WEB COPY

C.M.P.No.19956 of 2022
in
O.S.A.No.80 of 2021

R.MAHADEVAN, J.,
&
SENTHILKUMAR RAMAMOORTHY,J.,

(made by **SENTHILKUMAR RAMAMOORTHY, J.**)

A common order dated 06.10.2020 was issued in applications filed by the first respondent, applicant and the 4th respondent herein. The said order was carried in appeal before the Division Bench of this Court in O.S.A.Nos.79 to 81 of 2021. The appeals were disposed of by judgment dated 09.03.2021. The operative part of the said judgment is as under:

> *"28. Accordingly, the order impugned dated October 6, 2020, as corrected on November 18, 2020, is modified by requiring the appellant to deposit a sum of Rs.65 crore in any nationalised bank having a branch in this city within a period of eight weeks. Till such time that the deposit is made, the injunction in terms of the order impugned will continue. In the event the deposit is made within the time permitted, the injunction pertaining to the shares in company Sonata Finance Private Limited will stand vacated."*

https://www.mhc.tn.gov.in/judis

WEB COPY

2. The petitioner did not deposit the sum of Rs.65 crore within a period of eight weeks as directed by the Division Bench. Therefore, the order of interim injunction continued to operate. By virtue of the said order, the petitioner and second to fifth respondents were restrained from dealing with, alienating or encumbering the shares held by the petitioner in Sonata Finance Private Limited (Sonata).

3. Thereafter, it appears that a leading private sector lender in the country has expressed the intention to acquire the entire 100% shareholding in Sonata. In those circumstances, the petitioner and the second to fifth respondents, on the one hand, and the first respondent, on the other, entered into negotiations and arrived at an agreement. On that basis, they seek modification of the operative portion of the judgment dated 09.03.2021 so as to differently secure the first respondent's claim in the pending arbitral proceedings while also enabling the proposed acquisition of 100% of the share capital of Sonata.

4. The agreement between the parties is captured in paragraph 8 of the affidavit of the petitioner. The said paragraph 8 is set out below:

"8. At the request and proposal made by the Petitioner and Respondent Nos.2 to 4, Respondent No.1 has agreed as follows:

(a) To secure the claim made by Respondent No.1 in the Ongoing Arbitration, the Petitioner will substitute its shareholding in Sonata(which is the subject matter of the injunction) with the actual cash proceeds realised from the sale

https://www.mhc.tn.gov.in/judis

WEB COPY

of the Petitioner's shareholding in Sonata to the Buyer being Rs.107,09,05,924.00 (Rupees One Hundred and Seven Crores Nine Lakhs Five Thousand Nine Hundred and Twenty Four Only) as reduced by withholding tax amount ("Deposit Amount"). The withholding tax amount shall be calculated as per the prevailing withholding tax rate as applicable in India at the time of the sale of shares in Sonata. At least 5(five) Business Days prior to the remittance of the Deposit Amount to the Arbitration Escrow Account(as defined below), a certificate confirming the withholding tax amount shall be furnished to the Respondent No.1, from a reputed accounting firm acceptable to Respondent No.1. For this purpose, Kotak Mahindra Bank Limited, or such other bank as mutually agreed by the Petitioner and Respondent No.1 will be appointed for opening an escrow account ("Arbitration Escrow Account"). The Arbitration Escrow Account will be maintained till final determination of the disputes raised in the Ongoing Arbitration ("Final Determination"). Final Determination shall mean that all available appeals (if filed by any party to this Petition) including upto the Hon'ble Supreme Court of India have been exhausted. Upon the Final Determination and once the amounts in the Arbitration Escrow Account are distributed to Respondent No.1 and/or the Petitioner in terms thereof, the Arbitration Escrow Account will be closed. The manner in which this Arbitration Escrow Account will be operated has been provided in sub-paragraph (b) below.

