

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

CP 01/16

UNDER SECTION 241 OF CA/2013

IN THE MATTER OF STANDARD CHARTERED PVT & EQUITY MAURITIUS II LTD  
& OTHERS

Vs

FIREPRO SYSTEMS PVT. LTD.

Coram: 1. Hon'ble Shri.Ratakonda Murali, Member Judicial  
2. Hon'ble Shri.Ashok Kumar Mishra, Member Technical

Order delivered on 21<sup>st</sup> July, 2017

For the Petitioners: Shri Udaya holla, Sr. Advocate  
Shri Ananya Kumar, Advocate  
Ms. Pragya Chauhan, Advocate  
Ms. Nishta Paul, Advocate

For the Respondents: M/s. Converse Law LLP, Advocates  
Shri N.K. Dilip, Advocate  
Shri Vivek B.S., Advocate.

Per Hon'ble Shri Ratakonda Murali, Member (J):

**ORDER**

Company Petition was filed by the Petitioners against the Respondents alleging certain acts of oppression and mismanagement.

Among the main reliefs, the Petitioners have also prayed for certain interim reliefs. We are passing an order on Interim Relief No.1, since the Petitioners are contending that there is urgency to grant interim relief No.1.

It is the contention of the petitioners that if the interim relief No.1 is not granted, Respondent No.2 would proceed with the call option and the very purpose of filing this petition will be defeated and that the Petitioners will be put to irreparable loss.

The case of the Petitioners in brief is given hereunder for considering the interim relief No.1 as prayed.

The Petitioners are minority shareholders of Respondent No.1 Company. They together hold 27.03% of shares in the Respondent No.1 Company as against a collective investment of Rs.200 crores. The Respondents No.2 and 3 are the majority shareholders who conducted the affairs of the Company in a manner which is unfair to the interests of the Company and to the detriment of the Petitioners.

Basing on the representation of Respondents No.2 and 3 that they would improve the business of the Company if they are inducted in the Company and also promised to recover from the debtors an amount of Rs.436 crores due to the Company. Basing on such representation, the parties entered into an agreement and that the majority shareholders were given a call option on the shares of the Petitioners which would be effective from 01.10.2016.

It is further alleged that Respondents No.2 and 3 have deliberately mismanaged the affairs of the Company, suppressed the revenues of the Company and failed to recover the dues from the Debtors and as a result, the petitioners will receive nothing if call option is exercised. Further, the Petitioners alleged certain acts of mismanagement. The conduct of the affairs of the Company are done in such a manner by Respondents No.2 and 3 so as to prepare a ground for exit of petitioners from the Company. Therefore, they moved the main petition seeking certain main reliefs and interim reliefs.

The Interim Relief No.1 is as follows:

"Restrain the Respondents from exercising any rights under or in terms of the Call Option Agreements dated 29 May 2012 (as amended) entered into between the Petitioner Nos.1,2 and 3 respectively and Respondent No.2".

When the matter was being listed for filing of counter, the Respondents filed IA No.12/16 contending that this Tribunal has no jurisdiction to entertain this petition under Section 241, 242 of the Companies Act, 2013 and contended that if any dispute arises under





the call option agreement, the same is to be referred to the Arbitrator. Therefore, the respondents filed IA NO.12/16 under Section 45 of Arbitration and Reconciliation Act seeking to refer the dispute to the Arbitrator. When this petition was being posted for hearing, the petitioners prayed the Tribunal to pass an order on Interim Relief No.1 by restraining Respondent No.2 and 3 from proceeding further in pursuance of issuance of call option notice.

We have heard the counsels for petitioners as well respondents on Interim Relief No.1. The main contention of the learned counsel for petitioners that when the main petition was coming up for hearing on interim reliefs, this Tribunal by order dated 17.10.2016, gave liberty to the petitioners to approach the Tribunal to take up hearing on interim relief in the event Respondent No.2 exercises the call option on the shares of the petitioners.

We have seen the order of this Tribunal dated 17.10.2016. This Tribunal gave liberty to the petitioners to approach the Tribunal in case of urgency, i.e., in case of exercising of call option by respondents. Subsequently, the matter was being adjourned and arguments were being heard on IA No.12/2016.

