(2013) 02 DEL CK 0129

In the Delhi High Court

Case No : Co. A. (SB) No''s. 77 and 81 of 2011

Vijay Kumar Sekhri and Others APPELLANT

Vs

Tinna Overseas Ltd. and Others RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:
Companies Act, 1956 — Section 10F, 397, 398

Citation : (2013) 3 AD 647 : (2013) 177 CompCas 29 : (2013) 3 CompLJ 442

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Manish Jain and Akur Garg in Co. A. SB No. 77 of 2011 and Vivek Kohli, Karan Gupta, Akansha Srivastava in Co. A. SB No. 81 of 2011, for the Appellant; Manish Jain and Akur Garg in Co. A. (SB) No. 81 of 2011 and Vivek Kohli, Karan Gupta, Akansha Srivastava in Co. A. (SB) No. 77 of 2011, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—These two appeals u/s 10F of the Companies Act, 1956 ("the Act") are directed against an order dated September 16, 2011 (2012) 106 CLA 510 passed by the Company Law Board in an application filed by Mr. Vijay Kumar Sekhri and seven others (hereafter the "VKS group") (appellants in Co. A. (SB) No. 77 of 2011) for execution of a consent order dated June 9, 2009, passed by the Company Law Board in C. P. No. 17 (ND) of 2008 filed by the VKS group against Mr. Bhupinder Kumar Sekhri and others (hereafter the "BKS group") (appellant in Co. A. (SB) No. 81 of 2011). The background to the present appeals is that the Tinna group of companies are controlled and managed by the Sekhri family. The disputes that arose between the family members, led to the filing of Company Petition No. 17 of 2008 by the VKS group against the BKS group under sections 397 and 398 of the Act in the Company Law Board. By an order dated January 5, 2009, in the said petition the Company Law Board recorded the broad terms of the family settlement, inter alia, as under :

4. Bhupinder will take immediate steps to pass necessary resolution appointing Vijay and Anil as directors of Tinna Agro and Tinna Oil as the nominees of Tinna group.

5. Till such time the remuneration for Vijay and Anil is fixed by Tinna Oil and Tinna Agro, Bhupinder will pay a sum of Rs. 5 lakhs per month jointly for both of them.

6. Tinna Overseas will immediately transfer two Mercedes, one BMW, one Honda Accord, one Honda CRV to Vijay and Anil and who will undertake to pay the balance installments of car loans, if any.

7. It has also been agreed that transfer of management of companies, transfer of shares and loans if any between the companies, all have been taken into account in the settlement and the entire settlement is on a zero value basis.

8. The parties have also agreed that the terms agreed before me today is the last and final settlement superseding all other prior oral or written agreements between the parties in regard to the settlement...

9. The parties shall prepare a memo of family settlement incorporating the above terms and submit the same to this Board on January 15, 2009, at 4.00 p.m.

2. Pursuant to the above order the parties entered into a memorandum of family settlement ("MoFS") dated March 27, 2009. It was agreed that the MoFS would come into effect from January 5, 2009 (effective date). The assets, shares, interest and business allocated to the BKS group from the effective date were set out in Schedule-I. Likewise, the assets, shares, interest and business allocated to the VKS group were set out in Schedule-II to the MoFS. Inter alia, it was agreed that Tinna Overseas Ltd. ("TOL"), Tinna Agro Ventures Ltd. ("TAVL") and Pratham Road Technologies Ltd. ("PRTL") would come to the share of the BKS group whereas Tinna Finex Ltd. ("TFL"), Duraflex Services and Construction Technologies Ltd. ("Duraflex"), Vedanta Overseas Ltd. ("VOL") came to the share of VKS group.

3. Schedule-I to the MoFS set out the manner in which 100 percent. of the shares held by TOL and Tinna Agro Industries Ltd. ("TAIL") would be transferred to the VKS group. It was stated that "100 percent. of such TAIL shareholding held by TOL shall be transferred by BKS group in favour of:

(i) Vijay Sekhri; and (ii) Anil Sekhri or their nominee (s); to be held by them equally--i.e., 50 per cent, each of such TAIL shareholding. Further, till :

(i) such time as the VKS group continues to retain and hold the TAIL shareholding; or

(ii) TAIL/TOCL decides on the remuneration of Vijay Sekhri and Anil Sekhri;

Whichever is earlier, TOL will pay a sum of INR 500,000 (rupees five hundred thousand only) per month jointly to Vijay Sekhri and Anil Sekhri.

