(2015) 07 BOM CK 0102

In the Bombay High Court

Case No : Notice of Motion No. 1399 of 2011 in Suit No. 988 of 2011, Notice of Motion No. 178 of 2015 in Suit No. 988 of 2011, Notice of Motion No. 3190 of 2011 in Suit No. 678 of 2011 and Notice of Motion No. 179 of 2015 in Suit No. 678 of 2011

Vector Program Pvt. Ltd. and Others APPELLANT

Vs

Standard Chartered Bank and Others RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Citation : (2015) 07 BOM CK 0102

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Pravin Samdani, Gaurav Joshi, Senior Advocates and Chirag Mody i/b. RMG Law Associates, for the Appellant; Tushar Cooper, Rujuta Joshi, Krushi Barfiwala and Savita Nangare instructed by ALMT Legal, Advocates for the Respondent

Judgement

S.C. Gupte, J—These two suits and motions taken out therein involve several common questions of fact and law. The suits are filed in respect of the respective Plaintiffs'' ownership of certain shares of Tamilnad Mercantile Bank (Defendant No. 6 in Suit No. 988 of 2011 and Defendant No. 5 in Suit No. 678 of 2011.) It is the Plaintiffs'' case that these shares were to be transferred by the Plaintiffs and for that purpose deposited with an escrow agent, but the transfers did not go through, and as a result, the Plaintiffs have terminated the proposed transactions and are entitled to return of the shares. Since the Defendants are refusing to do so, the Plaintiffs seek orders for return of the shares and also claim damages. The motions, one each by the respective Plaintiffs and the others respectively by Defendant Nos. 4 in the two suits, are for interlocutory reliefs in respect of the suit shares.

2. Brief facts of Suit No. 988 of 2011 :

2.1 Background facts :

Tamilnad Mercantile Bank (TMB) is an Indian Scheduled Bank established in the year 1921 and registered under the Banking Regulation Act, 1949 (''B.R. Act''). The shares of TMB are mostly held by members of the Nadar community in Tamilnadu. The shares are not listed on the stock exchanges and as such, are not freely available in the market. In the year 1994, Essar Group of Companies acquired control of about 77.29% of the issued share capital of TMB, which resulted in the reduction of the shareholding of the Nadar community to 32.71%. Reserve Bank of India (RBI) refused to acknowledge the transfer in favour of Essar Group on the ground that the group''s record with public sector banking was poor and, as a result, it should not be allowed to take control of TMB. Essar Group, thereupon, agreed to sell their shareholding to another group of which the Plaintiff -Vector Program Pvt. Ltd. ("Vector") formed part. The transfer, however, was not completed. Sometime around the same time, the Nadar community formed an Investors'' Forum with the object of buying back the shares and increasing its shareholding in TMB. Several rounds of litigation followed, in the course of which a substantial portion of the shares were re-conveyed to the members of Nadar Community, leaving still 95418 shares which the group of Vector and others was in the process of acquiring, as mentioned above. The Group of Vector and others, however, faced various difficulties over regulatory issues in relation to the transfer of shares to be effected in its favour. In the premises, Vector and others were identifying purchasers for these shares. Whilst they were so scouting around for suitable investors, they came in touch with Corsair Investments LLC (Defendant No. 3)(hereinafter referred to as "Corsair "). Having regard to the fact that the shares of TMB were not listed on stock exchanges and were valued substantially and the fact that Vector and seventeen others wanted to sell the shares in one tranche, Corsair proceeded to make an arrangement to open an escrow account by the name of ''Project Windmill Escrow Account'' with Standard Chartered Bank Mauritius (Defendant No. 2) (hereinafter referred to as "SCB Mauritius") to facilitate the transfer of these shares. Corsair, thereafter, identified various investors, including Starship Equity Holding Ltd. (Defendant No. 4) (hereinafter referred to as "Starship"), who would acquire individually these shares.

