

(2002) 02 DEL CK 0051

In the Delhi High Court

Case No : C.M. No. 1176 of 2001 in FAO (OS) No. 462 of 2001

K.K. Modi and Another

APPELLANT

Vs

M.K. Modi and Others

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Citation : (2002) 4 AD 386 : (2002) 112 CompCas 133 : (2002) 97 DLT 386 : (2002) 62 DRJ 465

Hon'ble Judges : Shamik Mukherjee, J;Devinder Gupta, J

Bench : Division Bench

Advocate : S. Ganesh and Vanita Mehta, for the Appellant; Ravinder Sethi, Rajiv Sawhney and A.M. Singhvi, Manmohan, Rakesh Sawhney, Bhawna Kohli, K. Budhiraja and Anurag Dubey, Sumant Batra, for IFCI and Jagdeep Kishore, for PNB, for the Respondent

Judgement

Mukerjee, J.—This application has been preferred by applicants B.K. Modi, Along with V.K. Modi, who have agreed to purchase certain shares of M/s Modi Rubber Limited (hereinafter referred to as MRL) held by M/s Modipon pursuant to a process of public officer, @ Rs. 90/- per share (as against the stock market reflected share value of about Rs. 50/- per share). The relief claimed in the application is that either the amount of Rs. 8.27 crores jointly deposited by them, in the ESCROW account, should be paid back to them or the shares should be transferred in their favor since they have paid the complete consideration amount in relation to the said shares. The text of the prayer made, may be quoted for convenience of reference:-

(a) pass an order modifying varying its order dated 2.7.2001 and permitting the transfer of shares of Modi Rubber Ltd. lodged by Modipon Ltd. pursuant to the Public Officer in favor of the Acquirer subject to deposit of consideration in this Hon"ble Court or on such terms and conditions as this Hon"ble Court may deem fit and proper in the facts and circumstances of the case; and

(b) without prejudice and in the alternative, pass an order exempting the

Applicant/Acquirer from Regulations 28 & 29 of SEBI (Substantial Acquisitions of Shares & Takeover) Regulation, 1997 from depositing a sum of Rs. 8,27,20,980/- in the Escrow account pending the conclusion of the litigation between the parties before this Hon''ble Court.

2. The application has been objected to by IFCI by filing their reply/objections in terms of the order dated 26th November 2001 even whilst IFCI's application under Order 1, Rule 10, Code of Civil Procedure, was still pending consideration (and same has been disposed of by us only today vide orders separately passed in that behalf).

3. The appellants in FAO (OS) No. 462 of 2001 have orally contended that while they have no objection to the money being returned to the applicants, but according to them, the transfer of shares is not permissible by virtue of the order dated 4th February 1998 passed by the Supreme Court whereby Suit No. 1394 of 1996, out of which the SLP arose, has been remanded for consideration by the learned Single Judge of this court, Along with certain directions as detailed in the said order. The submission of the appellants/non-applicants is that the sale/transfer of these shares in favor of the applicants, would render a substantial portion of the relief claimed in the Suit No. 1394/96, and also the main appeal in this Court, in the present case, to become infructuous.

4. It was the contention of the appellant that after the order dated 4th February 1998 of the Hon''ble Supreme Court, there has been no such change of circumstances, as would warrant modification of the injunction granted by the learned Single Judge, whereby 50% of the total shares were allowed to be put on sale by public offer.

5. We have presently taken up for consideration only the application (I.A. No. 1176/2001), primarily for the purposes of working out an interim arrangement which would balance the apparently conflicting interests of the various parties involved (including the banks/financial institutions), all in the specific context of this application filed by the purchasers. However, the degree, extent and nature of the change of circumstances are all aspects on the merits of the main appeal, and all those aspects of the issue regarding change of circumstances and all other connected issues, will be considered by us only at the time of hearing of the appeal itself.

6. In the order dated 4th February 1998, the Supreme Court has left it open to the learned single judge trying the suit, to decide whether there is change of circumstances warranting a departure from the then prevailing position, viz. of the status quo regarding transfer of shares.

7. The learned Single Judge has now, on 8th October, 2001, after hearing all the parties, passed a detailed order directing that 50% of the total shares of MRL owned by M/s Modipon Ltd., be put to sale through public offer. All concerned were duly permitted to participate in the said process of public offer, so that the best offer can be received.

8. On a prima facie consideration of the change of circumstances referred to in the impugned order and pending the detailed hearing of the main appeal on merits, it appears to us that it cannot be said, at least for the present purposes, that the circumstances referred to by the single judge, did not, or could not amount to the kind of circumstances contemplated by para 33 of the judgment of the Supreme Court governing change of circumstances warranting deviation from the earlier orders of status quo regarding transfer of shares.

9. We find that the resolution of the Board of Directors of M/s Modipon Ltd. proposing the sale/transfer of shares of MRL, was the subject matter of directions/orders by SEBI, and thereafter by the Bombay High Court in C.W.P. No. 153 of 2001. Vide judgment and order dated 2nd July 2001 and 23rd July 2001 of the Bombay High Court, permission has been granted for the public offer, and it is after that that the applicants have purchased these shares.

