



2024 : DHC : 3930-DE



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

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Judgment reserved on: 23.04.2024
Judgment pronounced on: 15.05.2024

+ **FAO(OS) (COMM) 174/2023 & CM APPL. 43309/2023**

MORGAN SECURITIES & CREDITS PVT. LTD.

..... Appellant

Through: Mr K. Datta, Senior Advocate with
Mr Simran Mehta and Mr.Amit
Ranjan Singh, Advocates.

versus

BPL LIMITED & ORS.

..... Respondents

Through: Mr Anirudh Bakhru, Mr Rishi
Agrawala, Mr Pranjit Bhattacharya,
Mr Prabhav Bahuguna, Ms Tarini
Khurana and Ms Pragya Choudhary,
Advocates for R-1, 4, 5, 6, 9 & 10.
Mr Dayan Krishnan, Senior Advocate
with Mr Sukrit Seth, Mr Rohan Batra,
Ms Sonali Malik and Mr Harsh Arora,
Advocates for R-2.
Mr Shank Sen Gupta, Ms Varuna
Bhanrale, Mr Kartikeya Yadav and
Mr Ribhu Garg, Advocates for R-3.
Mr Rajiv Nayar, Senior Advocate
with Mr Shank Sen Gupta, Ms
Varuna Bhanrale, Mr Kartikeya
Yadav and Mr Ribhu Garg,
Advocates for-7 & 8.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]



AMIT BANSAL, J.:

1. The present appeal has been filed on behalf of the appellant/plaintiff against the impugned judgement dated 10th August, 2023 passed by the learned Single Judge, whereby the application under Order XXXIX Rule 4 of the Code of Civil Procedure, 1908 (CPC), filed on behalf of respondents no.7 and 8 (defendants no. 7 and 8), has been allowed.
2. *Via* an interim order dated 13th January, 2023, the learned single judge had directed the respondents herein (defendants in the suit) to maintain the status quo in respect of the various allotments of shares in respondent no. 2 company (defendant no.2) issued in favour of respondents no. 3, 4 and 6. The aforesaid interim order was subsequently extended to respondents no. 7 and 8 by order dated 2nd March, 2023.
3. The impugned judgment proceeds to vacate the interim order dated 13th January, 2023, read with order dated 2nd March, 2023, *qua* respondents no. 7 and 8.
4. Briefly stated, the facts relevant for the purposes of deciding the present appeal are set out hereinafter.
5. The appellant is a company registered under the Companies Act, 1956 which is, *inter alia*, engaged in the business of lending monies and providing bill discounting services. Respondent no.1 is a company engaged in various businesses, including healthcare business, which was a separate unit of respondent no.1. Respondent no.2 was the wholly owned subsidiary of respondent no.1 and the healthcare business of respondent no. 1 was transferred to respondent no. 2 on 9th August, 2013. At the time of transfer, the respondents no.1 and 4 held 100% shares in respondent no. 2, respondent



4 being a group company of respondent no. 1.

6. Respondent no.3 is a US-based company engaged in banking and investment management. On 12th August, 2013, respondent no. 3 was allotted 2,14,88,542 shares in respondent no.2, constituting 49% of the total shareholding of respondent no.2. Respondents No. 7 and 8 are companies registered under the laws of Singapore and are subsidiaries of respondent no. 3 company. They are engaged in the business of holding investments in financial assets.

7. The respondent no.1 had availed certain bill discounting facilities from the appellant under 'Bill Discounting Agreements' dated 27th December, 2002 and 11th June, 2003 in terms of which a sum of Rs.13,23,23,523/- was disbursed to respondent no.1 by the appellant.

8. Since respondent no.1 defaulted in discharging its liability under the aforesaid agreements, arbitration proceedings were initiated by the appellant against respondent no.1. In the said arbitration proceedings, orders dated 26th July, 2013 and 8th August, 2013 were passed by the Arbitral Tribunal permitting the respondent no.1 to transfer its "healthcare business" to its subsidiary i.e. respondent no. 2, subject to providing certain securities.

9. An appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter the Arbitration Act) was filed on behalf of the appellant being Arb. P. No.362/2013 (later re-numbered as Arb. Appeal No. 14/2015) challenging aforementioned orders dated 26th July, 2013 and 8th August, 2013 passed by Arbitral Tribunal, wherein an interim order was passed on 23rd August, 2013, restraining respondent no.1 from creating any third party interest in the 51% shares held by respondent no.1 in Respondent



no.2.

