

**BEFORE THE COMPANY LAW BOARD, NEW DELHI BENCH
NEW DELHI
CA 332/2012
In
C.P. No. 56(ND)/2012**

Present: B.S.V. Prakash Kumar, Member (Judicial)

In the matter of:

Companies Act, 1956 Sections 397, 398, 399, 402 & 403

And

In the matter of:

Mr. Chiranjiv Singh & Anr.

..... Petitioners

versus

M/s Omega Exports Pvt. Ltd

..... Respondents

Present:

The counsel for the Petitioners: Shri P.K. Mittal, Sunil and Mahek Gupta, Advocates

The counsel for the Respondents: Shri S.K. Bhattacharya, Ajay Kumar, Advocates

**Order
(Heard and pronounced on 31-12-2014)**

R1 to R6 filed this CA 332/2012 under Regulation 44 of the CLB Regulations for dismissal of this CP 56(ND)/2012/for modifying interim order dated 24.6.2012/ CLB proceedings for proper directions.

2. The sum and substance of this CA is that the impugned allotment has already been made to R2 in the award dated 4.4.2003 passed by Ld. Arbitrator Haji Ayamuddin in a family arbitration duly registered with the sub-registrar, Delhi. In the same award, the father of the petitioners, late Manmeet Singh has been awarded assets worth Rs. 95/- lacs which is under the control and possession of S. Nirmal Singh, the grandfather of petitioners and the then legal guardian of the petitioners herein, while at page 28 of the said Award, S. Harinder Singh Grover has been awarded share capital of Rs. 16,02,000/- in question. When Ld. Arbitrator Haji Ayamuddin passed the award, Nirman Singh i.e. grandfather of Manmeet Singh,



along with his Brother Kirat Singh filed appeal u/s 34 of the Arbitration and Conciliation Act before the Hon'ble High Court of Delhi, wherein, Ld single judge of Hon'ble High Court of Delhi set aside the award passed by the Ld. Arbitrator, on which when R2, having felt aggrieved of it, moved an appeal before the Honourable Divisional Bench (DB) of Hon'ble High Court of Delhi, honourable DB passed orders on 6.9.2012 and 10.9.2012, setting aside the order passed by Ld. Single Judge of Hon'ble High Court of Delhi appointing another Arbitrator to deal with the ambit and scope of Arbitration in relation to the issues in between the parties as enunciated u/s 16 of Arbitration and Conciliation Act. In furtherance, the Hon'ble DB made an observation that the status quo is to be maintained over the properties dealt with in the award of Ld. Arbitrator Haji Ayamuddin dated 4.4.2003, making it clear that it is open to both the parties to approach the Ld. Arbitrator to seek variation of the of the scope of the interim order or to seek vacation of interim order dated 10.9.2012 passed by the Hon'ble DB.

3. The Respondents, who are applicants in this CA, submitted that for having the Hon'ble High Court of Delhi already dealt with the issues in relation to the affairs of R-1 company, the petitioners herein, who said to have interest over the said properties of R-1 company, should have gone for an appeal over the orders dated 6.9.2012 and 10.9.2012 passed by the DB. The issues pending before this Bench having already been covered by the award passed by Ld. Arbitrator Haji Ayamuddin and for having Hon'ble High Court of Delhi already directed newly appointed Arbitrator to decide the scope and ambit of Section 16 before going into the merits of the case, R2 counsel says jurisdiction lies with the arbitrator but not before this Bench. He further submits that the share capital issue, which is the primary issue in this CP, has already been dealt with by the Ld. Arbitrator, therefore, the issues raised by the petitioners are squarely covered by the issues pending before the Arbitrator appointed by the Hon'ble High Court of Delhi, hence this CP is liable to be dismissed.

4. Before going into the merits of this application, I wish to mention the sum and substance of the Company Petition filed by the petitioners. P1&2 i.e. Chiranjiv



Singh and Agamjit Singh are sons of late Manmeet Singh who, in turn, is the son of Nirmal Singh. This Nirmal Singh is brother of late Avtar Singh, Harinder Singh (R2) and Kirat Singh (R7).

