(2020) 02 NCLT CK 0004

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Application No. 143/ND Of 2014

Yogeshwar Nath And Ors — APPELLANT

Vs

General Commerce Ltd. And Ors — RESPONDENT

Date of Decision : 29-02-2020

Acts Referred:
Companies Act, 1956 — Section 397, 398, 634(A)

Citation : (2020) 02 NCLT CK 0004

Hon'ble Judges : Ina Malhotra, J

Bench : Single Bench

Advocate : Ranjana Roy Gawai, Vasudha Sen, Rohan Gupta, Varun Gupta, Praveen Maratha

Final Decision : Dismissed

Judgement

Ina Malhotra, J

1. This is a Petition filed by Yogeshwar Nath & Ors. invoking the provision of Section 634A of Companies Act, 1956 ("the Act") for enforcing the Memorandum of Family settlement (MOFS) recorded in CP No. 25/ND/2009, a petition for oppression and management filed by them. The parties to the lis are family members, having shareholding in the family Companies. Two companies, viz. Nath Brothers Exim International Ltd. (NBEIL) and Nath Exports Pvt. Ltd (NEPL) are wholly owned subsidiaries of the Respondent No. 1 Company General Commerce Ltd. (GCL). The Company Law Board had advised the parties to have an amicable settlement considering that it was a dispute within the family.

2. A global settlement of all the family disputes was arrived at, which was placed on record and the Hon'ble Company Law Board disposed off the petition filed under section 397-398 of the Companies Act 1956, vide order dated 03.02.2011 in terms of the family settlement, observing:

"The parties have amicably settled their disputes by way of a family settlement.

The term sheet incorporating the division of assets signed by all members has been filed and the same is taken on record. The parties will be bound by the same."

3. The petitioner's grievance is that despite substantial compliance of their obligations under the MOFS, the respondents have failed to execute their part of the agreed terms. It is the case of the petitioner that the respondents have not only refused to perform their obligations, but have also unilaterally implemented the MOFS in their favour by fraudulent means. Since the respondents have failed to transfer some immovable properties falling to their share, the petitioners were constrained to file the present application for execution of order dated 03.02.2011 passed by the Hon'ble Company Law Board Delhi, in CP No. 25 of 2009.

3. The Prayer made by the Petitioner in the Execution is as under:

a) to enforce and execute Order dated 03.02.2011 Passed by the CLB disposing of C.A No. 79 of 2011 in CP No. 25 (ND) of 2009 by taking on record the memorandum of family settlement dated 19.01.2011.

b) Direct the Respondent Group including the party of the third part of the MOFS, Party of the fourth part of the MOFS, the party of the fifth part of MOFS and confirming party No. 2 of MOFS to perform their respective legal obligations in terms of MOFS and to deliver/ hand over all the documents/deeds to the petitioner group including the deeds /documents as detailed in the present application within 15 days.

c) Restrain Mr. Vishwa Nath Respondent No. 4 and the other executants of MOFS from raising undue and frivolous demands outside the MOFS and direct the Respondent Group to fully implement the MOFS at the earliest.

d) Direct Mr. Vishwa Nath Respondent No. 4 to reimburse in full the stamp duty and transfer charges (along with interest) paid by petitioners for transfer of property 36 Hanuman Road New Delhi.

e) Direct the ROC to take actions against NBEIL and its working Directors for falsification and fabrication of records of the Company, illegal cancellation of shares held by GCL and its nominee, transfer of shares held by Late Shri Nath without following the law and illegal removal of the petitioners as Directors and other matters stated in the Complaint Dated 26.06.2013 filed by GCL.

4. The Petitioners have stated that the Respondents are entitled to comply with the following obligations mentioned in the below table, as per the terms of the MOFS:

Transfer of following shares held by Respondent Group in GCL & Nath Export Processing Ltd.

a) Respondents No. 4 & 5, Mr. Vishwa Nath, his wife Mrs. Poonam Nath and son Mr. Vidur Nath hold 37.47% of paid up share capital in GCL, allocated to petitioner Group vide clause 1.1 (i) of MOFS. Similarly Mr. Vishwa Nath and Mrs. Poonam Nath hold 0.10% paid up share capital in NEPL allocated to Petitioner Group vide clause 1.2 (i) of MOFS.

b) R-4 and his family members were to hand over the blank share transfer forms along with share certificates held by them in GCL & NEPL to Mr. Yogeshwar Nath or his nominee as per clause 1.1 (ii), (iii) and 1.2 (ii), (iii) of MOFS.

