

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

Misc. Company Appeal No : 1 of 2012

Ranjana Singh

- V/s -

Jitendra Mohan Khungar and others

Present : **Hon'ble Shri Justice Rajendra Menon.**

Shri Brian D'Silva, Senior Advocate, with Shri
Shobhitaditya for the appellant.

Shri Sankalp Kochar, counsel for the respondents.

Whether approved for reporting:

Yes / No.

ORDER

16/02/2012

Challenging the order-dated 19.10.2011 – Annexure A/1 passed by the Company Law Board, Principal Bench, New Delhi in Company Appeal Nos. 534/2007 and 458/2010, which were filed under section 634-A of the Companies Act in Company Petition No.66/2004, this writ petition is filed.

2- Facts that have come on record indicate that respondents 1, 2 and 3 initiated proceedings before the Company Law Board in Company Petition No.66/2004 under section 397 read with 398 of the Companies Act and certain allegations were levelled in the said company petition with regard to 'oppression' and 'mis-management' of the affairs of the Company. Company Petition No.66/2004 was allowed by the Company Law Board vide order-dated 14.3.2006/11.5.2006 – Annexure IA/5, and the following directions were issued by the Company Law Board:

- “(I) Respondent Nos. 3 to 8 are hereby directed to bring back an amount of ₹ 88,16,603/- (₹ 65,91,809 + ₹ 7,24,794 + ₹1,00,000 + ₹ 14,00,000) to the corpus of Respondent No.1 Company forthwith;
- (II) Respondent Nos. 3 to 8 (specifically Respondent No.3) are hereby directed to bring back the sale consideration of Respondent No.1 Company to its corpus and render complete account of receipt of sale consideration; and,
- (III) Respondent No.3 is further directed to repatriate Respondent No.1 Company’s funds alongwith bank commission paid for Escrow account to Respondent No.1 Company forthwith.”

Against the aforesaid directions issued by the Company Law Board, an appeal under section 10-F of the Companies Act, 1956 was filed by the respondents herein, particularly Respondent No.3 (since deceased). The appeal was heard and this Court in Misc. Company Appeal No.1/2006 on 19.5.2010 dismissed the Company Appeal and upheld the order passed by the Company Law Board. Records indicate that the order passed by this Court in Company Appeal No.1/2006 was challenged before the Supreme Court and the said challenge was also rejected. After rejection of the matter by the Supreme Court, respondents herein have filed an application under section 634-A of the Companies Act and are seeking compliance with the order passed by the Company Law Board and execution of the order passed on 25.7.2006.

3- The appellants herein appeared in the Execution Proceedings and raised an objection to the effect that direction Nos. (I), (II) and (III) given in the order passed on 25.7.2006 are not distinct directions, direction No.(I) covers the other two directions and, therefore, the specific prayer made for executing each and every direction separately is not correct. The matter has been dealt with by the Company Law Board and in paragraphs 5 & 6 of the order and is dealt with in the following manner:

“5. The Respondents’ plea that the Directions I, II and III given in order dated 25.7.2006 are not distinct and that the Direction I covers the other two Directions viz. II and II as well is untenable. It is noted that these three different directions given are specific and do not overlap. These three specific directions are to bring back the amount from EAPPL; and the sale consideration wherever parked, besides the commission paid for Escrow account. Direction No.I is to bring back ₹ 88,16,603/- to the R-1 Company’s Account. This amount included an amount of ₹ 65,91,809/- diverted to EAPPL, ₹ 7,24,724 is an unproved/unspent expenditure, ₹ 1,00,000/- is unproved payment said to have been made to P-3, ₹ 10,00,000/- included in this direction pertain to non-compete payment due to the Petitioners. Direction No.II pertains to sale consideration for R-1 Company to be brought back to R-1’s account including the amount due on account of land and other items as pointed out in the order dated 25.7.2006. Direction No.III pertains to the commission paid to the Banker and other amounts withdrawn on that date for the purpose of escrow account which can continue as per the terms decided between the R-1 Company and the purchaser company which amount has to be brought back after the purpose for which escrow account is opened is fulfilled/over.

6. Further, it is noted that the R-2’s contention that the escrow account was opened in order to secure the interests of R-2 in accordance with the terms as recorded in the Escrow Agreement dated 12.4.2001 is tenable. But, I see no impediment in R-3 to R-8’s bringing back that amount to the R-1 Company’s A/c in satisfaction of this decree, however, the responsibility for bringing it back is on the Respondents who must take all necessary steps to reimburse the entire sale consideration to R-1 Company’s Account.

And in case they fail to bring back the entire sale consideration to the R-1 Company as well as the amounts as per the directions contained in the order dated 25.7.2006 within four weeks of receipt of this order, the Petitioners' group is given liberty to mention the matter for issuance of certificates under Order XXI Rule 6 of the Code of Civil Procedure, 1908 in respect of the properties as mentioned in the Company Applications for satisfaction of the decree dated 25.7.2006.”

4- Having heard Shri Brian D'Silva, learned Senior Advocate appearing for the appellant, and Shri Sankalp Kochar, learned counsel for the respondents, and after considering the directions issued by the Company Law Board on 11.5.2006 in Company Petition No.66/2004 and the reasons given by this Court while rejecting Company Appeal No.1/2006 on 19.5.2010, it is clear that each and every direction is an independent direction and has to be complied with by the a petitioners/appellants in its letter and spirit. The direction to bring back the amount of ₹ 88,16,603/- to the corpus of the respondent Company is on account of mis-appropriation of the aforesaid amount by defendants 3 to 8 in the original Company Petition. The mis-appropriation is due to diversion of fund of respondent No.1 Company through Eastern Air Products Limited so also the expenses said to have been incurred by the company which have been established as 'not spent' and, therefore, amounts to mis-appropriation and various other amounts, which is found to be proved.

5- The second direction is with regard to bringing to the corpus of the company the sale consideration after finding that the same has been affected by undervaluation. As far as utilization of the escrow account is concerned, the account is directed to be brought back to the account of the company in question. Accordingly, the directions issued are independent of each other and the learned Company Law Board in its impugned order-dated 19.10.2011 has not committed any error

warranting interference in the matter again now exercising powers under section 10-F of the Companies Act.

6- Considering the totality of the facts and circumstances and the directions issued, this Court does not find any ground to interfere in the execution proceedings.

7- Accordingly, the appeal being devoid of merits, is itself dismissed at this stage of admission.

(RAJENDRA MENON)
J U D G E

Aks/-