

HYDERABAD BENCH AT HYDERABAD.

CA No. 1 of 2014

In

CP No. 84 of 2012

(TP No. 90/HDB/2016)

Date of Order: 19.10.2016

Between:

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

...Applicants/Respondents

And

1. Mr. Niranjnlal 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. Niranjnlal 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. Niranjnlal 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

..Respondents/Petitioners

Counsel for the Applicants :

Sri Rahul Jain

Counsel for the Respondents :

Sri R.Rajesh

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 accordingly given liberty to apply for release of the same. 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 with CLB. The Petitioners of the CP have also filed two CA Nos 1 & 2 of 2016 by inter alia seeking a direction to release an amount of Rs. 31 lakhs out of Rs. 62 Lakhs deposited with CLB 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 No. 1 of 2014 in the present case since other CA Nos 1 & 2 of 2016 are disposed off by separate order today.

2. The brief facts leading to the filing of the present CA No 1 of 14 are as follows:

- i. CP No. 84 of 2012 was filed by Mr. Niranjan 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 of CP have agreed to pay an amount of Rs.12,06,00,000/- (Rupees twelve crores and six lakhs only) as full and final settlement of the shares and management of



the first Respondent Company to the Petitioners. It is also one of the conditions that the petitioners of CP have to indemnify the Respondents against 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 AAPL regarding 36,443 shares of the Company was settled. Clause 8 relates to deposit of Rs 38 lakhs by way of cumulative 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 after 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 and this Application is subject matter in the present case.

3. CA No. 1 of 2014 was filed u/s 10E, 402, 403 of the Companies Act, 1956 read with Regulation 44 of the Company Law Board Regulations, 1991 by interalia seeking a direction to break Cumulative Joint Deposit of Rs. 38 Lakhs and to pay them a sum of Rs. 19,52,540/- under clause 8 of MoC stated supra.
4. We have heard Sri Rahul Jain, learned counsel for the Applicants and Shri R. Rajesh, learned counsel for the Respondents, and carefully perused all the pleadings made in the applications and material papers filed in support of their pleadings.
5. The learned counsel for the Applicants, while reiterating the averments made in the application further submits that as per clause 8 of said MOC, Rs. 38 lakhs was deposited in cumulative joint fixed deposit namely, Mr. Shailendra Singh Bagga(Respondent No. 2) and Mr. Niranjanlal Agarwal(Petitioner No1.). Original FD No. 952194 dated 30.05.2013 of Union of Bank of India, Ramakote. And the FD was directed to keep under the safe custody of Bench Officer until further orders. The deposit was made to meet any contingent liabilities that may devolve upon the Company.



6. The learned counsel further submits that the applicants came to know that certain liabilities were devolved upon the first applicant company, which was not disclosed by the Respondents at the time of compromise. He stated that APBCL issued a debit note to the Company intimating that they have debited an amount of Rs. 19,52, 540/- to cover up the past liabilities of the company to previous years 2011-12 and 2012-13, and the same was adjusted against the earnest money deposit paid by the first applicant company to APBCL. He contended that the said amount is required to be released out of the said Fixed Deposit. He has further stated that the Applicants came to know an act of nepotism by the Respondents in nominating one Sri Giris R. Gupta, to enjoy the privileges and the facilities of Nizam club, Hyderabad, of which DLIPL is a corporate member. Sri. Gupta was never associated with the Company, but he was paid salary. He further contended that the Company was incurring huge expenditures for the Membership/nomination for Sri R. Gupta in Nizam club. Sri Gupta also made claim regarding non-payment of salary till February 2013. ✓

7. The Respondents have filed a detailed counter dated 11th October, 2014 by denying all the allegations and averments made in the application. They stated that the present claim of Rs. 19.52 lakhs is outside the purview of clause-8 of MOC, which states that the FD amount of Rs 38 lakhs would cover to settle any claims of undisclosed, unsecured ✓

creditors of the company not disclosed by Agarwal Group, if any upto 31.03.2013 only.

However, the present deductions of Rs. 19.52 lakhs by APBCL was not a claim made on or before 31.03.2013 since it was made for the first time only by a debit note dated 12.05.2014, issued by APBCL and the applicants were parties to all the transactions and agreements between the Company and APBCL.

So far as the nomination of Girish R. Gupta, as a member of Nizam Club is concerned, it is stated that the Company has not paid any amount towards his nomination to Nizam Club and the Respondents have also obtained no claim letter from Sri Gupta. Ultimately, it is stated that the Company has to collect the said sum of Rs 19.52 lakhs from the respective sub-lease of the companies as per agreement and tender conditions, and it cannot be treated as undisclosed liabilities and cannot be deducted out of the fixed deposit of Rs 38 lakhs lying with the Bench Officer.

