



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 31.10.2023**

+ **O.M.P.(I) (COMM.) 338/2023 and I.A. 20761/2023 (exemption)**

IN THE MATTER OF

M/S MORGAN SECURITIES AND CREDITS PVT.

LTD.

..... Petitioner

Through: **Mr. Abhishek Puri, Ms. Surbhi Gupta,
Mr. Sahil and Mr. Amit, Advocates.**

versus

M/S GANESH BENZOPLAST LIMITED Respondent

Through: **Mr. Arun Kumar Varma, Sr.
Advocate with Mr. Ashwani Kr.
Dhatwalia, Ms. Iti Sharma, Mr.
Puneet and Mr. Aditya, Advocates.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 9 of the Arbitration & Conciliation Act, 1996 (hereafter, 'A&C Act'), petitioner (hereafter, 'MSCPL') seeks the following directions:-

"A. Restraining the Respondent Company from acting in furtherance to the Board Resolution passed on 04.09.2023 and Shareholders Special Resolution passed on 29.09.2023, with respect to the proposed issuance and allotment of Equity shares of the Respondent Company for placement of QIP, in any manner, whatsoever, directly or indirectly.



B. Direct the Respondent Company to make a Full and complete Disclosure of the terms of the proposed QIP by the Respondent Company to the Petitioner, by way of Affidavit.”

2. MSCPL has preferred the present petition in the context of Inter-Corporate Deposit Facilities (hereafter, ‘the ICD Agreement’) dated 14.02.2000 and 07.03.2000 extended by it to the respondent (hereafter, ‘GBL’) granting financial assistance. Disputes having arisen between the parties, the same were adjudicated by the Arbitral Tribunal resulting in an Award dated 09.12.2015 (later, corrected vide order 18.02.2016) (hereafter, ‘the Award’) in favour of MSCPL. While GBL filed its objections under Section 34 of the A&C Act vide OMP (COMM) 307/2016, MSCPL filed an execution petition seeking enforcement of the award vide OMP (ENF.) (COMM.) 108/2019. Both the petitions are pending consideration.

3. Post-passing of the Award, MSCPL approached this Court vide three successive petitions under Sections 9 of the A&C Act, details of which are as under:

A) OMP (I) (COMM) 62/2019

MSCPL sought restraint on GBL from proceeding in furtherance of the Resolutions passed by the company for demerger and slump sale dated 07.02.2019 proposed to be undertaken. The petition came up for hearing on 28.05.2019 when the Court noted the assurance by the counsel for the GBL that no final sanction of the scheme of merger/de-merger would be requested for from the National Company Law Tribunal till the next date of hearing. On the undertaking recorded on behalf of GBL to the aforesaid extent, the petition stood disposed of.



B) OMP (I) (COMM) 363/2020

By this petition, MSCPL sought restraint on GBL qua Resolutions passed for preferential allotment of shares pursuant to Share Sale and Purchase Agreement with one Stolt Rail Logistic Systems. Vide interim order dated 17.11.2020, GBL was restrained from acting in furtherance of the Resolutions. Subsequently, on 21.01.2021, the interim directions were modified and GBL was granted liberty to act on the aforesaid Resolutions subject to GBL depositing Rs.3 Crores with the Registrar General of this Court and further subject to not transferring, alienating or creating any encumbrance with respect of its immovable assets till further orders. The petition is pending consideration.

i) MSCPL challenged the order dated 21.01.2021 vide FAO (OS) (COMM) 17/2021. The appeal was disposed of after recording factum of parties reaching a settlement thereby securing the award amount, in following terms:-

“xxx

23. During the course of this appeal, the parties have found it prudent to find a solution by way of a settlement agreement, which has been recorded in the orders dated 02.02.2023 and 13.04.2023. In effect, the appellant has been secured, in some measure, by the pledge of non-sale of shares to the appellant's satisfaction and the parties shall, till further orders, be bound to the same. According to the appellant, it is secured only if the assets are kept intact and not made the subject of transfer or encumbrances etc.

24. Para 21 of the impugned order is ex facie an inquiry into the history of the working of the appellant with respect to: i) the time since when it had adopted the 36%





penal interest clause with monthly rest ii) the size of the business in terms of the said clause iii) how effective has the appellant been in recovering defaulted loan/advance/credit amounts and the said penal interests; and iv) all details of proceedings challenging such recoveries, the litigation history as well as the copies of the judgments and awards, as may have been passed in all such proceedings. It also obligates the appellant to bring on record details of other unrelated financial institutions, which may have adopted a similar rate of interest, as well as to furnish the Rules and Regulations applicable regarding the rate of interest in commercial contracts.

