IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: November 24, 2010
Decision on: November 29, 2010

W.P.(C) No. 7558 of 2010 CM No. 19670 of 2010

VIJAY SEKHRI & ORS. ..... Petitioners
Through: Mr. Gaurav Duggal with
Mr. Rakesh Sharma, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Jatan Singh, CGSC for UOI.
Mr. Amit Chadha, Senior Advocate with
Mr. Ramesh Singh, Mr. A.T. Patra and
Ms. Roopa Dayal, Advocates for R-3 & R-4.

AND
W.P.(C) No. 7559 of 2010 CM No. 19672 of 2010

VIJAY SEKHRI & ORS. ..... Petitioners
Through: Mr. Gaurav Duggal with
Mr. Rakesh Sharma, Advocate.

versus

UNION OF INDIA & ORS. ..... Respondents
Through: Mr. Jatan Singh, CGSC for UOI.
Mr. Amit Chadha, Senior Advocate with
Mr. Ramesh Singh, Mr. A.T. Patra and
Ms. Roopa Dayal, Advocates for R-3 & R-4.

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of the local news papers be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

JUDGMENT
29.11.2010

1. The challenge in these two writ petitions is to a common order passed on 20th July 2010 by the Company Law Board ('CLB') in CA No. 469 of 2009 in CP No. 78/ND/2009 (***Vijay Sekhri & Ors. v. Tinna Agro Industries Ltd***

& Anr.) and CA No. 468 of 2009 in CP No. 79/ND/2009 (***Vijay Sekhri & Ors. v. Tinna Oils and Chemicals Ltd. & Anr.***). By the impugned order common to both petitions, the CLB allowed the applications filed by the Respondents under Section 45 of the Arbitration & Conciliation Act, 1996 ('AC Act') in the above matters and referred the disputes arising out of both CP Nos. 78 and 79 of 2009 for arbitration as contemplated by the share holders agreements ('SHAs') dated 21st April 2004 and 28th February 1998 respectively.

2. In this Court while Writ Petition (C) No. 7558 of 2010 corresponds to CP No. 79/ND/2009 concerning Tinna Oils and Chemicals Ltd. ('TOCL'), Writ Petition (C) No. 7559 of 2010 corresponds to CP No. 78/ND/2009 and concerns Tinna Agro Industries Ltd. ('TAIL').

3. TAIL is a joint venture between ADM Interoceanic Ltd. ('ADM'), Respondent No. 4 in Writ Petition (C) No. 7559 of 2010, and Tinna Overseas Ltd. ('TOL'), Respondent No. 5 in Writ Petition (C) No. 7559 of 2010. TOCL is a joint venture between ADM and Tinna Finex Ltd. ('TFL'), Petitioner No. 3 in Writ Petition (C) No. 7558 of 2010.

4. On 28th February 1998, an SHA was executed between ADM, TFL and Bhupinder Kumar who was the principal promoter and share holder of TOCL as well as TFL. In terms of the said SHA, ADM subscribed to and acquired 60% equity shares of restructured TOCL subject to certain conditions specified in the SHA. The signatories to the SHA were ADM, TFL, Bhupinder Kumar, the Tinna Group and the TOL. Clause 13 of the

SHA dealt with transfer of shares and Clause 13.6 stated as under:

> "13.6 It shall be an express condition of any sale or transfer of the shares that the transferee shall undertake in writing to adhere to and be bound by the terms and conditions of this Agreement. No shares shall be transferred to any person who is directly or indirectly engaged in the business of processing oil seeds, refining of oils or sale of edible oils."

5. As far as the petition concerning TAIL, an SHA was entered into on 21st April 2004 between ADM, TOL, TAIL and Bhupinder Kumar whereby ADM acquired 75% of the total enhanced capital of TAIL and TOL was to hold the remaining 25%. Clause 13.6 of this SHA was identically worded as the SHA of 28th February 1998. This SHA dated 21st April 2004 was signed by ADM and TOL represented by its two Directors Vijay Kumar Sekhari and Anil Kumar Sekhari, the Tinna Group and Bhupinder Kumar.

6. The aforementioned two Company Petitions, i.e. CP No. 78 of 2009 and CP No. 79 of 2009, were filed by the Petitioners in Writ Petition (C) No. 7559 of 2010 and Writ Petition (C) No. 7558 of 2010 respectively before the CLB under Sections 397, 398, 402 and 409 of the Companies Act, 1956 ('Act') complaining of several actions of the ADM which according to them were in derogation of the covenants of the SHA. It was averred that the covenants of the SHA had been incorporated in the Memorandum of Association and Articles of Association of the respective companies, i.e., TOCL and TAIL but certain resolutions were passed contrary to those documents. In the said petitions, ADM filed applications under Section 45 of the AC Act seeking reference of the disputes to arbitration.

