

(1996) 01 DEL CK 0030

In the Delhi High Court

Case No : Interim Application No's. 9027 and 9880 of 1994 and Suit No. 1577 of 1992

Himal Enterprises Pvt. Ltd.

APPELLANT

Vs

Dabur India Pvt. Ltd.

RESPONDENT

Date of Decision : 23-01-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A

Citation : (1996) 61 DLT 494 : (1996) 112 PLR 43

Hon'ble Judges : Devinder Gupta, J

Bench : Single Bench

Advocate : Sandeep Sethi and A.K. Mata, for the Appellant;

Judgement

Devinder Gupta, J.

(1) In petition filed u/s 20 of the Arbitration Act a direction is sought for filing of the arbitration agreement dated 23.1.1987 in Court and for reference of the disputes and differences for adjudication by an Arbitrator, namely, Shri C.S. Vaidyanathan or to pass such other order as may be deemed fit and proper in the circumstances of the case.

(2) Along with the petition, an application for interim relief, being No. 3979/92, was also filed. Relief prayed for in the said application was that during the pendency of the proceedings, an order be made restraining respondent No. 1 from obstructing or interfering with the functioning and working of Shri B.K. Shrestha as the Managing Director of respondent No. 3 Company and from issuing any letter, notice or communication disputing or denying the status of Shri B.K. Shrestha as the Managing Director of respondent No. 3 Company.

(3) PETITIONER'S case in nutshell is that it is a company registered under the Sikkim Registration of Companies Act, 1961 with registered office at Gangtok. Respondent No. 1 is a Company incorporated under the Companies Act, 1956 with registered office at New Delhi. Respondent No. 3 is a Private Limited

Company incorporated under Sikkim Registration of Companies Act, 1961 and respondent No .2 is an individual working as General Manager of respondent No. 1 Company. On 8.8.1993 an agreement was entered into between the petitioner and Dabur (Dr.S.K. Burman) Private Ltd., a Company incorporated under the Companies Act,1913. On the basis of which parties to the agreement agreed to set up a Company to be registered under the provisions of the Sikkim Registration of Companies Act, for the manufacture and sale, inter alias of Ayurvedic and other drugs and toiletries. In terms of the agreement, a new Company by the name and style of Himall Laboratories Pvt. Ltd. (respondent No. 3) was incorporated, which was accorded registration No. 34 under the Sikkim Registration of Companies Act, 1961 (hereinafter referred to as the "Act"). It is further alleged that by an order passed on 12.9.1986 by this Court in Company Petition No. 57/86, the Company, with whom the agreement had been entered into by the petitioner, was amalgamated with another Company known as Vidgourn and Chemicals Ltd. Subsequently the amalgamated Company changed its name to Dabur India Ltd. (respondent No. 1) which was issued a fresh certificate of incorporation on 13.10.1986. By virtue of amalgamation, rights ,liabilities and obligations of the erstwhile company came to be vested in respondent No. 3 Company and as a consequence of this fresh agreement dated 23.1.1987 was entered into between the plaintiff and respondent No. 1. Terms of the agreement have been incorporated in the petition. Petitioner has alleged that on 16.1.1991 abruptly production was stopped by respondent No. 1 and notice of closure was put up on 19.1.1991 .As a result of the abrupt closure, the petitioner has suffered losses. It is alleged that disputes and differences arose between the parties, in terms of the agreement clause, contained in the agreement dated 23.1.1987. Disputes and differences, which are stated to have arisen are enumerated in para 22 of the petition as follows:

"(I) Whether the Respondent No. 1 Company acted in breach of the said Revised Agreement and particularly Clause 8 thereof, when it closed the manufacturing operations of the Respondent No. 3 Company on 16/01/1991; (ii) Whether the Respondent No. 1 Company is liable to pay to the Petitioner a sum of Rs.47.50 lakhs as and by way of compensation for the abrupt closure of production of the Respondent No. 3 Company; (iii) - Whether the Petitioner is entitled to have the first right to purchase the Plant and Machinery of the Respondent No. 2 Company; (iv) What is the fair value of the Plant and Machinery of the Respondent No.3 Company; (v) Whether the Respondent No. 1 Company is liable to restore the six truck loads of machineries and equipment stated to be spirited away from the Respondent No. 3 Company works; (vi) Whether the said Shri B.K. Shrestha continues to be the Managing Director of the Respondent No. 3 Company with all powers accorded by the Board of Directors of the Respondent No. 3 Company. (vii) Whether the Power of Attorney executed in favor of one Shri G.P.S. Bhandari has been duly withdrawn/cancelled by the said Shri B.K. Shrestha; (viii) Whether the said Revised Agreement has been terminated by the letter dated 28/11/1991 by the Petitioner; (ix) Whether the Respondent No. 1 Company is liable to

reimburse to the Petitioner a sum of Rs. 40.15 lakhs (i.e. half of Rs. 80.30 lakhs) paid by the Petitioner to the Department of Excise, Govt. of Sikkim in respect of the claim of the concerned authorities towards excise duty for the period prior to 1/04/1986;(x) Whether the Respondent No. 1 Company will become liable to the Petitioner to the sum of Rs. 2 crores approx. in case the Excise Department of the Govt. of Sikkim finally insists on recall of the outstanding interest-free loan of Rs. 5.11 crores."

