
(2021) 10 NCLT CK 0057

In the National Company Law Tribunal

Case No : CP No.1417 of 2020 & CA No. 68 of 2021

Sumeet Vaid & Others

APPELLANT

Vs

AR Wealth Management Private Limited & Others

RESPONDENT

Date of Decision : 18-10-2021

Acts Referred:

Companies Act, 2013 — Section 241(1)(a), 242, 244
Arbitration and Conciliation Act, 1996 & Section 8

Citation : (2021) 10 NCLT CK 0057

Hon'ble Judges : Suchitra Kanuparthi, Member (J); Rajesh Sharma, Member (T)

Bench : Division Bench

Advocate : Satvik Varma, Rakesh Puri, Soumendra Nath Mookherjee, Prateek Seksaria, Shyam Kapadia, Gauraj Joshi

Final Decision : Disposed Of

Judgement

Rajesh Sharma, Member (T)

1. This Petition is filed u/s 241(1)(a), & (b) 242 r/w section 244 of the Companies Act, 2013 in respect of affairs of Respondent Company which are being conducted in a manner prejudicial oppressive to the shareholders of AR Wealth Management Private Limited and inter alia seeking certain relief as follows: -

- i. Pass an interim ex-parte order restraining the Respondents from transferring any investment/asset of the Respondent No. 1, 2, 11 and 12 in favour of any third party or creating third party interest in Respondent No. 1, 2, 11 and 12 in any manner;
- ii. Pass an ad interim ex-parte order directing the Respondent No. 2 to not transfer or create any further encumbrances or third-party rights on the shares held by it in Respondent No. 11 and Respondent No. 12 during the pendency of the present matter;

BRIEF FACTS OF THE CASE

2. The Petitioner No. 1 to 3 were the promoters of Respondent No.11. On 19.07.2013, Respondent No. 11 incorporate a Company, Respondent No. 12, which is a wholly and subsidiary of Respondent No. 11 with an objective of running/operating technology platform which would utilize by share brokers to rendering services to their customers. Respondent No.2 is in the business of wealth management of high network individuals.

3. In the year 2015, Respondent No. 2 approach the Petitioners with a proposal to buy out shares of all the shareholders of Respondent No. 11 including the Petitioner and in return allot them shares in the Respondent No. 1 Company. The broad terms of arrangement were captured in the email sent by the Respondent No.3 on behalf of the Respondent No.2 and the Petitioner. Further, the Share Purchase Agreement (hereinafter referred as "SPA") dated 10.08.2016. Thereafter, the shareholders transferred their shares to the Respondent No.2 and in return were allotted shares to the Respondent No. 1 Company. Pursuant to the arrangement Respondent No. 11 became 100% subsidiary of Respondent No. 1 and Respondent No. 12 being subsidiary of R11 became a stepdown subsidiary of Respondent No. 1 Company.

4. On 25th Sep 2017, the Respondents without informing the Petitioners surreptitiously and clandestinely transferred Respondent No. 11 from Respondent No. 1 to Respondent No.2, thereby stripping the Respondent No.1 of one of its substantial undertaking in favour of Respondent No.2 wherein the Petitioners did not hold any shares. Thereafter, on 23th Nov 2017, Respondent No.11 transferred his shareholding in Respondent No.12 to Respondent No.1.

5. As per to the understanding between the parties, the Anand Rathi group was required to invest a sum of Rs. 60 crores in Respondent No.1, post the said investment freedom shareholders were to hold 15% of Respondent No.1 with an intention to bypass the said arrangement and EGM dated 05.02.2019 was conducted, wherein a resolution was passed to allot 15,62,500 equity shares of Rs. 10 each at a premium of Rs. 246 per share amounting to Rs. 40 Crores to Respondent No.2.

6. The Petitioner No.1 vide email dated 14.02.2019 raise objection stating that the price of shares is low and hence should be revised. Respondent No.1 upon realising fraudulent issue of shares, immediately filed a revised form on 20.02.2019 wherein the price was increased from Rs. 246 to Rs. 325. Thereafter, the Petitioner received notice dated 18.12.2019 calling for EGM to be held on 15.01.2020. The EGM was called mentioning that Respondent No.1 would transfer, sell, otherwise dispose its entire investment in Respondent No.12 in favour Respondent No.2. The investment of Respondent No.1 in Respondent No.12 constituted of 5,98,837 equity shares which were to be transferred in favour of Respondent No.2 as per the valuation report by prepared by Pantomath Capital Advisors Private Limited.

