(2020) 05 DEL CK 0144

In the Delhi High Court

Case No : CO. APP. No. 9 Of 2020

Kuber Securities Ltd APPELLANT

Vs

C.R.B. Capital Markets Ltd. (In Liquidation) & Anr RESPONDENT

Date of Decision : 22-05-2020

Acts Referred:

Companies Act, 1956 — Section 483, 531A
Code Of Civil Procedure, 1908 — Order 23 Rule 1

Citation : (2020) 05 DEL CK 0144

Hon'ble Judges : Rajiv Sahai Endlaw, J;Asha Menon , J

Bench : Division Bench

Advocate : Rajat Bhalla, Sudhanshu Batra, Deepa Maheshwari, Ramesh Babu, Ruchi Sindhwani, Megha Bharara

Judgement

Rajiv Sahai Endlaw, J

CM No.11163/2020 (for exemption)

1. Allowed, subject to just exceptions and in terms of prevalent rules.

2. The application is disposed of.

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3. This appeal under Section 483 of the Companies Act, 1956 impugns the order dated 14th May, 2020 of the Company Judge of this Court disposing of CA No.242/2020 filed by the appellant in view of the order dated 13th May, 2020 on various applications filed by other applicants but claiming similar relief as claimed by the appellant in CA No.242/2020.

4. The principal grievance of the appellant in this appeal as well as as argued by the counsel for the appellant is, that the Company Judge has erred in disposing of the application of the appellant, without considering the merits thereof and in terms of the order dated 13th May, 2020 in applications of others and to which the appellant was not a party.

5. We have heard the counsel for the appellant as well as the counsel for the Official Liquidator (OL).

6. CA No.242/2020 in CA No.491/2019 in Company Petition No.191/1997 was filed by the appellant, pleading (i) that the appellant is a share broker and a member of Delhi Stock Exchange (DSE); (ii) that the appellant had bought 15,050 shares of Reliance Industries Limited (RIL) in Settlement No.9703A of DSE, commencing from 12th April, 1997 and ending on 25th April, 1997 and the delivery of the said 15,050 shares was received by the appellant from the clearing house of DSE vide delivery bill / order dated 26th April, 1997 and which consisted of 8,450 shares held in the name of C.R.B. Capital Markets Ltd. (CRB), the company under liquidation before this Court and the remaining 6,600 shares were held in the name of another group of company of CRB namely CRB Trustee Limited; (iii) that the appellant sent the said 15,050 shares to Karvy Computershare Pvt. Ltd. (Karvy), being the Registrar and Transfer Agent of RIL, for transfer of the said shares to the name of the appellant but the shares were retuned by Karvy vide Objection Memo dated 20th June, 1997 stating that vide order dated 22nd May, 1997 in Company Petition No.191/1997 of the Company Judge of this Court provisional liquidator had been appointed with respect to CRB; (iv) that the shares having been bought on 26th April, 1997 i.e. prior to 22nd May, 1997 when provisional liquidator was appointed for CRB and also prior to direction dated 6th June, 1997 of respondent No.2 Reserve Bank of India (RBI) by which Directors of CRB were restrained from disposing of properties of CRB, the appellant is legally entitled to have the said shares transferred to its name; (v) that the appellant due to prolonged illness of its Managing Director could not take further steps in the matter of transfer of the said shares to its name; (vi) that vide order dated 25th November, 2010 in CA No.176/1998 of Vikram Commercial Limited (Vikram) which had bought 5,500 shares of RIL sold by CRB, from the clearing house of DSE, during the same settlement period i.e. 12th April, 1997 to 25th April, 1997, it was held that the order dated 22nd May, 1997 appointing a provisional liquidator of CRB shall not come in the way of Vikram getting the shares registered in its name; (vii) that though the appellant, in view of the order dated 25th November, 2010, approached the OL vide legal notice dated 16th August, 2011, seeking transfer of 15,050 shares to its own name, but no reply was received; (viii) that again owing to failing health of the Managing Director and his demise on 15th December, 2017, the appellant could not then pursue the matter further; (ix) that the appellant again vide letter dated 10th October, 2018 approached the OL for transfer of 8,450 shares of RIL along with accumulated bonus shares and dividends etc., from the name of CRB to the name of the appellant but the OL vide letter dated 31st October, 2018 informed the appellant that the assets of CRB stood vested in this Court and hence the transfer of shares could not be made without the leave of the Court; (x) that the appellant filed CA No.491/2019 in this Court seeking transfer of 8,450 shares of RIL standing in the name of CRB to the name of the appellant and the said CA No.491/2019 was pending consideration; (xi) that in the meanwhile, RIL, on 30th

