
(2015) 01 DEL CK 0049
In the Delhi High Court
Case No : CS (OS) 3510/2014

Vikram Kapur and Others

APPELLANT

Vs

Atlas Cycles (Haryana) Ltd. and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4, Order 6 Rule 17
Companies Act, 1956 — Section 391, 394

Citation : (2015) 2 AD 245 : (2015) 219 DLT 1 : (2015) 148 DRJ 461

Hon'ble Judges : Indermeet Kaur, J.

Bench : Single Bench

Advocate : A.S. Chandhiok, Senior Advocate, Anil Airi, Ravi Kishan Chandna, Shashank Khurana, Roopa Dayal, Ritesh Kumar and Honey Kumari, for the Appellant; Sudhir Chandra, and Sudhir Makkar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Indermeet Kaur, J.

I.A. No. 688/2015 (under Order XXXIX Rule 4 of the CPC)

1. This application is not pressed.

2. Disposed of accordingly.

I.A. No. 22804/2014 (under Order XXXIX Rules 1 and 2 of the CPC)

(i) Present suit has been filed by the plaintiffs (Vikram Kapur group) against the defendants of whom defendant No. 1 is the company namely Atlas Cycles (Haryana) Ltd.

(ii) Defendants No. 2 to 7 are the directors of the company. Defendants No. 8 to 17 are other members of the Kapur group i.e. legal representatives of deceased Jagdish Kapur and Jaidev Kapur.

(iii) The plaintiffs and defendants No. 8 to 17 are all family members of late Rai Bhadur Janki Dass Kapur i.e. the Kapur family; their predecessors were the promoters of the defendant company and its management and control vested largely with the Kapur group.

(iv) This Court has been informed that Kapur group has a cumulative shareholding of 45%. Being a limited company, balance shareholding vests with third parties.

(vi) Defendant No. 1 company was running three cycle manufacturing units in India and was controlled and managed by the managing committees i.e. the plaintiffs group and defendants No. 8 to 17.

(vii) Late Sh. Rai Bhadur Janki Dass Kapur had three sons namely B.D. Kapur, Jaidev Kapur and Jagdish Kapur all of whom have died. The Vikram Kapur group includes all the legal heirs of late Shri B.D. Kapur except Arun Kapur who is estranged from them.

(viii) Defendants No. 2 to 17 represent the other two groups of the other two brothers namely Jaidev Kapur and Jagdish Kapur.

(ix) Interest of all the defendants appears to be common.

(x) The three cycle manufacturing units of the company were located at Sonapat, Sahibabad and Malanpur.

(xi) Late B.D. Kapur, Jagdish Kapur and Jaidev Kapur had entered into a memorandum of understanding (MOU) dated 08.01.1999. In terms of the said MOU, the ownership, control and management of the three cycle manufacturing units was to be divided amongst the brothers.

(xii) On 31.08.2003, a further MOU in continuation of the MOU dated 08.01.1999 was entered into between the parties. Three baskets of various assets of the company were prepared to be divided amongst the three Kapur groups. In terms of this MOU, the Sonapat unit came under the management of B.D. Kapur. Sahibabad unit fell to the share of Jaidev Kapur and Malanpur unit had fallen to the share of third brother namely Jagdish Kapur group. On the same day, i.e. on 31.08.2003, a Board Resolution had also been passed by the Company (defendant No. 1) noting this MOU entered inter-se the brothers.

(xiii) This MOU contained an arbitration clause; in case of disputes and differences between the parties, the matter would be referred to the sole arbitration of Shri A.M. Ahmadi, (retired Chief Justice of the Supreme Court of India).

(xiv) Disputes and differences arose between the three groups in August, 2000 and the arbitration clause was invoked. It was agreed that Mr. K.N. Memani would be appointed as the Valuer to evaluate the assets of the company.

(xv) The proceedings which were pending before the Arbitrator culminated on

01.11.2014. The sole Arbitrator pronounced his Award. This Court has been informed that the objections had been filed by the defendants group qua the said Award.