5. As per CP, R1 Company was incorporated on 30.12.1988 with two promoter directors Harinder Singh (R2) and Manmeet Singh (father of P1&2), with an authorised share capital of Rupees One Crore. Thereafter, the father of late Manmeet Singh i.e. Nirmal Singh purchased some shares in the company which, in turn, were sold away to Jagmeet Singh Grover (R4) and late Manmeet Singh whereby there were three shareholders as on 1992. Since Manmeet Singh passed away in the year 1993, his shares 1,80,000 are claimed by the petitioners as legal representatives of late Manmeet Singh, in pursuance thereof, they filed this CP on 23-4-2012 assailing the increase of authorised share capital from One Crore to Rs. 1.5 Crores, thereafter allotting 3,50,000 equity shares in favour of R2 & R3 on 31.8.2005 without making any proportionate distribution to the petitioners and mortgage of R-1 company property towards the loan taken by R5 company called M/s Kissan Petro Oil Pvt. Ltd. belonging to R2.

6. On the backdrop of this factual scenario, the respondents filed this CA stating that Nirmal Singh, who is grandfather of the petitioners, R2 and R7, entered into an Arbitration Agreement on 29.8.2002 conferring power upon the Ld. Arbitrator Haji Ayamuddin to deal with the sale proceeds of Kabul property and all the financial matters with the participation of Avtar Singh stating how the sale proceeds should remain in the custody of Harinder Singh and Kirat Singh until Award is passed.

7. Basing on the Arbitration Agreement, Ld. Arbitrator Haji Ayamuddin passed an award on 4.4.2003 holding that various properties including share capital of S. Manmeet Singh in Omega Exports Pvt. Ltd. shall be transferred to R2, especially the share capital continuing in the name of late S. Manmeet Singh. For having Ld. Arbitrator Haji Ayamuddin held that shares lying in the name of Late Manmeeth Singh shall be transferred to R2, S. Nirmal Singh, grandfather of the petitioners and R2's brother Kirat Singh (R7) filed an appeal u/s 34 of the Arbitration and



Conciliation Act challenging the award passed by Ld. Arbitrator Haji Ayamuddin. On seeing that award, the Hon'ble High Court of Delhi set aside the Arbitration Award holding that the Arbitrator went beyond the scope of the Arbitration Agreement dated 29.8.2002. It is also pertinent to mention that the petitioners mentioned R2 did not make any claim in relation to the share capital lying with Late Manmeeth Singh before the Ld. Arbitrator passed an award on 4.4.2003.

8. On seeing the award was set aside by the Ld. Single Judge of the Hon'ble High Court of Delhi, R2 appealed u/s 37(1)(b) of Arbitration and Conciliation Act, challenging the order passed by the learned single judge in OMP 261/2003. The contention of the appellant before the DB is that the judgment passed by the Ld. Single Judge is incorrect because the Arbitration Agreement covers all financial transactions in relation to the assets of the family members including R1 Company therefore learned single judge could not have said that Ld. Arbitrator dealt with the issues beyond the scope and ambit of the agreement. Seeing the same, the Division Bench elaborately dealt with the order passed by the Ld. Single Judge holding that the Arbitration Agreement was not limited to mere distribution of amount of US Dollars 5,50,000 and its scope of the agreement is wide. The Hon'be Division Bench held that the Ld. Single Judge has not considered the scope of the Arbitration Agreement in the light of the background facts and the correspondence between the parties from time to time. The Division Bench further stated that the Arbitration Agreement was to decide all financial matters between the parties and for division of movable and immovable assets according to business norms. The DB also referred a letter dated 27.7.2001 disclosing that whatever properties purchased in India were from the funds of Kabul properties. And it is there in second note how much property was sold with the fund come from Kabul and how much balance is remaining. This letter was addressed to Balwinder Singh, but the Division Bench further observed that the award passed by Balwinder Singh is not acceptable to R2.

