
(2010) 04 DEL CK 0182
In the Delhi High Court
Case No : OMP 660 of 2009

Montreaux Resorts Pvt. Ltd. and Another APPELLANT
Vs
Sonia Khosla and Another RESPONDENT

Date of Decision : 27-04-2010

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 8, 9
Companies Act, 1956 — Section 10F

Citation : (2010) 04 DEL CK 0182

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Vibhu Bhakru, for the Appellant; Deepak Khosla, Attorney on behalf of Resp. No. 1, for the Respondent

Judgement

S. Ravindra Bhat, J.

I.A. No. 5410/2010

1. Issue notice. Sh. Deepak Khosla appears and states that he represents Ms. Sonia Khosla, Respondent No. 1 and M/s. Montreaux Resorts Pvt. Ltd., as Power of Attorney holder; he accepts notice. The applicant petitioner seeks an ad-interim order, to restrain the first respondent from holding any Extra ordinary meeting scheduled by her, on 28th April, 2010, or giving effect to any resolution passed therein.

2. At the outset, Sh. Deepak Khosla objects to the application, contending that the Court should not have entertained it on account of an order of the Division Bench in W.P. (C) 7651/2009 dated 08.10.2009, particularly para 13, which, in turn, refers to para 21 of the judgment of the Supreme Court in Uday Shankar Triyar Vs. Ram Kalewar Prasad Singh and Another, . It is specifically urged that the Vakalatnama on behalf of the petitioner/applicant, M/s. Montreaux Resorts Pvt. Ltd. does not comply with the directions contained in para 21(b) and (d). Learned Counsel for the petitioner contended that the application is maintainable

since the second petitioner, Sh. Vikram Bakshi is signatory to the agreement dated 31.03.2006, which contains the arbitration clause, and the relief is sought by him.

3. The Vakalatnama on the record (at page 267) so far as Sh. Vikram Bakshi is concerned, discloses his name and signatures of the second petitioner, Sh. Vikram Bakshi. In these circumstances, the Court is of the opinion that the application as far as the said Sh. Vikram Bakshi is concerned, is maintainable.

4. The petition seeks relief u/s 9 of the Arbitration and Conciliation Act. In the Petitioner applicant, has referred to the agreement dated 31.03.2006 - copy of which is placed at pages 36-57 of the record, to say that in its terms, out of the 10,000 shares of M/s. Montreaux Resorts Pvt. Ltd. (hereafter called "the company"), Sh. Vikram Bakshi was the owner of 5100 shares and Ms. Sonia Khosla was the owner of the rest. It is argued that the objective of the agreement was to acquire the specified properties. The petitioner/applicant submits that the disputes as to the functioning of the company led to a Company Petition, being C.P. No. 114/2007 being preferred by Ms. Sonia Khosla, (complaining of oppression and mismanagement of company by the present petitioner), in which initially an interim order was made, by the Company Law Board ("the Board"). The applicant points to the order dated 31.01.2008 where the Board recorded that status quo with regard to composition and the shareholding existing on the date of filing of the petition (i.e. 13.08.2007) was to be restored. The said order is at page 64-69 of the paper book.

5. The applicant argues that the appeals, being Co.A.(SB) No. 6/2008 and Co.A(SB) No. 7/2008 were preferred against the Board's order before this Court, which were disposed of on 11.04.2008 and 22.04.2008. The copies of the said orders are at pages 70-85 and 86-91 of the paper book. The order of 11.04.2008 records that the parties had agreed to refer their inter se disputes to arbitration and in terms of such agreement, the appeal was disposed of with direction to the parties to maintain status quo with regard to possession of the Board and shareholdings of the company. The other appeal, of Sh. R.P. Khosla, Co. A (SB). 7/2008 was disposed of by consent.

6. Apparently, during the interregnum, on 07.04.2008, a Writ Petition was preferred by one Sh. R.K. Garg, contending that he was affected by the Board's order (of status quo) dated 31.01.2008. On 07.04.2008, the Court, in the said writ proceeding suspended the order of Company Law Board - dated 31.01.2008 - in so far as it affected the allotment of his shares. The initial interim order in the writ petition was later vacated and the petition was disposed of, sometime in 2009. The said Sh. R.K. Garg subsequently pursuant to the liberty granted, preferred an appeal u/s 10-F of the Companies Act.