(xvi) The plaint further discloses that on 05.10.2013, a Resolution had been passed by defendant No. 1 deciding upon the closure of the Malanpur unit; the restructuring of the other two units i.e. the Sonapat and the Sahibabad unit; it further resolved that the losses suffered by the Malanpur unit would be paid off equally by both the Sonapat unit (of the plaintiffs group) and the Sahibabad unit.

(xvii) It is this resolution which has hurt the plaintiffs. Submission is that the whole purpose of this resolution is to defeat the implementation of MOUs dated 08.01.1999 and 31.08.2003; once these MOUs had categorically decided that the three units were to be managed independently by the 3 groups, the resolution dated 05.10.2014 is clearly an attempt to impinge upon the functioning of these units which are otherwise independent and autonomous. The Resolution further declaring that the debts of the Malanpur unit will be borne equally by the Sonapat and the Sahibabad unit is clearly malafide.

(xviii) In para 32 of the plaint it has also been averred that the cause of action also arose in terms of the notice dated 11.11.2014 (issued by the company) calling for a meeting on 19.11.2014; submission being that this was to implement the malafide contents of the resolution dated 05.10.2014.

(xix) Accordingly, a prayer for permanent injunction has been made restraining defendant No. 1 in any manner from acting contrary to the MOUs dated 08.01.1999, 31.08.2003 as also the Award dated 01.11.2014.

(xx) Written statement and reply to the pending application have been filed by the defendants. As noted supra, an application under Order XXXIX Rule 4 of the CPC had also been filed by the defendants but the submission of the learned senior counsel for the defendants was that the matter requires an urgent hearing and since the pleadings in the application under Order XXXIX Rule 4 of the CPC were not yet complete, this application has not been pressed; the reply filed to the application under Order XXXIX Rules 1 and 2 of the CPC be treated as the application filed under Order XXXIX Rule 4 of the CPC.

(xxi) This Court notes that on the first date of hearing (19.11.2014), the defendants had appeared on an advance notice. An interim had been passed in favour of the plaintiffs; defendant No. 1 had been directed not to implement or act upon any resolution passed by it in its proposed meeting of 19.11.2014 which would adversely affect the plaintiffs in any manner. This order continues till date.

(xxii) The defendants as noted supra are aggrieved by this order and had requested for an urgent hearing.

(xxiii) Contention of the defendants is that although admittedly the MOU dated 08.01.1999 was followed by a subsequent MOU dated 31.08.2003 and had been entered into between the parties and the Board of directors had also ratified this

arrangement in terms of its Resolution dated 31.08.2003 yet there were certain exceptions contained in this Resolution; this Resolution clearly provides that the overseeing control of these units vested with defendant No. 1 (the Company); the Resolution further provides that although substantial shareholding of the company was with the Kapur family yet this being a public limited company, the balance shares still vested with outsiders and the company had all along even in its Resolution dated 31.08.2003 retained complete control over the financial functioning of these three units. Further submission being that this suit is in fact not maintainable as the prayers made by the plaintiffs cannot be granted; a company is a distinct legal entity and even presuming that there was an inter-se arrangement between the three family groups of the Kapur brothers, it cannot bind the company. Attention has also been drawn to an order of the Single Bench of this Court dated 02.05.2006 in CS (OS) No. 77/2003 wherein the Court had reiterated the legal position that the company being a distinct juristic entity is not bound by the inter-se arrangement of Kapur family. Learned senior counsel for the defendants has placed reliance upon Reliance Natural Resources Ltd. Vs. Reliance Industries Ltd., to support the submission that the inter-se family arrangement cannot bind the company.

3. Arguments have been heard. Record has been perused.

4. On 08.01.1999, an Memorandum of Understanding had been entered into between the three Kapur groups. In terms of this arrangement, the three cycling units of the defendant company (which were already being managed and run by the senior executives i.e. Kapur family) were agreed to be divided. The Sonapat plant fell to the share of B.D. Kapur, Sahibabad had fallen to Jaidev Kapur and the Malanpur plant and machinery fell to the share of Jagdish Kapur. This MOU is an admitted document. It contained an arbitration clause which stated that in case disputes between the parties, the matter would be referred to the Arbitrator Shri A.M. Ahmadi, (retired Chief Justice of India, Supreme Court of India).

