIN No.00260185, has been disqualified as Director of KBCPL and KBDPL with effect from 1st November 2016 and 1st November 2017, respectively, upto 31st October 2022 and therefore, he could not have signed the consent terms. Mr. Bookwala also relied upon Exhibit “D” to the application, which is an extract from the Ministry of Corporate Affairs website, the date on which the extract was taken is not clear, to show that the DIN status of Mr. Suresh Bhujanga Bhandary shows that he has been disqualified upto 31st October 2022. The document ofcourse does not mention the date from which the disqualification period commences but Mr. Bookwala correlated it to Exhibit “B” annexed to the application to say that disqualification was effective from the dates mentioned earlier, i.e., 1st November 2016 for KBCPL and 1st November 2017 for KBDPL.

4 In the affidavit in reply, respondents have filed an extract from the MCA website taken on 6th March 2020 which shows that the disqualification period of Mr. Suresh Bhujanga Bhandary commenced on 1st November 2018 and it is upto 31st October 2022. Mr. Sharma brought to the notice of the Court an order dated 13th April 2018 passed by the National Company Law Tribunal in which the NCLT was pleased to restore the name of the company (KBDPL) in the Register of Companies and thereby, the disqualification was revoked. Ofcourse for some other reason, Mr. Suresh Bhujanga Bhandary has been disqualified with effect from 1st November 2018. The fact is, on the date the consent terms were signed, I am satisfied that Mr. Suresh Bhujanga Bhandary, who signed for KBDPL and KBCPL, had authority to sign for the company.

5 Mr. Bookwala relied upon an affidavit of Suresh Bhujanga Bhandary, Neha Shetty and Kusuma Bhujanga Bhandary, copy whereof is at Exhibit “1” to the rejoinder to submit that admittedly Mr. Suresh Bhujanga Bhandary was disqualified to be a Director. But that affidavit is dated 26th March 2018 and the order of the NCLT mentioned earlier is dated 13th April 2018. Therefore, in my view, the application has no merit and has to be dismissed.

6 Interim Application is hereby dismissed.

7 At the same time, since the disqualification is still in force, Mr. Sharma states that all pleadings for KBCPL and KBDPL before the

Arbitrator will be filed either by respondent no.5 or respondent no.6, who are Directors of these two companies as on date and if any pleadings have been filed by respondent nos.2, 3 or 4 before the Arbitrator, respondent no.5 or respondent no.6, since respondent nos.5 and 6 appeared to be Directors of the company as per the extract of MCA website annexed to the application, shall file an affidavit for KBDPL or KBCPL ratifying/accepting the affidavit already signed either by respondent no.2, 3 or 4 in the arbitral proceedings and this affidavit shall be filed within two weeks from today. Statement accepted as undertaking to this Court. The cost of this application shall be considered by the Arbitrator in the arbitral proceedings.

Gauri A.
Gaekwad

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by Gauri A.
Gaekwad
Date:
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(K.R. SHRIRAM, J.)