D/L. 37.
February 2, 2024.
MNS.

WPA No. 28104 of 2022
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CAN 1 of 2023

Mahavir Chemical Industries (MCI)
Vs.
Bank of Baroda and others

Mr. Partha Chakraborty,
Mrs. Paulomi Dutta

… for the petitioner.

Mr. Avishek Guha,
Ms. Akansha Chopra

…for the Bank of Baroda.

1. Affidavit-in-opposition and affidavit-in-reply filed in court today be kept on record.
2. By consent of the parties, the application and the writ petition are taken up for hearing together.
3. The contention of the petitioner is that the petitioner entered into a joint venture agreement with one M/s Bhagabati Construction. As per the agreement, Bhagabati Construction had 51% participation share whereas the petitioner M/s Mahavir Chemical Industries (MCI) had 49% share.
4. It is submitted that the understanding between the partners was that due to the experience of M/s Bhagabati Construction, it would be the

lead partner, but the financial benefits would primarily come to the present petitioner, since the petitioner bore the financial burden substantially.

5. It is argued that the joint venture firm did certain works for the railway authorities for which the payments were made by the railway authorities in the account of the Bank of Baroda, lying in the name of the joint venture firm. However, after the demise of the proprietor of M/s Bhagabati Construction, the bank withheld the money flowing into the account on the allegation that there were certain dues from the proprietor of M/s Bhagabati Construction to the bank.
6. It is argued that the claim of the bank under Section 171 of the Indian Contract Act, 1872 is not tenable, since the said provision does not confer any power on the bank to unilaterally segregate between two partners of a joint venture.
7. Learned counsel for the petitioner further argues that for the purpose of making the payments by the railway authorities in a single account of the joint venture, the said entity is to be treated as a single unit and as such the bank cannot by itself bring about segregation between the partners.

8. That apart, it is argued that the liabilities *inter se* between the partners of the joint venture during the life time of the proprietor of M/s Bhagabati Construction cannot be re-written by the bank.

9. Learned counsel for the bank, by placing reliance on its affidavit-in-opposition, submits that the joint venture agreement itself discloses that M/s Bhagabati Construction had 51% share whereas the present petitioner had 49% share. The bank discloses its clear intention to release 49% out of the amount lying in the account of the joint venture in favour of the petitioner.

10. However, insofar as the 51% of the share of M/s Bhagabati Construction is concerned, the bank has general lien in view of the balance of account being against the debtor, that is, the proprietor of M/s Bhagabati Construction, since deceased.

11. A careful perusal of the joint venture agreement clearly indicates that the joint venture was brought about between the present petitioner and the proprietor of M/s Bhagabati Construction merely as a sort of special purpose vehicle for doing some work with the railway authorities.

12. However, the said joint venture did not acquire the characteristic of an independent juristic entity in law.
13. In effect, the two participants in the joint venture, that is, the present petitioner and M/s Bhagabati Construction remained two individual entities who were merely components of the joint venture for the purpose of the work. In terms of the joint venture agreement itself, the participation share of M/s Bhagabati Construction was 51% whereas that of the present petitioner was 49%.
14. Thus, there is no question of any segregation being brought in by the bank unilaterally, since in law, the two partners of the joint venture always remained two separate individual entities.
15. The bank is justified in contending that the power conferred under Section 171 of the Indian Contract Act, 1872 pertaining to general lien of bankers is fully attracted to the present case. The relevant portion of the said Section indicates that bankers, in the absence of a contract to the contrary, may retain as a security for a general balance of account, any goods bailed to them.

16. In the present case, the money lying in the account of the joint venture, to the extent that the same belonged to the debtor M/s Bhagabati Construction, undoubtedly can be made a subject matter of such general lien by the concerned bank in view of the general balance of account being against the said debtor.
17. Thus, this Court does not find any irregularity in the stand taken by the bank of withholding the 51% share out of the amount lying in the joint venture agreement insofar as it pertains to M/s Bhagabati Construction while releasing the balance 49% share in favour of the present petitioner.
18. As such, there is no scope of interference in the writ petition.
19. WPA No. 28104 of 2022 is thus disposed of by directing the respondent-bank to release 49% share out of the total amount lying with the respondent-bank in the account of the concerned joint venture in favour of the petitioner and/or permit the petitioner to operate the said 49%.
20. Insofar as the balance 51% of the said amount is concerned, the bank has the right to withhold the same subject, however, to the outcome of any due process of law or litigation

if taken out by the heirs of the proprietor of M/s Bhagabati Construction or otherwise, relating to the said share.

21. There will be no order as to costs.

22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)