5. In August, 2000 certain differences arose inter-se the family groups and the matter was referred for arbitration. On 31.08.2003, a fresh MOU was entered into between the three groups. The erstwhile brothers B.D. Kapur, Jaidev Kapur and Jagdish Kapur had died by that time and this MOU was entered inter-se their legal heirs. This MOU disclosed that Kapur family had a substantial shareholding in the company. It was agreed that a Valuation report would be prepared by Mr.K.N. Memani to determine the value of the assets of the Company.

On the same date, another MOU was entered inter-se the brothers; this related to a "non-competing arrangement" between the parties.

6. The company on 31.08.2003 by its Board Resolution had endorsed the restructuring of the company in terms of the MOU of the 3 Kapur groups dated 31.08.2003. This Board Resolution noted that the Sonapat unit would fall to the share of B.D. Kapur; unit No. 2 i.e. Sahibabad had fallen to the share of Jaidev Kapur and unit No. 3 i.e. Malanpur unit would fall to the share of Jagdish. The

Board of directors had noted with serious concern the decline in the growth of the company manifested in poor financial results; the Board after detailed deliberations noted that this restructuring of the company in the manner as proposed by the Kapur family would be for its better growth to enable it to remain in the position as a market leader. It was resolved that this arrangement would deem to have come into effect w.e.f. 01.09.2003. It was further resolved that the management committee of the respective units shall manage and be responsible for taking all decisions with respect to the functioning and management of the respective units either individually or jointly; the management committee of each unit shall be exclusively responsible for ensuring all requisite statutory and legal compliances pertaining to the unit.... subject to the approval of the board of directors; to avoid duplication and interpolation of work, all the units will have complete autonomy of operations subject to the overall control of the board of directors.

7. In terms of the aforementioned resolution, inter-se transfers of money were also effected between the three units.

8. It was further resolved that the company will have a common balance-sheet and all the three units shall manage independent accounts and prepare separate balance-sheets but the unit accounts would be merged and consolidated with the concurrent auditors as per the approved accountancy norms and in accordance with applicable regulations and guidelines duly certified by the statutory auditors. It was resolved that "company shall have a centralized company law department at Sonapat and the management committee at Sonapat will keep the management of other bicycle units fully informed about the functioning of the company law department. It was further resolved that notwithstanding anything contained in the resolutions, the following matters shall be treated as exceptions and any decision pertaining to these matters by the concerned unit shall require prior approval from the board of directors of the company.

A) "Obtaining any loan, banking-limit or further credit facility from any bank or Financial Institution or any other person including enhancement, re-scheduling or revision of any existing loan, credit facility and/or bank-limit.

B) So Any decision pertaining to Sale, mortgage, lease, licence, gift or alienation in any other manner of any immovable property belonging to the Company.

C) Any decision relating to Sale, mortgage, gift or alienation in any other manner of the plant and machinery or any other part thereof or other movable assets of the company except disposal of scrap or sale and/or disposal of vehicle by the unit in regular course of business. However, such prior approval shall not be required if the written down value of the plant and machinery or part of the movable assets individually does not exceed Rupees one lac for individual item and Rupees five lacs in total in the same financial year.

D) Opening of a new bank account by any Unit of Atlas;

E) Furnishing of any Bank Guarantee or other guarantee/security on behalf of Atlas whereby the financial liability of the Company would be enhanced (this would however not include furnishing of bank guarantee within the existing sanctioned bank limits).

F) Writing off any amount/recoverable debt of the value over Rs.1,00,000/- or writing off any amount/recoverable debt where the combined value of the written off amount in any financial quarter exceeds 3,00,000/- subject to statutory and other legal limitations.