2.2 The transaction between Vector and Corsair concerning the suit shares :

On 12 May 2007, a letter was addressed by Vector to Corsair recording an agreement between the two concerning 13455 shares of TMB which Vector was in the process of acquiring and which it proposed to transfer ("suit shares"). The gist of the agreement was as follows : The acquisition of the suit shares by Vector was to be completed on 13 May 2007, when TMB was expected to hold a board meeting. Vector agreed to transfer the suit shares to entities designated by Corsair immediately upon such acquisition. Pending completion of such transfer, the suit shares would be placed in the custody of Standard Chartered Bank (Defendant No. 1) (hereinafter referred to as "SCB") in escrow. The consideration for such transfer would be paid as advance purchase consideration by and on behalf of the transferees designated by Corsair. The transfer of shares would be subject to approvals to be obtained under Indian laws (including the approval of RBI). If such approvals were not obtained and the transferees were thereby unable to acquire the shares, Vector undertook at the sole request of Corsair to immediately return the advance purchase consideration on condition that irrevocable instructions were issued by Corsair to SCB to release the shares from the escrow account in favour of Vector. (As mentioned in the letter dated 12 May 2007, TMB effected transfer of total 95418 shares in favour of about 18 investors including Vector, which included the transfer of the suit shares in favour of Vector. Prior to this, RBI had granted an approval under the Foreign Exchange Management Act ("FEMA") for transfer of these shares, by its order dated 30 March 2007, in favour of Vector and others.)

2.3 The receipt of advance purchase consideration by Vector :

On 15 May 2007, Corsair caused a sum of about Rs. 32.52 crores to be paid to Vector as advance purchase consideration under the agreement. An FIRC certificate confirming inward remittance of the amount from Starship was received by Vector towards the purchase consideration. This remittance accounted for the full consideration receivable by Vector towards the sale of the suit shares.

2.4 Challenge to the shareholding of Vector and others by shareholders of TMB :

In 2008, TMB Shareholders Welfare Association filed Suit No. 481 of 2008 in Madras High Court for a declaration that transfer of 95418 shares in favour of Vector and others (including the suit shares) was null and void. Around the same time, a Writ Petition was filed before this Court by a shareholder of TMB, C. Kanakaraj, for setting aside the RBI order dated 30 March 2007 and consequently seeking direction against TMB not to give effect to the share transfer in their books. There were also other petitions filed by various other shareholders of TMB challenging the transfers. Whilst disposing of the petition of Kanakaraj, by its order dated 8 April 2009, this Court gave liberty to Kanakaraj to make a representation to RBI in respect of his grievances in the writ petition. In response to this order, a representation was made by Kanakaraj before RBI with notice to Vector and others, who claim to be the transferees of 95418 shares of TMB. The transferees also made their respective representations.

2.5 RBI order of 12 October 2009 :

In its order dated 12 October 2009, in pursuance of the representation made by Kanakaraj, as noted above, RBI, in the first place, identified Vector and 17 others as a group of 18, who had acted in concert for acquisition of shares of TMB and that, in the premises, held RBI guidelines of 3 February 2004 requiring acknowledgement of transfer/allotment of shares in private sector banks to be applicable to the acquisition. RBI, accordingly, directed TMB to approach RBI with full details in the requisite format for acknowledgment of the transfer in favour of Vector and 17 others in terms of circular of 3 February 2004.

2.6 Attempts of Vector to have the suit shares released in its favour:

Between February 2010 and May 2010, Vector addressed communications to SCB and Corsair seeking release of the suit shares in its favour offering refund of the advance purchase consideration against instructions to SCB to handover physical possession of the shares to Vector, since RBI approval was not forthcoming in respect of the transfer of the suit shares in favour of Vector and others.

2.7 Further orders of this Court in the other group of petitions :

The other group of petitions referred to above was disposed of by this Court on 14 October 2010 directing RBI to inter alia take appropriate decision in connection with the acknowledgment of the transfer of TMB shares pending before RBI latest by 28 February 2011. This Court allowed the various writ petitioners as also the transferees including Vector and others to make appropriate representations in writing to RBI in this behalf with necessary documents. RBI sought an extension of time for taking a decision upto 31 March 2011.

2.8 Filing of the present suit by Vector :

On 22 March 2011, Vector filed the present suit praying for return of the suit shares and payment of damages to Vector on the ground, inter alia, that the arrangement reflected in the letter addressed by Vector to Corsair on 12 May 2007 was terminated by Vector due to non-approval of RBI to the transfer of shares or at any rate, delay in obtaining RBI approval for transfer of the suit shares.

