(2013) 05 DEL CK 0248

In the Delhi High Court

Case No : Co. Application No''s. 1143 of 2003, 1144 of 2009, 1145 of 2009, 1153 of 2009, 1767 of 2009, 200 of 2010, 201 of 2010, 712 of 2010, 1941 of 2010 and 782 of 2012, 783 of 2012 and 913 of 2012 in Company Petition No. 379 of 2009

Securities and Exchange Board of India APPELLANT

Vs

Crb Capital Markets Ltd. RESPONDENT

Date of Decision : 29-05-2013

Acts Referred:

Citation : (2013) 05 DEL CK 0248

Hon'ble Judges : Sudershan Kumar Misra, J

Bench : Single Bench

Advocate : Neeraj Malhotra, Mr. Shailendra Singh, Mr. Arvind Kr. Gupta in CA Nos. 1153/2009 and 1767/2009, Mr. Sumesh Dhawan, Mrs. Vatsala Kak Panda, in CA 913/2012 and Mr. M.R. Shamshad in CA No. 1144/2009, for the Appellant; Sudhanshu Batra, Mr. Bhuvan Gugnani, for R-1, 2 and 3, Mr. Arunabh Chaudhary, Atanu Chakraborty, Gainilung Panmei, Dorjee Karma Advocates for Indian Infotech and Software Ltd., Mr. A.N. Haksar, Mr. Shiv Sapra and Ms. Deeksha Khurana, Advocate for Sofear Global in CA Nos. 1145/2009 and 1941/2010, for the Respondent

Final Decision : Disposed Off

Judgement

Sudershan Kumar Misra, J.

Co. Appl. Nos. 1144/2009, 1145/2009, 1767/2009, 1941/2010 & 913/2012

1. Co. Appl. Nos. 1145/2009 and 1941/2010 have been moved by Sofear Global Limited praying, inter alia, for transfer of shares pending in the name of CRB Trustees Limited A/c. CRB Mutual Fund in favour of the applicants on the ground that the same have been validly purchased by the applicant. The remaining application which have been moved by Ishita Enterprises Pvt. Ltd., GLFL Securities Ltd. and Rekhi Holdings Pvt. Ltd. are also pressing the same claim and seek the similar relief. The applicants also allege that in terms of the initial

orders passed by the Bombay High Court on 22.01.1999 (page 132 of Vol. 10) whereby the Bombay High Court had by way of an interim order put in place a certification procedure with regard to CRB Mutual Fund. This order is thereafter stated to have been amended on 4.5.1999.

2. The aforesaid applications of Sofear Global Research H.K. Limited seek directions for release of amount of Rs. 68,28,253/-, stated to have been deposited by the Reliance Infrastructure Ltd., from the Prothonotary and Senior Master, High Court of Bombay, along with further directions to Reliance Infrastructure Ltd. to pay to the applicant all further accumulated unpaid dividends on the 2,05,750 REL/Reliance Infrastructure Ltd. shares, along with accumulated interests, other dividends, etc.

3. In this context, pursuant to orders passed by this Court from time to time, including the order of 13th May, 2012 and 24th August, 2012; it was noted, inter alia, on 29th August, 2012 as follows:

Two cheques of Rs. 97,33,555.75 and Rs. 70,20,112/- each have been received from the Registrar, Original Side, Prothonotary and Senior Master, Bombay High Court, in terms of the orders passed by this Court in this behalf on 11th May, 2012 and even thereafter.

These cheques are stated to be in respect of 2,05,750 shares of Reliance Infrastructure Ltd. (erstwhile Bombay Suburban Electric Supply Ltd.[BSESL]), which have been claimed by the applicant, Sofear Global Research (HK) Ltd., in Co. Appln. Nos. 1145/2009 and 1941/2010.

Counsel for M/s. Reliance Infrastructure Ltd. states that the first cheque of Rs. 97,33,555.75, is in respect of the dividend on the aforesaid shares and towards interest for the period 1999-2006, while the second cheque of Rs. 70,20,112/- pertains to the dividend on those shares and towards interest for the period 2006-2011.

Let these cheques be encashed by the Registrar of this Court and placed in a short term fixed deposit, subject to further orders of this Court. M/s. Reliance Infrastructure Ltd. is directed to ensure deposit of all further dividends, interests or payments, if any, pertaining to the aforesaid shares with the Registrar of this Court, in future.

Counsel for M/s. Reliance Infrastructure Ltd. states that there is no other payment which is due on these shares except dividends that may be declared in future. Be that as it may, this Court is compelled to issue this direction in more general terms keeping in mind the fact that despite transfer of the Company Petition under orders of the Supreme Court to this Court, M/s. Reliance Infrastructure Ltd. has persisted on depositing the dividends in the Bombay High Court. Counsel then states that the deposit was not done by her client but by M/s. Karvy Computershare Pvt. Ltd., who is its transfer agent. Admittedly, M/s. Karvy Computershare Pvt. Ltd. is the agent of M/s. Reliance Infrastructure Ltd.

and, therefore, is obliged to function on its instructions and in the interest of M/s. Reliance Infrastructure Ltd.

4. By a separate order passed today, disposing off the main petition, a three member Committee has been appointed by this Court to wind up the Mutual Fund Scheme in question. That Committee has also been further authorized to carry out certification of all securities transacted during the period 22.05.1996 to 22.05.1997. This would also include certification of the securities which are the subject matter of all these applications. Therefore, all these applications are disposed off in terms of the aforesaid directions leaving it open for the Committee to examine the claim of the applicants in these applications and to carry out the necessary certification in this regard.

