

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.**

CA Nos. 1 & 2 of 2016 ✓

In

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OF THE ORIGINAL

CP No. 84 of 2012 ✓

(TP No. 90/HDB/2016) ✓

Date of Order: 19.10.2016. ✓

Between:

1. Mr. Niranjnall Agarwal ✓
S/o Mr. Ramswaroop Agarwal,
Aged about 55 years
Occupation: Business,
R/o Flat No. 710, Varuna Block,
My Home Navdweepa, Madhapur
Hyderabad- 500084
2. Mr. Ashish Agarwal, ✓
S/o Mr. Niranjnall Agarwal,
Aged about 34 years
Occupation: Business,
R/o Flat No. 710, Varuna Block,
My Home Navdweepa, Madhapur
Hyderabad- 500084
3. Mrs. Uma Devi Agarwal ✓
W/o Mr. Niranjnall Agarwal
Aged about 52 years
Occupation: Business,
R/o Flat No. 710, Varuna Block,
My Home Navdweepa, Madhapur
Hyderabad- 500084
4. Mrs. Sandhya Garg
W/o Mr. Ashish Agarwal,



Aged about 32 years
Occupation: Housewife,
R/o Flat No. 710, Varuna Block,
My Home Navdweepa, Madhapur
Hyderabad- 500084

..... Applicants/Petitioners

AND

1. Durga Liquor India Pvt Ltd
D.N. 8-2-602/C
111, Hanging Gardens,
Road No. 10, Banjara Hills,
Hyderabad- 500034
2. Mr. Shailender Singh Bagga
S/o Mr. Gurucharan Singh Bagga,
Aged about 34 years
Occupation: Director of the Company Durga Liquor India Pvt Ltd
Plot No. 400,
Road No.14, Banjara hills,
Hyderabad – 500034
3. Mr Guru Charan Singh Bagga
S/o Nand Singh Bagga
Aged about 56 years
Occupation: Director of the Company Durga Liquor India Pvt Ltd
Plot No. 400,
Road No.14, Banjara hills,
Hyderabad – 500034
4. Mrs. Charanjit Kaur Bagga
W/o Mr. Gurucharan Singh Bagga,
Aged about 53 years,
Occupation: Director of Company Durga Liquor India Pvt Ltd
Plot No. 400,
Road No.14, Banjara hills,
Hyderabad – 500034



5. Mrs. Sanjog Kaur Bagga ✓
W/o Sri Shailender Singh Bagga
Aged about 32 years

Occupation: Director of the Company Durga Liquor India Pvt Ltd

Plot No. 400,

Road No.14,Banjara hills,

Hyderabad – 500034

...Respondents/Respondents

Counsel for the Applicants:

Sri R. Rajesh ✓

Counsel for the Respondents:

Sri Rahul Jain ✓

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judl)

Hon'ble Mr. Ravikumar Duraisamy, Member (Tech) ✓

ORDER

(As per Rajeswara Rao Vittanala, Member (Judl))

1. The Company petition bearing CP. No. 84 of 2012 was initially filed before the Hon'ble Company Law Board, Chennai u/s 397/398 and 402 of the Companies Act, 1956. The CP was finally disposed off by an order dated 31.05.2013, in terms of Memorandum of Compromise (MOC) dated 22.03.2013, however, subject to retaining the jurisdiction of Tribunal in respect of the two FDs deposited in the case and, parties are given liberty to apply only in respect of the two FDs. Accordingly, ✓



the Respondents of the CP (Durga Liquor India Pvt Ltd and Ors) have filed CA No. 1 of 2014 by interalia seeking a direction to pay a sum of Rs.19,52,540/-out of Rs. 38 lakhs deposited. The Petitioners of the CP have also filed two CA Nos 1 & 2 of 2016 by interalia seeking a direction to release an amount of Rs. 31 lakhs out of 62 Lakhs deposited and, to issue duplicate shares in dispute. Upon the constitution of NCLT bench at Hyderabad, the above 3 CAs stands transferred to this Bench as the subject matter falls under the jurisdiction of this Tribunal. Hence, we are deciding CA Nos. 1 & 2 of 2016 in the present case.

