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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 27th September, 2021.

+ O.M.P. (I) (COMM) 324/2021 & I.A. 12548/2021

MORGAN SECURITIES AND CREDIT PVT. LTD. Petitioner

Through: Mr. Amit Sibal, Senior Advocate with
Mr. K. Bhimraj Achary and
Mr. Simran Mehta, Advocates.

versus

GANESH BENZOPLAST LIMITED Respondent

Through: Mr. Arun Bhardwaj, Senior Advocate
with Mr. Ashwani Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

[VIA VIDEO CONFERENCING]

SANJEEV NARULA, J. (Oral):

1. The present petition under Section 9 of the Arbitration and Conciliation Act, 1996 [*hereinafter, 'the Act'*] has been filed seeking urgent interim reliefs reproduced as under: -

"A. Pass orders, restraining the Respondent from acting in furtherance of the resolution proposed at Item No.7 of the Notice of the Annual General Meeting of the Respondent, to be held on 27.09.2021, in any manner whatsoever, whether directly or indirectly.

B. Pass orders, restraining the Respondent from transferring any assets and/or monies to GBL Clean Energy Private Limited and GBL Infra Engineering Services Private Limited or incurring any obligation/encumbrance to secure the dues of the said companies, in any manner whatsoever, whether directly or indirectly.

C. Pass such other/ further orders as this Hon'ble Court may deem fit in the facts of the present case.”

2. Briefly stated, the cause of action for filing of the present petition is as follows: -

2.1. The Petitioner i.e., the Decree Holder [*hereinafter*, ‘**MSCPL**’] has an award in its favour and against the Respondent i.e., the Judgment Debtor [*hereinafter*, ‘**GBL**’] dated 09th December, 2015, (corrected *vide* Order dated 18th February, 2016),

2.2. MSCPL has filed an execution petition before this Court, seeking enforcement of the award *being* O.M.P. (ENF.) (COMM.) 108/2019. The same is pending consideration.

2.3. MSCPL filed multiple petitions under Section 9 of the Act wherein certain orders have been passed in its favour. The same are reproduced as under: -

(a) In O.M.P.(I) (COMM.) 62/2019, this Court *vide* Order dated 28th May, 2019, took note of the undertaking given by the counsel for GBL and passed the following order: -

“I.A. No.6460/2019 (Delay)

This is an application seeking condonation of three days delay in filing of the reply.

For the reason stated in the application, the delay is condoned and the reply is taken on record.

I.A. No.7443/2019 (Stay)

Issue notice. Notice is accepted by Mr.Kuljeet Rawal, Advocate on behalf of the respondent. He prays for and is granted three days to file reply. Rejoinder, if any, be filed before the next date of hearing.

Learned counsel for the respondent assures the Court that no final sanction of the scheme of merger/de-merger shall be requested for from the National Company Law Tribunal (NCLT) till the next date of hearing.

List on 30th July, 2019.

Dasti.”

- (b) Thereafter, in another Section 9 Petition - O.M.P.(I) (COMM.) 363/2020, this Court *vide* interim Order dated 17th November, 2020 restrained GBL from acting in furtherance of the resolutions passed in the board meeting dated 07th October, 2020 and the special resolutions passed by way of postal ballot on 06th November, 2020.
- (c) The said petition [*being* O.M.P.(I) (COMM.) 363/2020] was thereafter taken up on 21st January, 2021 along with the other petitions including, the Section 34 petition [*being* O.M.P. (COMM.) 307/2016] and the enforcement petition [O.M.P. (ENF.) (COMM.) 108/2019]. Then a detailed Order dated 21st January, 2021 was passed whereby, the interim Order passed on 17th November, 2020 was modified and GBL was granted liberty to act on the resolution passed in the board meeting dated 07th October, 2020 and the special resolution passed by way of postal ballot on 06th November, 2020 with respect to the preferential allotment of shares of GBL. Further, the Court also passed an order of restraint against GBL's immovable assets while taking note of the affidavits filed by GBL dated 04th January, 2021 and made the following observations: -

“15. GBL has filed two affidavits dated 04th January, 2021 along with the relevant documents. GBL claims to have total realizable value of their assets to be Rs. 238 crore against secured loans of Rs. 35 crore. GBL claims to have an asset cover of 6.6x allowing it to borrow an additional Rs. 125 crore from banks while maintaining asset cover.”