7. Several objections were raised by the Petitioner herein to the aforementioned applications seeking reference of the disputes to arbitration. One was that the applications themselves were not signed by any of the Respondents in the two Company Petitions or by any authorised signatory. Secondly, it was submitted that all the parties to the disputes, i.e., parties to the two Company Petitions were not signatories to the SHAs that contained the arbitration clause. Thirdly, some of the disputes did not emanate from the SHAs and therefore reference to arbitration was not permissible. Fourthly, it was submitted that disputes under Section 397 and 398 of the Act was not *per se* arbitrable as the Arbitrator has no jurisdiction to exercise powers conferred to the CLB under Section 402 of the Act.

8. By the impugned order, the CLB discussed the provisions of Sections 8 and 45 of the AC Act and correctly concluded that the essential requirements of reference of a dispute to arbitration was that the action should be brought before the judicial authority which CLB undoubtedly was. Secondly, the two SHAs had to contain an arbitration clause which, in fact, they did. One of the parties to the SHAs in each matter had applied to the CLB and these applications were made even before submitting a first statement on the merits of the disputes to the CLB.

9. As regards parties to the SHAs, the CLB analysed who the signatories were and concluded that the non-signatories were all related to the signatories to the SHAs. On the date of the respective SHAs, the non-signatories were not share holders in the respective companies and, therefore, could not be signatories to the SHAs. Further, the evidence and

allegations presented both by the signatories and non-signatories could not be separated. Lastly, the Petitioners themselves had claimed that the Respondents had committed a breach of the respective SHAs and, therefore, accepted the binding nature of the SHAs. The respective arbitration clauses formed an integral part of SHAs and, therefore, the disputes could be validly referred to arbitration. The CLB also placed reliance upon the decision of the Supreme Court in ***Everest Holding Ltd. v. Shyam Kumar Shrivastava (2008) 16 SCC 774***.

10. Mr. Gaurav Duggal, learned counsel appearing for the Petitioners reiterated the submissions made before the CLB. He submitted that some of the Petitioners before the CLB were not parties to the respective SHAs and, therefore, the disputes arising between them and the Respondents cannot possibly be referred to arbitration. Mr. Amit Chadha, learned Senior counsel appearing for the Respondents while adopting the submissions made before the CLB pointed out that in addition to the SHA in each of the cases, the parties had entered into a further amendment agreement on 26th June 2009 which was signed by ADM and the respective companies incorporating a recital that "the parties have decided that their mutual rights and obligations and the operation, administration management of the Company with effect from the Execution Date shall be governed by the Shareholders Agreement as amended/agreed by this Agreement."

11. It is pointed out by Mr.Chadha that the objection that the companies themselves were not party to the SHAs and, therefore, the disputes in relation to them could not be referred to arbitration is no longer valid in view

of the subsequent amendment agreements. In this context, Mr. Duggal referred to e-mail dated 13th August 2009 from Petitioner No.1 in both the writ petitions protesting against the amendment to the SHAs and retracting them although admitting that they had been duly signed by him during his visit to Geneva on 30th June 2009.

12. Be that as it may, it appears to this Court that those who were not signatories to the SHAs at the time when the SHAs were executed, became share holders subsequent to the SHAs and were bound by Clause 13.6 in each of the SHAs. The terms and conditions in both SHAs were integral to the nature of the shares and in terms of Clause 13.6 bound the subsequent transferees. With a majority in each company controlled by ADM itself, the question of the disputes involving the companies not being referable to arbitration does not arise as the stand of the companies would be no different from that of ADM. In fact, as long as the Petitioners are bound by the SHAs and Clause 13.6 thereof, they cannot possibly object to the disputes involving TAIL and TOCL being referred to arbitration.

13. Mr. Duggal then submitted that the Arbitrator could not possibly exercise the powers of the CLB under Section 402 of the Act. A complete answer to this submission is in the decision of the Supreme Court in ***Everest Holding Ltd***. In para 27 of the decision it was observed as under:

> "27. It is true that the arbitrator would have no power to order for winding up of the company as such power is conferred on and vested with a court as envisaged under the Companies Act in view of the decision of this Court in ***Haryana Telecom Ltd. v. Sterlite Industries (India) Ltd***. But in terms of the arbitration agreement, the

> arbitrator can always find out and adjudicate as to whether or not a company is functional and if it was not functional, in that event he could always find out the nature and status of its assets and can also issue direction and pass orders regarding dues and liabilities and also for taking recourse to appropriate remedy."

14. The other submissions of Mr. Duggal were only a reiteration of the submissions already made before the CLB. In regard to these submissions as well, this Court finds no reason to differ from the reasoning and conclusions arrived at by the CLB in its detailed impugned order.

15. These petitions are without merit and are dismissed as such with no order as to costs. The interim order stands vacated. The applications are disposed of.

S. MURALIDHAR, J

NOVEMBER 29, 2010
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