

(2002) 05 DEL CK 0097

In the Delhi High Court

Case No : I.A. 4218 of 2002 in Suit No. 1394 of 1996

K.K. Modi and Another

APPELLANT

Vs

K.N. Modi and Others

RESPONDENT

Date of Decision : 20-05-2002

Acts Referred:

Citation : (2003) 115 CompCas 671 : (2002) 64 DRJ 538 : (2003) 45 SCL 509

Hon'ble Judges : Jiwan Dass Kapoor, J

Bench : Single Bench

Advocate : S. Ganesh, Deepa Das, Pravin Bahadur and Puneet Bhardwaj, for the Appellant; Manmohan, for the Respondent

Final Decision : Allowed

Judgement

J.D. Kapoor, J.—Modipon Limited has two divisions, Chemical division and Fibre division. Chemical division is controlled and managed by Group "A" company which is represented by Mr. M.K. Modi, defendant No. 2. Fibre Division is controlled by Group "B" company which is represented by Mr. K.K. Modi. Mr. K.K. Modi owns 12.65% shares whereas Mr. M.K. Modi owns 9.07% shares. The litigation landed them in Supreme Court where on 7.1.1998 following interim order on the application of Mr. M.K. Modi was passed which reads as under:-

"For a period of eight weeks from today, neither Mr. K.K. Modi nor Mr. M.K. Modi will acquire directly or indirectly any further shares of Modipon Limited nor take any steps that would in any way directly or indirectly destabilise the control and management of the Fibre Division of Modipon Limited by Mr. K.K. Modi and of the Chemical Division of Modipon Limited by Mr. M.K. Modi.

Liberty to apply for variations if circumstances change."

2. The appeal against the said order was finally decided by the Supreme Court on 4.2.1998 wherein aforesaid interim order of 7.1.1998 was ordered to continue to operate in terms thereof with liberty to the parties to apply to the High Court for any variation of this order in the event of any change in the circumstances.

3. Subsequently Mr. M.K. Modi, defendant No. 2 filed Suit No. 434/1998 wherein on 5.3.1998 following order was passed with the consent of the parties:-

"Mr. Dushyant Dave, learned senior counsel appearing on behalf of plaintiff states that interim order passed by Supreme Court in I.A. No. 3/97 in SLP No. 18711/97 dated January 7, 1998 be continued. Learned senior counsel appearing on behalf of the defendant states that he has no objection to the continuation of the interim order in terms of the order by the Supreme Court in its judgment."

4. Through the instant application, the plaintiff/applicant seeks modification in the earlier part of the order dated 7.1.1998 whereby Mr. K.K. Modi and Mr. M.K. Modi were restrained from acquiring directly or indirectly any further shares of Modipon Limited. By this order, they were given liberty to apply for variation in the event of change in circumstances.

5. As is apparent from the aforesaid order, defendant No. 2 agreed that he will have no objection to the continuation of interim order in terms of the order of the Supreme Court i.e. order dated 4.2.1998. Till date both the parties have maintained sanctity of the said order as none of them has acquired any shares directly or indirectly in Modipon Ltd. and Therefore control and management of fibre division by Mr. K.K. Modi and Chemical division by Mr. M.K. Modi has remained intact.

6. A piquant situation has cropped up by a public notice issued by UPSIDC on 25.4.2002 inviting offers for the sale of its equity shares which constitutes 16.61% of the total equity of the company. What is irking the plaintiff is that through this notice offer has to be made by a single party for the entire block of shares owned by UPSIDC and since none of the parties owns 16.61% there is every likelihood of third party bidding for it. It is contended that if a third party comes to own 16.61% shares it will destabilise the control of both the parties on Modipon Ltd and practically will oust both of them from the company as the third party will not be bound by MOU or by the order of Supreme Court.

7. In order to save the company from going into the hands of third party who will not be bound by MOU and to keep the control of the company among themselves plaintiff is seeking modification in the order dated 4.2.1998 and the order dated 5.3.1998 referred above by way of permitting it as well as defendant No. 2 to individually bid and purchase shares held by UPSIDC and to make a public offer in terms of SEBI Takeover Code and to purchase the shares so offered as also to make competitive bids and purchase shares in the case of public offer by any other party.

8. SEBI Takeover Code provides that if a person acquires more than 15% of the equity share capital of a company, he is obliged to make a public offer to the shareholders of the company for acquiring at least an additional 20% of the equity share capital. Thus, if the said 16.61% share holding is acquired by a third party, the third party would necessarily proceed to acquire pursuant to the public, offer at least an additional 20% block of shares or even more in Modipon

Limited thereby adding up to a total shareholding of at least 36.61% or more.

9. It is contended by Mr. S. Ganesh, learned Senior Counsel for the plaintiff/applicant that 78.28% of the shareholding is outside the control of the plaintiff and the defendants and there is every likelihood that holders thereof may participate in a public offer for purchase of shares of Modipon Ltd. issued by any third party. As a result shares held by non-controlling parties will be acquired by third party and such a party would be in commanding and controlling position of company.

10. The problem against variation of said order is that of defendant No. 2. Defendant No. 2 is short of funds and has no money to purchase. It is also facing liabilities to be discharged in the form of debts towards financial institutions and banks and has financial constraints and crunch.

11. It is in view of this position of defendant No. 2 that plaintiff has submitted written offer to the effect that any shares that would be acquired either by Mr. K.K. Modi or Mr. M.K. Modi pursuant to this court's order would be shared equally between them in terms of written proposal already filed with the court and since the latter part of injunction order is not being disturbed, the control and management of Fibre Division will continue with defendant No. 2. Permission to purchase the equity of UPSIDC is only with the sole object to save the company from going into hands of strangers.

12. According to Mr. Manmohan, learned counsel for the defendant No. 2, the apprehension of plaintiff is highly misplaced as the Modi Group holds as a whole about 49.57% shareholding in Modipon Ltd. and even if a third person acquires 16.61% shareholding of UPSIDC there is no threat to the control and management by either Group A or Group B. It is pertinent to mention that in order to discharge its liabilities towards financial institutions and Banks, defendant No. 2 was permitted to sell 50% of its share by this court but it is stated that the said order has been stated by the Division bench and till date neither defendant No. 2 is having money for making payment to financial institutions nor has any source to purchase shares being offered by UPSIDC. The said 50% shares come to be about Rs. 30 crores which is to be paid to financial institutions and Banks.

13. After looking to the problem of the parties in retrospective and prospective scenario and in order to allay the apprehension of defendant No. 2 that by getting permission to acquire shares of UPSIDC, the plaintiff will not only get absolved from the terms of the MOU but also will have exclusive control and management of the company resulting in destabilizing the status quo, the permission to the plaintiff to purchase shares of UPSIDC is granted subject to the condition that payment will be made by the plaintiff towards 50% shares of UPSIDC on behalf of defendant No. 2 and this payment shall only be confined to making purchase of shares of UPSIDC and will not be deemed as payment made to the defendant No. 2 for discharging his liabilities to the banks and financial

institutions. This order is being made in order to save the company from going into the hands of strangers and to maintain the order of the Supreme Court that control and management of Chemical Division by Mr. K.K. Modi and Fibre Division by Mr. M.K. Modi, defendant No. 2 shall not be destabilished. The application is allowed in the aforesaid terms.

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