

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI**

**COMPANY EXECUTION APPLICATION NO. 92/C.1/2014  
IN  
CP 65/2001**

PRESENT : CHIEF JUSTICE M.M. KUMAR  
CHAIRMAN

(S.K. MOHAPATRA)  
MEMBER (T)

**IN THE MATTER OF: The Companies Act 1956(1 of 1956) Section 634A**

**AND**

**IN THE MATTER OF**

**M/S Aar Gee Board Mills Pvt Ltd**

**AND**

**IN THE MATTER OF Mr Girdhar Gopal Gupta & Ors**

**Petitioner**

**V**

**M/s Aar Gee Board Mills Pvt Ltd & Ors ...**

**Respondents**

**Present on behalf of the parties**

Mr. Rajiv Bahl, Advocate for the Petitioners  
Mr. S.P. Srivastava, Advocate for the Petitioners  
Mr. Brijesh Gupta, Advocate (for R-1)  
Mr. Ashish, Advocate (for R2-4)

**ORDER**

This is a Company Execution Application registered as 92(C-1)/2014 filed on 31<sup>st</sup> May 2014 under section 634-A of the Companies Act 1956 for enforcement of order dated 25<sup>th</sup> March 2004 passed by Company Law Board in CP No.65/2001. The following reliefs have been sought in the aforesaid Application.

- (a) Give directions to the Respondents to file an affidavit and thereby disclose all the assets of the Respondent No.1 company.
- (b) Appoint an independent valuer for fixing the valuation of shares so that the shares of each other could be purchased or sold as per the orders passed by this Hon'ble Board on 25<sup>th</sup> March 2004;





- (c) Direct the Respondents not to issue any further fresh equity shares of the Respondent No.1 Company, without the permission of this Hon'ble Board and during the pendency of the present application.
- (d) Pass ex-parte ad interim orders in terms of prayer© made above;
- (e) Pass such other or further(s) to which the Petitioners are also entitled to.'

2. Precisely, the admitted fact remains that the Petitioners( Gupta group) had filed CP No. 65/2001 under section 397 and 398 of the Companies act 1956 before the Company Law Board alleging oppression and mismanagement on the part of the Respondent (Garg group) . In the aforesaid CP 65/2001, three acts of oppression and mismanagement were highlighted which are as under:-

- (a) Illegal allotment of 9507 equity shares .
- (b) Appointment of Mr Parmanand, brother of Mr Guru Charan Dass Garg as the Additional Director with effect from 20<sup>th</sup> October 1994, return in respect of which was also filed with the Registrar of Companies on 20<sup>th</sup> August ,1998.
- © Removal of Mr Girdhar Gopal Gupta and Mr Ram Narain Gupta as Directors from the company on 16<sup>th</sup> September, 1998 without notice of any Board Meeting.

3. The Company Law Board finally decided the company petition No. 65 of 2001 vide order dated 25<sup>th</sup> March 2004.

4. In reference to prayer(a) regarding issuance of allotment of shares, the Company Law Board held that allotment of 5564 shares to the Garg Group were illegal and accordingly allotment of 5564 shares were set aside. In so far as allotment of remaining 3943 shares is concerned, benefit of doubt was given to the Garg Group on the ground that this allotment was within the knowledge of the Petitioner i.e. Gupta Group.

5. In respect of other two prayers, the petition was decided in favour of Gupta Group and it was held that the appointment of Mr Parmanand as Additional Director was invalid. Similarly removal of Mr Girdhar Gopal Gupta and Mr Ram Narain Gupta as Directors was also held to be illegal.

6. The aforesaid order dated 25.3.2004 of Company Law Board passed in CP 65 of 2001 was agitated before the Hon'ble Delhi High Court and subsequently





before the Hon'ble Supreme Court but was not interfered with by the superior Courts.

7. It is, therefore seen that the order of Company Law Board dated 25<sup>th</sup> March 2004 passed in CP 65/2001 has clearly attained finality.