2. The brief facts leading to the filing of the present CA Nos. 1 & 2 of 16 are as follows:

- i. CP No. 84 of 2012 was filed by Mr. Niranjana Agarwal and 4 others u/s 397, 398, 402 of the Companies Act, 1956 by alleging several acts of oppression and mismanagement by the Respondents.
- ii. While the matter was pending, the Petitioners and the Respondents have decided to settle their disputes and differences amicably without recourse to further litigation. Accordingly, they have signed the Memorandum of Compromise dated 22nd March, 2013, which is hereinafter referred to as MOC. A copy of the same was also submitted to the CLB, Chennai. The sum and substance of the said compromise is that the respondents agreed to pay an amount of Rs. 12,06,00,000/- (Rupees twelve crores and six lakhs only) as full



and final settlement for a total consideration of the shares and management to the Petitioners. It is also one of the conditions that the petitioners have to indemnify against all or any losses, claims, charges, damages, etc. for a period upto 31.03.2013. It is further agreed that the Petitioners and the Respondents shall not file any cases against the company or against each other after the execution of the MOC.

- iii. There are two clauses in the said MOC namely clause 4 and 8. Clause 4 relates to deposit of Rs 62 Lakhs by way of cumulative joint fixed deposit initially for a period of 2 years with renewable clause till the dispute with Apollo Alchobev Private Limited (AAPL) regarding 36,443 shares of the Company was settled. And Clause 8 relates to deposit of Rs 38 lakhs by way of joint fixed deposit for a period of 1 year to meet any contingent liabilities that may devolve upon the Company and to settle the same.
- iv. The CLB by taking into consideration of the said MOC disposed off the CP 84 of 2012 by an Order dated 31.05.2013, after satisfying that all the terms and conditions of MOC except with respect to Clause 4 & 8 , were complied with by the parties. Accordingly, the jurisdiction of the CLB is retained till the terms of Clause 4 and 8 of the MOC are complied with.
- v. In pursuance to the liberty granted by the CLB in respect of the issue relates to clause 4 and 8 as mentioned above, the Petitioners of the CP 84 of 2012, have filed CA Nos. 1 & 2 of 2016. The



Respondents of CP (Durga Liquor India Pvt Ltd), which is referred herein after as DLIPL, have also filed CA No. 1 of 2014.

3. The Petitioners of CP have filed CA No. 1 of 2016 u/s 10E, 402, 403 of the Companies Act, 1956 read with Regulation 44 of the Company Law Board Regulations, 1991 by interalia seeking to direct the Bench Officer to handover a sum of Rs. 31 lakhs in favour of the Applicants out of the cumulative Fixed deposit of Rs.62 lakhs; to direct the Respondents not to register the share transfer with regard to the balance of 18,222 disputed shares.
4. The learned counsel for the Applicants/Petitioners, while reiterating the averments made in the applications submits that as per clause 4 of said MOC, an amount of Rs. 62 lakhs was placed in cumulative joint fixed deposit, which can be encashed by Agarwal group (Applicants/Petitioners herein) on successful retrieval and transferring the disputed shares of 36,443 in favour of Bagga Group (Respondents of CP) within a period of 7 days from such transfer of shares. For this purpose, maximum period of seven years from the date of MOC is granted to the Applicants/Petitioners.

In default, the above fixed deposit together with interest shall be encashed by the Bagga Group (Respondents). The learned counsel further submits that the Applicants came to know that the Respondents have given effect to transfer of 18,222 disputed shares

in favour of third respondent of CP namely, Mr. Gurucharan Singh Bagga, which is contrary to the MOC in question. On the alleged transfer of shares, which is stated to be contrary to the MOC in question. On the alleged transfer of shares, which is stated to be contrary to the said MOC, the Applicants/Petitioners herein claim Rs. 31 lakhs i.e. 50% out of the total Rs. 62 lakhs in the cumulative fixed deposit.

5. The Applicants/Petitioners have filed another CA No. 02 of 2016 under Regulation 44 of the Company Law Board Regulations, 1991 read with Section 10E of the Companies Act, 1956 by seeking a direction to issue duplicate share certificates of 36, 443 shares.