3. In the afore-noted background, the present petition has been filed.
4. Mr. Amit Sibal, Senior Advocate for the Petitioner has made several

submissions which are summarised as follows: -

- 4.1. Notwithstanding the fact that there is no stay of the award granted in favour of the GBL, yet GBL has failed to pay the awarded amount to MSCPL. As a result, there is a default of 7779 days (as on 22nd September, 2021) which is 86.43 times the original loan period;
- 4.2. During the pendency of Section 34 Petition, GBL was attempting to hive off whole of its undertaking *vide* a scheme of merger/ de-merger to escape the enforcement of the arbitral award. This constrained MSCPL to approach this Court under Section 9 of the Act [*vide* O.M.P.(I) (COMM.) 62/2019] wherein on 28th May, 2019, GBL gave an undertaking as noted in the Order dated 28th May, 2019, extracted in the preceding paragraphs;
- 4.3. Undeterred by this, GBL issued a postal ballot notice on 07th October, 2020 for allotting equity shares on preferential basis. This was in violation of Clause 12 of the Inter Corporate Deposit Agreement dated 07th March, 2000;
- 4.4. Subsequently, MSCPL filed another Section 9 Petition [*being* O.M.P.(I) (COMM.) 363/2020] wherein this Court on 17th November, 2020 [*ex-parte* interim order] restrained GBL from acting in furtherance of its board resolution dated 07th October, 2020 with respect to preferential allotment of shares;
- 4.5. GBL is seeking to further dilute its assets and revenues by artificially diverting the same to its subsidiary companies (such as - GBL Clean Energy Pvt. Ltd. and GBL Infra Engineering Services Pvt. Ltd.) which are third parties and beyond the reach of any process for enforcement of arbitral award;

- 4.6. The proposed resolution annexed at page nos. 104-117 of the present petition indicates that GBL is now resolving to outsource the sales/ purchase/ manufacturing function of GBL's chemical business to its 100% wholly-owned subsidiary company - GBL Chemicals Ltd., retaining only the "job work" function with the parent company i.e., GBL. This will result in revenues of the chemical business of MSCPL henceforth being booked by GBL Chemicals Ltd. i.e., a third-party which would be beyond the reach of enforcement process of this Court. In effect, MSCPL will be left with only a paper decree, without any assets to secure enforcement thereof;
- 4.7. The assets of the GBL are all encumbered and mortgaged with several financial institutions and banks. The only unencumbered assets available are valued at not more than Rs. 3.5 Crores (as per GBL's own financial statement placed on record). This amount would be insufficient to satisfy the decree which has now swelled up to Rs. 97,03,84,768/-;
- 4.8. The Order dated 21st January, 2021 is only an *ad-interim* order passed by the Court; in fact the order itself makes it clear that observations made therein are only tentative and not a final view of the Court. Besides, the observations made in para 15 of the said order [reproduced above] are the submissions of GBL and not findings of the Court.

5. Mr. Arun Bhardwaj, Senior Advocate assisted by Mr. Ashwani Kumar, counsels for the Respondent, on the other hand, oppose the present petition and make the following submissions: -

5.1. The Order dated 17th November, 2020 [in O.M.P.(I) (COMM)]

363/2020] has since been modified [*vide* Order dated 21st January, 2021] and GBL has been permitted to act on the resolution with respect to preferential allotment of shares. The detailed observations made by the Court in the aforesaid order clearly indicate that the basis of the entire awarded is on account of unconscionable rate of interest being levied by GBL. The Court has taken a *prima facie* view that claim of 36% interest with monthly rest on the principal amount of Rs. 34,59,218/- along with interest has become Rs. 90 Crores (i.e., 260 times higher) is unconscionable. The Court had further issued directions to MSCPL, as contained in the said order, which have not been complied till date;

- 5.2. The aforesaid Order dated 21st January, 2021 has not been stayed and has thus, attained finality;
- 5.3. The scheme of de-merger, which was sought to be restrained by MSCPL in O.M.P.(I) (COMM.) 62/2019 was on an entirely different footing. The proposed resolution does not, in any way, cause prejudice to the rights of MSCPL as the assets of GBL are not being alienated;
- 5.4. The proposed resolution only creates a mechanism for the conduct of the business of the company (GBL) which the Court should not interdict. MSCPL, by virtue of the present petition seeks an order of restraint that would amount to interference in the functioning of the company (GBL) which would not aid the Court in executing the decree. The proposed resolution impugned in the present petition has since been approved and passed by the shareholders of GBL; it has to go through various statutory approvals as enumerated in the proposed agenda;

5.5. In terms of the directions given by this Court *vide* Order dated 21st January, 2021 in O.M.P.(I) (COMM.) 363/2020, an amount of Rs. 3 Crores has since been deposited before this Court in order to secure MSCPL i.e., the Decree Holder. Since, MSCPL has been secured by virtue of an order of restraint against GBL from alienating any of its immovable assets in terms of the Order dated 21st January, 2021, interim order as sought for is not necessary.