April, 2020, had come out with a rights issue; (xii) that since the aforesaid 8,450 shares which the appellant had purchased, as aforesaid, have not been transferred to the name of the appellant and resultantly the bonus shares issued thereagainst have also not been issued in the name of the appellant, the appellant is unable to avail of the rights issue; (xiii) that since the said shares as well as the bonus shares issued thereagainst continue to stand in the records of RIL in the name of CRB, CRB upon receipt of offer letter for rights issue would be required to pay to RIL a total sum of Rs.56,64,042/-for subscription of 4,506 rights shares to which it is eligible; (xiv) that CA No.491/2019 filed by the appellant and pending before this Court is likely to be allowed in the light of the order dated 25th November, 2010 on the application of Vikram; and, (xv) however, before CA No.491/2019 is decided, if the appellant is prevented from availing rights issue shares, the appellant will suffer irreparable injury. The appellant thus, by way of CA No.242/2020 sought a direction from the Company Judge of this Court to the OL, to deliver to the appellant the offer of rights shares, received from RIL and to renounce the said rights shares in favour of the appellant and a further order enabling the appellant to apply for the rights shares.

7. The Company Judge, as aforesaid, vide the impugned order dated 14th May, 2020, has disposed of CA No.242/2020 of the appellant recording that vide order dated 13th May, 2020 on applications of other similarly situated as the appellant, to enable maximum advantage to be reaped from the said rights issue, Karvy had been appointed as a Court Commissioner to sell the entitlement of rights issue of RIL shares as available to CRB, at maximum price available. The Company Judge thus, in the impugned order dated 14th May, 2020 on CA No.242/2020, held that in view of the order dated 13th May, 2020, the principal relief sought by the appellant in CA No.242/2020 could not be granted and left the appellant to its rights and remedies in CA No.491/2019, which remains pending before the Company Judge.

8. Though the contention of the appellant in the appeal, that since it was not a party to the order dated 13th May, 2020, it could not be denied the relief as sought in CA No.242/2020 entitling it to apply for rights shares, especially when its CA No.491/2019 was pending considering, for the reason of the order dated 13th May, 2020, appeared attractive but the counsel for OL, on receipt of advance copy of the appeal, has emailed to this Court CA No.2436/2011 also filed by the appellant on 24th November, 2011 in Company Petition No.191/1997, setting out the same facts as set out in CA No.491/2019 and CA No.242/2020 and seeking the same order as sought by the appellant in CA No.491/2019 i.e. of transfer of 8,450 shares of RIL from the name of CRB to the name of the appellant.

9. The counsel for OL has also emailed to the Court the reply filed by OL on 12th April, 2012 to CA No.2436/2011 opposing the claim of the appellant for transfer of shares of RIL to its name, inter alia on the grounds (a) that the appellant had slept over the matter for more than 12 years; (b) that there was no explanation

whatsoever as to what steps the appellant had taken between 1997, when the shares were claimed to be purchased and till the filing of CA No.2436/2011 to get the shares transferred to its name; (c) that CA No.2436/2011 was liable to be dismissed on this ground alone; (d) that as per the case of the appellant also, the appellant had purchased the shares after the prohibitory orders passed by RBI on 9th April, 1997 qua CRB; (e) that CRB, after 9th April, 1997 could not have sold the shares of RIL held by it; (f) that the transaction amounts to a fraudulent preference within the meaning of Section 531-A of Companies Act, 1956 and was void; (g) that the appellant had no lawful right over the shares in question and the remedy of the appellant was to file a claim in Form-66 of the Companies (Court) Rules, 1959 and prove that consideration had been received by CRB; and, (h) that Vikram stood on a different footing inasmuch as payment for the purchase of shares was made by Vikram much prior to the passing of the orders dated 22nd May, 1996 and 13th June, 1997 and the shares of RIL purchased by Vikram had been put to sale before 24th January, 1997 and were immediately sold after 24th January, 1997 to some other person and consideration was also received; on the contrary, the appellant had purchased the shares, after the prohibitory order dated 9th April, 1997 of RBI.