10. In the meanwhile, the arbitration proceedings culminated in an award being passed on 14th December, 2016 against respondent no.1, awarding a sum of Rs.27,89,34,260/-, in favour of the appellant, along with interest as per the terms of agreement between the parties from the date these amounts were due till the date of award and further interest of 10% from the date of award till realisation.

11. The aforesaid award was challenged by respondent no.1 by filing objections under Section 34 of the Arbitration Act which were dismissed *vide* judgment dated 18th December, 2018.

12. An appeal preferred by the respondent no.1 under Section 37 of the Arbitration Act is stated to be pending. However, there is no stay operating against the operation of the award.

13. We are informed that execution proceedings have been filed by the appellant against respondent no.1 before the competent courts in Bangalore.

14. Between 2014 and 2018, respondent no. 2 increased its share capital by making fresh allotments by way of issue of rights shares. This restructuring diluted the shareholding of respondent no.1 in the respondent no.2 company from 51% to 20.54%. The fresh allotments were made in favour of respondents no.4 and 6 (other group company of respondent no.1) and respondents no. 7 and 8.

15. It is the case of the appellant that these allotments were in the teeth of the aforesaid order dated 23rd August, 2013. Accordingly, contempt petitions were filed by the appellant being CCP(O) 5/2017 and CCP(O) 35/2017 in Arb. P. No.362/2013.



16. The Single Judge *vide* order dated 18th December, 2018, in contempt petitions CCP(O) 5/2017 and CCP(O) 35/2017, held the respondent no.1 and its directors were guilty of having intentionally violated the interim order dated 23rd August, 2013 and held them guilty of contempt. The relevant observations of the learned Single Judge are set out below:-

“7. I am unable to agree with the submission made by the learned senior counsel for the respondents. The order dated 23.08.2013 is absolutely clear and unambiguous. It restrains M/s BPL Ltd. from creating any third party interest in 51% shares held by it in BMTPL. The Court made specific reference to the percentage shareholding held by M/s BPL Ltd. in BMTPL as the same has vital significance on the control of the company, that is BMTPL. The Court was not referring to the number of shares simpliciter, but to such controlling interest. It is not denied by the respondents that the respondents held a controlling interest in BMTPL as on the date of passing of the said order. Therefore, increase in subscribed share capital of the BMTPL could not have been done without the concurrence and consent of M/s BPL Ltd. Such increase in subscribed share capital in favour of the third parties was clearly to achieve the objective of hiving off BMTPL from the control of M/s BPL Ltd.”

17. The respondent no. 1 preferred appeals against the aforesaid order in contempt petitions, which are stated to be pending before a Division Bench of this Court.

18. On 13th January, 2023, a suit being CS(COMM) 498/2022 was filed on behalf of the appellant seeking a declaration that the allotments made by respondents no.1 and 2 in favour of respondents no. 4,6,7 and 8 be declared null and void and the status quo prevailing on 23rd August, 2013, the date on which the learned Single Judge passed the stay order, be restored.

19. In the said suit, the learned Single Judge passed an ad interim order on 13th January, 2023, followed by an order dated 2nd March, 2023, directing the defendants in the suit to maintain status quo *qua* the various allotments



of shares in respondent no.2 (defendant no.2) in favour of respondents no. 3, 4, 6, 7 and 8. Consequently, the said respondents were restrained from selling/transferring the shares held by them in respondent no.2.

20. On 14th April, 2023, respondents no.7 and 8 filed an application under Order XXXIX Rule 4 of the CPC being I.A. No.7416/2023 seeking vacation of the status quo order passed against the said respondents and permitting them to sell/transfer the aforesaid shares.

