

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.68 OF 2021
IN
INTERIM APPLICATION NO.1153 OF 2020
IN
COMPANY PETITION NO.511 OF 2016
WITH
INTERIM APPLICATION (L) NO.17283 OF 2021
IN
APPEAL NO.68 OF 2021**

Sachin Corporation ... Appellant

Versus

Kusuma Bhandary Developers Pvt. Ltd. and Ors. ... Respondents

Mr. Karl Tamboly with Mr. Kezer Kharawala i/by Lex Juris, for Appellant.

Mr. Nirman Sharma with Mr. Sachin Chowdhari i/by Dharam and Co., for Respondents.

**CORAM: S.J. KATHAWALLA &
MILIND N. JADHAV, JJ.**

DATE: 18th AUGUST, 2021

P.C.:

1. The above Appeal is filed by the Appellant against the order passed by the learned Single Judge (K.R.Shriram, J.) dated 16th March, 2021 rejecting Interim Application No.1153 of 2020.

2. The relevant facts in the matter are in brief set out hereunder :

2.1 The Appellant - Sachin Corporation, was the original Petitioner in Company Petition No.511 of 2016 which was filed against the Respondent No.1 herein

– Kusuma Bhandary Developers Pvt. Ltd. (‘KBDPL’) seeking winding up of KBDPL on the ground that it is unable to pay its debts.

2.2 Several other proceedings by way of Summary Suits were filed by the Appellant against the KBDPL and Kusuma Bhandary Constructions Pvt. Ltd. (‘KBCPL’) which were pending before this Court. One more Summary Suit was pending before the Bombay City Civil Court at Dindoshi.

2.3 On 3rd July, 2018 the parties filed Consent Terms in Company Petition No.511 of 2016, by which they referred all their disputes to a sole arbitrator and accordingly, the arbitration proceedings commenced

2.4 Almost three years thereafter i.e. on 7th April, 2021, the Appellant through its Partner, filed the above Interim Application No.1153 of 2020 in Company Petition No.511 of 2016 seeking the following reliefs :

“(a) that this Hon’ble Court be pleased to recall its order dated 3rd July, 2018 taking Consent Terms dated 3rd July, 2018 on record, for the reasons more particularly stated in the Affidavit in support hereof;

(b) that the Official Liquidator, High Court, Bombay be appointed as Provisional Liquidator of Respondent No.1 with all the powers under the Companies Act, 1956 to take charge of all the assets of the Company;”

2.5 The said Interim Application came up for hearing before the learned Single Judge, when the Appellant – Sachin Corporation, submitted that the Consent Terms ought to be set aside since Mr. Suresh Bhandari, Director of KBDPL along with

Kusuma Bhandary and Neha Shetty had signed the Consent Term on 3rd July, 2018 despite being disqualified to be the directors of any Company on 3rd July, 2018.

2.6 The learned Single Judge after considering the submissions and going through all the records, has by his order dated 16th March, 2021 interalia observed / held as under :

(i) that Mr. Suresh Bhandary has signed the Consent Terms on behalf of KBDPL and KBCPL;

(ii) that Kusuma Bhandary and Neha Shetty have signed the Consent Terms in their individual capacity and not as directors of KBDPL and KBCPL;

(iii) that the submission of the Senior Advocate representing the Appellant – Sachin Corporation that Mr. Suresh Bhandary having DIN No.00260185 has been disqualified as directors of KBCPL and KBDPL from 1st November, 2016 and 1st November, 2017 respectively upto 31st October, 2022, is incorrect.

(iv) that it is true that the name of KBDPL was struck off in the records of the Ministry of Corporate Affairs (MCA) and pursuant to an order of National Company Law Tribunal (NCLT) dated 13th April, 2018, the same stood restored;

(v) that on 3rd July, 2018, Mr. Suresh Bhandary was not disqualified as director of KBDPL and was therefore, authorized to sign the Consent Terms on behalf of KBDPL and KBCPL;

(vi) that for some reason, Mr. Suresh Bhandary had been disqualified with effect from 1st November, 2018, however, the same would not entitle the Respondents to contend that the Consent Terms dated 3rd July, 2018 were signed by Mr. Suresh Bhandary without any authority;

(vii) That the directors appointed subsequently i.e. Respondent Nos.5 and 6 shall file an Affidavit before the Arbitral Tribunal accepting and ratifying all the pleadings which are filed before the Arbitral Tribunal.

3. After hearing the learned Advocates for the parties and going through the impugned order, we are of the view that the order impugned before us is correct and needs no interference whatsoever. Infact, we have informed the learned Advocate for the Appellant that the impression gathered by this Court is that the Appellant in order to wriggle out of the arbitration proceedings has filed the above Interim Application which is untenable and baseless and such conduct of the Appellant amounts to a sharp practice.

4. In response, the learned Advocate for the Appellant has submitted that the above Interim Application is filed by the Appellant only since the Appellant is apprehending that after going through the entire arbitration process, the present directors i.e. Respondent Nos.5 and 6 may take a stand that the award passed by the learned Arbitrator is not binding on them, since they were not the signatories to the Consent Terms.

5. We see no substance in the said apprehension for the following reasons :

(i) All the Respondents including Respondent Nos.5 and 6 have through their Advocates given an undertaking to this Court that they shall file their Vakalatnama in the above Appeal within a period of one week from today, which undertaking is accepted.

(ii) The directors appointed subsequently i.e. Respondent Nos.5 and 6 have in compliance of paragraph 7 of the impugned order, filed an Affidavit before the Arbitral Tribunal accepting and ratifying all the pleadings filed before the learned Arbitrator prior to their appointments. Hence, it is clear that the earlier board of directors as well as new board of directors have ratified the reference to arbitration and stand by it.

6. For all the above reasons, the above Appeal is dismissed. Interim Application (L) No.17283 of 2021 also stands dismissed.

(MILIND N. JADHAV, J.)

(S.J.KATHAWALLA, J.)