(2013) 07 P&H CK 0433

In the Punjab And Haryana At Chandigarh

Case No : C.M.A. No. 51 of 2013 in/and C.A.R.P. No. 16 of 2013 (O and M)

M/s. Cinepolis India P. Ltd. and Others APPELLANT

Vs

Deepak Marda and others RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:
Companies Act, 1956 — Section 111(4), 397, 398, 402

Citation : (2013) 07 P&H CK 0433

Hon'ble Judges : Surya Kant, J

Bench : Single Bench

Advocate : A.K. Chopra, Mr. Rohit Khanna, Mr. Amar Gupta, Mr. Pardeep K. Bakshi, Mr. U.N. Sharma and Mr. Divyam, for the Appellant; Anand Chhibbar, Mr. Vaibhav Sahni, Advocate, Mr. Sumeet Goel, Advocate and Ms. Gauri Rishi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Surya Kant, J.

C.M.A. No. 51 of 2013

Documents (Annexures R-34 (colly) and R-35 (colly) are taken on record.

C.M.A. stands disposed of.

CAPP No. 16 of 2013

1. This appeal is directed against an order dated 21.5.2013 passed by the Company Law Board (for short ''CLB'') whereby in a petition under Sections 111(4), 397, 398 & 402 of the Companies Act, 1956 instituted by the first respondent, the CLB has directed that "Status quo be maintained with regard to the fixed assets and share holding of the Company and no third party interest be created in ten thousand equity shares being the subject-matter of the petition." The first respondent has filed the above-stated petition inter alia alleging that an agreement was executed on 6.10.2007 between the Management of Cinepolis

Mexico, the first respondent and respondent No. 8 (Milan Saini), according to which while Cinepolis was to be a strategic investor in the Indian Company to-be-incorporated, whose affairs were to be run by respondent No. 8 and the first respondent in their capacity as Managing Director and Joint Managing Director respectively.

2. The appellant-Company was consequently incorporated under the Indian Companies Act, 1956, who now seriously disputes the execution of agreement dated 6.10.2007 between the parties. The first respondent''s further case before the CLB was that ten thousand equity shares were acquired by him in the appellant-Company on 4.7.2010 on payment of consideration and he continued to be the share-holder in the appellant-Company till the time of filing of petition before the CLB. This fact too, however, is disputed by the appellants, as according to them, the first respondent voluntarily executed a ''share transfer agreement''.

3. Since the validity of the very basic agreement dated 6.10.2007 is being disputed by the appellant-Company and the first respondent is also controverting the genuineness and execution of the ''share transfer agreement'', as the original shares are still lying with him only, there are indeed involved contentious issues relatable to the validity of one or the other document/instrument(s) relied upon by the parties against each other. An appropriate forum, which may include the Company Law Board also, will have to, thus, determine those issues.

4. The question that arises for consideration in this appeal is: whether in the absence of determination of the above noticed seriously disputed mixed questions of law and facts in relation to the existence of ''agreement'' dated 6.10.2007 or the alleged ''share transfer agreement'' and consequential maintainability of the petition before CLB, was it justified for the CLB to issue interim directions to maintain status-quo with regard to the ''fixed assets'' and ''equity share holding'' of the Company which has, in a way, brought the appellant-Company to a complete halt in respect of its day-to-day functioning?

5. I have heard the learned counsel for the parties at some length and gone through the records.

6. Acquisition of ten thousand equity shares by the first respondent on 4.7.2010 from the appellant-Company is not a fact in issue though the subsequent ''share transfer agreement'' allegedly executed by him is vigorously disputed. The said agreement and/or its subsequent cancellation are sub-judice issues between the parties.

7. The rival contentions raised on behalf of the parties hovering around the merits of controversy need not be dwelled upon by this Court at this stage as it would unwittingly prejudice one party or the other before the CLB who is already seized with the matter, more so when the proceedings are still at the threshold.

8. Suffice it to observe that keeping in view the well-known parameters to be

applied by a judicial or quasi judicial Forum while considering the prayer for ad-interim relief, the CLB need not have directed to maintain status-quo with regard to ''fixed assets'' and ''share holding'' of the Company as in relation thereto, the purported interest of the first respondent or of respondent No. 8 could be well protected by issuing such alternative interim directions which would have neither affected the day-today functioning of the appellant-Company nor caused any prejudice to the contesting respondents.

9. However, the CLB was well within its jurisdiction to grant interim protection to the first respondent by directing the appellant-Company not to create any third party interest in ten thousand shares.

10. For the reasons afore-stated, I allow this appeal in part and modify the order dated 21.5.2013 passed by the CLB in the following terms:-

(i) The appellants shall not create any third party interest in the ten thousand equity shares which are the subject-matter of petition before the CLB till any further direction is issued by the CLB in this regard;

(ii) the appellants shall not cause any variation in the fixed assets of the company without first giving an undertaking before the CLB that such variation shall be without prejudice to the interest of the first respondent or other contesting respondents.

(iii) direction No. (ii) above shall not be construed as an interference in the day-to-day functioning or running of the affairs of the appellant-Company. Similarly, nothing shall preclude the appellant-Company from acquiring more assets. However, if it intends to dispose of its existing assets, the direction No. (ii) shall have to be complied with.

(iv) If the appellants resolve to alter the share holding of the Company, they shall do so with prior permission of the CLB. Such an application if moved, shall be decided by CLB within one week.

(v) The CLB shall treat the question of maintainability of the petition as a ''preliminary issue'' and decide the same expeditiously and preferably within one month.

11. Appeal stands disposed of accordingly. Copy of the order be given dasti to the counsel for the parties under the signatures of the Bench Secretary of the Court on deposit of usual charges.