8. The learned counsel for the respondents further submitted that they have filed CA No. 5 of 2013 in CP No. 84 of 2012 under Regulation 17 and 44 of CLB Regulations 1991, praying the CLB to direct the Respondent to comply with the order of CLB dated 31.05.2013 in returning the collateral given by the applicant to the bankers and settle the statutory dues and other third party dues and other third party dues, which have been incurred during the directorship of the Applicants/Petitioners. After

hearing the case, the CLB dismissed the CA by an order dated 8th November, 2013 as frivolous, vexatious and abusing the process of the Bench.

Aggrieved by the said order, the Petitioner of the CP have filed CA No. 21 of 2013 before the Hon'ble High Court of A.P and the CA was disposed off by an Order dated 26th June, 2014 by observing that the findings rendered in the Order under appeal shall not bind either parties.

Hence, the learned counsel for the respondents prayed the Tribunal to dismiss CA under reply as devoid of merits and consequently sought to release the FD of Rs. 38 lakhs immediately to them with interest.

9. It is not in dispute that the issues raised in the company Petition was not adjudicated by the CLB, but it was disposed off by an Order dated 31.05.2013 in terms of the MOC dated 22.03.2013. However, the jurisdiction of CLB is retained till the terms of clause 4 and 8 of MoC are complied with. In the present CA, clause 8 is relevant to decide the issue. As per clause 8 of MOC, the original fixed deposit certificates bearing No. 952194 dated 30.05.2013 of Union Bank of India, Ramkote, Hyderabad for an amount of Rs 38 lakhs was deposited with the Bench Officer of CLB. And the same is in joint names of Mr. Shailendra Singh Bagga (Respondent No. 2) and Mr. Niranjana Lal Agarwal. The said deposit was meant to meet any contingent liabilities that may devolve upon the Company and to settle any claims of un-disclosed, un-secured creditors of the Company, which were not disclosed by Agarwal Group,



if any upto 31.03.2013. If no liability devolves upon the company before that date, the entire FD amount along with accumulated interest should go to the Account of Agarwal Group and Bagga Group should fully co-operate for the same.

10. Though the applicants raise two claims/liabilities as referred to above, the respondents did not agree that those claims/liabilities come under the clause 8 of MOC as mentioned in their reply stated supra. Since the CLB has not adjudicated the main issue and disposed off the case in terms of MOC by both the parties and almost all conditions of MOC are already complied with by mutual understanding, it would be inappropriate to go into the veracity of the claims made in the present application. As stated in the MOC, both the parties have settled their issues amicably and the present issue cannot be decided in isolation in the present case and it would be against the spirit of the terms and conditions of MOC. Therefore, we are of the view that it may not be desirable to clash on insignificant sum of Rupees One Crore (Rs62 lakhs + Rs 38 lakhs) out of total settlement of Rs 12.06 Crores.

11. It is not in dispute that the issue raised in the present application is not part and parcel of pleadings in the main Company Petition No. 84 of 2012 which was filed under Section 397, 398 and 402 of the Companies Act, 1956. However, we are considering the case on hand, under the

powers conferred on the CLB/NCLT under Section 402/242 of the Companies Act, 1956/2013. It is not in dispute that the entire management of the Company vests with the Applicants/Respondents herein and thus both the parties are aware of the terms and conditions of business dealings with APBCL, and it is not desirable to quarrel on small issues like the present one. It is relevant to point out clauses 24 & 25 of MOC dated 22.03.2013, which are extracted as below

Clause 24 – “All parties agree to co-operate with each other on a best endeavours basis to carry out all acts and execute all deeds and documents and do any activities, incidental or ancillary hereto, for the purposes of fulfilling the terms of this Memorandum of Compromise both in letter and spirit, without any demur.”

Clause 25 – “All parties unconditionally agree that the CP No 84 of 2012 pending before the Hon’ble Company Law Board, Chennai is to be disposed off in terms of this Memorandum of Compromise.”

12. The other issue relating to the disputed shares under clause 4 was already settled/compromised with AAPL and today we have disposed off two connected CA Nos 1 & 2 of 2016 by separate orders.

13. In view of the above facts and circumstances of the case and, in order to put an end to the litigation in question, by exercising the powers conferred on the CLB/NCLT under Section 402/242 of the Companies Act, 1956/2013, we suggest both the parties to settle the issue relating



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the FD for Rs 38 lakhs in the same spirit as agreed to in their MOC. After submission of their settlement over the issue by both the parties, we hereby direct the Registry of NCLT, Hyderabad Bench to release FD No. 952194 dated 30.05.2013 of Union Bank of India, Ramkote, Hyderabad for an amount of Rs. 38 lakhs as per their settlement proposal. With the above directions, CA No. 1 of 2014 stands disposed off. No orders as to costs.

Sd/-

Ravikumar Duraisamy

Member (Tech)

Sd/-

Rajeswara Rao Vittanala

Member (Judl)

V. Annapoorna
V. ANNA POORNA
Asst. DIRECTOR
NCLT, HYDERABAD - 68