2.9 The RBI order of 31 March 2011:

After considering the representations of the various stakeholders, RBI in its order dated 31 March 2011, observed that the investors mentioned in its order dated 12 October 2009, i.e. Vector and 17 others, did not satisfy the criteria fixed by RBI for the purpose of acknowledgment of transfer in the circular of 3 February 2004. RBI, in the premises, declined to acknowledge the holding of 5% or more of the paid up capital of TMB by the group comprising of Vector and 17 others. The RBI order mandated that the group holding of Vector and others in the aggregate should be below 5% of the paid up capital of TMB.

2.10 Notice of Motion No. 1399 of 2011 and the ad-interim orders :

On or about 29 April 2011, Notice of Motion No. 1399 of 2011 was taken out by Vector in the present suit inter alia for restraining further transfer of the suit shares. When the Motion came up before a learned Single Judge for ad-interim reliefs, the learned Judge found no merit in the ad-interim application, holding that the beneficial ownership of the suit shares had been transferred to Starship subject to approval being received from RBI. Vector preferred an appeal from this order. By its order dated 8 August 2011, a Division Bench of this Court in appeal directed that the suit shares would continue to remain in escrow and would not be transferred to any party without seeking leave of this Court. This order was to operate as an ad-interim order pending Notice of Motion No. 1399 of 2011. The order, however, gave liberty to the parties to move the Single Judge in case of any further development relevant to the transfer of the suit shares.

2.11 Further development : RBI circular of 4 November 2011:

On 4 November 2011, RBI, in a circular issued under FEMA, allowed transfer of shares from a resident to a non-resident without prior approval of RBI for companies in the financial sector provided, however, that no objection certificates were obtained in this behalf from the respective financial sector regulators concerning the investee company as well as the transferor and transferee entities.

2.12 Further development : RBI circular of 11 November 2013 :

On 11 November 2013, RBI issued another circular inter alia altering its earlier direction in the circular of 4 November 2011 and permitting transfer of shares from resident to non-resident for companies in the financial sector without approval of RBI and also without requirement of obtaining no objection certificates from the financial sector regulators concerning the investee company, and transferor and transferee entities.

2.13 Notice of Motion No. 179 of 2015 :

In the light of the RBI circular of 4 November 2011 and the further circular of 11 November 2013, Starship moved an application for vacating the ad-interim order of 8 August 2011 in pursuance of the liberty granted by the appeal court to move the Single Judge in the event of any development relevant to the transfer of shares. It is the case of Starship in this Notice of Motion that the conditions of the RBI permission or the permission of the relevant financial sector regulators having been done away with, the cloud on the transfer of shares from Vector to Starship, which was the only basis of the Division Bench order of 8 August 2011, had been removed and, as a result, Starship was entitled to complete the transfer inter alia by having the suit shares released in its favour from the escrow account.

3. Brief facts of Suit No. 678 of 2011 :

3.1 The facts of this suit, filed by Gokul Patnaik ("Patnaik"), who is similarly placed as Vector being one of the eighteen investors initially seeking to acquire 95418 shares of TMB and later proposing to transfer the shares to entities designated by Corsair, are more or less similar to Suit No. 988 of 2011. In this suit we are concerned with 10,589 shares of TMB("suit shares").

3.2 By a letter of the same date, i.e. 12 May 2007, a similar agreement was recorded between Patnaik and Corsair for transfer of the suit shares to entities designated by the latter. The terms of this letter are identical to the terms of the letter dated 12 May 2007 addressed by Vector to Corsair for transfer of the suit shares in Suit No. 988 of 2011. The purchasers identified by Corsair in this case were East River Holdings Ltd. ("East River") and CC India Holdings Ltd. ("CC India"), both foreign companies. In pursuance of the agreement, a total remittance of about Rs. 25.60 crores towards advance purchase consideration was received by Patnaik. Between February and May 2010, similar letters were addressed by Patnaik to Corsair seeking release of the suit shares against refund of the advance purchase consideration, since RBI approval was not forthcoming. Finally around the same time, i.e. on or about 14 March 2011, Patnaik filed the present suit originally against SCB Mauritius, SCB and Corsair. Subsequently, TMB and the two purchasers designated by Corsair, namely, East River and CC India, were joined as party defendants to the suit. As did Starship in the case of Vector, so did East River and CC India make representations before RBI, when transfer in favour of eighteen investors (including Vector and Patnaik) was being considered by RBI for acknowledgement. Similar ad-interim orders operated in Suit No. 678 of 2011 as in Suit No. 988 of 2011. After the RBI circulars of 4 November 2011 and 11 November 2013, a similar Motion was taken out by East River, Notice of Motion No. 179 of 2015, for vacating the ad-interim orders on the ground that the clog on transfer of shares from Patnaik to East River and CC India had been removed after the new RBI circulars of 4 November 2011 and 11 November 2013.