9. Considering totality of the facts, the DB held that jurisdiction of Arbitration Tribunal extends to the determination by the Tribunal itself. If at all any of the parties felt that they are not bound by the Arbitral Tribunal, then also they have to



approach before the Arbitral Tribunal to say that Tribunal has no jurisdiction to determine the disputes between the parties or any particular dispute between the parties. Since Section 16(5) of the Arbitration and Conciliation Act clearly provides that the Arbitral Tribunal shall decide on the plea with regard to the scope of its authority and where the Tribunal rejects a plea or objection to the jurisdiction of the Tribunal, it will continue the proceedings and pass arbitral award. The Division Bench specifically held that the Ld. Single Judge has not considered the scope of the arbitration agreement in the light of the aforesaid background of facts and averments and failed to determine the issue whether the respondents reliance over earlier arbitration agreement is valid in consequence to the stand alleged to have been taken before Balwant Singh by Nirmal Singh and Kirat Singh.

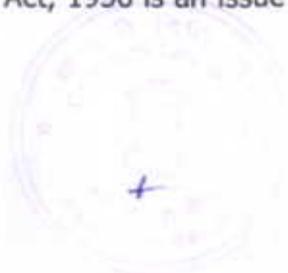
10. Finally, the learned Division Bench felt that there is a binding arbitration agreement in existence between the parties and, even according to Nirmal Singh and Kirat Singh plea in respect of distribution of sale proceeds of Kabul property, the Division Bench left it to the scope and decision of the Arbitral Tribunal, in case Nirmal Singh and Kirat Singh decide to raise the issue of jurisdiction of the Tribunal or scope of its authority by reference to Section 16 of the Act. Holding so, the learned Division Bench set aside the impugned judgment passed by the Ld. Single Judge.

11. Thereafter, again on 10.9.2012, the learned DB passed another order appointing Mr. Justice R.C. Chopra, retired Judge as the Sole Arbitrator to adjudicate upon the dispute inter se the parties in pursuance of the order dated 6.9.2012 holding that the properties covered under the award of Ld. Arbitrator Haji Ayamuddin dated 4.4.2003 came to the appellant shall be preserved and status quo be maintained qua the said properties until such time this matter is decided by the Sole Arbitrator appointed by the Division Bench of the Hon'ble High Court of Delhi.

12. On seeing the judgement passed by learned Division Bench, it is obvious that learned DB not only held that the judgement of the Ld. Single Judge as invalid but also held that the status quo be maintained over the properties covered under the

award passed by Ld. Arbitrator Haji Ayamuddin until the same has been decided by the Sole Arbitrator appointed by the Division Bench of the Hon'ble High Court of Delhi.

13. Now, the issue for consideration is whether CLB could deal with allotment of shares and other issues in relation to R-1 Company when status quo has been passed over the properties dealt with by Ld. Arbitrator Haji Ayamuddin. Since Ld. Arbitrator Haji Ayamuddin has already dealt with the shareholding which falls under the definition of 'properties', I am afraid that this Bench has any right to deal with an issue that the learned DB has sealed it directing the learned arbitrator to deal with scope and ambit of the Arbitral jurisdiction, if found the issues are covered by Arbitration to decide the same, that being the position the parties shall approach the Arbitrator. In the award passed by Ld. Arbitrator Haji Ayamuddin, it is made clear that the shareholding held by Manmeet Singh should be transferred to R2, on that award, honourable DB passed status quo not to disturb the status quo ante before passing setting aside the award passed by Ld. Arbitrator Haji Ayamuddin until it is decided by the Arbitrator appointed by the Hon'ble High Court of Delhi. When the judgement of Honorable DB is subsisting with a direction to an Arbitrator to deal with the same issue, if this Bench deals with any issue then it amount to conflict with the Judgement of Honorable DB. It is no doubt the petitioners are not parties to the Agreement in appointing Ld. Arbitrator Haji Ayamuddin as Arbitrator, nor the company was in existence as on 2003, therefore, the petitioners are obviously not a party to the agreement. However, for the Honorable Division Bench having categorically held in the light of the other Arbitration Agreement entered between the grandfather of the petitioners and others and the letter written by the grandfather of the petitioners as a custodian of the properties of his son, for there being status quo over the share capital of the father of the petitioners, these petitioners, I believe, shall have to go before the Arbitrator appointed by the Division Bench of the Hon'ble High Court of Delhi to raise whatever objections they have in relation to the arbitral issues as directed by the Division Bench. Since the very shareholding upon which the petitioners raised jurisdiction u/s 397 & 398 of the Companies Act, 1956 is an issue pending before the Ld. Sole Arbitrator appointed by