7. It is submitted by the respondent that notice on the said appeal was issued on 13.04.2010. Reliance is placed on that order to submit that the order of the Board dated 31.01.2008 is nullity and ex-facie illegal. A copy of the said order

dated 13.04.2010 in Company Appeal (SB) 23/2009 has been handed-over. The same is hereby taken on record.

8. The petitioner applicant states that the arbitral proceedings pursuant to this Court's order could not proceed, and that Tribunal has virtually returned the references and that the applications for reconstitution of the Tribunal are pending on the file of the Court. In these circumstances, says the applicant, the respondent is attempting to change the position of the Company's Board (of Directors) and is proposing to appoint four new Directors, and for such purpose, an Extra General Meeting (EGM) is scheduled for tomorrow, i.e. 28th April, 2010. Learned Counsel submits that having regard to the entire conspectus, the Court should, as an ad-interim measure, restrain the respondent from proceeding with such a meeting, as that would result in creation of irretrievable situations, best avoided when parties are disputants, on the control and shareholding of the company.

9. The respondent argues, besides the preliminary objections that Sh. Vikram Bakshi is disentitled to maintain the proceedings or move an application, in view of the orders made yesterday, i.e. on 26.04.2010 (in CCP (CO) 11/2009 and CCP 2/2010) where he was restrained from transacting any business on behalf of the company or acting as its Director. It is submitted that Sh. Vikram Bakshi cannot have any locus as his allegation of his being a shareholder or Director has been held to be prima facie contempt. A copy of the said order was handed-over during the course of hearing. The same is taken on record.

10. Sh. Deepak Khosla also resists the application, contending that the order of the Company Law Board dated 31.01.2008 is further to be deemed as nullity in view of the arbitration agreement (contained in the contract dated 31-3-2006) and in view of an application moved u/s 8 of the Arbitration and Conciliation Act, 1996. Sh. Deepak Khosla strongly contested the statement of the applicant that Ms. Sonia Khosla was the owner of only 4900 shares and submitted that the petitioner/applicant has, as is apparent from the pleadings, taken different stands in eight instances and that there is no clarity in respect of 5100 shares, which are claimed to have been transferred. It is urged that the petitioner applicant is facing contempt and perjury proceedings, and having regard to these facts, the Court should desist from making any order now, or otherwise.

11. The Court has considered the averments and submissions. Originally, the petition is scheduled for hearing on 05.05.2010. On account of urgent mentioning, the case was directed to be taken-up. Sh. Deepak Khosla was heard initially on his preliminary objection, beginning 02.30 p.m. for 20 minutes, (on the preliminary objections) after which Sh. Vibhu Bhakru, Learned Counsel argued on behalf of the petitioner for an hour. Sh. Deepak Khosla replied to the arguments for about half an hour; the proceedings were continued beyond the court scheduled time to enable the respondent to complete his submissions.

12. Having considered the submissions, the Court is of the opinion that the

interim order made on 26.04.2010 in CCP 2/10 and CCP (CO) 11/2009 cannot be construed as an impediment to the maintainability of the present application. The present application is treated as one for the second applicant, who claims to be a signatory of the agreement dated 31.03.2006. As to what are the inter se rights of the parties is not a matter for the Court to consider at this interim stage. However, what is apparent is that the orders of this Court in the company appeals have become final. The respondent had relied upon an order dated 05.02.2010, to submit that the Court had reviewed its previous order. It is submitted by the defendant that in Co.A(SB) No. 7/2008, consent was wrongly recorded, which was never given. He has shown this Court a copy of that order. Prima facie the Court is of the view that there is no review; all that the order purports to record is the respondent's stand that consent was not given.

13. In these circumstances, and having regard to the urgency, the Court is of the opinion that unless injunction sought for is granted, prejudice would be caused as the management of company is likely to be altered, which may have an impact on the arbitral proceedings and may also affect the parties' rights. In these circumstances, Respondent No. 1 is hereby restrained from giving effect to any resolution or decision which may be taken at the EGM or proceeding to attend or hold the same in any capacity of hers in the company, till the next date of hearing, i.e. 5th May, 2010.

Order dasti under signatures of Court Master.

OMP 660/2009

List on the date fixed, i.e. 05.05.2010.