

(2012) 05 DEL CK 0134
In the Delhi High Court
Case No : CO.A (SB) 91 of 2011

M/s. Devisons Pvt Ltd and Ors

APPELLANT

Vs

Umesh Salwan

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Companies Act, 1956 — Section 402

Citation : (2012) 5 AD 201

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : A.K. Singla, with Mr. Mukesh Sukhija, for the Appellant; Saurabh Kalia with Mr. Sameer Chaudhary and Mr. Naveen Dahiya, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J.—This Court while issuing notice on 30November, 2011, had passed the following order in the company appeal :

CO.A(SB) 91/2011

After some arguments learned senior counsel for the appellants confines his prayer to Prayers 3 to 6 of CA 645/2010 at Page 68 of the paper book.

Issue limited notice to respondent confined to the aforesaid prayers.

Mr. Saurabh Kalia, Advocate accepts notice on behalf of respondent. He prays for and is granted four weeks time to file a reply-affidavit. Rejoinder, if any, be filed before the next date of hearing.

However, it is made clear that in the meantime the order passed by the Company Law Board shall be executed/implemented.

List on 26th March, 2012.

Order dasti.

(Emphasis supplied)

Prayers 3 to 6 of Co. Appl. 645/2010 filed before the Company Law Board (for short "CLB") are reproduced hereinbelow:

3. The Petitioner be directed to pay the arrears and future monthly rent at the rate of Rs. 2 lac in terms of the consent order dated 16.01.2009 till the assets are actually transferred and owned by him.

4. To pay the installments of Honda Civic Car, registration no DL 2 FH-0050 from 1st of December, 2009 as per orders dated 04.01.2010 or in alternate return the car to the respondent Company.

5. To return Honda Accord Car No DL 2FGM-0055 to the respondent Company after being seized to be its Director.

6. To deposit the sale proceed of the two cars of the respondent company sold by him as mentioned in para 14 above.

2. Today, at the outset, Mr. A.K. Singla, learned counsel for the appellants states that after the issuance of notice in the present petition prayers 4 and 5 of the aforesaid application stand resolved. Consequently, he does not press the said prayers.

3. As far as payment of arrears of rent is concerned, Mr. Singla relies upon the order dated 6th January, 2009 passed by the CLB. The said order reads as under:

1. The respondent company is a family company. The petitioner and the 2nd and 3rd respondents are brothers each holding one-third shares in the company. In view of the close relationship I advised the parties to resolve the disputes amicably. Accordingly, they have agreed to do so in the following manner:

a. The business of the company will be divided and demerged so that the petitioner on the one hand and the 2nd and 3rd respondent together on the other hand will carry on independent businesses;

b. For the purpose of demerger a valuer will be appointed to evaluate the assets and business of the respondent company. Accordingly, I appoint M/s. Raju Dinesh & Associates, Chartered Accountants and Col. Kapur, Chartered Engineer to jointly evaluate the assets and the business of the company. The valuation shall be as of 31st December 2008.

c. For the purposes of valuation the business of Devisons Infiniti which is now independently managed by the petitioner will be taken as a part of the respondent company;

d. An amount of Rs. 2. Lakh per month will be reflected in the accounts of M/s. Devisons Infiniti as payable to the respondent company for the period from June 2008 to Dec 2008 as rental for the premises and the equipments used by Devisons Infiniti; From January 2009 onwards an amount of Rs. 2lakhs will be paid to the company in this regard.

e. Second and third respondents shall be free to use one chamber in premises 433 during office hours along with one of the staff;

f. Both the parties are at liberty to make both oral and written submissions before the valuers who will taken into consideration the said submissions in preparing the valuation report. Both the sides shall furnish all information/document needed by the valuers. The valuation report should be made available latest by 10March, 2009.

class="rightalign">(emphasis supplied)

4. Mr. Singla also submits that the sale proceeds of two cars sold by respondent No. 1 have not been deposited with respondent company.