The learned counsel for the Applicants/Petitioners submits that they have already handed over all the shares together with irrevocable general Power of Attorney (GPA) and also blank share transfer deeds in respect of the disputed shares in question illegally held by Apollo Alchobev Pvt., Ltd. (AAPL). As a GPA holder of former director of first Respondent Company, the first Applicant herein, has also filed a suit on behalf of M. Ramaiah and 2 others, bearing OS No. 299 of 2004 before the Hon'ble Chief Judge City Civil Court (Second Additional Judge) against M/s Durga Liquors India Pvt Ltd, AAPL, etc by interalia seeking a declaration that the Plaintiffs are lawful owners of the suit scheduled shares i.e. totally 36,443 shares. The case is under trial now.

It is further stated, while the said suit was still pending, the AAPL came for a compromise of the issue involved and agreed for a total consideration of Rs. 20 lakhs to be paid on behalf of the Plaintiffs for full settlement of the said disputed shares. They have also addressed letter dated 22nd March, 2016 to Mr. Niranjana Lal Agarwal (first Applicant/Petitioner) to the first Respondent by inter alia submitting that they would hand over the shares in dispute at the time of the receipt of compensation of Rs. 20 lakhs. However, they have stated that the shares in question were lost. In these circumstances AAPL requested to see that duplicate share certificates issue to be issued by the Respondent No. 1 Company to complete the transaction. They have also sent an Indemnity Bond dated 5th February, 2016 for duplicate certificates to Durga Liquors India Pvt Ltd (first Respondent of CP) in which it is clearly mentioned that the disputed shares have been lost and they were not in their possession and also further declared that they have not executed any blank transfer of deeds signed by them either to dispose of or pledge, assign any interest to any person. They have also declared in clear terms in the indemnity bond that they are absolute owners of shares in question and undertakes to surrender those original shares, in case, if they are found. As such, they requested to issue duplicate share certificates in question.

6. The Respondents have filed a counter dated 12th March, 2016 by denying that the allegations made in the applications are false and



baseless and, alleged that the applicants are harassing them with various vexatious applications, proceedings, etc. They further submitted the original, physical share certificates in dispute are in custody of AAPL, though defective ownership on those shares had been eventually transferred in two parts to the respondents No. 3 as per MOC dated 22.03.2013. They denied the alleged transfer of 18,222 shares in favour of Respondent No. 3 and the contention is a concocted one without any iota of evidence. They stated that only share transfer deeds in respect of the disputed shares were handed over to them as per the MoC and the entire 100% shareholding of the company shall vest with the respondent No. 1 company upon payment of Rs. 12,06,00,000/- to the applicants. So the Applicants cannot have any right over the disputed shares and on other hand, they are under the obligation to retrieve those shares and hand it over to Respondents and then claim the joint fixed deposit of Rs.62 lakhs. The other contentions made by the applicants are also denied. They further contended transfer of disputed shares is possible only after the original share certificates are handed over to the respondents. Hence, they sought for dismissal of both the CAs.

7. The Applicants have also filed rejoinder in June, 2016 rejecting the contentions of the respondents by justifying their claim and prayed to allow the applications as prayed for.



8. The learned counsel for the respondents, while reiterating the averments made in their reply, have further stated that without complying with the terms and conditions of MOC specifically with reference to clause 4 and 8, they cannot file the present applications and they are devoid of merits and liable to be dismissed.
9. We have heard Shri R.Rajesh the learned counsel for the applicants and Shri Rahul Jain Learned Counsel for the respondents, we have carefully perused the various contentions raised in the respective company applications and also the documents filed in its support.
10. It is not in dispute that the issue raised in the company application was not adjudicated by the CLB, but it was disposed of by an Order dated 31.05.2013 in terms of the MoC dated 31.05.2013. However, the jurisdiction of CLB is retained till the terms of clause 4 and 8 of MoC are complied with. In the present CAs, clause 4 is relevant to decide the issue. As per clause 4 of MoC, the original fixed deposit certificates bearing No. 952193 dated 30.05.2013 of Union Bank of India, Ramkote, Hyderabad was deposited with the Bench Officer of CLB. Agarwal group (applicants herein) can encash the said fixed deposit with interest, on successful retrieval and transferring disputed 36,443 shares in favour of Bagga Group within a period of 7 days from such transfer of shares. And the Respondents should fully co-operate for the



same. In case the Petitioners (Applicants herein) not succeeding in court of law and not possible to retrieve the disputed shares from AAPL, within a maximum period of 7 years from the date of MOC, the said FD amount with interest shall be encashed by Bagga Group and Agarwal Group should cooperate fully in this regard without any demur. Further stated, that in case, Agarwal Group able to retrieve the said shares, at a later date, the same shall be transferred to Bagga Group and Bagga Group shall pay the encashed amount on the above FD together with same rate of interest without demur to the applicants herein.

