
(2010) 04 DEL CK 0050

In the Delhi High Court

Case No : CCP (CO.) 11 of 2009 and 02 of 2010

Montreaux Resorts (P) Limited and Another

APPELLANT

Vs

Vikram Bakshi and Others

RESPONDENT

Date of Decision : 26-04-2010

Acts Referred:

Companies Act, 1956 — Section 397, 398
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2010) 04 DEL CK 0050

Hon'ble Judges : P.K. Bhasin, J

Bench : Single Bench

Advocate : Deepak Khosla, for the Appellant;

Judgement

P.K. Bhasin, J.—A Company by the name of Montreaux Resorts (P) Limited was incorporated sometime in the year 2005. Mrs. Sonia Khosla (petitioner No. 2 in these contempt petitions), was one of the two founder Directors. The other Director was one Mr. Vini Ahuja. At the time of incorporation of the said Company (which is petitioner No. 1 herein and hereinafter shall be referred to as "MRL"). Mr. R.P. Khosla, father-in-law of Mrs. Sonia Khosla was having some land in village Mashobra in the State of Himachal Pradesh. He had also entered into agreements with landowners in that area for purchase of more land. Mr. Deepak Khosla, husband of Mrs. Sonia Khosla (petitioner No. 3 herein) had also entered into some transactions for purchase of land in that area. It was with the idea of utilising those tracts of lands for development of a tourist Resort, Studio Apartments and a Golf Course that MRL came to be formed by the Khosla family. However, since these projects required large scale investments Khoslas started looking for financiers and in due course one Mr. Vikram Bakshi, respondent No. 1 herein, came forward to pool in funds. An MoU was signed in December, 2005 between MRL, Mr. Deepak Khosla and Mr. Vikram Bakshi. Mr. R.P. Khosla signed the same as a confirming party. Pursuant to that MoU Mr. Wadia Prakash and Mr. Vinod Surha (respondents No. 2 and 3 herein) were made Additional Directors of MRL on 21st December, 2005 being the nominees of Mr. Vikram Bakshi. They

were employees also of Mr. Vikram Bakshi. It appears that subsequently the MoU was replaced by a formal agreement executed on 31st March, 2006.

2. Before the projects conceived of could really take off disputes arose between Khoslas and Mr. Vikram Bakshi and his nominee Directors (Bakshi Group) in respect of the implementation of the MoU/agreement. Since Mrs. Sonia Khosla felt oppressed and found that Bakshi Group was mismanaging the affairs of MRL she filed a petition under Sections 397 and 398 of the Companies Act (being CP No. 114/07) before the Company Law Board (CLB) on 13/08/07. In that petition, in which Mrs. Sonia Khosla had impleaded Mr. Vikram Bakshi, Mr. Vinod Surha and Mr. Wadia Prakash besides her husband Mr. Deepak Khosla and father-in-law, Mr. R.P. Khosla and some others, it was claimed by her inter-alia that Mr. Wadia Prakash and Mr. Vinod Surha had illegally allotted additional shares of MRL to the family members of Mr. Vikram Bakshi (who were impleaded as respondents 4-6 in CP 114/07 and have been impleaded as respondents/contemnors 4-6 in CCP(CO) 02/10) in order to dilute her shareholding in the Company and that Mr. Vikram Bakshi was illegally claiming himself to be a Director of MRL without fulfilling his obligations towards Khosla family regarding payment of crores of rupees to them upto the stipulated period as per the agreement dated 31st March, 2006. Subsequently Mrs. Sonia Khosla filed an additional affidavit before the CLB detailing therein certain additional facts in respect of her shareholding in MRL and the trust reposed by her in Mr. Bakshi and how he breached that trust.

3. Bakshi Group instead of filing reply to CP No. 114/07 filed an application invoking arbitration clause in the agreement dated 31st March, 2006 and that application is still stated to be pending.

4. At the time of preliminary consideration of CP No. 114/07 the records of MRL, including Minute Books, were got authenticated by the CLB through one of its Bench Officers and Mrs. Sonia Khosla was permitted inspection of those records. Inspection of those records revealed to Mrs. Khosla that Mr. Vinod Surha and Mr. Wadia Prakash, who were initially inducted into the Board of MRL as Additional Directors and were required in law to get confirmed as Directors in the first AGM of the Company to be held after their appointment as Additional Directors had in fact not been confirmed as Directors in the AGM which was held on 30th September, 2006 and so, according to Mrs. Sonia Khosla, both of them had ceased to be the Directors of the Company w.e.f. 30th September, 2006 and consequently they also could not appoint Mr. Vikram Bakshi as a Director of MRL on 19th March, 2007 which they had done. They had also illegally ousted Mr. Vini Ahuja from the MRL's Board by forging his resignation as a Director. Mrs. Sonia Khosla then acting as the sole Director of MRL brought into the Board Mr. Vineet Khosla as a Director on 11th December, 2007 who then moved an application (being CA. No. 572/07) on 24th December, 2007 before the CLB on behalf of MRL as its Director bringing to its notice the fact of cessation by operation of law of Mr. Vinod Surha and Mr. Wadiam Prakash as the Additional Directors w.e.f. 30th September, 2006 and the illegal appointment of Mr. Vikram Bakshi as an