5. However, on a perusal of the paper book it transpires that subsequent to the aforesaid order dated 6January, 2009, the parties had executed a Memorandum of Understanding (MOU) dated 7 December, 2009. The relevant portion of the said MOU reads as under :

Now, with the intervention of the Well Wishers, relations etc., all the parties to the disputes and executants of this memorandum of understanding, consider it expedient that an end be brought to the litigation and matter is resolved amicably amongst themselves. Accordingly the executants had entered into an understanding given herein below of their own free will without any coercion or influence or pressure of any kind so that their relations are not further deteriorated.

It has been mutually agreed that Sh. Umesh Salwan who is equal share holder to the rd extent of 1/3in M/S Devisons Pvt. Ltd., will be given the following assets towards his share under the scheme of demerger in full and final settlement of his share

1 Premises No. 433, EPIP, Kundli Sonipat belonging to M/S Devisons Pvt. Ltd., on as is where is basis.

2 All the plant and machinery shown as per list enclosed herein.

3 Honda Accord bearing registration No. DL 2FG-M0055.

4 Honda Civic bearing registration No. DL 2FH-F0050 with proviso that balance installments from 1st Dec., 2009 shall be paid by Sh. Umesh Salwan.

The above said building; plant and machinery will be transferred by M/S Devisons Pvt. Ltd. to Mr. Umesh Slawan towards his share in the assets of the company. Shri Umesh Salwan will tender his registration from the Directorship and surrender his shares. Thereafter Sh. Umesh Salwan shall cease to the part of M/s. Devisons Pvt. Ltd., for all times. Mr. Umesh Salwan thereafter will not be liable for any kind of liabilities whatsoever. None of his heirs particularly his wife, sons, daughters in law and grand children, successors in interest or any one claiming any rights or interests under him shall be in any manner concerned or

shall have any right to claim any of the other properties and assets of M/S Devisons Pvt. Ltd.

xxx xxx xxx xxx

Consequent to the above understanding between the executants, all the disputes stand resolved. The parties shall not file any fresh/supplementary suits or raise further issues on the above stated matters of disputes between them. The terms of the MOU are binding on all the parties.

(Emphasis supplied)

6. Subsequent to the execution of said MOU, a joint application was filed before the CLB in the year 2010. The relevant portion of the said joint application reads as under:-

3. That thereafter the Hon"ble bench vide its order dated 26/03/2009 and 02/07/2009 had directed the Petitioner to deposit the amount of Rs. 2,00,000/- (Rupees Two Lacs Only), through each of the said orders in its account. In compliance of the said orders dated 26/03/2009 and 02/07/2009, the Petitioner had deposited Rs. 4,00,000/- (Rupees Four Lacs Only) in account of Hon"ble Board vide cheque No. 222193 dated 30/05/2009 drawn on Corporation Bank and 315399 dated 31/08/2009 drawn on HDFC Bank. The copy of the said orders dated 26/03/2009 and 02/07/2009 are enclosed herewith and marked as ANNEXURE-B. The copy of the covering letter and draft of deposit in compliance with sale orders are enclosed herewith and marked as ANNEXURE-C

xxx xxx xxx xxx

5. That now the parties have amicably settled their entire dispute by entering into a Memorandum of Understanding (MOU) dated 07December, 2009. The term of the said MOU resolves the dispute among the parties related to the present matter also. The Copy of the said MOU is enclosed herewith as ANNEXURE D

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class="centeralign">PRAYER

In view of the aforesaid facts and circumstances and in view of the equity jurisdiction of the Hon"ble Board, it is humbly prayed to thisHon"ble Board to pass the following orders in order to put an end to the dispute between the parties:

1. Pass an order to demerge the property of the Respondent Company in favor of Devions Infiniti Housewares Pvt. Ltd. in terms of sub-para (a) of para 5 and ANNEXURE E of the present Application.