The terms of the MOFS and the status is given by the petitioners in the following table:

Entitlement of Petitioner Group under MOFS dated 19.01.2011

Item No.

Item description

From/To

Status

1

Factory A-24, Sector-4, Noida, UP

GCL to GCL

? No action was required.

2

Factory A-1, Sector-5, Noida, UP

NBEIL to GCL

? Transfer by respondent pending as per clause 1.1 (iv). ? 50% of transfer / registration expenses reimbursement pending as per clause 5.5.

3

Udaigiri (2 Flats) 14C & 96D Sector-34, Noida, UP

GCL to GCL

? No action was required.

4

Dhawalgiri Flat No. 19C, Sector-11, Noida, UP

Sri Nath to Petitioner Group

? Completed

5

Dhawalgiri Flat No. 32B, Sector-11, Noida, UP

NBEIL to GCL

? Transfer by respondent pending as per clause 1.1 (iv). ? 50% of transfer / registration expenses reimbursement pending as per clause 5.5.

6

Shivalik 106, Sector-35, Noida, UP

YogeshwarNath/GCL to YogeshwarNath

? No action required on respondent's part.

7

Devli Apartments (4 Flats) E-91, E-92, E-93 & E-96, DevliKhanpur, New Delhi.

NBEIL to GCL

? Transfer done

8

36, Hanuman Road, New Delhi.

Sri Nath to YogeshwarNath&AnjalaNath

? Completed by way of Gift

9

50/2-3, Hanuman Road, New Delhi. (50% as jointly owned by YogeshwarNath&VishwaNath)

VishwaNath to YogeshwarNath

? Transfer to YogeshwarNath ? Vacant possession to be given by VishwaNath pending. ? 50% of statutory dues pending from VishwaNath as per clause 6.2

10

35, Gandhi Market, New Delhi (50% as jointly owned by YogeshwarNath&VishwaNath)

VishwaNath to YogeshwarNath

? Completed on the basis of MOFS.

11

100, Bangla Sahib Marg, New Delhi (50% as jointly owned by YogeshwarNath&VishwaNath)

VishwaNath to YogeshwarNath

? Completed on the basis of MOFS. ? 50% of statutory dues pending from VishwaNath as per clause 6.2

12

Shri Sri Nath Farm Land, Khasra No. 244 to 247, Village Bhatti, Tehsil Mehrauli, Delhi

Sri Nath to YogeshwarNath

? Relinquishment deed from VishwaNath pending.

13

ShriYogeshwarNath Farm Land, Khasra No. 248, Village Bhatti, Tehsil Mehrauli, Delhi

YogeshwarNath to YogeshwarNath

? No action required.

14

Shares held by Mr. VishwaNath, Mrs.PoonamNath and Mr.VidurNath in General Commerce Limited.

Respondent Group to petitioner group

? Share transfer deed from all three pending as per clause 1.1(iii).

15

Shares held by Mr. VishwaNath, Mrs.PoonamNath in Nath Export Processing Limited.

Respondent Group to petitioner group

? Share transfer deed from all three pending as per clause 1.2(iii).

? Share transfer deed from all three pending as per clause 1.2(iii).

? NBEIL = Nath Brothers Exim International Ltd.

? GCL = General Commerce Ltd.

? NEPL = Nath Export Processing Ltd.

Entitlement of Respondent Group under MOFS dated 19.01.2011

Item No.

Item description

From/To

Status

16

Factory C-51, Sector-57, Noida, UP

NBEIL to NBEIL

? No action was required.

17

Factory C-32, Sector-57, Noida, UP

NBEIL to NBEIL

? No action was required.

18

Udaigiri (6 Flats)

NBEIL to NBEIL

? No action was required.

19

Low Cost Flat G0279, Noida, UP

NBEIL to NBEIL

? No action was required.

20

Low Cost Flat 141, Noida, UP

NBEIL to NBEIL

? No action was required.

21

Industrial Plot 12A, Ecotech Extension, Greater Noida, UP

NBEIL to NBEIL

? No action was required.

22

42 & 42/1, Hanuman Road, New Delhi.

NBEIL to Vishwa&PoonamNath

? No action required on petitioner's part.