25. The court is of the view that the extensive inquiry embarked upon is, *ex facie*, not germane to the petition under section 9 of the Act. It is more in the nature of an inquiry into the money lending business and extends to furnishing of information relating to virtually every financial institution/entity in that domain. It also seeks to look into the rates of interest charged in various commercial contracts. Such information will be onerous, difficult and well-nigh impossible for the appellant to furnish. When the Arbitral Award has neither been stayed nor set aside, the appellant would logically seek to secure its interests in terms of the Award. It was not for the appellant to justify the quantum of the interim relief. The amount to be paid by the respondent stood already quantified in the Award, which still subsists. The examination, if at all, of the justification for such of the awarded amount or if it was a plausible view, would at best be an exercise in the section 34 petition. Whether the latter exercise is to be undertaken is for the learned Single Judge to determine. The enquiry envisaged in terms of para 21, in the section 9 petition for the interim relief, extends into a domain already occupied by section 34. Therefore, the information, as directed in para 21 of the impugned order would not be warranted.



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27. In view of the above, the appeal is held as being maintainable and is allowed. The information in para 21 of the impugned order will not be required to be furnished.

...
xxx”

C) OMP (I) (COMM) 324/2021

i) By this petition, MSCPL sought following directions:-

“A. Pass orders, restraining the Respondent from acting in furtherance of the resolution proposed at Item No.7 of the Notice of the Annual General Meeting of Respondent, to be held on 27.09.2021, in any manner whatsoever, whether directly or indirectly.

B. Pass orders, restraining the Respondent from transferring any assets and/or monies to GBL Clean Energy Private Limited and GBL Infra Engineering Services Private Limited or incurring any obligation/encumbrance to secure the dues of the said companies, in any manner whatsoever, whether directly or indirectly.”

ii) On 27.09.2021, the Court took note of the orders passed in the earlier petitions filed by MSCPL under Section 9 of the A&C Act and dismissed the petition with following observations:-

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6. The Court has considered the contentions advanced by the counsels for the parties. At the outset, the Court expressed reservation in intervening in the present proceedings as an execution petition [being





O.M.P. (ENF.) (COMM.) 108/2019] is pending. Section 9 Petition post the making of award is certainly maintainable, however, only till such time the award attains finality, and the decree is enforced. In the instant case, although an objection petition has already been filed under Section 34 of the Act [being O.M.P. (COMM.) 307/2016], however, there is no stay granted therein against the award. Thus, in effect, the award is executable and is indeed being enforced this Court. Therefore, the appropriate remedy for interim reliefs would lie in the execution proceedings.

7. Nonetheless, the Court has heard the counsels at length, specifically on the issue whether interim orders, as sought for in the present petition, are necessary.

8. GBL is already restrained from alienating its immovable assets and the order continues to be in force. Relevant extract of the Order dated 21st January, 2021 is reproduced hereunder:-

“20. ...GBL shall not transfer, alienate or create any encumbrance with respect; of its immovable assets without the permission of this Court till further orders...”

9. Earlier, when MSCPL had approached this Court seeking a restraint on the de-merger scheme, the Court had taken note of the undertaking given by the counsel and made it a part of the Section 9 order.

10. Now, GBL vide the proposed resolutions which are for conduct of its business. There is not going to be any transfer or alienation of the assets of GBL.....

11. For the enforcement of the award, the Decree Holder (MSCPL) would have the right to take recourse to any of the assets of the Judgment Debtor (GBL) and perhaps for this reason, the challenge to the de-merger proposal was

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also entertained by this Court. However, the proposed resolution falls purely within the purview of GBL's prerogative relating to conduct its the business, which the Court does not find any reason to interdict. It is well-settled that the Court does not interfere with the internal management of a company. A company is guided by the percipience of its board of directors and the internal affairs relating to the administration/ management of a company are left with members/board of directors of such company. The Decree Holder has the right to take recourse against the assets of the Judgement Debtor for recovery of its dues, but not to interfere in its business decisions. Thus, the interim reliefs sought in the present petition are beyond the jurisdiction of the Court under Section 9 of the Act, pending execution proceedings.

12. In view of the foregoing, the Court does not find any merit in the present petition and accordingly, the same is dismissed along with pending applications.”