(b) Towards securing the interest of Respondent No.1, as stated in paragraph 8 (a) above, the Petitioner will, subject

https://www.mhc.tn.gov.in/judis

WEB COPY

to securing this Hon'ble Court's permission, sign and give effect to the terms of the Share Purchase Agreement and transfer its shareholding in Sonata to the Buyer in terms of and in accordance with the procedure set out in the Share Purchase Agreement. Out of the sale consideration of Rs.107,09,05,924.00(Rupees One Hundred and Seven Crores Nine Lakh Five Thousand Nine Hundred and Twenty Four Only) payable by the Buyer to the Petitioner for purchase of the shares pursuant to the Share Purchase Agreement, (a) the Deposit Amount will be directly remitted by the Buyer to the Arbitration Escrow Account, to be retained in the Arbitration Escrow Account until the Final Determination; and (b) withholding tax (as per the prevailing withholding tax rate as applicable in India at the time of the sale of shares in Sonata) will be deposited by the Buyer with the appropriate government authority. The Deposit Amount retained in the Arbitration Escrow Account will be released from the Arbitration Escrow Account in favour of Respondent No.1 and/or the Petitioner based on the Final Determination. It is clarified that the Deposit Amount will be released only after the Final Determination and until then the Deposit Amount shall be retained in the Arbitration Escrow Account.

(c) If upon a Final Determination, the Petitioner and/or Respondent Nos.2 to 4 are required to pay any amount to Respondent No.1 ("Final Amount") which is less than the Deposit Amount retained in the Arbitration Escrow Account, then (i) the Final Amount will be immediately transferred and remitted from the Arbitration Escrow Account to Respondent

https://www.mhc.tn.gov.in/judis

WEB COPY

No.1; and (ii) the balance amount (i.e., the Deposit Amount which is in excess of the Final Amount) will be immediately transferred and remitted from the Arbitration Escrow Account to the Petitioner. If the Final Amount as determined in the Ongoing Arbitration subject to the Final Determination is more than the Deposit Amount, the entire Deposit Amount will be immediately transferred and remitted from the Arbitration Escrow Account to Respondent No.1.

(d) The aforesaid will not in any manner whatsoever prejudice the contentions of the Petitioner, Respondent Nos.2 to 4 in the Ongoing Arbitration.

(e) The Petitioner will solely bear all expenses for the Arbitration Escrow Account until the Final Determination of the claim initiated by Respondent No.1.

(f) The escrow arrangement will also be recorded in the Share Purchase Agreement to be signed with the Buyer and other parties to the Share Purchase Agreement, such that all the parties to the Share Purchase Agreement are aware of and agree to such arrangement.

(g) The Petitioner hereby undertakes that it will not seek any fresh directions from any court/arbitral tribunal for release of the Deposit Amount until the Final Determination."

5. In order to give effect to the agreement, about six steps are envisaged by the parties. The said six steps are set out in paragraph 11 of the affidavit of the petitioner, which is set out below:

https://www.mhc.tn.gov.in/judis

WEB COPY

"11. Accordingly, the following steps are contemplated upon this Hon'ble Court permitting this petition:

Step 1: The Share Purchase Agreement will be signed by the Buyer and other parties to the said agreement.

Step 2: The parties will proceed to fulfill all Conditions Precedent.

Step 3: Once all Conditions Precedent are fulfilled, the Buyer will directly remit the Deposit Amount to the Arbitration Escrow Account.

*Step 4: Upon receipt of the Deposit Amount in the Arbitration Escrow Account and a written confirmation to this effect to all parties by the Escrow Agent, the injunction pertaining to the Petitioner's shareholding in Sonata will stand vacated, for the sole purpose of transfer of the shares held by the Petitioner in Sonata to the share escrow account as designated by the Buyer**("Buyer Share Account")**.*

Step 5: Upon the injunction being vacated, the freeze executed on the Petitioner's shareholding in Sonata pursuant to the Order will cease to be valid, and the Petitioner shall immediately and in any event, not later than 10 days of completion of Step 4 above, transfer the shares held by the Petitioner in Sonata to the Buyer Share Account.