23

102, Bangla Sahib Marg, New Delhi (50% as jointly owned by VishwaNath&YogeshwarNath)

YogeshwarNath to VishwaNath

? Completed on the basis of MOFS.

24

IX/4695, Street No. 6, Old Seelampur, Delhi.

NBEIL to NBEIL

? No action was required.

25

Residential Plot A-17, Sector-61, Noida, UP

VishwaNath to VishwaNath

? No action was required.

26

Late Smt. Uma Kumari Farm Land, Khasra No. 208, Village Bhatti, Tehsil Mehrauli, (50% as jointly owned by YogeshwarNath&VishwaNath)

YogeshwarNath to VishwaNath

? Relinquishment Deed from Petitioner

27

ShriVishwaNathFarm Land, Khasra No. 209 to 215, Village Bhatti, Tehsil Mehrauli, Delhi

VishwaNath to VishwaNath

? No action was required.

28

Shares held by GCL in NBEIL to be surrendered.

GCL to NBEIL

? Shares unilaterally cancelled by respondent group without surrender by GCL.

? NBEIL = Nath Brothers Exim International Ltd.

? GCL = General Commerce Ltd.

? NEPL = Nath Export Processing Ltd.

5. The Respondents have raised several contentions in their reply which are as follows:

a) The Petitioners have not fulfilled their promises in respect of the personal movable assets of late father mentioned in Article 3.1 of MOFS.

b) Not handed over the 58.500 kg silver or payment in lieu thereof to the respondents which come to the share of the Respondents on allocation of Company, to R-2.

c) The Petitioner and GCL to handover all title deeds, books of Accounts, minute books etc. in their possession pertaining to NBEIL and to confirm that will hand over any such documents- if found in his possession in future.

d) GCL and its nominee, Ms. Anjala Nath are required to surrender the share certificates in respect of 12,300 shares held by them in NBEIL and to give a resolution of GCL to cancel these shares as per MOFS, also the corresponding investments of GCL in NBEIL along with the entries passed in the ledger of GCL signifying the cancellation of investment of GCL in NBEIL establishing end of holding/subsidiary relationship between two companies on the date of MOFS.

e) The petitioner has to issue a NOC and acknowledgement letter approving transfer of 62,700 shares in NBEIL to persons covered in respondent group.

6. The Respondents further submits that, this execution petition is misconceived devoid of any merit and liable to be dismissed in limine. During the course of arguments, ld. Counsel for the Respondents raised the plea that the said consent recorded by a court is a nullity as it lacked jurisdiction. It is submitted that the jurisdiction of the Hon'ble CLB was limited to company matters alone and therefore it was beyond the scope and jurisdiction of the Board to enforce the family settlement which involved properties and assets other than those belonging to the Company in a Consent decree. According to him, since the MOFS entails movable / immovable properties of the parties and not limited to the assets of the Company alone, the same could not be treated as a "consent decree" and is therefore unenforceable.

7. Ld. Counsel for the applicant / decree holder on the other hand has laid stress on the fact that a Consent decree cannot be impugned by the respondents at this stage of execution as the petition had been disposed off after taking the MOFS on record. The Petitioners and the Respondents are bound by the order of CLB which has to be implemented in its entirety..

Hence the contention raised by the respondent and in the execution application has to be dismissed.

Reliance is made by the Ld. Counsel for the decree holder /petitioners on a catena of judgements, wherein the Courts have observed that Family Settlements recorded in courts, including orders of the CLB are not only effectively and legally enforceable, but are to be treated at a higher pedestal than other settlement agreements.

8. This bench is conscious of the fact that it is vested the equitable jurisdiction. Disposing off petitions in terms of the Family settlement, MOFS, was within the competence and jurisdiction of the Board under sections 397-398 of the Act and to pass such orders as it thinks fit with a view to bring the disputes to an end. Therefore when the disputes are disposed off under a consent taken on record by

the Board, then it is not open to the parties to wriggle out of the same subsequently. Further, it is well settled that the orders made by the Board are at par with decrees passed in suits and are executable under section 634-A of the Act.

9. The Supreme Court while discussing the importance and validity of family settlements, in the matter of Manish Mohan Sharma and others vs. Ram Bahadur Thakur Ltd. and others, (2006) 4 SCC, arrived at the conclusion that the Company Law Board has the jurisdiction to execute such orders. Reliance is placed on the following paragraphs by the ld. Counsel for the petitioner / decree holder.