(4) In the background of the averments made in the petition, the aforementioned directions have been sought. This petition is opposed by respondent No. 1 on number of grounds, legal and factual. It is alleged that the disputes have already been resolved and settled and the remaining disputes are already under consideration and adjudication by an Arbitrator appointed, who is seized of the matter and has already entered upon reference and conducted proceedings. It is alleged that agreement dated 23.1.1987 stands novated by virtue of the two subsequent agreements, arrived at between the parties, as evinced in the form of memorandum of minutes of discussion and agreement dated 3.8.1991 and 19.2.1992. So far as the matters of disputes, which have been resolved, no dispute survives or remains to be settled, which according to the respondents are contained in sub-paras (iii), (iv), (v), (ix) and (x) aforementioned and the remaining, it is contended, that the petition deserves to be dismissed as the same are already under consideration by the appointed Arbitrator. Respondents have further contended that without prejudice to the reply, serious gross breaches of various terms and conditions of the agreement have been made by the petitioner, who is not entitled to any relief.

(5) Keeping in view the nature of the prayers made in the two applications in hand, suffice it to say that disputes which, according to the petitioner, have arisen also include a dispute that B.K. Shrestha continues to be the Managing Director of Company with all powers accorded to him by Board of Director of respondent No.3 Company which, according to the stand taken by respondent No. 1, is not the correct position, who has taken up the stand that after 23.1.1987 the Board of Directors of respondent No. 3 never made any appointment of Shri B.K. Shrestha as the Managing Director of respondent No. 3 and Shri B.K. Shrestha and the Petitioner being signatory to the agreement dated 23.1.1987, cannot contend that Shri B.K. Shrestha is the Managing Director of respondent No. 3 after 23.1.1987.

(6) As noticed above, in the first Misc. application, is 3979/92, prayer is made by the petitioner seeking injunction restraining respondent No. 1 from, in any manner, obstructing or interfering with the functioning and working of Shri B.K. Shrestha as the Managing Director of respondent No. 3 Company. Notice of this application was directed to be issued to respondents. The application has not yet been heard and decided. An ad-interim order was passed on this application on 30.4.1992 directing the parties to maintain status quo in respect to each group, in respect to the Management of the Company till next date. This order is

still in operation .

(7) Another application (IA 8145/92) was made by the petitioner in which a prayer was made that till further orders Shri B.K. Shrestha be permitted to continue as the Managing Director of respondent No. 3 Company and restraining respondent No .1 Company from interfering or obstructing in the performance and functioning of Shri B.K. Shrestha as the Managing Director. On 29.5.1992, after hearing the parties ,an order was made clarifying the earlier order passed on 30.4.1992 that Shri B.K. Shrestha is authorised to apply as Managing Director of M/s Himal Laboratories Pvt. Ltd. (respondent No. 3) to the Competent Authority such as Excise and Drug Authorities of Sikkim for renewal of the Excise and Drug license and to pursue those applications or to do any other act, which may be necessary, in connection therewith or for the grant of the licence. It was made clear that Shri Shrestha shall, for the time being and till further orders, have this authority to represent himself as the Managing Director or act as such only for the limited purpose of applying for the renewal of the aforesaid license or doing any act essential thereto and for no other purpose. It was also clarified that without prejudice to the respective contentions of the parties and in case licences are granted Shri Shrestha shall not commence any manufacturing activities till further orders of the Court.

(8) Respondent No. 1 preferred is 1030/93 under Order 39 Rule 2A of the CPC complaining of breach of the aforementioned order dated 29.5.1992 inasmuch as Shri B.K. Shrestha is alleged to have contravened this order and acted beyond the specified and limited powers granted to him by the Court. This application is under consideration and has not yet been decided..

(9) There is yet another application, is 7545/94, which was filed by respondent No .1 under Order 39 Rules 1 & 2 of the CPC claiming interim directions against the petitioner on which an order was made on 1.8.1994 that until further orders the machinery, plant and equipment shall not be sold away or parted with by any of the parties till disposal of the proceedings. This application is also pending consideration and has not yet been disposed of

(10) The two applications, which are being decided by this order, are is 9027/94 and 9880/94. In is 9027/94 filed on 17.10.1994 by respondent No. 1, a direction is sought restraining Shri Shrestha from acting, in any manner, on notice dated 22.9.1994 and further restraining him from calling for the meeting of the Board of Director of Respondent No. 3 in his capacity as Managing Director of respondent No .3 and in is 9880/94 a direction is sought for giving effect to the resolution, stated to have been passed in the adjourned meeting held on 24.10.1994.