7. The Freedom shareholders objected the said transfer on the following reasons:

- i. No valuation report was provided to the Petitioners.
- ii. Transfer of Respondent No. 12 from the Respondent No.1 would amount to eroding the substratum of the company and therefore would be prejudicial to the interest of the Respondent No.1.
- iii. Transfer was being executed in favour of a related party (i.e.) Respondent No.2.

8. The Petitioner also raised objections by email 16.01.2020, 15.07.2020, 02.10.2020 and 06.10.2020, the Respondents replied on 19.10.2020 and provided the copy of valuation report.

9. Acts of Oppression and Mismanagement: -

- a. Systematic assets stripping of Respondent No. 1 and transferring to Respondent No. 2 were petitioners does not hold any shares;
- b. The Petitioners have been kept away from affairs of Respondent No. 1;
- c. Affairs of Respondent No. 1 are being conducted as a sole proprietorship;
- d. Unjustified transfer of Respondent No. 12 to Respondent No. 2.
- e. Breach of doctrine of legitimate expectation.
- f. Breach of doctrine of legitimate expectation.

CA 68 of 2021 in CP 1417 of 2020

1. The Applicant in C.A. 68 of 2021 raised preliminary objection as to maintainability of this Hon'ble Tribunal to entertain C.P 1417 of 2020 u/s 241-242 of the Companies Act, claiming that the Petitioner is dressed up Petition which is attempting to disguise disputes which are purely contractual and arising out of shareholders agreement which contains an Arbitration clause.

2. On 10.08.2016 Shareholders Agreement (hereinafter referred as "SHA") was executed between the Company and its shareholders, terms and conditions of SHA governed the relation of the parties interse in Respondent No. 1 Company. The Applicant further pointed out that the SHA has an arbitration clause at clause 19 and that governs the dispute arising out of the shareholders agreement to be referred to arbitrators as defined in the SHA.

3. The Applicant contended that upon perusal of the Petition it reveals the real purpose of the Petitioners is to exit the company at a mutually aggregable value/ proportionate representation on the board/direct the respondent must fulfil the investment of 60 crores and ensure the Petitioners hold 15% of shareholding. All these prayers aminates from the SHA and are subject matter of arbitration.

4. The Applicant further sought to refer the dispute between the parties to arbitration as refer in clause 19 of SHA and also sought dismissal of Petition including interim stay of hearing of the Petition.

REPLY BY RESPONDENT NO. 2 AND 3

5. The Respondents contended that the Petitioners have approached the Hon'ble Tribunal with no cause of action and inordinate delay and on this ground alone the Petition may be dismissed.

BRIEF FACTS SET OUT BY THE RESPONDENT NO. 2 AND 3.

6. The Respondent No.1 is a pioneer in providing mobile first, objective based investment solutions to emerging high networth individual segments. The Respondent No. 1 and 2 from India leading conglomerate services known as Anand Rathi group. Presently Respondent No. 2 holds 75.51% shareholding in Respondent No. 1. Respondent No. 2 was incorporated in 1995 and is in the business of Distribution of various third-party investments catering to high and ultra-high networth individuals. Respondent No. 2 owns over 23000 crores of assets under management of 5000 families in India and Globally.

7. In around Oct-Nov 2015, the erstwhile shareholders including the Petitioners of Freedom wealth solutions private limited approach Respondent No.1 for sale of respective shareholding aggregating to 31,20,000 equity shares along with their voting rights in Respondent No. 11. Respondent No. 1 agreed to purchase the shareholding of Respondent No. 11. The parties thus executed the share purchase agreement whereby erstwhile shareholders of Respondent No. 11 sold the respective shareholding in Respondent No. 11 in favour of Respondent No. 1. In consideration for sale of their respective shareholding 8,03,000 equity shares of Respondent No. 1 were issued to the erstwhile shareholders including the petitioners by way of preferential allotment on a private placement basis. Thereafter, Respondent No. 1 and its shareholders and the erstwhile shareholders of Respondent No. 11 executed SHA dated 10.08.2016.

8. Pursuant to said acquisition Respondent No. 11 became subsidiary of Respondent No. 1 and a stepdown subsidiary of Respondent No. 2. Furthermore, because of the acquisition of whole shares of Respondent No. 11 by Respondent No. 1, Freedom Intermediaries Infrastructure Private Limited (Respondent No. 12), being a subsidiary company of Respondent No. 11 de facto became a step-down subsidiary company of Respondent No. 1 and Respondent No.2. In view thereof, three layers of subsidiary companies was formed qua Respondent No. 2 vis-à-vis the Respondent No.12.