the Division Bench, I am of the view, these petitioners have to first go before the Arbitrator and raise their objections u/s 16 of the Arbitration and Conciliation Act.

14. The petitioners counsel relied upon citation in between **Rakesh Malhotra v. Rajinder Kumar Malhotra [MANU/MH/1309/2014]** and citation in between **Triumphant Institute of Management Education (P) Ltd & Anr. v. Inspire Educational Services (P) Ltd & Ors. [(2014) 121 CLA 38 (AP)]** to say that the jurisdiction of Company Law Board u/s 397 & 398 and Sec. 402 of the Companies Act is statutory whereby the Company Law Board is conferred with power to pass any orders as contemplated u/s 402 which an Arbitrator cannot exercise. Since the petitioners herein challenged the allotment made to R2 & R3 as oppressive and prejudicial to the interest of the petitioners, the remedy being statutory in nature, the power to deal with such issue is vested with CLB but not with Arbitrator who is conferred with a jurisdiction only to deal with issues which are referred by the parties in the agreement. Therefore, the petitioners cannot say that the petitioners not being parties to the Arbitral Agreement nor in proceedings before the Hon'ble High Court of Delhi, the petitioners herein are not bound by either the Arbitral Agreement or the orders thereto.

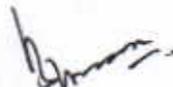
15. On seeing the citations referred by the petitioners counsel herein, the proposition of law that cited in those judgments is not in question. The point in the present petition is whether this Bench can deal with an issue over which the Hon'ble High Court of Delhi specifically passed an order of status quo over the properties dealt with by the earlier Arbitrator until the said issues are again decided by the Arbitrator appointed by the Division Bench of the Hon'ble High Court of Delhi. Moreover, Ld. Arbitrator Haji Ayamuddin held that the shareholding of late Manmeet Singh i.e. father of the petitioners shall be transferred to R2, here in company petition, since the same share holding is shown as qualification to file CP under sections 397 & 398, this Bench cannot take up this petition under the assumption that the petitioners are claimants to the shareholding of their father which was already held as the shareholding go to R2. Besides this, the petitioners have not challenged the judgment of the honourable DB, either by filing an appeal or by



petitioning to the Division Bench that they are not bound by the order for they are not parties to the Arbitration Agreement.

16. In view of the reasons given above, this petition is hereby dismissed giving liberty to the petitioners to approach this Bench on the same cause of action, provided their right over the shareholding survives after the jurisdictional issue has been decided by the Arbitrator appointed by the Division Bench of the Hon'ble High Court of Delhi.

17. Accordingly, this Company Petition is hereby dismissed, without any costs.


(B.S.V. PRAKASH KUMAR)
Member (Judicial)

New Delhi,

Signed on 20th January, 2015



प्रमाणित सत्य प्रतिलिपि
CERTIFIED TRUE COPY
Vikram Singh
20/1/15
विक्रम सिंह / VIKRAM SINGH
कार्यवाही अधिकारी / Bench Officer
दिल्ली उच्च न्यायालय / Delhi High Court
बिचौली / Court of Justice
नया दिल्ली / New Delhi