8. The operative portion of the order dated 25<sup>th</sup> March 2004 which has since attained finality envisages as follows:-

*"Either party being equal partners is given liberty to buy or sell the shares of each other. Either party can approach this bench for fixing valuation of the shares on the base line of 1995 when company was closed after getting evaluation from the independent valuer and sell the shares".*

9. The petitioner in the present execution application No. 92/C-1/2014 have requested for execution/implementation of order dated 25<sup>th</sup> March 2004 passed by the erstwhile Company Law Board in CP 65/2001 with the main prayer in getting the value of shares evaluated from the independent valuer so that the share of each other could be sold or purchased by the parties in the light of the order dated 25<sup>th</sup> March 2004 which has attained finality.

10. The first objection raised by the Respondent is that the execution petition in question is liable to be dismissed on the ground of limitation because the same has not been filed within three years from the impugned order dated 25<sup>th</sup> March 2004. In this regard, it is seen that the impugned order of Company Law Board dated 25<sup>th</sup> March 2004 was challenged before the Hon'ble Delhi High Court and subsequently before the Hon'ble Supreme Court by way of Special Leave Petition. The SLP was finally decided by the Hon'ble Supreme Court on 2<sup>nd</sup> Feb 2009. It is also the case of the petitioner that during the pendency of Special Leave Petition, the Registrar of Companies Delhi had struck off the Respondent-I company M/s Aar Gee Board Mills Pvt Ltd as defunct. The Registrar of Companies in its notification No. ROC/Delhi/560(5)/SM/260 dated 31<sup>st</sup> May 2007 has notified that under sub section 5 of Section 560 of the Companies Act 1956, Respondent-1 company M/s Aar Gee Board Mills Pvt Ltd inter alia has been struck off from the Register of Registrar of Companies Delhi & Haryana w.e.f. 31<sup>st</sup> May 2007 and is dissolved. Accordingly, it is contended that the Execution Application could not have been filed as the Company was struck off from the Register of the Companies. Subsequently in a petition filed by Respondent before the Hon'ble High Court of Delhi, the name of M/s Aar Gee Boards Mills Pvt Ltd. was restored by the Hon'ble High Court of Delhi on 23<sup>rd</sup> September 2013. It is contended that the present Execution application was filed on 31<sup>st</sup> May 2014 after the name of the Company was restored by High Court.

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*[Signature]*



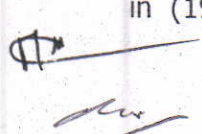
The Respondents have shown sufficient and adequate grounds for filing the present Execution application on 31<sup>st</sup> May 2014 and in the facts and circumstances aforesaid the objection on the ground of limitation is not tenable.

11. The Respondents have also taken technical objection alleging that the impugned order dated 25<sup>th</sup> March 2004 of Company Law Board is not a executable order. However, on perusal of the operative part of the order, it appears that not only it has attained finality but also the same is clearly executable. The Respondents have also alleged that all the persons of the Gupta Group have not filed the present application and on that account the application is liable to be dismissed. In this respect the Petitioners have affirmed that Shri Girdhar Gopal Gupta has been duly authorised by the entire 'Gupta group' to file the present Execution application. It has been contended that the special Power of Attorney dated 31<sup>st</sup> October 2014 given by the entire 'Gupta Group' has been annexed collectively marked as annexure "A"(copy) to the Rejoinder of the Petitioner dated 15<sup>th</sup> November 2014. In that view of the assertion of the Petitioners, this objection is also liable to be rejected.