10. Ordinarily speaking the shares being held by M/s Modipon Ltd. or by any other company, by way of intercorporate holding, in MRL or any other company, are assets of the company which could be sold by a valid decision of the Board of Directors of the company. The only possible impediment could be in relation to the effect on the control of the other company (i.e. MRL) whose shares are being sold/transferred and changing hands on account of the said transaction. However this aspect need not detain us since the SEBI proceedings which culminated in the order of the Bombay High Court, have cleared the sale. As such the said impediment no longer survives. Moreover there are a number of orders of other Courts/Tribunals wherein a stand has been taken by the objecting appellants, in those proceedings, to the effect that the shares in question should be put to public offer, and that all concerned may be permitted to participate in the same.

11. It was not the contention of any of the parties appearing before us, that the shares are being sold at less than their market price. In fact on our posing the question, there was unanimity on the point that at Rs. 90/- per share, these shares now stand to fetch considerably more than the market value as on the date of sale or even on date as reflected on the stock exchange. As rightly contended by the parties, the applicants, perhaps due to their having special reasons, are prepared to pay a higher price than what is otherwise prevailing in the market for acquiring the shares in question. However, as already indicated by us, once the directions of SEBI, which is the controlling body in this behalf, got merged in the orders of the Bombay High Court, permitting the sale/transfer, there could be no impediment in the way of the applicants acquiring the shares, to this extent, in MRL.

12. The only question which remains is regarding the title to the shares which are the subject matter of the suit pending before the learned single judge. We do not wish to decide any of these issues which are pending before the learned Single Judge in the suit, or to render the same substantially or completely infructuous. We, Therefore, propose to work out an interim arrangement which sufficiently and equitably safe-guards the interest of all concerned, without

adversely affecting the aspects involved in the other pending litigation, and we proceed to do so as under all the while keeping in view the position that the title to the shares is still to be decided in the suit or other proceedings, and that the shares in question shall stand transferred in favor of the applicants to the extent of only 50% of the total number of shares, and that too at Rs. 90/- per share (being a value about 80% higher than the quoted value on the stock exchange):-

(i) the transfer of shares will be subject to the further orders to be passed on the main appeal;

(ii) the applicants under the transfer of shares in their favor as directed by us, will only have the right to vote and to participate as shareholders, but will not be entitled to further sell or transfer or alienate or encumber or otherwise deal with, or part with, or agree to do so in favor of any third party or any nominee;

(iii) the applicants will be entitled to receive the dividends provisionally, subject to restitution, in case the matter is finally decided against the transfer of shares in their favor;

(iv) the amount of Rs. 8.27 crores will be kept in a suitable interest bearing deposit with the IFCI (instead of the ESCROW account). Neither the amount nor the interest will be appropriated by anyone, including IFCI, and the same shall abide by further orders to be passed by this court;

13. Since the learned single judge has considered the change of circumstances to be warranting only permission to sell in relation to the sale of 50% of the shares of MRL being held by M/s Modipon, our present order shall be confined to these 50% shares only.

14. While concluding we may note that the contesting parties were at loggerheads on most issues. While the appellants claim that they are entitled to have these shares without paying anything, the respondents claim that the appellants have to pay them Rs. 21 crores as amounts owned by the appellants on various grounds. While denying the liability to pay Rs. 21 crores, the appellants have not come out with any specific figure regarding the payment to be made by them. During the hearing we put it to the appellants whether they were prepared to safe-guard the possible loss due to fluctuation of share value, and also the eventuality of return of amount to the applicants who are admittedly paying much much more than the share market value for these shares with good interest return in case their money remains blocked for long. After reserving the order we directed posting of the matter for directions on 30th January 2002 for the appellant's counsel to inform us what amount, if any, they are prepared to deposit in court. However, apart from the original Rs. 5 crores already deposited under the directions of the Hon"ble Supreme Court dated 4th February 1998 to which they claim there has been further interest accrual, the appellants did not agree to deposit in court any further amount at all. It was so mentioned to us by Shri S. Ganesh, Sr. Advocate on 28th January 2002 by mentioning in the presence of other counsel and as such the matter was deleted from the list on

30th January 2002.

15. Considering the admitted position that the applicants are paying much more than the present day stock market value, and also the overall interest of the share-holding company (Modipon Ltd.) whose assets may get irretrievably dwindled in the event of any delay, and also the interest of the financial institutions and also the fact that none of the parties came forward with any other reasonable suggestion regarding the interim arrangement, we have, Therefore, after considerable thought, felt that the above said arrangement would be the best and most equitable arrangement pending the hearing of the stay application and the hearing of main appeal. We are also conscious that the applicants having blocked Rs. 8.27 crores, cannot be made to wait for long after paying such a huge amount and not get any rights to the shares at all. At the same time because of the inter se dispute between the parties, the interests of the bank/financial institutions, to whatever extent it can be safe-guarded by the sale of assets of M/s Modipon in the form of MRL shares, should also not to be allowed to be put to prejudice.

16. We have tried to consider the matter only from the stand point of a prima facie consideration by way of interim arrangement, and Therefore, have avoided to take any view on the vexed involved. By way of abundant caution we further clarify that nothing stated in this order shall have any effect either on the consideration of the stay application, or the final hearing of the appeal.