G) Making a donation of the value of over Rs.1,00,000/- or where the combined value of the donation made in any financial quarter exceeds Rs.3,00,000/-. Further none of the units shall make donations in any financial year in excess of five percent of the average net profit of that particular unit for the last three years or such other statutory limitations or regulations as may be applicable from time to time.

H) Any decision relating to licensing, authorizing use of or otherwise entering into any arrangement with any other person with respect to use of the Trade Mark, designs, patents, copyrights or other intellectual property rights owned, used or enjoyed by the Company except for use in relation to components being supplied to Atlas by vendors.

I) Appointment/Recruitment of any employee(s) where the monthly salary of the employee inclusive of allowances and other benefits exceeds Rs.25,000/- per month.

J) All decisions by the Management Committee of the respective units relating to increments/promotion/revision/fixation of salaries, benefits, perks etc. of members of Management Committee or any other employee who may be directly or indirectly related to any member of the Management Committee.

K) The concurrent audit, which is presently being carried out by M/s. S.R. Batliboi and Co. shall continue in all units of the company including ASTI, Auto and Numero. Designating a common agency/consultant for concurrent audit, appointment, re-appointment, fixing of remuneration etc. of concurrent auditors shall however require prior approval of the Board. The Board shall however take into account the recommendations made by the Management Committees of the units in this regard.

L) Any decision pertaining to sale, transfer, alienation or creating a third party interest in any manner over the shareholdings, Fixed Deposits, investments or other liquid assets owned or held by the Company.

M) Any other matter which as per statutory requirement is required to be referred to the Board of Directors."

9. A scrutiny of this Board Resolution clearly establishes the fact that the overall and overseeing control of the 3 units continued to vest with the Company. All

decisions relating to sale, mortgage, lease, licence, gift or alienation of any immoveable property, opening of new bank account, furnishing of bank guarantees, writing off any debt, money donation, licensing, appointment/recruitment of employees whose salary exceeds Rs.25,000/- per month, increments, promotion and fixation of salaries of employees directly or indirectly related to any member of the managing committee, audit of accounts, decision relating to sale, transfer, alienation or creating any third party interest in moveable property i.e. shareholdings, fixed deposits and other investments of three of each unit only with the prior approval of the company. Thus as rightly pointed out by the learned senior counsel for the defendants the company continued to retain its hold over the Kapur family.

10. In CS (OS) No. 77/2003 filed by one member of Kapur family against another (subsequently withdrawn), an order came to be passed on 02.05.2006. While noting that the inter-se family arrangement between the Kapur groups, the application filed by the disgruntled brother (estranged son of B.D. Kapur group) under Order 1 Rule 10 of the CPC (I.A. No. 10331/2005) and the second application under Order 6 Rule 17 of the CPC (I.A. No. 10329/2005) seeking the addition of the company as a party to the present proceedings and claiming certain reliefs qua the company were both dismissed. The single Judge of this Court had noted the legal proposition qua the company in the following words:-

"As already noted above, the suit has arisen out of a valuation report prepared pursuant to an MOU entered into between the three groups of the Kapur family on 8th January, 1999. While the members of the Kapur family may have a large shareholding in Atlas Cycles, that entity is a completely independent legal and juristic entity that has nothing to do with the MOU entered into between the groups of the Kapur family. Under the circumstances, the attempt of the Plaintiffs is to unnecessarily rope in Atlas Cycles into the controversy and if this is permitted, over a dozen entities with which the Kapur Family is concerned would also have to be roped in to the litigation. All this is not only totally unnecessary but has no concern to MOU entered into between the groups the Kapur family."

11. In the proceedings before the learned Arbitrator, the question which was posed was on the binding nature of the inter-se arrangement between the Kapur brothers. The Award pronounced on 01.11.2014 in its last but second part in this context noted as under:-

"The challenge to any decision of the board of directors in respect of Atlas Cycles falls outside my purview and therefore I have not expressed any firm view on the Board's decision. If the Board has taken any decision in respect of any business establishment, the matter is treated falling outside the scope of arbitration.

The parties will be at liberty to move the appropriate forum in respect of matter falling outside my purview."