12. An other Objection raised on behalf of the respondent is that a proviso has been added to section 634A which provides that the provisions of section 634A were not to apply on or after the commencement of the Companies(Second Amendment) Act 2002. According to Section 634A the order passed by the Company Law Board could be enforced by the Company Law Board (Now Tribunal) in the same manner as if it were a decree made by a Court in a suit. It has thus been argued that the amendments stand notified and therefore the power to enforce the order of Company Law Board is no longer available. In that regard learned counsel has placed reliance on a judgement of the Hon'ble Supreme Court rendered in the case of Md. Moiuddin v. Most Haliman Nisa & Ors AIR 2014(2) SCW 6372 in which it has been observed that

*" there is no such procedure prescribed to execute order of CLB particularly after proviso is added to Section 634A of the Companies Act 1956 vide Companies(Second Amendment) Act, 2002".*

13. Per Contra Learned Counsel for the Petitioner submitted that the matter before case in question was a contempt matter and the aforesaid observation was made not on merit and without any reason/discussion and therefore cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. In support of this contention he has placed reliance on the judgement of the Supreme Court in case of State of U.P. v Synthetics and Chemicals Ltd reported in (1991) 4 SCC139.





14. Learned counsel for the Petitioner then placed reliance on the observations made in *Deepak Lohia v Kamrup Developers P Ltd & Others* in (2010)157 Comp Cas 82 wherein Gauhati High court vide order dated 3/5/2010 has observed as follows:-

*"Section 634A of the Act provides how an order passed by the Company Law Board is to be enforced. It provides that any order made by the Company Law Board may be enforced by that board in the same manner as if it were a decree made by a court in a suit pending therein ... The proviso to the said provision stipulates that the said provision shall not be applied on or after commencement of the Companies (Second Amendment) Act 2002, which has admittedly not been enforced till date."*


15. Learned Counsel for the respondents has not been able to show that the Companies(Second Amendment) Act 2002, has ever been enforced rendering section 634 A of the Act inapplicable and unavailable to the Petitioner. In view thereof we reject the aforesaid objection.

16. Learned Counsel for the Respondents further relied upon a Press note No.2/2003 dated 4<sup>th</sup> April 2003 which interalia states that:-

*"For the sake of clarity. It is stated that the Notification bringing into effect section 6 of the Companies (Second Amendment) Act 2002(11 of 2003) will only set in motion all preliminary steps required for establishment of National Company Law Tribunal. Upon establishment of the same a separate Notification regarding constitution of NCLT will be issued. Till such time jurisdiction of Company Law Board will continue to remain unchanged".*

17. The Legislative intent was clearly to confer the execution power of erstwhile Company Law Board upon the Tribunal constituted under the Act. It is also pertinent to note that the order dated 25<sup>th</sup> March 2004 of Company Law Board has been affirmed by Single Bench and Division Bench of Delhi High Court and also by the Hon'ble Supreme Court of India. Implementation of the order dated 25/3/2004 is in the interest of the company in getting value of shares evaluated from the independent valuer so that the share of each other could be sold or purchased by the parties. This may remove the prevalent deadlock in the management and may get rid of the dormant position of the Company.

18. In view of the above and in the interest of justice, we do not see any reason to decline implementation of the order of Company Law Board dated 25<sup>th</sup> March 2004, which has since attained finality.

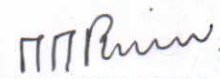


19 The operating portion of the order dated 25<sup>th</sup> March 2004 is reproduced below:-

*"Either party being equal partners is given liberty to buy or sell the shares of each party. Either party can approach this bench for fixing valuation of the share on the base line of 1995 when company was closed after getting evaluation from the independent valuer and sell the shares".*

20. In compliance of the above order, at the first instance, this bench is to fix value of the shares on base line of 1995 after getting evaluation from independent valuer.

20. Accordingly we appoint M/s Ashwani Jain & Associates, 103 Partap Bhavan, Bahadur Shah Zafar Marg, New Delhi-110002 as independent valuer. The valuer will fix his fees in consultation with the parties which will be paid by the parties in equal proportion. The parties shall assist the valuer in providing document and information as required by the valuer. The valuer shall expedite the determination of valuation of shares of Respondent No. 1 Company and may submit his report by the next date of hearing . List on

  
(CHIEF JUSTICE M.M. KUMAR)  
PRESIDENT

  
(S.K. MOHAPATRA)  
MEMBER (T)

(A.K. Arora)  
29.08.2016