Additional Director on 19th March, 2007. When in that application it was also pointed out to CLB that even after ceasing to be the Directors of MRL Mr. Bakshi, Mr. Surha and Mr. Prakash (Bakshi Group) were going to hold a Board meeting the CLB found a prima facie case in favour of Khosla Group and an order was passed on 24th December, 2007 for the deferment of the proposed Board meeting by Bakshi Group. Bakshi Group felt aggrieved and without filing any reply either to the main CP.No. 113/07 or to CA No. 372/07 filed an application (being CA. No. 01/08) which was signed by Mr. Vikram Bakshi for self and Mr. Vinod Surha signed that application on behalf of MRL. In that way both the Groups started representing MRL separately in the same proceedings. The prayer in the application filed by Bakshi Group was for re-calling of the order dated 24th December, 2007. In that application Bakshi Group alleged that Mr. Surha and Mr. Wadia Prakash had been confirmed as Directors in the AGM held on 30th September, 2006 but inadvertently in the minutes of that meeting their confirmation was not recorded in respect of which minutes this Court has already ordered a preliminary enquiry u/s 340 Cr.P.C. It was also claimed that Mrs. Khosla had illegally co-opted one Director in a meeting held by her as the sole Director of MRL on 11th December, 2007. On 3rd January, 2008 the CLB passed an order that no Board meeting shall be held either by Khosla Group or by Bakshi Group. During further hearings of the applications from both the groups it transpired that in another Board meeting held by Mrs. Sonia Khosla on 18th December, 2007 her husband Mr. Deepak Khosla, petitioner No. 3 herein and one M.R.K. Garg were also appointed as additional Directors of MRL and additional shares of the Company were also issued.

5. On 31st January, 2008 the CLB set aside the allotment of additional shares as well as appointment of additional Directors at the instance of Mrs. Sonia Khosla in the meetings held by her on 11th and 18th December, 2007. With that order Mrs. Sonia Khosla felt aggrieved. So she filed an appeal in this Court (being Company Appeal No. 6 of 2008). Shri R.P. Khosla, father-in-law of Mrs. Sonia Khosla, who was also a party in the CP No. 114/07, also filed an independent appeal against the same order (Company Appeal No. 7 of 2008).

6. It is stated that in both the appeals it was re-iterated by the appellants that contemnors 2 & 3 herein, namely, Mr. Wadia Prakash and Mr. Vinod Surha had both ceased to be the Directors of MRL by operation of law but illegally they were continuing to represent themselves as the Directors and also that both of them had illegally appointed Mr. Vikram Bakshi as an additional Director of MRL on 19th March, 2007 by which time they themselves had ceased to be the Directors of MRL because of their having not been confirmed as Directors of MRL in the first AGM which was convened after their initial appointment on 30th September, 2006.

7. Co. A. No. 07 of 2008 filed by Mr. R.P. Khosla came to be taken up for consideration on 11th April, 2008 before the Company Bench. On that date Counsel for the appellant Mr. R.P. Khosla, Counsel for Mrs. Sonia Khosla and

Counsel for Mr. Vikram Bakshi (on behalf of Bakshi Group) had appeared. MRL was sought to be represented by two advocates, one from the side of the Khosla Group and one from the side of Bakshi Group. It appears that the Counsel from Bakshi Group had appeared before the Court on advance notice. That appeal came to be disposed of on the same date by a consent order to the effect that both the Groups shall maintain status quo with regard to the share holdings and fixed assets of MRL as stood at the time of filing of CP No. 114/07 before CLB by Mrs. Sonia Khosla and further that the Board of MRL shall not take any substantive decision on the finances of the Company without prior permission of the Arbitral Tribunal before which the disputes between the parties were already pending consideration in terms of the agreement dated 31st March, 2006, reference to which has already been made.

8. The appeal of Mrs. Sonia Khosla came up before the Company Bench on 22nd April, 2008 on which date also Bakshi Group was represented by the same Counsel who had appeared on 11th April, 2008 in the appeal of Mr. R.P. Khosla. Mr. Deepak Khosla, husband of Mrs. Sonia Khosla was also present. MRL, which was appellant No. 2, was represented by the same Counsel who had represented it from the side of Khosla Group on 11th April, 2008 in the appeal of Mr. R.P. Khosla. That appeal came to be dismissed in limine on 22nd April, 2008 with a direction, in view of order earlier passed in the appeal of Mr. R.P. Khosla on 11th April, 2008, that the parties shall maintain status quo with regard to the composition of Board and shareholdings as it existed on the day of filing of the petition by Mrs. Sonia Khosla before CLB.