(11) First application, as noticed above, is by respondent No. 1 and the second by the petitioner. In the first application an order is sought restraining Shri B.K.Shrestha from acting in any manner on the notice issued by him on 29.9.1994 for holding of meeting on 17.10.1994 and projecting himself as the

Managing Director of respondent No. 3. In the second application the petitioner wants the resolution passed on 24.10.1994 (the adjourned meeting in pursuance to notice dated 23.9.1994) to be given effect to. During course of arguments, learned Counsel for the petitioner, pointed out that it is absolutely necessary in the interest of respondent No. 3 Company to give effect to the resolution failing which, the petitioner was likely to suffer immense loss and injury.

(12) In the light of the facts, which have been set out aforementioned I need not go into the merits of the controversy raised by the learned Counsel for the parties, since in my view the very act of calling of the meeting of the Board of Directors of respondent No. 3 company by Shri B.K. Shrestha is beyond the express order passed in these proceedings on 30.4.1992, as was clarified on 29.5.1992 under which a limited authority was given to Shri B.K. Shrestha. He could not have, by describing himself as the Managing Director, called the meeting and moreover, respondent No. 1 in its reply filed to is 9880/94 has vividly pointed out that despite best effort sit has not been possible for the representative of the respondents to attend the only carrier adjourned meeting on 24.10.1994. Such non-attendance by the representatives of respondent No. 1 is stated to be beyond their control. Disputing the right of Shri B.K. Shrestha in having issued notice of the meeting in the capacity of Board of Directors, it is stated that without prejudice to their rights, representatives of the respondents, after the order was passed by this Court on 17.10.1994 in the post lunch session, arrangement was made for obtaining their tickets from Indian Airlines, the only carrier flying to Bagdogra, the nearest airport to Gangtok so as to be able to reach Gangtok for the meeting to be held on 24.10.1994. No flight was leaving for Bagdogra for the remaining part of 21st and 22/10/1994, due to heavy rush of booking and wait-listing. The two representatives were not in a position to reach the place of meeting. On 21.10.1994 on the application moved by respondent No. 1, a prayer had been made for staying the holding of meeting on the ground that Shri Shrestha had contravened the order of the Court by describing himself as the Managing Director. It was observed that for this reason merely the holding of meeting cannot be restrained. To protect the interest of the applicant, it was directed that though the meeting may take place as scheduled but the resolution passed in the meeting be brought to the notice of the Court and the same shall not be given effect to, except by leave of the Court. It was observed that order is merely interim and would not prejudice the rights of either party. It is in this light that is 9880/94 was preferred praying for giving effect to the resolutions

(13) Since the very authority of Shri B.K. Shrestha is the very subject matter of dispute between the parties and the petitioner has also questioned the locus of the two representatives of the respondent who could not attend the meeting, it will not be appropriate at this stage to make any adjudication or pass an order which will result in giving effect to the resolutions passed with respect to the affairs of the company. At this stage it will be advantageous to quote the operative part of the order dated 29.5.1992, which says :

"IN view of the undertaking offered, and position stated, I allow the prayer made today to the effect that Shri B.K. Shrestha is authorised to apply as Managing Director of M/s. Himal Laboratories Pvt. Ltd. to the Competent Authorities viz. Excise & Drug Authorities at Sikkim, for renewal of the excise and drug licences and pursuing those applications, or do any other act which may be necessary in connection thereof, or for the grant of licences. It is made clear that Shri Shrestha shall be for the time being, and till further orders, have this authority to represent himself as Managing Director or act as such, only for the limited purpose of applying for the renewal of aforesaid licences or doing any act essential thereto and for no other purposes. This order is further without prejudice to the respective contentions of both the sides and in case the licences are granted, Shri Shrestha shall not commence any manufacture activities ,till further orders of the Court."

(14) In view of the above order, at this stage when the two applications, namely, IA 3979/92 and 8145/92 are still pending and have not been heard and decided, no order can be passed for giving effect to the resolutions, which have been passed IN a meeting summoned by a person who was restrained from representing himself as the Managing Director for any other purpose, other than the one referred to in order dated 29.5.1992. The applications accordingly with the above observations are disposed of at this stage. Liberty, however, is reserved to the parties to apply afresh for such interim order as may be deemed appropriate, after aforesaid two applications are disposed of Suit No. 1577/92List for directions on 14/02/1996.