3.3 The only difference between the two cases is that SCB, as the escrow agent, has already acted on the instructions of Corsair and released the custody of the suit shares and blank transfer deeds to East River and CC India in the case of Patnaik, whereas in Vector''s case SCB continues to hold the shares as an escrow agent. The ad-interim order, accordingly, operating in Suit No. 678 of 2011 restrains TMB from registering any transfer of shares in favour of East River and CC India and the latter two from transferring or releasing the suit shares to any third party.

4. Consideration of the rival submissions :

The two suits involve common questions of law and fact and common submissions were advanced in the two sets of Motions. The following analysis of rival submissions is, for the sake of convenience, made in the context of the two Motions in Vector''s suit, namely, Notice of Motion Nos. 1399 of 2011 and 178 of 2015. It, however, equally applies to the two Motions in Patnaik''s suit.

5. Vector''s case is that it is entitled to terminate the suit contract for sale of shares, since -(a) the contract was subject to approval of RBI and (b) such approval was not granted by RBI (Ref: RBI order dated 31 March 2011), or (c) at any rate, such approval was not forthcoming for over a period of more than two and half years. Let us test this case.

6. The agreement between the parties is evidenced by Vector''s letter addressed to Corsair on 12 May 2007. The agreement was as follows:

(i) Vector was in the process of acquiring the suit shares from existing shareholders of TMB and was expecting the shares to be transferred at a board meeting of the bank to be held on 13 May 2007;

(ii) Vector confirmed having agreed to transfer the shares to the entities designated by Corsair ("Transferees");

(iii) The consideration for such transfer paid by and on behalf of the Transferees was to be treated as "advance purchase consideration" for the transfer;

(iv) Such transfer was to occur immediately upon Vector''s acquisition of the shares;

(v) Such transfer was to be subject to the applicable approvals under Indian laws (including the approval of RBI);

(vi) The custody of the shares was to, however, pass to the Transferees simultaneously with the transfer;

(vii) Vector unconditionally and irrevocably agreed to place the shares (along with duly executed transfer deeds) in escrow in a designated account, i.e. the account established by SCB titled as "SCB Project Windmill (Shares) Escrow Account";

(viii) The Escrow agreement was to be created simultaneously with the transfer of the shares to Vector''s name at the board meeting of TMB to be held on 13 May 2007;

(ix) Under this agreement, SCB was to hold the shares in the Escrow Account until receipt of the applicable approvals under Indian laws;

(x) In the event, Corsair determined in its sole discretion that such approvals were not, or would not be, received and that the Transferees were, therefore, unable to acquire the shares, Vector undertook at the sole request of Corsair to immediately return the advance purchase consideration;

(xi) The condition for such return was irrevocable instructions by Corsair to the Escrow Agent (i.e. SCB) to release the shares to Vector from the Escrow Account;

(xii) A power of attorney was granted by Vector to Corsair in respect of the transfer of shares and suitable provisions were made so that Vector could not revoke or alter the same or issue contrary constructions concerning the share transfer, etc.

