

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM Nos. 17175/07(stay) & 9432/09 (vacation of stay)
in FAO(OS) No.500/2007

JAGATJIT JAISWAL & ANR.Appellant through
Mr. P.V. Kapur, Sr. Adv. with
Mr. Ashim Vachher &
Mr. Achal Gupta, Adv.

versus

KARAMJIT SINGH JASWAL & ANRRespondent through
Dr. A.M. Singhvi, Sr. Adv.
with Ms. Malini Sood, Adv.

% Date of Hearing: July 23, 2010

Date of Decision: August 20, 2010

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether reporters of local papers may be allowed to see the Judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the Judgment should be reported in the Digest? | Yes |

VIKRAMAJIT SEN, J.

1. By these Orders, we shall dispose of CM No.17175/2007 dated 12.12.2007 filed by the Appellants for appropriate orders, *inter alia*, restraining the Respondents from discontinuing their salary, perks and benefits; and for restraining the Respondents from transferring, pledging, creating any third party rights, parting with possession or otherwise dealing with in any manner whatsoever the shares detailed in the Annexure. On the first

date of hearing, that is, 14.12.2007, the following Order was passed:

Issue notice. Learned counsel for the respondents may file their Objections within six weeks. In the meantime order dated 25.8.2006 passed by the learned Single Judge shall continue to remain in operation subject to the appellants filing undertaking in this court that in case the appeal is eventually dismissed, the amount received by them towards, salary, perquisites and other benefits during the intervening period shall be refunded to the company.

Hearing of this application has been deferred from time to time.

2. CM No.9432/2009 was filed on 13.7.2009 by the Respondents seeking vacation of the aforementioned Order dated 14.12.2007. The gravamen of the application is that the substratum of the Appellants' case has vanished because their entire shareholding in Jagatjit Industries Limited as well as L.P. Jaiswal & Son Private Limited have been sold by them for a consideration of ₹ 36,50,00,000/-. The argument is that interim payment of salary and perks, passed on 14.12.2007, was predicated on the Appellants' status as shareholder as well as their erstwhile position in the Management of Jagatjit Industries Limited.

3. It is beyond the pale of the controversy that the sum of ₹ 36,50,00,000/- has been received by the Appellants and as a consequence thereof, the Appellants do not hold any shares in Jagatjit Industries Limited or L.P. Jaiswal & Son Private Limited. This Arrangement was arrived at before the Company Law Board (CLB), Principal Bench, New Delhi on 12.3.2009. The CLB, in its Order dated 12.3.2009, recorded the compromise between the parties as follows:-

4. In terms of the settlement, the Petition is dismissed with the directions that

1. The Respondents will buy the entire shareholding of the Petitioners in JIL and L.P. Jaiswal & Sons Pvt. Ltd., which as per the company's record is as follows:

Jagatjit Industries Limited

- | | | |
|-----|--------------------|------------------|
| i) | Petitioner Nos.1-3 | 28,95,524 shares |
| ii) | Petitioner Nos.4-5 | 28,98,588 shares |
- (and other members of JJ Group)

L.P. Jaiswal & Sons Pvt. Ltd.

- | | | |
|------|---|------------|
| i) | Petitioner No.1 | 300 shares |
| ii) | Petitioner Nos.2 & 3 | NIL |
| iii) | Petitioner Nos.4-5 | NIL |
| iv) | JJ and other members of
JJ Group
(Jagatjit Jaiswal) | 300 shares |

The above shares will be purchased on the following mutually agreed terms and conditions:

2. The above shares of APJ Group and JJ Group will be purchased at a value of Rs.36,50,00,000/- (Rupees thirty six crores fifty lacs) each.

3. The Respondent No.1 Company will pay for shares of Petitioners only by buyback of shares in cash and consequently the equity share capital of the Company will stand reduced to that extent. Payment will be made within 3 months from the date of the order of CLB.

4. All allegations of oppression and mismanagement and challenges to the preferential allotment both before this Hon'ble Board and before SEBI are withdrawn unconditionally by the Petitioners and JJ and the issue of shares with DVR are upheld as valid by the Company Law Board as being in accordance with the Articles of Association of the Company and provisions of the Companies Act. This direction and consent will take effect on the date of payment by the Respondent to the Petitioners in terms hereof.

5. All interim orders passed are vacated, and the Respondent will be entitled to sell/transfer/mortgage any immovable assets as it deems fit from the list annexed hereto as Annexure A. The proceeds thus realized will be deposited in a separate account and utilized for any other purpose only after the above payments are first made to the Petitioners. Also annexed hereto as Annexure B is a list of the properties which the Company does not propose to sell presently.

6. All parties will file an Affidavit of compliance of this order within 10 days.

7. It is agreed that this order will not affect any other pending proceedings between the parties except that

the allegations of oppression and mismanagement and challenges to the preferential allotment will not be raised by the Petitioners and JJ before any other Court/Forum.