9. Subsequently, the Ministry of Affairs (MCA) issued a Notification dated 20.09.2017 bearing number G.S.R. 1176(E) (in short 'notification') imposing a restriction on numbers of layers for holding companies. As per the said notification, no company other than a banking, a non-banking financial company, insurance company and a Government Company shall have more than two layers of subsidiaries. In view of embargo laid down by the Notification and to ensure its due compliance, on 20.09.2017, the Respondent No. 1 transferred its entire shareholding in Respondent No. 2. The transfer of shareholding was to the complete knowledge and by seeking consent of all shareholders, (including the

Petitioner). Copy of the financial statement of Respondent No. 2 for the year ended 31.03.2018 and the form MGT-17 for the Financial Year 2017-18 submitted by the Respondent No.2 to the MCA recording the transfer of shareholding by Respondent No. 1 in Respondent No. 11 in favour of Respondent No. 2. On 31.10.2017, the Respondent No. 12 conducted its Board Meeting wherein a resolution was passed approving the transfer of entire equity shareholding of the Respondent No. 12 held by Respondent No. 11 and the Petitioner No. 1 in favour of Respondent No. 1 for a purchase consideration amount of INR 25,00,000/-.

10. In or around December, 2018, in accordance with the rights encapsulated under clause 7.1 of the agreement (though not being obligated), the Respondent No. 2 decided to invest an amount to the tune of INR 40,00,00,000 in Respondent No. 1 and conveyed the same to its Board Members. For the said purposes, Respondent No. 1 was considering to use the then existing share valuation report dated 21.09.2018 obtained from M/s Mahesh Chandra and Associates or to carry out a fresh valuation. It was thereafter decided that a fresh valuation be carried out. Accordingly, the Respondent No. 1 appointed Pantomath Capital Advisors Ltd. thereafter submitted its final report dated 08.01.2019.

11. In consonance with said board related papers and ROC form, a resolution was passed in the Extra-Ordinary General Meeting dated 02.02.2019 and Board Meeting dated 05.02.2019 of Respondent No. 1 thereby approving the issuance and allotment of 15,62,500 equity shares of face value of INR 10/- each at INR 256 to 11,94,029 equity shares of face value of INR 10/- each at INR 335 (including premium of INR 325 per equity share) aggregating to INR 40 crores. At the end of financial year 2018-19 inter alia on account of the increasing requirement of working capital, Respondent No. 1 approached No. 2 seeking infusion of funds. In line with its fiduciary duties, the Respondent No.2 agreed to advance a sum of INR 50,00,00,000 to the Respondent No. 1 at the interest of 10% per annum, of which has been subsequently repaid. In the said regards, an Inter-Company Loan Agreement dated 01.04.2019 was executed between Respondent No. 2 and Respondent No. 1 recording the terms and conditions therein.

12. To cover the additional capital requirement of Respondent No 1, Respondent No. 2 as also in view of the restriction laid down in the Notification, Respondent No. 2 proposed to buy the entire shareholding of Respondent No. 1 in Respondent No. 12. Accordingly, the management of Respondent No. 1 appointed M/s Patomath Capital Advisors Private Limited for conducting the valuation of equity shares of Respondent No. 12. On 21.10.2019, M/s Pantomath Capital Advisors Private Limited submitted its valuation report wherein the equity shares of Respondent No. 12 were valued at the rate of INR 434 per share.

13. After the proper analysis of the June, 2019 Valuation Report, the management of Respondent No. 1 placed the offer of Respondent No. 2 before its

members by sending a notice of Extra Ordinary General Meeting on 18.12.2019 thereby inviting its members for discussion and voting on the resolution pertaining to the sale of the entire share capital in Respondent No. 12 to Respondent No. 2.

14. In pursuance to the aforesaid notice, the Respondent No. 1 conducted in its Extra-Ordinary General Meeting on 15.01.2020. The meeting was also attended by the Petitioner No. 1 along with the other members. In the said meeting, the majority of members of Respondent No. 1 unconditionally approved for the sale of its shareholdings in Respondent No. 12 in favour of Respondent No. 2. Despite having the full and complete knowledge as well as understanding about the valuation of shares since 18.12.2019, the Petitioners chose to register their protest only on 16.01.2020 against the said transfer by alleging that the same was undervalued and occurred in the absence of service of valuation reports to the Petitioners.

15. It is the Petitioners' own case that Respondent No. 1 provided them with a copy of the 2019 Valuation Report vide mail dated 19th October 2020. The abovementioned mail, Respondent No. 1 also highlighted that in case the Petitioners felt that shares of Respondent No. 12 were transferred to Respondent No. 2 at valuation which according to them was on a lower side, then the Respondent No. 1 could consider offering Petitioners the shares in Respondent No. 2 at the same valuation, equivalent to balance stake agreed to be offered in the Respondent No. 1. For the reasons best known to the Petitioners, they chose to remain silent on the said correspondence and thereafter filed the petition, failing to make out any cause of action. It is pertinent to mention that despite receipt of the 2019 valuation reports, the Petitioners have not disputed the 2019 Valuation Report.