2. Pass an order to demerge the Plant and Machinery and two Cars of the Respondent Company in favor of Devisons Infiniti Housewares Pvt. Ltd. in terms of sub-para (b) of para 5 and ANNEXURE F of the Application.

3. Further the MOU, as entered between the parties and as stated in para 5 and ANNEXURE D of the application, may be taken on record.

4. Directions may be given for the release of Rs. 4,00,000/-(Rupees Four Lacs only), deposited by the Petitioner with the Hon''ble Bench as per the orders dated 26/03/2009 and 02/07/2009 passed by the Hon''ble Bench, in favor of Respondent No. 1.

5. To vacate all the previous order passed in the matter.

6. To dispose the present petition in terms of the settlement arrived among the parties as mentioned in the present Joint Application, under the provisions of Section 402 of the Companies Act, 1956.

class="rightalign">(emphasis supplied)

7. Subsequent to the joint application, the CLB passed an order th dated 4January, 2010. The relevant portion of the said order is reproduced hereinbelow:

7. After hearing learned counsel and the parties present in person and on perusal of the MOU, Annexure D, Board Resolution dated 28.12.2009 Annexure G I am satisfied that the parties have, under the MOU dated 7.12.2009, amicably settled their disputes and differences and fully implemented the terms and conditions contained therein w.e.f. 7.12.2009.

8. Considering the facts and circumstances of the case and the fact that it is a closely held family company which has settled finally all disputes under the MOU dated 7.12.2009, it is ordered as under:

(a)The property of Respondent company towit 433 EPIP Kundli, Distt. Sonipat belonging to M/s. Devisons Infiniti Housewares Pvt. Ltd. on as is where is basis, all the plants and machinery shown as per list enclosed to the MOU, Honda Accord bearing registration No. DL 2FG-M0055 and Honda Civic bearing registration No. DL 2FH F0050 shall stand demerged in favour of M/s. Devisons Infiniti Housewares Pvt. Ltd. w.e.f. 7.12.2009. Balance installments of Honda Civic bearing registration No. DL 2FH F0050 due from 1/12/2009 shall be paid by petitioner Sh. Umesh Salwan.

(b)The MOU dated 7.12.2009 as entered between and agreed to by the parties shall form part of this order.

(c) The amount of Rs. 4,00,000/-(Rs. Four lakhs only) deposited by the petitioner with the Company Law Board under order dated 26.3.2009 and 2.7.2009 shall be released in favour of the respondent No. 1 company.

9. C.P. No. 84 of 2009 is accordingly disposed off on the above terms.

(Emphasis supplied)

8. Keeping in view the aforesaid facts, this Court is of the view that the issue of rental stands resolved by virtue of the MOU dated 7December, 2009 and the joint

application filed before CLB in 2010. While in the said MOU it is stated that all the disputes between the parties stands resolved, in the joint application of 2010 a prayer had been made to vacate all the previous orders passed in the matter.

9. Consequently, this Court is of the view that by virtue of MOU dated 7December, 2009 as well as the joint application filed in 2010, the order dated 6th January, 2009 stands vacated. Accordingly, the issue of payment of any amount on the ground of rental does not survive.

10. This Court further finds that along with the reply filed by the respondent in the present proceedings, appellant company's Board Resolution dated 15July, 2008 has been annexed wherein the appellant company itself had authorised the respondent to sell the above-said two cars. It is further stated in the reply that the sale proceeds were deposited in the coffers of the appellant company.

11. It is pertinent to mention that Board Resolution dated 15July, 2008 is not only prior to demerger of the appellant company in accordance with the MOU dated 7December, 2009, but even before filing of the present petition before CLB. Further, absence of any mention about these vehicles in joint application gives credence to respondent's contention that the issue is a settled matter. In any event, this Court is of the view that as the MOU dated 7December, 2009 and the joint application settled all the disputes between the parties, the present issue cannot be raised. With the aforesaid observations, the present appeal is dismissed with costs of Rs. 25,000/-.