4. It is worthwhile to emphasize that the aforementioned Settlement has occurred after the Admission of the present Appeal and the passing of the interim Orders dated 14.12.2007. Failure to specifically mention the effect of the Settlement on these interim Orders is conspicuous by its absence. The controversy would not have arisen had the Consent Terms dated 28.2.2009 (duly signed by the parties) clarified this conundrum. If the understanding was that the salary, perquisites etc. that were being received and enjoyed by the Appellants till March, 2009 were to continue, this ought to have been so spelt out by the Appellants. Conversely, the Respondents should have taken care to clarify that consequent upon the receipt of the said sum of ₹ 36,50,00,000/- by the Appellants, the Order dated 14.12.2007 would become ineffectual.

5. The situation is worse confounded because Clause 7 of the Consent Terms, which received the *imprimatur* of the CLB by way of paragraph 8 of the said Order, articulates the Agreement that –“the orders, presumably of the CLB, would not affect any other pending proceedings between the parties except that the

allegation of oppression and mismanagement and challenges to the preferential allotment will not be raised by the Petitioners and JJ (Appellant) before any other court”.

6. In the Order impugned in the Appeal, the learned Single Judge has comprehensively discussed the rival contentions of the parties with regard to Appellants’ Petition under Section 9 of the Arbitration & Conciliation Act, 1996 (A&C Act for short). The issue was whether Clause 9 of the Memorandum of Family Settlement (MOFS), dated 30.3.2000, amounted to an Arbitration Agreement. The conclusion of the learned Single Judge was that there was no binding or enforceable arbitration agreement between the parties and hence the Petition itself was not maintainable. In such a situation the question of granting the interim relief prayed for by the Appellants/Petitioners obviously did not arise. The Prayers contained in CM No.17175/2007 are in *pari materia* with the Prayers contained in the Petition under Section 9 of the A&C Act.

7. There can be no gainsaying that where the Respondents deny the existence of an Arbitration Clause, it will undeniably be open to the Petitioners to initiate appropriate legal proceedings in a Civil Court. There is always an awkward ambivalence felt by the Plaintiffs who may have filed a suit for injunction etc. as any favourable orders may be set to naught in the event the

Respondents assert the existence of an Arbitration Agreement. This is not the situation before us. If any doubt had existed, it was set at rest by the impugned Order of the learned Single Judge which accepted the Respondents' version that no Arbitration Clause existed. The learned Single Judge was concerned with the existence or absence of an Arbitration Clause and, therefore, was not called upon to discuss and decide whether the Appellants/Petitioners had made out a good case for the grant of the interim relief which is the same in the Petition under Section 9 of the A&C Act as well as in the Appeal before us. We are, therefore, principally concerned with the nodus whether the Petition under Section 9 of the A&C Act was maintainable and that was entirely dependent on whether an Arbitration Clause/Agreement existed between the parties. At the highest, if the decision in the Appeal were to be in the favour of the Appellants, the matter would be remanded to the learned Single Judge for taking a decision as to whether the injunction prayed for in the Petition under Section 9 of the A&C Act ought to be granted or refused.

8. In these circumstances, the interim Order passed on 14.12.2007, in our opinion, travels far beyond the contours of the Appeal before us. We cannot lose sight of this fact because, as we have already noted above, there was no impediment for

the Appellants to have initiated civil proceedings seeking the very same relief that they had prayed for in the subject Petition.

9. Having said that, we feel duty-bound to return a *prima facie* finding on the merits of the interim prayers made before us. The interim Order was passed much before the compromise between the parties. At this stage of the proceedings, it is preponderantly evident that the injunctive relief was predicated on the factum of the Appellants being principal/equal shareholders in L.P. Jaiswal & Son Private Limited and a substantial shareholder in Jagatjit Industries Limited. By arriving at the settlement before the CLB, they have sold their shareholding for a valuable consideration of ₹ 36,50,00,000/-. The effect of the sale is that the position prevailing on 14.12.2007 and thereafter till March, 2009 has altered altogether. Clause 7 mentioned above, no doubt, poses a problem because of ambiguous and ill-advised wordings. It seems to us that had the Appellants retained any part of their shareholdings in Jagatjit Industries Limited or L.P. Jaiswal & Son Private Limited, it was arguable that these Consent Terms would not impact upon the present litigation because of the use of the words 'oppression and mismanagement and challenges to the preferential allotment in the Consent Terms'. With the sale of the entire shareholding, the Appellants have been denuded

not only of rights flowing therefrom, but also of any perceived rights for salary, perquisites etc.

10. There is substantial substance and weight in the argument put forward on behalf of the Respondents that since Jagatjit Industries Limited is a public company, payments made pursuant to private compacts between the parties would not be rendered illegal. Judicial decisions should steer clear from ordaining a situation which runs contrary to law.

11. For these reasons, we recall the Order dated 14.12.2007. We dismiss CM No.17175/2007 and allow CM No.9432/2009. We make no order as to costs. We also note that the Appellants have furnished an Undertaking that they shall reimburse all payments received and perquisites enjoyed as a consequence of the Orders dated 14.12.2007. We, however, leave the issue open for decision when the Appeal is itself taken for Final Disposal.

(VIKRAMAJIT SEN)
JUDGE

(A.K. PATHAK)
JUDGE

August 20, 2010
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