7. It is clear from the foregoing agreement that transfer of the suit shares was to occur immediately upon completion of Vector''s acquisition of the shares. The shares were acquired by Vector on 13 May 2007, when TMB effected transfer of 95,418 shares in favour of eighteen entities including Vector and Gokul Patnaik (Plaintiff in the companion suit), as mentioned in the narration of the facts above. Thus, the transfer occurred and beneficial ownership in the shares stood transferred to the Transferees on 13 May 2007 itself. After 13 May 2007, the shares held in escrow by the Escrow Agent (SCB) were to the account, and as agent, of the Transferees. Vector had no authority thereafter to give any

instructions for the return of the shares. Such authority solely rested with Corsair. In the event Corsair determined that the applicable approvals under Indian laws were not forthcoming, it could request Vector to return the purchase consideration and then instruct the Escrow Agent (i.e. SCB) to release the shares unto Vector. This was at the sole discretion of Corsair. Vector had absolutely no role to play there. Admittedly, the entire purchase consideration of about Rs. 32.53 Crores was received by Vector towards the transfer of the shares.

8. As a necessary concomitant, Vector had no authority to decide whether or not any applicable approval was granted by RBI. Vector could not unilaterally, or otherwise at all, consider the RBI order of 31 March 2011 as a rejection of the latter''s approval to the subject transfer. So also, Vector could not decide that RBI approval would not be received, considering that such approval was not forthcoming within two and half years. That was for Corsair alone to decide. In the premises, there is no question of Vector terminating the suit contract for transfer of shares.

9. There is one more reason why Vector was not right in terminating the suit contract. The RBI order of 31 March 2011 cannot possibly be treated as a rejection of the suit transfer of shares. In the first place, the order was in connection with the acknowledgement of transfer of the suit shares in favour of Vector and seventeen others, and not the further transfer thereof by Vector. The RBI inquiry essentially was regarding the requirement of obtaining of an acknowledgement of transfer/allotment of shares under the RBI guidelines of 3 February 2004 issued under the BR Act. These guidelines streamlined transfer / allotment of shares in banking companies from the point of view of holding levels of shares resulting from such transfer/allotment. The guidelines provided that an acknowledgement was required from RBI for any acquisition/transfer of shares, which resulted in the aggregate holding of an individual or group being equal to or more than 5 per cent of the paid -up capital of the bank. The guidelines provided for various criteria for such acknowledgement including the integrity, reputation and track record in financial matters and compliance with tax laws and standards of good corporate governance, the source of funds for acquisition etc. Vector and other investors (i.e. a total of eighteen investors named in the order) were being considered as one group and their aggregate holding level resulting from the transfer as far above 5% of the paid -up capital of TMB. These aspects were the subject matter of various Writ Petitions pending before this Court challenging the transfers effected in favour of Vector and others by TMB. Whilst disposing of these writ petitions, this Court had directed RBI to take a decision concerning the acknowledgement of the transfer of shares in favour of Vector and others. RBI considered the various aspects of the matter and in its order dated 31 March 2011 declined to acknowledge the holding of 5% or more of the paid -up capital of TMB by the group of eighteen investors including Vector. It held that the group holding should be below 5% of the paid -up capital of the bank. No doubt Starship was represented before RBI when the order of 31 March 2011 was passed. It had inter alia submitted before RBI that it was an

independent investor, whose shareholding was within the threshold limit of 5% as a result of the transfer; It had made Foreign Inward Remittance of Rs. 32.54 crores to Vector and it was entitled to FEMA permission for the transfer. RBI, however, observed that since the original share transfers in favour of eighteen investors was under examination, further transfer of shares to others and granting approval for such further transfer of shares did not arise at that stage. From the foregoing narration it is clear that the RBI order of 31 March 2011 did not reject the suit transfer. Rather it did not deal with it, since RBI was not considering the validity of that transfer whilst passing the order.

10. Thus, Vector cannot claim any relief in its suit on the ground either that it has terminated the agreement recorded in the letter of 12 May 2007 or that it is entitled to return of shares on the ground that the relevant applicable approvals under Indian laws have been refused or not forthcoming. What now remains to be seen is whether as part of that very agreement or the escrow arrangement between the parties made in pursuance thereof, Vector is entitled to restrain Starship from getting custody of the suit shares or restrain SCB from releasing such custody. At the outset, it must be noted that Vector has neither produced before this Court the escrow agreement between Vector, Corsair and SCB nor advanced any submissions on its basis. There is, thus, no case for consideration of inter se rights and liabilities between the parties arising out of the escrow agreement and no relief can possibly be claimed against SCB directly.