Now the contention of the counsel for petitioners that Respondent No.2, on 03.06.2017 exercised the call option and issued notice to the Petitioners calling upon them to sell their shares to Respondent No.2 for "Zero" value. The petitioners have relied on Annexure-'A' to the memo of posting. We have seen the notice issued by Respondent No.2 to Petitioner No.3. It is stated in the notice dated 03.06.2017 that Respondent No.2 is exercising call option in pursuance of clause 4.1 of the Call Option Agreement in respect of the shares of 3,67,116 held by Petitioner No.3 and the consideration is "Zero" as determined in the consideration statement dated 03.06.2017 issued by M/s. S.R. Batliboy & Associates LLP. So, it is very clear that Respondent No.2 has exercised the call option in pursuance of the agreement.

The contention of learned counsel that the petitioners who have invested Rs.200 crores collectively in the first respondent company will get nothing for their investment if Respondents No.2 is allowed to proceed further in pursuance of call option notice. Therefore,

the learned counsel would contend that there is urgency in this matter and he prayed for granting interim relief No.1 restraining Respondents No.2 from proceeding further on the call option notice pending disposal of the main petition.



On the other hand, the counsel for respondents contended that the Petitioners are not entitled for the interim relief when an application I.A. No.12/16 under Section 45 of Arbitration and Conciliation Act, is pending. Counsel would contend that the interim relief cannot be granted when the jurisdiction of the Tribunal is questioned by the respondents. Counsel would further contend that the petitioners cannot be permitted to advert to new and subsequent facts and seek relief basing on them. The contention of the learned counsel for respondents that if any relief is sought basing on subsequent events, the petition is first to be amended and thereafter to seek for interim relief. However, in this case, the petitioners are seeking the interim relief based on a subsequent event without even amending the petition by incorporating the subsequent events. Thus, the respondents counsel has raised a technical objection for grant of interim relief. It is contended that no amendment petition is filed so far, and therefore, the petitioners are not entitled for any interim relief. The respondents further contended that there is no urgency in the matter and even if notice is issued, yet certain other steps are to be taken which involves a lot of time. Therefore, there is absolutely no urgency in passing the interim order. It is further contended on behalf of the respondents that an application under Section 45 of Arbitration and Conciliation Act, 1996 is pending bearing IA No.12/16 seeking for reference of the dispute for arbitration basing on the written contracts including the call option agreement. Thus, it is contended that when the jurisdiction of the Tribunal is questioned, the petitioners cannot seek interim relief till the question of maintainability of the petition is decided. Thus, the counsel for respondents have opposed the grant of interim relief No.1.

By order dated 17.10.2016, this Tribunal gave liberty to the petitioners to move the Tribunal in case of urgency over the exercise of call option agreement. It is not in dispute that the Respondent No.2 has issued the call option notice to the Petitioner No.3 over its shares



and the value to be given in respect of these shares is "Zero". This is very clear from the notice dated 03.06.2017 issued by Respondent No.2 to petitioner No.3. But, from the allegations made by the petitioners that Respondents No.2 and 3 have mismanaged the affairs of the Company and failed to recover the money due from the debtors running into several hundred crores of rupees. No doubt, IA No.12/2016 filed by the respondents under Section 45 of the Arbitration and Conciliation Act, 1996 is being heard to decide whether the dispute is to be referred to the Arbitrator or not. The interim relief No.1 prayed by the petitioners on the basis of averments made in the petition is to restrain the respondents from exercising any rights under or in terms of the call option agreement dated 29.05.2012, entered into between the petitioners and the Respondent No.2. The only development that has taken place after filing of this petition is the issuance of call option notice by Respondent No.2 to Petitioner No.3, which was apprehended by the petitioners at the very beginning of filing of the petition. Hence, the issuance of call option notice cannot be treated as a subsequent development. But, it is only in pursuance of the call option agreement dated 29.05.2017 which was anticipated by that petitioners that Respondent No.2 may at any time exercise the call option. Therefore, this interim relief is also sought for in the main petition. On the same set of facts as pleaded in the petition, the petitioners are now seeking the interim relief. Therefore, there is no question of any subsequent development calling for any amendment in the petition.

When an application I.A. No.12/16 filed by the respondents themselves under Section 45 of Arbitration and Conciliation Act, to refer to dispute to the Arbitrator is pending, then, there is no need for Respondent No.2 to issue call option notice. Having filed the application for referring the dispute to the Arbitrator, Respondent No.2 has gone to the extent of exercising the call option. The respondents ought to have waited till the disposal of IA No.12/16. But, in a hurried manner and when the matter is still pending for consideration in IA No.12/16, exercising call option is unwarranted. It is the contention of the petitioners that they will get nothing if the call option is exercised and it is also very clear from the notice issued by the Respondent No.2. The Respondents No.2 and 3 are in the management of the Company and



certain acts of oppression and mismanagement are alleged against them. Of-course, the respondents' contention that the petition does not lie and the allegation do not constitute oppression and mismanagement. All these points would be considered at an appropriate time..