12. This Court has also been informed that during the pendency of the proceedings before the learned Arbitrator, the Malanpur unit had come to be

closed and in fact because of the huge pendency of debt owed by the Malanpur unit to statutory bodies, the company was in the process of declaring it as a "non-performing asset" (NPA). Accordingly company had been constrained to propose the resolution dated 05.10.2014. In terms of this Resolution dated 05.10.2014, the company resolved that the Malanpur unit will be sold and out of the sale of the said unit, the statutory liabilities of company will be warded off; since the liabilities are huge and inter-se rearrangement of the structuring of Sonapat and Sahibabad unit was also proposed; it was also resolved that the balance debts of the Malanpur unit will be funded by the Sonapat and Sahibabad in equal shares.

13. It is this resolution dated 05.10.2014 which has triggered the present proceedings. The whole case of the plaintiffs is that such a resolution could not have been passed; it amounts to a violation and interference with the working of the Sonapat unit and the plaintiffs group over which they had an independent and complete autonomy and merely because the Malanpur unit was not functioning well and which has now been riddled with debts, the plaintiffs cannot be asked to pay of the dues of the Malanpur unit. After the passing of this resolution, the company had proposed to have a meeting of 19.11.2014. This Court by an order dated 19.11.2014 had directed that any resolution passed by the defendants company in its board meeting to be held on 19.11.2014 adversely affecting the plaintiffs, will not be implemented upon.

14. There is no dispute to the legal proposition that a company is a distinct legal entity; it is a juristic person. The inter-se family arrangement between the Kapur brothers which had taken place on 31.08.2003 and which had been endorsed by the Board Resolution was subject to the exceptions as noted supra. These exceptions clearly provided that the complete overseeing control over all the units continued to vest with the company. The Company had not lost its control over it. As such even if the three units continued to perform independently without interference from the year 2003 to 2014 smoothly (as has been pointed out), it was primarily for the reason that all the units were doing well in their respective fields. However, since the Malanpur unit suffered a closure in 2014 and came to be debt-ridden, the company proposed the resolution dated 05.10.2014. Not her prevented the company from doing so. The resolution dated 31.08.2003 did not prohibit the company from passing any further resolutions which were necessary for the overall governance of the company and which was in the best interest of the company. In fact the arrangement dated 31.08.2003 was subject to the overall control of the company. This is clear from the exception clauses (*italicized above*).

15. The Supreme Court in Reliance Natural Resources Ltd. (*supra*) while dealing with the binding nature of an inter-se family arrangement of Reliance group on the Company had noted that the MOU signed between the private family members and the arrangement of understanding arrived at between Ambani brothers and their mother, being a private arrangement, did not fall within the corporate domain; it was neither approved by the shareholders and nor it was

attached to the scheme; it was held to be not legally binding. In that case, there was a scheme which had been proposed under Sections 391 and 394 of the Companies Act and the Apex Court had noted that the MOU entered between the members of the family would not bind the other shareholders before whom the scheme of arrangement had been proposed; such an MOU was not within the corporate domain.

16. The ratio of this judgment clearly supports the proposition of the defendants.

17. This Court has also been informed that the liabilities of the company are becoming huge and the company is unable to repay them; time limits have been laid down by the statutory bodies for payment to them otherwise the company would be declared as "NPA". This position is not refuted.

18. In this background, this Court is of the view that the plaintiffs have failed to make out a prima-facie case in their favour. In fact an irreparable loss and injury would be suffered by the company if directors of the company are not allowed to transact the business of the company which would be in the interest and welfare of the company. The Resolution of the company dated 31.08.2003 containing exception clauses which in fact evidences the authority and control of the Company over all the three units which were allowed to function only to the limited extent as contained in the Resolution. The overall control of the units continued to vest with the company and this is clear from the simple fact that a common balance-sheet of the company continued to be filed before the Auditors. Balance of convenience is also not in favour of the plaintiffs. Accordingly, the interim order dated 19.11.2014 is set aside.

19. This application is disposed of in the above terms.

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20. List for directions on 06.04.2015.