Step 6: Upon receipt of the shares held by Petitioner in Sonata in the Buyer Share Account, the injunction shall stand vacated for all purposes and the said shares will be transferred from the Buyer Share Account to the Buyer in terms of the Share Purchase Agreement.

https://www.mhc.tn.gov.in/judis

WEB COPY

In the event that the shares held by the Petitioner in Sonata are not transferred to the Buyer Share Account within 10 days of the written confirmation by the Escrow Agent of the receipt of the Deposit Amount in the Arbitration Escrow Account, then the Deposit Amount will be released by the Escrow Agent to the Buyer and the injunction in terms of O.A. No.1137 of 2019 shall be deemed to continue. Consequently, the Respondent No.1 will inform Respondent No.5 to execute freeze instructions on the Petitioner's beneficial owner account with Respondent No.5 pertaining to the Petitioner's shareholding in Sonata."

6. The first respondent filed an affidavit, which was affirmed on 18.01.2023 by its Deputy General Manager, Mr.T.S. Ajith. At paragraphs 7 & 8, in relevant part, the first respondent has stated as under:

> *"7. I submit that the proposal as set out in paragraph 8(a) to 8(g) of the Petitioner's Affidavit, is acceptable to the Respondent No.1.*
>
> *8. I submit that the steps as set out in paragraph 11 of the Petitioner's Affidavit is acceptable to the Respondent No.1...."*

7. The first respondent further stated in paragraph 10 of the affidavit that its consent is conditional on the statements made in paragraphs 13 & 14 of the petitioner's

https://www.mhc.tn.gov.in/judis

WEB COPY

affidavit. The said paragraph 10 of the affidavit of the first respondent is set out below:

"10. I further submit that the Respondent No.1 has agreed to the Petitioner's proposal for modification of the order dated March 9, 2021 passed in OSA Nos.79,80 and 81 of 2021, on the basis of the understanding as provided in Paragraphs 13 and 14 of the Petitioner's Affidavit. The said paragraphs are extracted herein for ready reference:

13. Only upon the receipt of the Deposit Amount in the Arbitration Escrow Account and upon a provision of a written confirmation by the Escrow Agent to this effect to the parties, the injunction pertaining to the shares in Sonata will stand vacated, for the sole purpose of transfer of the shares held by the Petitioner in Sonata to the Buyer Share Account. In the event of any failure of the Petitioner to transfer the shares to the Buyer Share Account, within 10 days of the written confirmation by the Escrow Agent, then the Deposit Amount will be released by the Escrow Agent to the Buyer and the injunction in terms of O.A.No.1137 of 2019 shall be deemed to continue.

14. The Petitioner undertakes that they shall not deal with the share or transfer them to the Buyer, except strictly in the manner as stated in this petition and the Share Purchase Agreement. The Petitioner also undertakes that upon modification of the Order enabling signing of the Share Purchase Agreement with the Buyer, the Petitioner shall not deal with the shares or transfer them to any third party, except

https://www.mhc.tn.gov.in/judis

WEB COPY

the Buyer. Further, the Petitioner states that it shall be responsible for applying and pursuing the approval of the Reserve Bank of India for the creation and continued maintenance of the Arbitration Escrow Account."

8. In view of the express understanding arrived at between the contesting parties in the terms set out in paragraphs 8 & 11 of the petitioner's affidavit, which are extracted *supra*, this petition is allowed by modifying the operative portion of the judgment dated 09.03.2021 in O.S.A.Nos.79 to 81 of 2021 in terms of paragraphs 8 & 11 of the petitioner's affidavit. For the avoidance of doubt, it is clarified that the order of interim injunction shall stand revived *ipso facto* if the transaction envisaged in the above mentioned paragraphs is not consummated for any reason whatsoever.

(R.M.D.,J.) **(S.K.R.,J.)**
23.01.2023

rrg

https://www.mhc.tn.gov.in/judis

WEB COPY

R.MAHADEVAN, J.
and
SENTHILKUMAR RAMAMOORTHY,J.
rrg

C.M.P.No.19956 of 2022
in
O.S.A.No.80 of 2021

23.01.2023

https://www.mhc.tn.gov.in/judis