10. The counsel for OL has also emailed to us the copy of the order dated 22nd November, 2012 on the said CA No.2436/2011 of the appellant whereby the then counsel for the appellant withdrew CA No.2436/2011 with liberty to file claim before OL as and when claims were invited by OL.

11. From the aforesaid documents produced by the counsel for OL, it emerges that the appellant, after the alleged purchase of shares in 1997 and refusal of transfer thereof to its name soon thereafter, remained quiet for nearly 14 years, till about October, 2011 when CA No.2436/2011 was filed for directions for transfer of the shares to its name and which application was opposed by the counsel for OL and probably owing to which opposition, the then counsel for the appellant deemed it appropriate to withdraw the relief claimed of transfer of shares from the name of CRB to the name of the appellant with liberty to pursue the claim before the OL. The appellant conveniently concealed the said facts, while filing CA No.491/2019 as well as while filing CA No.242/2020 order of dismissal whereof is impugned in this appeal. Even in this appeal, no reference whatsoever is made to the claim made as far back as in 2011 for transfer of shares to own name and failure therein. Such conduct of the appellant alone is sufficient for dismissal of this appeal.

12. We have however enquired from the counsel for the appellant, whether not the claim, even if any of the appellant with respect to the shares of RIL held in the name of CRB and claimed to have been purchased by the appellant as far back as in the year 1997, stood barred by time on the appellant not taking any steps whatsoever with respect thereto for nearly 14 years, till October, 2011 and when such claim was opposed including on the ground of limitation and faced wherewith the appellant had withdrawn the same. The question also arises,

whether the appellant, after having withdrawn the claim made in CA No.2436/2011, can make the same claim by way of CA No.491/2019 and whether not the said claim would be barred by the principles as enshrined in Order XXIII Rule 1 of the Code of Civil Procedure, 1908. Merely by change of counsel and merely by passage of time, orders cannot be changed.

13. No satisfactory reply has been forthcoming. The only contention of the counsel for the appellant is that since CA No.491/2019 is pending, the appellant is entitled to interim relief as claimed in CA No.242/2020, during the pendency of CA No.491/2019. It is stated that the appellant is ready for preponement of hearing in CA No.491/2019.

14. The appellant having preferred this appeal instead of approaching the Company Judge for preponement of hearing of CA No.491/2019 and having taken up the time of this Court and especially after having indulged in concealment of the history of its claim as aforesaid, is not entitled to any indulgence. The present is clearly a case of re-litigation by the appellant of its claim as made in CA No.2436/2011 and which itself was barred by time and belated and was withdrawn. While considering the question of grant of any interim relief to the appellant by way of CA No.242/2020, during the pendency of CA No.491/2019, the merits of CA No.491/2019 definitely have to be considered and once no merit is found in CA No.491/2019, the question of granting any interim relief to the appellant does not arise.

15. Though we have given opportunity to the counsel for the appellant to withdraw this appeal, to pursue CA No.491/2019 but the counsel for the appellant insists on judgment in this appeal.

16. We may record that the counsel for the OL, for full disclosure, has informed us that review of the order dated 13th May, 2020 is pending since Karvy has expressed inability to act in the matter of sale of the rights issue entitlement of CRB.

17. Though the counsel for OL has also referred us to Balkrishan Gupta Vs. Swadeshi Polytex Limited (1985) 2 SCC 167 but for the reasons which have prevailed with us, the need to advert thereto is not felt.

18. No merit is found in the appeal.

19. Dismissed.