6. The Court has considered the contentions advanced by the counsels for the parties. At the outset, the Court expressed reservation in intervening in the present proceedings as an execution petition [*being* O.M.P. (ENF.) (COMM.) 108/2019] is pending. Section 9 Petition post the making of award is certainly maintainable, however, only till such time the award attains finality, and the decree is enforced. In the instant case, although an objection petition has already been filed under Section 34 of the Act [*being* O.M.P. (COMM.) 307/2016], however, there is no stay granted therein against the award. Thus, in effect, the award is executable and is indeed being enforced this Court. Therefore, the appropriate remedy for interim reliefs would lie in the execution proceedings.

7. Nonetheless, the Court has heard the counsels at length, specifically on the issue whether interim orders, as sought for in the present petition, are necessary.

8. GBL is already restrained from alienating its immovable assets and

the order continues to be in force.¹ Relevant extract of the Order dated 21st January, 2021 is reproduced hereunder: -

“20. ...GBL shall not transfer, alienate or create any encumbrance with respect; of its immovable assets without the permission of this Court till further orders...”

9. Earlier, when MSCPL had approached this Court seeking a restraint on the de-merger scheme, the Court had taken note of the undertaking given by the counsel and made it a part of the Section 9 order.²

10. Now, GBL *vide* the proposed resolutions which are stated to have been approved, has created only a mechanism for conduct of its business. There is not going to be any transfer or alienation of the assets of GBL. Relevant extract of the proposed resolution is given as under: -

“7. Conducting the chemical business between Ganesh Benzoplast Limited, parent company and/its wholly owned subsidiary, GBL Chemical Limited.

To consider, and if thought fit, to pass, with or without modifications, the following resolution as a Special Resolution:

“RESOLVED THAT pursuant to the provisions of Section 180(1)(a) and Section 188(1) of the Companies Act, 2013, read with the relevant rules and regulations, other applicable provisions, if any including any statutory modifications(s) or re-enactment thereof, for the time being in force), and subject to the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 as amended up to date (“SEBI (LODR) Regulations”) and enabling provisions of the memorandum and articles of association of the Company and subject to requisite approvals, consents, permissions and or sanctions of regulatory and other appropriate authorities; if any, and subject to any other alterations, modifications, corrections, changes and variations that may be decided by the Board in its absolute discretion, the consent of the members of the Company be and is hereby given for conducting the chemical business between the parent company – Ganesh Benzoplast Limited and its 100%

¹ Order dated 21st January, 2021 in O.M.P.(I) (COMM.) 363/2020.

² Order dated 28th May, 2019 in O.M.P.(I) (COMM.) 62/2019.

subsidiary (Wholly Owned Subsidiary) GBL Chemical limited, without transferring any immovable property owned by the company.

RESOLVED FURTHER THAT under this arrangement, the purchase of raw material necessary for the manufacture of the chemicals and the sale of finished chemical products will be handled by the WOS namely GBL Chemical Limited and the parent company (Ganesh Benzoplast Limited) will continue to carry on the manufacturing of chemicals on job work, exclusively for the WOS (GBL Chemical limited).

RESOLVED FURTHER THAT for the purpose of giving effect to the above, the Board be and is hereby authorized to do all such acts, deeds, matters and things as it may in its absolute discretion deemed necessary, desirable and expedient for such purpose, including execute the necessary documents and enter into contracts, arrangements, agreements and documents, that may be required, on behalf of the Company and generally to do all such acts, deeds, matters and things as may be necessary, proper, expedient or incidental for giving effect to this resolution and resolving all questions and doubt that may arise with respect to the above and to authorize all such person as may be deemed necessary, in connection therewith and incidental thereto as the Board in its absolute discretion shall deem fit without being required to seek any fresh approval of the Shareholders of the Company and that the decision of the Board shall be final and conclusive.”

[Emphasis supplied]

Therefore, if the business of GBL is sought to be conducted in a manner which is considered to be appropriate by GBL, the same does not call for a restraint order.

11. For the enforcement of the award, the Decree Holder (MSCPL) would have the right to take recourse to any of the assets of the Judgment Debtor (GBL) and perhaps for this reason, the challenge to the de-merger proposal was also entertained by this Court. However, the proposed resolution falls purely within the purview of GBL's prerogative relating to conduct its the business, which the Court does not find any reason to interdict. It is well-settled that the Court does not interfere with the internal management of a company. A company is guided by the percipience of its board of

directors and the internal affairs relating to the administration/ management of a company are left with members/ board of directors of such company. The Decree Holder has the right to take recourse against the assets of the Judgement Debtor for recovery of its dues, but not to interfere in its business decisions. Thus, the interim reliefs sought in the present petition are beyond the jurisdiction of the Court under Section 9 of the Act, pending execution proceedings.

12. In view of the foregoing, the Court does not find any merit in the present petition and accordingly, the same is dismissed along with pending applications.

SEPTEMBER 27, 2021

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SANJEEV NARULA, J