4. Following the MoFS, a scheme of arrangement ("SoA") was signed on May 17, 2009. Relevant to the present appeals was clause 3.2 of the SoA which read as under :

3.2 Joint venture :

Group A, B1 and B2 shall jointly address a letter to M/s. Archer Daniel Midland (ADM), joint venture partner of TOCL informing them of resignation of Mr. Gaurav Sekhri as director and nomination of Mr. Anil Kumar Sekhri as director on the board of TOCL. Until TOCL or TAIL fixes the remuneration of Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri, TOL shall continue to pay Rs. 2,50,000 per month each to Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri, subject to the group B1 and B2 continuing to hold their existing shareholdings in TAIL and TOCL. Hereon, group A shall have no further interference in the management of the said joint venture.

5. Group A in the above clause meant the BKS group, group B1 the VKS group and group B2 the group represented by Mr. Anil Kumar Sekhri. On the basis of the MoFS and the SoA, the Company Law Board passed a consent order on June 9, 2009, in which, inter alia, it was recorded as under :

4. Till such time as Tinna Oil and Chemicals Ltd., and Tinna Agro Industries Ltd., fixes the remuneration of Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri, TOL shall continue to pay Rs. 2,50,000 per month each to Mr. Vijay Kumar Sekhri and Mr. Anil Sekhri subject to the VKS group continuing to hold their existing shareholding in the aforesaid two companies. Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri shall make endeavours to have their respective remuneration fixed by the aforesaid two companies as soon as possible.

6. It is stated by the VKS group that while the BKS group paid salaries to Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri as per the agreed terms from January 5 to June 9, 2009, it stopped paying salary to the said persons after the consent decree was passed. Consequently, an application was filed in July, 2009 by the BKS group in which the Company Law Board passed the following order on July 14, 2009 :

Heard on the application. It has been agreed by counsel that the company would pay to the petitioners an amount of Rs. 2.5 lakhs each which has become due within a week along with a statement of expenditure incurred by the company on behalf of the petitioners and that the petitioners will reimburse the same within a week of receipt of the arrears of the Rs. 2.5 lakhs each. The company will continue to pay the said amount for another two months.

I also direct that appointment the petitioners as whole-time directors with remuneration should be decided by M/s. Tinna Oil and Tinna Agro latest by August 31, 2009.

7. Thereafter salaries were paid by the BKS group to the said two directors for the months of July and August, 2009. It is stated that the BKS group however

did not appoint the said two persons as full time directors and also refused to pay them the salaries thereafter. It is further contended by the VKS group that due to interference and pressure by the BKS group as well as the ADM group, the VKS group was forced to sell their entire equity of 25 per cent, in TOCL and TAIL to ADM group on July 15, 2011. With the said event, the liability of the BKS group to pay the monthly salary of Rs. 5 lakhs to Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri came to an end. It is contended by the VKS group that till that date the BKS group was liable to pay the said two directors Rs. 1,12,50,000 being the salary payable from September 1, 2009 to July 15, 2011.

8. Several applications including a contempt petition were filed in the Company Law Board. By the impugned order dated September 16, 2011, these applications were disposed of by the Company Law Board holding that there was a legitimate expectation of the VKS group that either TOCL/TAIL should fix their remuneration and till such time the BKS group would pay both Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri Rs. 2,50,000 each per month. Since no remuneration had been fixed by TOCL/TAIL, the BKS group was liable to pay them salaries. The Company Law Board negatived the plea of the BKS group that the decision taken at the board meeting held on August 12, 2009, that Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri were not entitled to salary satisfied the requirement of the terms of the MoFS and that once such a decision was taken, no further sum by way of salary was payable to either of the said persons. The Company Law Board held that when the said persons were not even appointed as directors then there was no question of fixing their salary as zero. In paragraph 23 of the impugned order it was concluded by the Company Law Board as under (page 534 of 168 Comp Cas) :

One cannot lose sight of the consent terms. Once a consent always a consent. Consent terms are binding on the parties and are legally enforceable. In this view of the matter and keeping the changed circumstances of this case the Bhupinder Sekhri group cannot be obligated to pay remuneration/salaries to the petitioners indefinitely. To do substantial justice between the parties it is hereby directed that the Bhupinder Sekhri group shall pay a lump sum amount of Rs. 50 lakhs, after adjusting the amounts due, to the petitioners towards remuneration/ salaries for the intervening period within two months of receipt of this order.

9. The VKS group is aggrieved by the impugned order inasmuch as it has not granted them the relief of payment of salary till July 15, 2011, i.e., the date on which they ceased to be the shareholders in TOCL and TAIL. In other words as against over Rs. 1.12 crores claimed by the VKS group the Company Law Board has directed the BKS group to pay the two directors only Rs. 50 lakhs.