9. It was submitted by Mr. Deepak Khosla, petitioner No. 3 herein in both the contempt petitions, that it was the case of Mrs. Sonia Khosla in the said Company Petition before the Company Law Board as also before this Court that on the date of filing of the petition before the Company Law Board S/Shri Vikram Bakshi, Wadia Parkash and Vinod Surha were not the Directors but despite that in both the appeals before this Court no affidavits in opposition to that stand were filed by S/Shri Vikram Bakshi, Wadia Parkash and Vinod Surha (described as "the Bakshi Group" by this Court also in the order dated 11th April, 2008) which showed that they had no opposition to the averments in the appeals that the Board of Directors of the Company on the date of filing of the Company Petition did not comprise of any one of these three persons, namely, Mr. Vikram Bakshi, Mr. Wadia Parkash and Mr. Vinod Surha.

10. After disposal of the two appeals of Mrs. Sonia Khosla and Mr. R.P. Khosla the Bakshi Group sought to convene an EGM of MRL on 27th September, 2008 and AGM on 29th September, 2008. Mrs. Sonia Khosla felt that by convening these meetings the Bakshi Group had violated the status-quo orders passed by this Court in the above referred two appeals against the order dated 31st January, 2008 passed by the CLB. Accordingly, she moved a contempt petition (being CCP No. 15/08). In that petition MRL was also impleaded as petitioner No. 1. That petition came to be considered ex-parte on 3rd October, 2008 by Gita Mittal, J

and on that date while issuing notice of the contempt petition to the five respondents impleaded therein as contemnors including Mr. Vikram Bakshi, Mr. Wadia Prakash and Mr. Vinod Surha the Court restrained them from taking any further steps pursuant to the meetings which may have been held on 27th and 29th September, 2008. That contempt petition is still pending.

11. Thereafter more similar contempt petitions were filed on behalf of Khosla Group against Bakshi Group including the present two contempt petitions. The members of Bakshi Group are alleged to have been continuing to convene Board meetings of MRL claiming themselves to be the Directors while, in fact, as per the case of the petitioners, they had long time back ceased to be so and had allegedly accepted that position by not refuting the same in the appeals of Mrs. Sonia Khosla and Mr. R.P. Khosla. CCP No. 11/09 was filed when Bakshi Group had convened a Board meeting of MRL for 19th September, 2009 and CCP No. 02/10 was filed when Bakshi Group convened Annual General Meeting of MRL on 30th September, 2009 claiming themselves to be the Directors of MRL.

12. The afore-said detailed factual narration was necessitated because of the fact that this Court is now flooded with such contempt petitions arising out of the two orders passed in Co. A. No. 6/08 and Co. A. No. 7/08 filed on behalf of Khosla Group, first of which, as noticed already, appears to be CCP No. 15/08 in which Mr. Vikram Bakshi etc. were restrained from giving effect to any decision which they might have taken in the Board meeting of MRL.

13. Mr. Deepak Khosla, petitioner No. 3 in both these contempt petitions, which were reserved for orders after hearing preliminary submissions of Mr. Deepak Khosla on different dates, had contended that when this Court in CCP No. 15/08 had issued notice of contempt to Mr. Vikram Bakshi, Mr. Wadia Prakash and Mr. Vinod Surha and had also restrained them from giving effect to the decisions which might have been taken in the Board meeting held by them it becomes clear that this Court had found the case of the petitioners, as far as the alleged violation of the orders passed in the two appeals on 11th April, 2008 and 22nd April, 2008 is concerned to be having substance and on receipt of the notice of that contempt petition the members of Bakshi Group should have stopped claiming themselves as Directors but instead of doing that they have been repeatedly convening Board meetings of MRL claiming themselves to be its Directors and thereby they have been repeating acts of contempt showing scant respect to the issuance of notice of contempt to them in CCP No. 15/08. Therefore, Mr. Khosla contented, time had reached now where more stringent orders need to be passed against the Bakshi Group so that their contemptuous acts come to a halt. He placed reliance on a decision of the Supreme Court reported as Delhi Development Authority Vs. Skipper Construction Company (P) Ltd. and another, and a Full Bench judgment of Madras High Court reported as AIR 1991 Madras 323 in support of his submission that this Court even while dealing with contempt petitions can use inherent powers to prevent repetition of violation of the orders of this Court. For seeking such interim directions in this

regard applications have been filed in both the contempt petitions separately.

14. After taking into consideration the afore-said facts highlighted on behalf of Khosla Group and the order passed by this Court in CCP No. 15/08 I am of the view that notice of these petitions deserves to be issued but only to the respondents 1 to 3 in both the petitions, namely, Mr. Vikram Bakshi, Mr. Wadia Prakash and Mr. Vinod Surha. Let the notice be issued, returnable for 1st July, 2010 mentioning therein that in case any written response to the show cause notice is to be filed the same be filed at least ten days before the said date.

15. Till the next date of hearing, Mr. Vikram Bakshi, Mr. Wadia Prakash and Mr. Vinod Surha shall stand restrained from transacting any business on behalf of Montreaux Resorts (P) Ltd. as its Directors.