When IA No.12/16 filed under Section 45 of Arbitration and Conciliation Act is pending, the respondents ought not to have exercised the call option.

The leaned counsel for petitioners has relied on the following decisions in support of his contention:

1. 1977 (1) Kar L.J. – Short Notes item No.132;
2. 1999 (1) Kar L.J. 577 – Smt. Rathnamma V. B.S. Srinivasa Gupta & Ors.
3. (2004) 8 SCC 488 – Maharwal Khewaji Trust (Regd.) Vs. Baldev Dass
4. ILR 2004 Kar 1148 – Raj Kumar V. Sardari Lal & Ors.

In Andhra Bank v. Official Liquidator – (2005) 5 SCC 75, the Hon'ble Apex Court in paras 33 to 35 held that prevailing conditions at the time of filing shall only be taken into consideration while passing order cannot be accepted. But, the Appellate Court, even can take subsequent events into consideration. Further, the Apex Court held the correctness of an equitable order may be judged upon taking into consideration the subsequent events. Thus, the subsequent events may also be taken into consideration for passing order.

In Venture India Properties P. Ltd. V. Capt. Manmohan Singh Kohli – (2011) 123 DRJ 520, the decision is on the proposition that Courts have inherent powers to do justice between the parties.

In 1999 (1) Kar. L.J. 577 - Smt. Rathnamma V. B.S. Srinivasa Gupta & Ors. (Headnote C and Paras 14 & 15) – the Hon;ble High Court of Karnataka has observed that the primary purpose of granting temporary injunction is to preserve property in dispute till legal rights of






parties are settled. It is issued to keep things in status quo pending litigation so that the suit is not rendered infructuous by unilateral act of party.

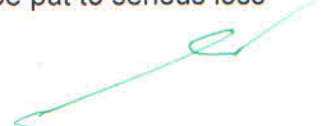
In 2004(8) SCC 488 - Maharwal Khewaji Trust (Regd.) Vs. Baldev Dass

(Headnote & Para 10) – the Hon'ble apex Court observed that the Court should not permit change of status quo which may lead to loss or damage being caused to the party who may ultimately succeed and may lead to multiplicity of proceedings .. ... If the claim for status quo is found to be baseless, Court may award damages (head note).

In ILR 2004 Kar 1148 – Raj Kumar V. Sardari Lal & Ors. – (para 5) the Hon'ble Apex Court held that the defendant cannot, by alienating property during the pendency of litigation, venture into depriving the successful plaintiff of the fruits of decree.

In this connection, the learned counsel also has relied on the decision of the Hon'ble High Court of Karnataka reported in 1977 (1) Kar.L.J. Short Notes, the Hon'ble High Court held that if there is a serious question to go for trial, the next question is whether greater injustice will be caused by grant of injunction or by declining to grant injunction.

We have considered the decisions cited above and also the principles laid down therein. The petitioners have alleged certain acts of oppression and mismanagement against Respondents No.2 and 3. The petitioners are minority shareholders. Exercising the Call Option by Respondent No.2 would result in serious loss to the petitioners and they will not get anything. When IA 12/2016 is filed by respondents for referring the dispute to the Arbitrator, then there is no point in invoking the Call Option provided under the Agreement. To maintain status-quo as existed at the time of filing the main petition, it is a fit case to restrain Respondent No.2 from further proceeding on Call Option notice dated 03.06.2017. By preventing the Respondent No.2 from taking further steps on the Call Option notice, no loss will be occasioned to the second respondent. Whereas, if the Respondent No.2 is allowed to proceed with the notice of Call Option, then it is the petitioners who will be put to serious loss



and hardship and there is a possibility of their exit from the Company, that too, even before deciding the application filed under IA No.12/16 for referring the dispute to the Arbitrator.

We are of the opinion that it is a fit case where the petitioners can be granted interim relief No.1.

This Tribunal grants interim relief No.1 in favour of the petitioners against the respondents restraining the respondents from proceeding further on the Call Option notice dated 03.06.2017 pending disposal of the main petition.



(ASHOK KUMAR MISHRA)  
MEMBER (TECHNICAL)



(RATAKONDA MURALI)  
MEMBER (JUDICIAL)

psp.