5. All these applications stand disposed of in the above terms.

CA No. 1143/2003

6. This is an application moved by the Provisional Administrator, late Sh. M.L.T. Fernandes, on 14th May, 2008 praying to pay out certain payments to unit holder and also for permission to dispose off securities of the CRB Mutual Fund; and to utilize the sums obtained thereby for that purpose.

7. Much water has flown since this application was filed, and in view of the orders passed by this Court appointing a Committee to wind up affair of the respondent, no orders are required to be passed in this application and the same is disposed off as infructuous.

CA No. 1153/2009

8. This application has been moved by the former director of CRB Capital Ltd. and CRB Assets Management Company under Rule 9 of the Companies (Court) Rules, 1959 seeking directions to the Provisional Administrator to transfer all the records of CRB Mutual Fund, CRB Trustee Ltd. and CRB Asset Management Co. Ltd. from Mumbai to the Official Liquidator, New Delhi.

9. In view of the orders passed disposing off the main petition by appointing a Committee to wind up affairs of the respondent company, along with various directions in that regard, this application is rendered infructuous and is accordingly disposed off.

CA No. 200/2010

10. This application has been moved by Mr. P.K. Saraf, who is arrayed as a party in CA No. 1152/2009 in CP No. 379/2009.

11. In view of the orders that have been passed in the main petition appointing a Committee to wind up the affairs of the respondent company, along with various directions in that regard; and since the main petition itself is being disposed off, no further orders are required to be passed in this application and the same is disposed off as such.

CA No. 201/2010

12. This application has been moved by Mr. P.K. Saraf, who is arrayed as a party in CA No. 1153/2009 in CP No. 379/2009.

13. In view of the orders that have been passed in the main petition appointing a Committee to wind up the affairs of the respondent company, along with various directions in that regard and since the main petition itself is being disposed off, no further orders are required to be passed in this application and the same is disposed off as such.

CA No. 712/2010

14. This application has been moved by the late Sh. M.L.T. Fernandes, who was functioning as the Provisional Administrator of the respondent company in terms of certain interim orders that had been passed by this Court in this behalf. The application was moved on 11th February, 2010.

15. Looking to the fact that the main petition has been disposed off by appointment of a Committee to wind up the affairs of the respondent, which has also been entrusted with the power to take all steps to realize all assets due to the respondent, i.e., CRB Trustee Ltd., CRB Assets and Management Co. Ltd., as well as assets and scheme of CRB Mutual Fund, it is directed that it would be open to the Committee to go into claims raised by the Provisional Administrator on behalf of the respondent and the reliefs sought by him in this behalf; and to take all steps necessary to realize all assets to which respondent may be found entitled by the Committee. A copy of this application be also placed before the Committee for ready reference in this behalf.

16. This application stands disposed off.

CA No. 782/2012

17. CA No. 782/2012 has been moved by the respondent through its ex-director seeking orders for appointing a Committee to wind up the scheme in accordance with the relevant SEBI Regulations. This application stands disposed off in terms of separate orders passed today in Co. Pet. No. 379/2009.

CA No. 783/2012

18. CA No. 783/2012 has been moved by M/s. K.J. John & Co., Advocates, who had originally been retained to represent the Provisional Administrator, late Sh. M.L.T. Fernandes, before this Court. It seeks appropriate orders with regard to a communication received by the said Advocates from the former Secretary of late Sh. M.L.T. Fernandes, Mrs. M. D''Souza.

19. In her communication, the former Secretary of the Provisional Administrator, Shri M.L.T. Fernandes, Ms. D''Souza has set down what according to her, there are some arrears of payment due to her. In substance, the response of counsel for SEBI as well as the respondent company is that Shri M.L.T. Fernandes was

appointed as Provisional Administrator by the Bombay High Court and the terms of his appointment were akin to that of a Court Commissioner appointed to carry out certain tasks assigned by the Court. In this case, he was expected to administer the affairs of the CRB Mutual Fund. For this purpose, obviously he was permitted to take the assistance wherever necessary, of appropriate secretarial staff. Any engagement, under such circumstances, could not be construed as a regular or permanent appointment in an establishment, and such an appointment would necessarily be construed to be temporary one of short term duration. Under the circumstances, counsel submits that the question of notice period, leave encashment or gratuity could not arise nor should there be any cause for any loss of service till retirement to be countenanced. Ms. D''Souza has not furnished any letter or contract of employment setting down the terms upon which her services were engaged by late Shri Fernandes. The fact also remains that Shri Fernandes passed away on 24.02.2012 and the office has remained locked eversince.

20. Counsel for the ex-management contends that, as a matter of fact, since the office has remained closed ever since the death of Mr. Fernandes, large number of communications have remained unattended and in fact, there was no substantial functioning of Mr. Fernandes''s office during this period. Admittedly, there is no electricity or telephone connection in that office since February, 2012. Be that as it may, and with a view to bringing about closure in a matter which is primarily concerned with the issue of safeguarding funds invested by the general public at large, this Court, therefore, considers it appropriate that Ms. D''Souza be paid a lumpsum equal to six months'' salary at the rate of Rs. 9,917/- per month.

21. It would, however, be open to the Chairman to pay any other reasonable sum that he thinks fit in his discretion for any further work or assistance taken by the Committee from Ms. D''Souza and/or any other erstwhile employee of the late Provisional Administrator, Mr. M.L.T. Fernandes. In view of other directions issued, whilst disposing of the main petition, appointing a Committee to wind up the affairs of the fund where certain further directions have also been given with regard to winding up the office of late Shri M.L.T. Fernandes, no further orders are required in this application and the same is disposed off accordingly.