11. It is submitted on behalf of Vector that till Starship applies for, and obtains, an approval/NOC from RBI for transfer of the suit shares to itself, there is no question of transferring the shares to, or exercising of any right thereto by, Starship. Vector relies upon the order of the Division Bench dated 8 August 2011 in this behalf. This order, which was passed in appeal from the rejection of ad-interim relief to Vector in the present Motion, observes that unless the Reserve Bank of India grants permission, the shares cannot be transferred in favour of Starship and that admittedly till this date the Reserve Bank of India has not granted permission. The Division Bench, in the premises, inter alia directed the Escrow Agent (SCB) to continue the custody of the shares and not handover or transfer the same to anybody without seeking the leave of the Court, though liberty was granted to Starship to apply for such permission. It is Vector''s case that Starship has neither made any application nor obtained the permission and in the premises, the shares cannot be handed over or transferred to Starship. On the other hand, it is submitted by Starship that the requirement of a prior permission/approval/no objection generally from RBI under the Foreign Exchange Management Regulations, 2000 was dispensed with by the RBI circular of 4 November 2011, though for investee companies in the financial sector, No Objection Certificates (NOCs) were required to be obtained from the respective financial sector regulators. It is submitted that by a subsequent circular dated 11 November 2013 even this requirement has been done away with totally and that accordingly, RBI approval or NOC is no longer necessary for transfer of shares from a resident to a non-resident in a banking company, i.e. between Vector to

Starship. In fact, on this basis, the accompanying Motion, Notice of Motion No. 178 of 2015 is taken out by Starship for vacating the order of the Division Bench passed on 8 August 2011. It is submitted that the very basis of the order of 8 August 2011 has now ceased to exist. Vector contests this position and submits that the relevant RBI circulars are prospective and have no application to transfers of an anterior date. The suit transfer of shares being as on 13 May 2011 is covered under the old regime under regulatory circulars applicable back then and not the circulars of 4 November 2011 and 11 November 2013.

12. At the outset, it must be noted that in the present matter, we are examining inter se rights between two private parties, i.e. the transferor and the transferee of the suit shares. The relevant regulatory authority, namely, RBI is neither before the Court nor is the regulatory perspective relevant for the purposes of the present action except insofar as it affects such inter se rights. In other words, Vector can rely on the regulatory circulars only to the extent they create a right in its favour or a corresponding liability in Corsair or Starship. If, on the other hand, the regulatory framework simply casts some obligations on the transferee before rights could be asserted by it as such transferee, the transfer will have to go through subject to these obligations.

13. With this in mind, let us examine the relevant regulatory framework and see if, and to what extent, Vector can seek to rely on it for the purposes of the present suit. At the time the transfer of suit shares in favour of Vector occurred, i.e. on 13 May 2007, there were two regulatory mechanisms in place, which governed the subject transfer. One was the RBI circular of 3 February 2004 issued under the B R Act and the other, Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulation, 2000 issued under FEMA. The RBI Circular, as already noted above, applied only to transfers which resulted into the total shareholding of the transferee exceeding 5% of the total paid -up capital of a banking company. This circular admittedly does not apply to the suit transfer of shares, since it is nobody''s case that such transfer results into shareholding equal to or above the threshold level. FEMA Regulations of 2000 permitted purchase of shares of an Indian Company under Foreign Direct Investment Scheme, subject to the terms and conditions specified in Schedule I. Under these Regulations, Starship has already applied to RBI for obtaining approval from Foreign Exchange Department (''FED''). The approval is, however, awaited, purportedly on the ground that the transfer in favour of the transferor, i.e. Vector, itself was under examination. It is submitted that approval by FED has now been done away with. Reliance is placed on two subsequent circulars, RBI circulars dated 4 November 2011 and 11 November 2013. The 4 November 2011 circular does away with the general requirement of FED permission, but still requires the NOC of the sectoral regulatory authority. Since in this case, the Indian company whose shares are transferred is a banking company, such sectoral regulatory authority is RBI itself and thus, its NOC was still necessary. This requirement has been done away with under the 11 November 2013 circular. This circular waives the requirement of NOCs from the perspective of FEMA

