

BEFORE THE
NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, KOLKATA

CA No.1145/2014
In CP No. 49/2014

Ms. Manorama Kumari
Hon'ble Member (J)

*In the matter of the Companies Act, 1956 : Sections 58, 59, 235, 397, 398, 399, 402, 403
and 406 of the said Act*

And

In the matter of : Dilip Kumar Par & Anr.

..... Petitioners

Versus

M/s. Tangerine Technologies Pvt. Ltd. & Ors

..... Respondents

Parties on Record :

Mr. Patita Paban Bishwal, Advocate		
Mr. Kuldip Mallick, Advocate		For the Petitioners
Mr. Sristi B Roy, Advocate		

Ms. Manju Bhutoria, Advocate		For the Respondents No. 1, 2 & 3
Mr. Saubhik Choudhury, Advocate		
Ms. Meenakshi Manot, Advocate		

Dates of Hearing : 23rd September, 2016

Date of Order : 6th October, 2016

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ORDER

The Company Application No. CA 1145 of 2014 has been filed by the respondent No. 1, namely, M/s. Tangerine Technologies Pvt. Ltd, the respondent No. 2 being Sajal Kumar Paul and the respondent No.3 being Paramita Paul (wife of Sanjit Kumar Paul) of the main Company Petition bearing No. 49 of 2014; stating inter alia that the petitioner/ non-applicant and the respondents No. 2 and 3 have arrived at a settlement on 20-04-2014 duly signed by all the parties and the same would be reflected from the minutes of the meeting held on 20-04-2014, a copy whereof is annexed and marked as annexure "A".

The Applicants/respondent(s) further submitted that settlement as recorded in the Minutes of the meeting dated 20-04-2014 is binding on all the parties. However, the petitioners have not taken any step to comply with the terms and conditions of settlement contained in the minutes of the meeting dated 20-04-2014 and further sought that in view of the said settlement the CP is liable to be rejected.

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The Applicants have further submitted that the then Company Law Board gave direction for filing affidavit on 8-4-2014 and when the

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matter was taken up on 28-08-2014 they placed a copy of the settlement as contained in the minutes of the meeting dated 20-04-2014 and submitted that though the parties have already settled their disputes as would be evident from the minutes of the meeting, but then even no withdrawal application had been filed by the petitioners/non-applicant. A copy of the said minutes of the meeting dated 20-04-2014 is annexed as annexure "B".

The petitioners/non-applicants have also filed their reply and they have submitted that the application is filed by the Applicant is bad in the eyes of law and made with an intention to delay the matter and harass the petitioner so as to deprive their rights. It is alleged that the application is mis-conceived and hence is required to be dismissed.

The Petitioners/non-applicants submitted that there was no settlement arrived at on 20-04-2014 or at any point of time as alleged by the Applicants/Respondents.

They further submitted that the minutes of the meeting dated 20-4-2014 is a document which is not binding as the same are not made as per law. More so, the respondent No. 1, 3 and 4 are not made party to the said alleged settlement/ minutes, hence the same is not binding upon them. Further, the said minutes record

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the presence of parties who are not parties to the present proceedings.

Therefore, such minutes cannot be termed as Settlement between the parties to the Company Petition. Since all of them are not signatories to the minutes of the meeting held on 20-04-2014, it is not binding and cannot be complied with.

Heard both side at length and also perused the record.

From the record, it appears that on 28-08-2014 the then Company Law Board on the submission of the parties, passed an order to report the final outcome of the settlement endeavoured between the parties and thereafter the matter is fixed on 11-09-2014.

It is further revealed from the records that on 11-09-2014 all the parties are present and it is reflected in the order that " since no settlement has been worked out between the parties, the pleadings are to be completed" which itself shows that parties are not agreed to the so called Minutes vis-a-vis settlement dated 20-04-2014 and consequent upon which the main CP proceeded.

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The then Bench also observed on 11-09-2014 that the direction for filing of reply and rejoinder was posted on 8-4-2014, no reply/rejoinder were filed and thereafter time is extended up to 10-11-2014 for final reply and rejoinder, if any, with further direction, that no further extension of time would be allowed, if asked for.

The order dated 11.09.2014 was passed in presence of both the parties wherein it has been clearly indicated that no settlement has been worked out between the parties but then even the applicants/respondents never challenged the order dated 11-09-2014 before any competent authority and that reaches to finality.

It is pertinent to note that after passing of the order dated 11-09-2014, wherein it is clearly indicated in the order by then CLB viz., "No settlement has been worked out between the parties, the pleading are to be completed" that itself is an embargo upon the applicant / respondent to re-agitate the same issue

Hence, in view of this fact, I have arrived at the conclusion that the order dated 11-09-2014 reaches to its finality and the respondents/applicant has never challenged that the settlement is still in existence and after lapse of such a long time, the respondents/applicants has reopened the issue by way of CA No. 1145/2014 and on the basis of the said minutes of the meeting

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dated 20-04-2014, have prayed for dismissal of the Company Petition. The Minutes of meeting cannot be called as settlement between the parties.

I have also gone through the citations of both the parties, but the facts and circumstances of the instant case is quite different. The applicants prayed for dismissal of the CP in view of the minutes of the meeting dated 20-04-2014 vis-a-vis settlement which as per their version, is a term of settlement between the parties.

The minutes of the meeting reflect fulfilment of certain conditions by the parties. Many of the signatories of the minutes of the meeting dated 20-04-2014 are strangers and were not made the parties in the Company Petition.

As a matter of fact, the conditions of the minutes are not fulfilled and/or complied with and when such conditions are not fulfilled, it cannot be said that the parties settled in between them.

In my opinion, the minutes of a meeting cannot become a settlement.

It is well settled principle that if the document or the letter relied on is constituting contract contemplating the execution of a further

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contract between the parties it is a question of consideration whether the execution of further contract is a condition or a term of bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transactions already agreed to, will indicate go through.

In the instant case, there are certain conditions as reflected from the minutes of the meeting dated 20-04-2014 which remained unfulfilled and as such, the same has no value and it cannot be said to be a settlement.

In my considered opinion, the Company Application No. 1145 Of 2014 has no force and the issue involved can also be agitated at the time of hearing of the main Company Petition.

Hence, CA No. 1145 of 2014 is rejected without any cost.

Interim order/orders, if any, passed earlier be vacated.

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MANORAMA KUMARI
MEMBER(J)