11. It is not in dispute that neither of the parties has fulfilled the said conditions to claim the above fixed deposit amount. However, as stated above, there is a compromise between the applicants and the AAPL for a total consideration of Rs. 20 lakhs to return the disputed shares. However, AAPL now contends that the original share certificates in dispute are lost beyond recovery. So the Applicants herein as well as AAPL are requesting the first respondent company to issue duplicate share certificate so as to complete the transfer of disputed shares to the concerned respondent as per the MOC. Since the main issue about the drawal of said FD is going to be resolved, it is not necessary to consider the issue of releasing half of said FD separately.

12. As stated above, the AAPL has already addressed a letter dated 22nd March, 2016 to Mr. Niranjana Lal Agarwal requesting to apply to Respondent No. 1 Company for issue of duplicate equity shares in question. An indemnity bond dated 5th Feb, 2016 was also submitted to Durga Liquor India Pvt Ltd by AAPL with an undertaking to indemnify in all respects of the disputed shares. AAPL has also passed a resolution at its meeting of Board of Directors held on 05.02.2016 by authorizing the Company to make an application to M/s Durga Liquors India Pvt Ltd for issue of duplicate certificates in question and, to execute an indemnity bond in favour of M/s Durga Liquors India Pvt Ltd.
13. It is not in dispute that the parties themselves have settled their disputes amicably and the CLB like an arbitrator disposed of CP in terms of MOC. Since the issue relating to disputed shares in question was not settled at the time of MOC as Suit was also pending, the said FD was kept with the Registry of CLB till the issue is settled. Now, as stated above, the issue in question was resolved with the AAPL and by accepting for a total compensation for Rs. 20 lakhs in return for disputed shares. It is not in dispute that proper share transfer deeds and indemnity bond are already executed by the applicants/petitioners and AAPL also on its part executed an indemnity bond and make a request for issue of duplicate certificate through a proper board resolution of the company.



14. As per MOC, original disputed shares have to be retrieved and transferred to the respondents. Since there is no such possibility as the original shares were lost by AAPL, the only alternative for the respondents is to accept the statement of AAPL that it has lost shares in question and completed the transaction in alternative way. So it would be appropriate for the AAPL to lodge a police complaint with the concerned Police Station intimating it about the loss of shares in question beyond recovery and, get a certificate to that extent from the police station. Since, the shares in question, either original or duplicate, are ultimately to be surrendered to first respondent company, there is no useful purpose to be served in directing the respondents to issue duplicate certificates to AAPL and then they should be surrendered to the Respondents through the applicants/petitioners.
15. In view of the above facts and circumstances of the case and, in order to put an end to the litigation in question, we do hereby direct the Applicants /Petitioners herein to ask the AAPL to lodge a police complaint with the concerned police station about the lost of original share certificates of 36,443 shares of Respondent No.1 Company (DLIPL), beyond recovery and, get a certificate to that extent and also submit it along with necessary indemnity bond as required under applicable rule/law in the present situation, to the respondents. The Applicants are also directed to take appropriate action to withdraw all

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suits pending against the respondents and submit necessary proof to them. After compliance of the above directions by the applicants, the Respondents are directed to give no objection for encashment of FD N952193 dated 30.05.2013 of Union bank of India, Ramkote, Hyderabad for an amount of Rs. 62 lakhs . After receiving necessary documents showing compliance of the above directions from both the parties, the Registry of NCLT is directed to return the said original Fixed Deposit receipt to applicants/petitioners. We further declare that by virtue of the above actions of the applicants that the transfer of above disputed shares deemed to be conclusive for all legal purposes. With the above directions, both CA Nos 1 & 2 of 2016 stands disposed off. No order as to costs.

Sd/-

Ravikumar Duraisamy**Member (Tech)**

Sd/-

Rajeswara Rao Vittanala**Member (Judl)***V. Annapoorna***V. ANNA POORNA**
Asst. DIRECTOR
NCLT, HYDERABAD - 68