
(2006) 10 DEL CK 0189

In the Delhi High Court

Case No : LPA No. 1978 of 2006 and CMs. 13737-78 of 2006

Integral Finvest (P) Ltd.

APPELLANT

Vs

Securities and Exchange Board of India and Others

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9
Constitution of India, 1950 — Article 226

Citation : (2007) 2 CompLJ 446 : (2006) 92 DRJ 601 : (2007) 78 SCL 170

Hon'ble Judges : V.K. Jain, Acting C.J.; Kailash Gambhir, J

Bench : Division Bench

Advocate : Mukul Rohtagi and Alok K. Aggarwal and Shashank Kumar, for the Appellant; Neeraj Malhotra, for Respondent No. 1, Abhimanyu Mahajan, for Respondent No. 2, P.V. Kapur and Thomas George and Dushyant Dave and Shruti Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, A.C.J.

1. Feeling aggrieved with the order of the learned Single Judge in W.P. (C) No. 15065/2006 dated 28.9.2006, the appellant has filed the present Letters Patent Appeal. Mr. Mukul Rohtagi, learned Counsel appearing for the appellant has contended that the learned Single Judge has not fully appreciated the actual controversy raked up by the appellant in the writ petition filed under Article 226 of the Constitution of India. Counsel for the appellant states that his main grievance was against the Security and Exchange Board of India (SEBI) which is a statutory body set up under the Securities and Exchange Board of India Act, 1992 (hereinafter called SEBI Act, 1992) who failed to fulfill and perform its legal and statutory duties as enshrined under the SEBI Act, 1992. Mr. Rohtagi has further contended that the learned Single Judge lost sight of the fact that there was an arbitration clause between the petitioner and respondent No. 4 and the disputes arising on account of alleged breaches on the part of respondent No. 4,

although having been referred to arbitration, the sale and transfer of shares by others cannot be subject matter of such an arbitration clause. The learned Counsel appearing for the appellant thus contended that the learned Single Judge ought to have exercised jurisdiction under Article 226 of the Constitution of India as the writ petition was filed by the appellant against Security and Exchange Board of India, inter alia, praying for issuance of a direction to ensure that no transfer or variation of any shareholdings of respondent No. 3 takes place until final adjudication of the matter in arbitration.

2. We have given our careful consideration to the arguments advanced by learned Counsel for the appellant. We are in complete agreement with the finding of the learned Single Judge. The Memorandum of Understanding on which reliance has been placed by the appellant before the learned Single Judge only contemplated execution of another agreement for the purposes of acquisition of shares and control and management of respondent No. 3. The learned Single Judge has dealt in detail that nothing was produced before him to show that even the consideration has passed and there was no communication of any type by the appellant to respondent No. 4 with regard to non-encashment of the cheque of Rs. 25 lakh. It has also been observed by the learned Single Judge that the appellant seems to have woken up from slumber only after respondent No. 4 had entered into agreement with respondent No. 5 and steps as contemplated under SEBI Regulations were taken.

3. Coming to the main argument of the Counsel for the appellant that directions cannot be issued to SEBI in the petition filed by the appellant pursuant to Section 9 of Arbitration and Conciliation Act as appellant had an arbitration Clause with respondent No. 4 only.

4. The enforcement of rights arising out of Memorandum of Understanding dated 14.8.2005 has already been invoked by the appellant before another Single Judge exercising Original Civil Jurisdiction in a petition u/s 9 of the Arbitration and Conciliation Act. Therefore, in order to avoid conflict of decisions, the learned Single Judge has rightly held that it would not be appropriate to agitate some of the rights arising out of the same agreement before one Court which is seized of petition u/s 9 of Arbitration and Conciliation Act and protection of some of other rights under the Memorandum of Understanding by invoking jurisdiction under Article 226 of the Constitution of India.

5. Coming to the last contention of Mr. Rohtagi that in the said proceedings no directions can be issued to the SEBI, the learned Single Judge in para 22 of the impugned judgment has held that it was only on account of an agreement between respondent No. 4 and respondent No. 5 the right of respondent No. 5 for taking control of the company has arisen. In our considered opinion, the appellant has chosen to invoke Section 9 of the Arbitration and Conciliation Act in relation to respondent No. 3 although no arbitration clause existed with respondent No. 3 and in the said petition the Court had passed an order in respect of respondents 3 and 4 and had directed to maintain status quo. When in

the absence of an arbitration clause the appellant had chosen to make respondent No. 3 as a party, the respondent could have made SEBI also as a party for appropriate directions. It was for that Court to decide at that stage whether in the absence of an arbitration clause the transfer of shares pursuant to an agreement by respondent No. 4 in spite of a Memorandum of Understanding with appellant, the appellant could seek any restraint order against SEBI. As a matter of fact, by filing another writ petition implicating SEBI as a party, the appellant has tried to initiate two parallel proceedings for getting the same relief.

6. Nothing said hereinabove would constitute an expression of opinion on the merit of the controversy if agitated before the Court hearing the appellant's petition u/s 9 of Arbitration and Conciliation Act or appellant's taking out any proceedings before SEBI.

7. Therefore, based on above discussion we do not find any merit in this appeal. The same is dismissed.