altogether. Now the question is where does the suit transfer of shares stand now. Which regulatory regime, i.e. as of which date, governs the same? What is the nature of compliance required so as to effectuate the transfer finally? These questions, however, though have a bearing on the rights that can be finally exercised by Defendant No. 4 as transferee of the shares, need not detain us whilst disposing of the present Notice of Motion. Whatever be the position, Vector cannot seek to terminate or rescind the transaction of transfer of the suit shares in favour of Starship. Vector cannot even obstruct Starship from getting the custody of the shares. The agreement between the parties envisages that if regulatory permissions are denied or not forthcoming the share transfer can be cancelled, but it is a matter for Corsair to decide. If Corsair, at its sole discretion, determines that such permissions are or will not be received and that the transferees are therefore unable to acquire the shares, it can require Vector, at its sole request, to return the advance purchase consideration. In that case, Vector is bound to return the consideration provided Corsair irrevocably instructs the Escrow Agent to release the shares to Vector. What this also means is that if the approvals or permissions are no more necessary by reason of a change in the regulatory regime, the transfers can be concluded and Starship as a transferee can even enforce its rights as a shareholder of TMB. And it is for Corsair to determine whether it is so. If Corsair considers that it is no longer necessary to obtain a regulatory approval for the transfer, it may seek custody of the shares and even deal with the shares. This is not to say that the regulatory authorities are bound to accept Corsair''s stand and accept the transfer in favour of Starship or allow it to exercise the rights of a member of TMB. That is a matter between Starship and the regulatory authorities. It has no consequence for Vector. After the beneficial ownership of the suit shares is transferred to Starship, which happened on 13 May 2008, as noted above, all that Vector has is a right to have the shares returned to it in the event Corsair calls upon it to refund the advance purchase consideration. If Corsair does not require Vector to return the consideration or irrevocably alters its position by getting the shares transferred to, or dealt with by, Starship, it forfeits its right to require Vector to refund the consideration. Vector has no liability in that case to refund the consideration and no corresponding right to require return of the shares against such refund. In other words, as between the two contracting parties, the transfer is complete. If as a result of any regulatory requirement, Starship is unable to get itself registered as a transferee or enforce its rights as a member of TMB, it takes the consequences. There is no prejudice to Vector. Vector has not shown that in terms of the agreement confirmed in the letter of 12 May 2007 or the Escrow Agreement, Vector is entitled to instruct the Escrow Agent (i.e. SCB) to either release the shares to Vector or not to part with the custody of the shares to Starship. The letter dated 12 May 2007 does not reserve any such power to Vector and the Escrow Agreement is not even placed before the Court.

14. There are no regulatory implications for Vector if the shares are transferred to Starship. RBI order of 31 March 2011 actually requires Vector and seventeen

others to dilute their equity below the threshold limit of 5 per cent of the paid-up share capital of TMB. Any transfer by Vector and those others is in fact in compliance with this mandate. Hence, far from there being any adverse consequences from a regulatory point of view, the suit transfer actually entails a benefit to Vector. On the other hand, if the transfer cannot be concluded finally or no rights can be claimed thereunder by the transferee as a result of any regulatory requirement, under FEMA or BR Act, there is no prejudice to be suffered by Vector. Withholding of the custody of the shares actually works a prejudice to Starship. Starship has parted with the entire consideration for transfer of shares and withholding of the custody of the shares so long as Starship does not insist on refund of consideration causes severe prejudice to it.

15. In that view of the matter, there is no merit in Notice of Motion No. 1399 of 2011 of Vector. For the same reasons, even Patnaik has no case in Notice of Motion No. 3190 of 2011.

16. Notices of Motion Nos. 1399 of 2011 and 3190 of 2011 are, accordingly, dismissed. In view of dismissal of the Motions, no orders need to be separately passed in Notice of Motion Nos. 178 of 2015 and 179 of 2015, and the same are also disposed of. Costs of the Motions to be the costs in the cause.

17. Learned Counsel for the Plaintiffs in both the suits seek stay of the order. Learned Counsel for the Respondents oppose. Having regard to the fact that the ad-interim orders have been operating for a long time, the order is stayed for a period of four weeks from today.