30.....Nevertheless once having agreed to particular terms of settlement which were incorporated in a decree, the parties concerned are bound to comply with the terms as may be interpreted by the executing court. Once the interpretation is done, the decree must be executed as interpreted.

31. The effort of the executing court must be to see that the parties are given the fruits of the decree. The mandate is reinforced when it is a consent decree and doubly reinforced when the consent is a family settlement......

32. It has been repeatedly emphasized in several decisions that family settlements are governed by a special equity and are to be enforced if honestly made. This would be so "even if the terms may have been agreed to on the basis of an error of the parties or originate in a mistake or ignorance of fact as to what the rights of the parties actually are, or of the points on which their rights actually depend." This because the object of an arrangement is to protect the family from long drawn out litigation and to bring about harmony and good will in the family.....

33. In our opinion both the Company Law board and the High Court erred in refusing to execute the order dated 19.08.1999 under section 634-A of the Companies Act. They have therefore failed to exercise the jurisdiction with which they were vested. The failure is heightened given the nature of the order they were hound to execute. They have erroneously proceeded upon principles applicable to contracts alone and have ignored the fact that the agreement between the parties had culminated in a consent order of the Company Law Board.....

10. The aforesaid principles are squarely applicable to the case in hand. Guided by the above, can this Bench arrive at any other conclusion but to hold that the resistance by the respondents / judgement debtors in executing the terms of the MOFS is a mere attempt to wriggle out of the same? This bench finds it highly reprehensible and grossly unjust that a respondent party gets free from the shakles of pending litigation and escapes adjudication by entering into a settlement, but after disposal of the case, has no compunctions in resiling from the commitment made. It would therefore be the bounden duty of the Court to ensure full compliance so as not to allow the party and the court for a ride.

11. The concept of a global settlement, moreso in family disputes, where the share holding may be held by members in more than 1 company, is not alien to company law. Such settlements often include other family properties as well. The Company Court is vested with the jurisdiction to entertain all such settlements with a view to bring an end to the disputes. Once having executed an MOFS in the nature of a global settlement, no party should be permitted to wriggle out of their commitments.

12. It is the case of the petitioners that the respondents availed the rights under the MOFS to their advantage. They have manipulated records to cancel the holding of GCL in NBEIL without the petitioners having executed a surrender or a transfer deed. They have even got the same recorded in their annual returns filed with the ROC. On the other hand, they have failed to hand over records, and relinquish their shares in the immovable properties or transfer the same to the petitioners in terms of the MOFS. Since the respondents are not coming forth to execute the terms under the MOFS, the same can be executed by this Bench by appointing an administrator for the sole purpose of executing the terms of the MOFS This Bench accordingly appoints Mr. Amit Bhagat Advocate (mobile no 9899791770) to ensure compliances of the terms of the MOFS by both the parties as per the table furnished by the petitioners. In the event of any clarification required, the MOFS shall be referred to. The Administrator shall be entitled to present the transfer deeds in respect of the immovable properties before the competent Sub registrar for their due registration. All charges borne by the petitioner in this exercise shall be recoverable from the Respondents in terms of the MOFS. This Bench finds that the property No. 36, Hanuman Road, New Delhi which was required to be relinquished by the respondents in favour of the petitioner, was already transferred by respondent No. 3, the deceased father of the petitioner during his life time apprehending that respondent No. 4 may not honour his commitments under the MOFS. The petitioner has prayed for reimbursement of the transfer charges incurred by him. This Bench is of the opinion that since the said property was gifted to the petitioner by his late father during his lifetime, the cause of action for relinquishing the interest in the said property was obviated. The petitioner therefore cannot seek the transfer charges incurred by him for securing his own interests.

13. The fees of the Administrator shall be determined by him to be borne borne by both the parties. The respondents' rights under the MOFS shall be executed on payment of their share of the fees.

14. The ROC shall take note of the illegal transfer of the petitioners / GCL's shares in NBEIL in favour of the respondents and cancel the same unless the Respondents produce a valid transfer deed /surrender deed executed in their favour by the petitioners.

15. The Ld. Administrator shall issue a notice to the parties granting them 7 days time to voluntarily comply with the terms of the MOFS, failing which he is authorized by this Bench to take all such steps as may be required to enforce the

terms of the MOFS including getting the transfer deeds executed and registered in favour of the petitioner as a process of the court.

16. Compliance report be filed with Bench by the Ld. Administrator within 3 months.