16. Reply of Respondent No.4 & 5 states that there are opposing the relief as sought for in the present Petition.

17. Reply of Respondent No. 6 mentioned that no reliefs are prayed against them and they have filed interlocutory application for rejections as it fails any cause of against Respondent No.6,

REPLY FILED BY RESPONDENT NO. 7 & 8

18. The Respondent claims that the Petitioner allegations are baseless and devoid of merits. The Petitioner never disputed the said transfer for the last three years despite having knowledge of the same or being knowledge of same, thus the Petition is vitiated by gross delay in latches. Moreover, the Petition are deemed to have acquiesced to the same. The Petition lacks merit and liable to be dismissed.

REJOINDER TO REPLY OF RESPONDENT NO. 2 TO RESPONDENT NO. 8

19. The Petitioner confirmed that the relief sought in the Company Petition are justified and fit to be granted.

FINDINGS

1. The issue which falls for consideration is as follows:

- i. Whether any interim order can be passed restraining the Respondents from transferring /investment/assets, R1, R2, R11 and 12;
- ii. Not to create any further third-party rights on the shares held by the Petitioner in R11 and R12.

2. The core issue between the parties revolves from the SHA and SPA both dated 10.08.2016 executed between Freedom Shareholders, Respondent No.1, Shareholders of Respondent No. 2. In pursuance of the SPA, the Freedom Shareholders transferred their shares to Respondent No. 2 and in return were allotted shares in Respondent No.

1 Company.

3. The Petitioner alleged that on 25.09.2017, the Respondents without informing the Petitioner transferred Respondent No. 11 from Respondent No. 1 to Respondent No. 2, thereby the said transfer of assets from Respondent No. 1 to Respondent No. 2, causes prejudice the rights of the Petitioner as they do not hold any shares in Respondent No. 2. On 23.11.2017, Respondent No. 11 transferred its shareholding in Respondent No. 12 to Respondent No. 1.

4. The Petitioners further have pointed out and drawn the attention of this Tribunal to the understanding namely the SPA wherein Anand Rathi Group was to invest an amount of Rs. 60 Crores in Respondent No. 1, post the said investment the Freedom Shareholders were to hold 15% of Respondent No. 1. Further, an EGM dated 05.02.2019 was conducted wherein a Resolution was allot 15,62,500 shares at Rs.10 each at premium of Rs. 246 per share amounting to Rs. 40 crores to R2. The Petitioners objected the transfer of shares.

5. The Petitioner were further aggrieved by a notice of EGM 18.12.2019 of Respondent No. 1 company wherein it was proposed that the EGM would held on 15.01.2020 and that Respondent No. 1 would transfer, sell or otherwise dispose of its entire investment in Respondent No. 12 in favour of Respondent No. 2. The further objection raised by the Freedom Shareholders on the following grounds.

- i. No valuation report was provided to the Petitioners.
- ii. Transfer of Respondent No. 12 from the Respondent No.1 would amount to eroding the substratum of the Company and therefore would be prejudicial to the interest of the Respondent No. 1.
- iii. Transfer was being executed in favour of a related party (i.e.) Respondent No. 2.

6. In view of the above narration of facts by the Petitioner and grounds of oppression and mismanagement namely systematic assets stripping of Respondent No.1, Petitioners being kept away affairs of Respondent No.1, affairs

of Respondent No.1 being conducted as sole proprietorship, unjustified transfer of Respondent No.12 to Respondent No.2 and breach of doctrine of legitimate expectation, it can be said that no prima facie case has been made out by the Petitioner to grant any interim directions to restrain the transfer of assets already made or creating any third party rights. The proposed EGM which is being challenged was held on 15.01.2020, the entire issue of dispute between the parties is founded in the Share Purchase Agreement and are purely contractual nature.

7. The relevant clauses of SHA are reproduced below:

"Clause No. 3 BOARD OF DIRECTORS

3.1 Powers of the Board

The Anand Rathi group shareholders shall be in sole control of the Company and the Board and an committee formed thereunder shall be responsible for the management, supervision, direction and control of the Company.

Clause No. 5 OPERATIONS AND DAY TO DAY MANAGEMENT

5.1 The Anand Rathi group shareholders through their nominees appointed as Directors will continue to manage and operate the business of the Company on a day to day basis.