10. The BKS group is also aggrieved by the order of the Company Law Board to the extent that it has required the BKS group to pay the VKS group a sum of Rs. 50 lakhs when according to the BKS group nothing is owed to the VKS group. In fact a sum of Rs. 50 lakhs is claimed as owing to the BKS group by the VKS group. It is pointed out that this was acknowledged by the Company Law Board

when it passed the following order on October 18, 2011, in an application filed by the BKS group seeking clarification of the impugned order dated September 16, 2011

C. A. No. 527 of 2011 mentioned. The respondents have not attended despite notice. Heard on C. A. No. 527 of 2011. It is hereby clarified that in paragraph 23 of the Company Law Board''s order dated September 16, 2011, a direction is contained to the Bhupinder Sekhri group to pay a lump sum amount of Rs. 50 lakhs, after adjusting the amounts due, to the petitioner towards remuneration/ salaries ....is intended to include adjustment of amounts receivable from the petitioner in C. P. No. 17 (ND) of 2008, i.e., Rs. 50 lakhs payable by the petitioners to the respondents as contained in paragraph 8 at page 3 of the Company Law Board''s order dated December 22, 2009, meaning thereby that no amounts remain actually payable to the petitioners. Order dasti. Applicants to serve this order on the petitioner in C. P. No. 17 (ND) of 2008.

11. What is significant is that the above order dated October 18, 2011, has not been challenged either by the VKS group or the BKS group. Both the present appeals are only against the order dated September 16, 2011, of the Company Law Board. Notice was issued by this court on November 16, 2011, in Co. A. (SB) No. 77 of 2011 filed by the VKS group and on November 25, 2011, in Co. A. (SB) No. 81 of 2011 filed by the BKS group. No interim order was passed in either appeal.

12. With the consent of both parties, the appeals were finally heard. Mr. Manish Jain, learned counsel appeared for the VKS group and Mr. Vivek Kohli, learned counsel appeared for the BKS group.

13. The central question to be decided by the Company Law Board was whether in terms of Schedule-I of the MoFS, Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri were entitled to remuneration of Rs. 5 lakhs per month jointly till July 15, 2011, i.e., the date on which they ceased to be the shareholders in TAIL.

14. Both in the MoFS as well as in the order dated June 9, 2009, passed by the Company Law Board, it was stated that Mr. Vijay Kumar Sekhri and Mr. Anil Kumar Sekhri would be paid Rs. 2,50,000 each per month by TOCL subject to two conditions : (1) as long as they continued holding shares in TAIL and TOCL and (2) till such time their respective remuneration was fixed by TAIL and TOCL. There was no question, therefore, of their receiving remuneration in perpetuity.

15. In the impugned order the Company Law Board has failed to address the issue whether as a result of the decision of the board of directors on August 12, 2009, not to pay any remuneration to the two directors, the liability of the BKS group to pay them a total salary of Rs. 5 lakhs per month came to an end. Instead the Company Law Board has, "to do substantial justice between the parties" and without explaining the basis, directed that the BKS group should pay Rs. 50 lakhs to the VKS group. To this extent both parties are justified in having a grievance against the said order dated September 16, 2011, passed by the

Company Law Board.

16. However, what is significant is that neither party has filed an appeal against the subsequent order, dated October 18, 2011, passed by the Company Law Board. By the said order, passed at the instance of BKS group, the Company Law Board has held that nothing is payable by either group to the other. Both the BKS and the VKS groups appear to have accepted the said order as neither has challenged it. The order dated September 16, 2011, passed by the Company Law Board should be held to have merged with the subsequent order dated October 18, 2011. The BKS group at the stage of filing the application for clarification did not question the order dated September 16, 2011, to the extent it required them to pay the VKS group Rs. 50 lakhs. The BKS group only sought a clarification that in view of the liability of the VKS, group to pay it a like sum, the BKS group owed nothing to the VKS group. Therefore, having invited the order dated October 18, 2011, of the Company Law Board on its application, and not questioning the said order, the BKS group is estopped from challenging the order dated September 16, 2011, which has merged with the subsequent order dated October 18, 2011, of the Company Law Board.

17. As far as VKS group is concerned, it is in a position where it has to pay nothing to the BKS group as a result of the order dated October 18, 2011, which it has accepted. It has also thereby implicitly accepted that it owes the BKS group Rs. 50 lakhs. It has thereby accepted that after adjustment of the said sum, the BKS group owes the VKS group nothing.

18. In other words, with the order dated October 18, 2011, of the Company Law Board attaining finality, the challenge by both the VKS and BKS groups to the impugned order dated September 16, 2011, of the Company Law Board has been rendered infructuous. Both groups have accepted that neither owes the other anything after the order dated October 18, 2011 of the Company Law Board. Consequently, there is no necessity for the court to examine the correctness of the impugned order dated September 16, 2011 of the Company Law Board. Consequently, both the appeals are dismissed, but in the facts and circumstances of the case, with no order as to costs.