- iii) The aforesaid order was challenged by MSCPL by way of FAO (OS) (COMM) 131/2021 and the same came to be disposed vide order dated 12.10.2021 on the statement given on behalf of GBL that MSCPL would be at liberty to execute the Arbitral Award against the judgment debtor as well as its wholly owned subsidiaries including GBL Chemical Ltd.
4. Coming back to the facts in the present case, it is submitted on behalf of MSCPL that the amounts under the Award are yet to be realised and the impugned Resolutions are in teeth of Clauses 12, 13 and 20 of the Agreement which prohibit GBL from increasing its paid-up capital, equity or preference, issuance of any bonus, rights shares or preferential allotment. To meet the objection about the legal propriety of filing the petition under

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Section 9 when the award has become ripe for execution, MSCPL switches to an alternate plea by contending that the impugned Resolutions have given rise to a new dispute, to redress which, MSCPL would be invoking a fresh arbitration. In essence, the present petition is seeking pre-arbitration interim protection order pending invocation of arbitration in relation to the fresh dispute. MSCPL justifies maintainability on the strength of decision in Dolphin Drilling Ltd. v. Oil and Natural Gas Corporation Ltd¹, Hero Wind Energy Pvt. Ltd. v. Inox Renewables Ltd. & Anr.² and Jyotsana Sinha v. Snigdha Paper and Packaging LLP & Ors.³

5. GBL, on the other hand, contends that the Award amount is sufficiently secured in terms of orders dated 02.02.2023 and 13.04.2023 passed by the Division Bench in FAO (OS) (COMM) 17/2021 as well as order dated 21.01.2021 passed in OMP (I) (COMM) 363/2020. The undertaking given on behalf of GBL and its promoter M/s Susram Financial Services & Reality Pvt. Ltd. is adequate and continues to exist. It is further submitted that interim directions thereby restraining the GBL were passed prior to the aforesaid orders passed by the Division Bench in FAO (OS) (COMM) 17/2021.

6. While doubting the maintainability of the present petition, learned Senior Counsel for GBL, on instructions, reassures that GBL in order to allay MSCPL's fears on dilution of value of the pledged share, would provide immediate top up out of remaining 2.5 crores unencumbered equity shares held by promoters in the GBL.

7. In the aforementioned backdrop of facts and various orders passed

¹ (2010) 3 SCC 267

² 2020 SCC OnLine Del 720

³ 2023 SCC OnLine Del 644





especially by the Division Bench, this Court is of the considered opinion that the award amount has been sufficiently secured by way of the shares pledged with the MSCPL of higher amount, with further undertaking that in case, the market value of the shares come down, GBL would provide the immediate top up of requisite value providing additional cover to MSCPL. Additionally, GBL has also been restrained from alienating its immovable assets vide order dated 21.01.2021. This Court also notes that once the award amount is sufficiently secured in the above manner, the decree holder/MSCPL cannot stifle the judgment debtor company/GBL from pursuing its day-to-day affairs and more particularly raising of funds by issuance of equity shares. In this regard, the Court has also enquired from the learned counsel for MSCPL as to the present-day market value of the pledged shares, to which it has been stated that the current market value of the pledged shares is more than the award amount. Further, assuming MSCPL's submission that the impugned Resolutions amount to a fresh dispute, the interim relief sought for in this petition is in the nature of final relief which MSCPL could claim before the Arbitrator for enforcement of Clause 12 of the Agreement.

8. There is no cavil on the decisions relied upon by MSCPL that there can be multiple disputes arising out of one agreement and filing of successive arbitral proceedings, but the same has to be seen in the facts of the individual case. Fresh dispute sought to be raised by the MSCPL relating to rights under Clause 12 is a substantive dispute in itself. However, *prima facie* it appears that Clause 12 was meant to secure the loan advanced by the MSCPL to GBL by ensuring that the capital structure of GBL is not altered, which may be detrimental to the prospects of recovery of the loan. Clause 12



does not empower the lender to interfere in the business of the borrower beyond its concern for the security of the loan. The loan amount, which has now crystallised into the arbitral amount, is fully secured in the manner discussed above. Under the circumstances, recourse to Clause 12 by the MSCPL does not appear to be justified. In any case, MSCPL has already taken recourse under Section 36 of the A&C Act to enforce the award. Needless to note that the objections filed by GBL against the award are also pending consideration.

9. In these facts, the petition is found to be meritless and is dismissed alongwith pending application.

**(MANOJ KUMAR OHRI)
JUDGE**

OCTOBER 31, 2023

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