Clause no. 7: FURTHER ISSUE OF CAPITAL

7.1 The Anand Rathi group Shareholders may decide to invest either by itself or through its nominees or through investments by investors negotiated by Anand Rathi Group Shareholders an amount aggregating upto Rs. 60,00,00,000/- into the company over a period of twelve (12) months subject to the satisfaction by the Anand Rathi Group Shareholders of certain milestones mutually agreed between the Anand Rathi Group Shareholders and the Company. Any further issue of Equity Securities of the Company shall be carried out in accordance with the requirements of the applicable Law and the Articles.

Clause No. 19: ARBITRATION

19.1 Any dispute, controversy or claim arising out of or relating to this agreement or the performance thereof or the breach thereof or the termination thereof or the determination thereof or concerning the provision of this determination thereof interpretation or their implementation or their application to any state or facts or the right or equities of the parties ("Disputes") shall be referred to arbitration before a panel of arbitrators ("panel") to be appointed within 10 (ten) calendar days from the date of Dispute arising. Both parties to the Dispute (that is the party instituting the arbitration proceedings and the respondent party shall appoint 1 (one) arbitrator each to the Panel and the 2 (Two) arbitrators so appointed by the parties to the dispute shall together appoint one more arbitrator to the Panel. It is hereby clarified that the Other Shareholders shall jointly have the right to appoint only (one) arbitrator to the

Panel""

8. Upon perusal of the clauses of shareholder agreement it is clear that Anand Rathi Shareholders shall be in sole control of the company and committee formed thereunder shall be responsible for management, supervision, direction and control of the company including day to day management of the company. The Anand Rathi group in control of the company as per the provisions of the SHA are entitled to take the decisions of the business of the company and as such the Petitioners cannot have any legitimate expectation to be consulted in any business decision with regard to manage and operating the business of the company and decisions taken thereof with regard to transfer of assets, transfer of shares etc. The Petitioner is a party to the said Agreement and has acquiesced to the rights conferred to both the parties under the SHA and now is estopped from claiming that the Anand Rathi group are conducting the affairs of Respondent No.1 which are oppressive and amounts to mismanagement of Respondent No. Company.

9. The Respondent No. 2 & 3 have also filed reply stating that the alleged acts of oppression and mismanagement are entirely arising out of the SHA and further in view of the embargo laid down by the notation of MCA dated 20.09.2017, Respondent No.1 transferred its entire shareholding in Respondent No.11 in favour of Respondent No.2. The transfer of shareholding was to the complete knowledge and consent of all shareholders including the Petitioners.

10. This Bench therefore is of the considered opinion that no prejudice is caused to the rights of the Petitioner under said alleged transfer of shares of Respondent No.1 to Respondent No.11 or transfer of assets to Respondent No.2 from Respondent No.1, and is governed by the interse agreement namely the shareholder agreement/share purchase agreement both dated 10.08.2016.

11. Further, the CA 68 of 2021 has been filed seeking reference of disputes to arbitration in purchase of clause 19 of SHA referred supra.

12. It is relevant to refer section 8 of Arbitration and Conciliation Act, Power to refer parties to arbitration where there is an arbitration agreement -

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued, and an arbitral award made.

13. In view of section 8 of Arbitration Act, if a party to the Arbitration Agreement so applies no later than the submitting of first statement on the substance of dispute, the Judicial Authority may refer the parties to arbitration. In the instant case the parties have executed the shareholders agreement which specifically contains a clause that all disputes with regard to the agreement shall referred to arbitration. In strict interpretation of the statute this Bench concludes that the language of Section 8 is peremptory and therefore obligatory for the court to refer the parties to arbitration in terms of their Arbitration Agreement as held by Hon'ble Supreme Court in P. Anand Gajpathiraju Vs. PVG Raju (AIR 2000 SC 1886)

14. The rights of the shareholders qua the company in the Petition alleging the Oppression and mismanagement are squarely covered under the SHA/SPA dated 10.08.2016 and hence are bound by the terms and conditions thereof. The Anand Rathi Group being the majority shareholders and in control of the management of the company have acted in the best interest of the Company due to the notification of MCA and the Petitioners have waived their rights to object to the transfers being made by acquiescence. Further, the action has been brought about with reference to the holding of meeting of EGM at a belated stage and hence there is no balance of convenience and irreparable loss cause to the Petitioner. Hence, the prayer for interim relief is rejected.

15. The court orders as follows:

- a. The prayer for grant of interim relief is rejected;
- b. The parties are directed to refer the dispute under the SHA dated 10.08.2016 to Arbitration.
- c. CA 68 of 2021 is allowed.

16. The Registry is directed to communicate the order both the parties immediately.