21. The learned Single Judge *vide* the impugned judgment modified the ad interim order dated 13th January, 2023 to the extent that respondents no.7 and 8 were granted permission to transfer their shareholding in respondent no.2, subject to the caveat that before transferring their shareholding, the said respondents would file an affidavit undertaking to deposit the entire sale consideration before the Court. The respondents no.7 and 8 were further directed to undertake that in case at a later stage, it is found that amounts are liable to be paid to the appellant by respondent no.1, respondents no.7 and 8 would have no objection if the amount deposited by them before the Court is appropriated towards the payment of the aforesaid dues. For the sake of convenience, the operative part of the impugned judgment is set out hereunder :-

“34. The application is, accordingly, allowed by modifying the order dated 13.01.2023 to the extent that the applicants are granted permission to transfer their shareholding in defendant no.2 to any party deemed fit. Before transferring their shareholding, the applicants will file an affidavit before this Court undertaking to deposit the entire sale consideration of their shareholding in defendant no.2. The applicants will further undertake that in case at a later stage, it is found that any amount is payable to the plaintiff by the defendant no.1, the applicants will have no objection if the aforesaid amount is appropriated towards the payment of these dues. The applicants will also undertake that they will not seek deletion of their names as defendants, so that the Court can pass appropriate



orders against them at a later stage, if deemed appropriate."

22. While coming to the aforesaid conclusion, the learned Single Judge made observations that since there were no orders restraining respondent no.2 from going for a rights issue, respondents no.7 and 8 could not be held responsible for subscribing to the rights issue offered by respondent no.2. Accordingly, the learned Single Judge observed that it cannot be held that the act of respondents no.7 and 8 subscribing to the rights shares of respondent no.2 was illegal or in breach of orders passed by this Court.

23. Aggrieved by the aforesaid judgment, the appellant has filed the present appeal.

24. The main grievance of the appellant is that the aforesaid observations made in the impugned judgment with regard to there being no illegality in the act of respondents no.7 and 8 from subscribing to the rights issue of respondent no.2 and the said act not being in violation of any orders of this Court, is in the teeth of the order dated 18th December, 2018 passed by another Single Bench of this Court whereby the respondent no.1 and its directors were held guilty of contempt.

25. It is further submitted that the impugned judgment is at complete variance with the judgment dated 13th January, 2023 passed by the Coordinate Bench in the present suit wherein it was specifically observed that respondents no.7 and 8 were aware of the various court orders restraining respondent no.1 from diluting its shareholding in respondent no.2.

26. *Per contra*, on behalf of respondents no.7 and 8, it is submitted that there is no infirmity in the impugned judgement in as much as respondents



no.7 and 8 have been directed to deposit in Court the amount they receive from the sale of their shares held in respondent no.2.

27. It is further submitted that the interim order dated 28th March, 2013 was passed in proceedings arising out of an appeal filed against the interim orders of the Arbitral Tribunal, which have now culminated in an Award in favour of the appellant. Therefore, the aforesaid order would not operate after an award has been passed.

28. When the appeal came up before this Bench on 8th January, 2024, after hearing the counsels for the parties, an interim direction was passed that the respondents no.7 and 8 will inform this Court once the buyers/transferees of the shares they intend to sell are identified. Respondents no.7 and 8 were further directed to furnish the price at which they proposed to sell the aforesaid shares by way of an affidavit. This was done to safeguard the interest of the appellant so that the shares are not sold by the respondents no. 7 and 8 at discounted prices.

29. In our considered view, the present appeal can be disposed of in the aforesaid terms.

30. Accordingly, it is directed that respondents no.7 and 8, before they sell their shareholding in respondent no.2, shall furnish to the Court by way of an affidavit the details of the buyers/transferees as well as the price agreed upon between the said respondents and the buyers/transferees. In case the appellant forms a view based on tangible material that the proposed sale consideration is below the market price, the appellant would have the liberty to take recourse to an appropriate remedy, albeit as per the law. However, if no such remedy is availed by the appellant in a reasonable time,



upon the shares being sold by respondents no. 7 and 8, the consideration received would be deposited with the registry of this Court, the fate of which would abide by the result in the appeal preferred under Section 37 of the Arbitration Act which is pending adjudication in this court.

31. In our considered view, the aforesaid directions would secure the interest of the appellant in the present suit.

32. It is made clear that the observations made in the impugned judgement shall not influence, in any manner, the outcome in CONT. APP. (C) 2/2019 and CONT. APP. (C) 3/2019 filed by the respondent no.1 against the order dated 18th December, 2018.

33. The present appeal, along with the pending application, is disposed of in the aforesaid terms.

**AMIT BANSAL
(JUDGE)**

**RAJIV SHAKDHER
(JUDGE)**

MAY 15, 2024
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