

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4456 OF 2008
(Arising out of S.L.P.(C) No.2289/2007)

M/s. Premium Exchange & Finance Ltd. & Anr.

...Appellant(s)

Versus

M/s. S.N. Bagla & Co. & Ors.

...Respondent(s)

ORDER

Leave granted.

The question which falls for determination in the Civil Appeal is: Whether the Executing Court is competent to set aside, vary or modify the terms or contents of the consent decree passed on 26th April, 2002 in C.S.No.406/2000 by the High Court of Calcutta?

Briefly, it may be stated that six suits were filed in which the matter came to be settled vide consent decree dated 26th April, 2002. By the said consent decree, disputes between the parties herein, namely, Birla Group and Bagla Group, which disputes were subject matter of six suits and one winding-up petition, came to be settled. The consent decree was a composite decree for Rs.4,06,93,252/-. A further decree for a sum of Rs.13,14,042/- was also passed on the basis of a claim made in the winding-up petition. The details of the suits and the details of the execution applications (six in number) are mentioned at page 182 of

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For deciding this matter, we are required to examine the relevant clause of the consent decree. We quote herein-below clause-K of the Scheme, forming part of the consent decree, which reads as under:

“Both the Bagla Group and Texmaco Ltd. will take steps for successful and quick implementation of the Hydel Power Project. Upon commissioning of the Hydel Power Project scheduled for completion in or around September/October-2002, evaluation of the shares of the Neora Hydro Ltd. shall be made by Ernst & Young having its office at New Delhi – Ernst & Young shall be appointed to value the shares of Neora Hydro Ltd. as on the date of commissioning or June 30, 2003 whichever is earlier. The fees of Ernst & Young including all expenses incurred for the purpose of valuation of shares shall be paid by Bagla Group and Birla Group in equal proportion. The decision of Ernst & Young on the valuation of shares shall be final and binding upon both Birla Group and Bagla Group and none of the parties hereo shall be entitled to raise any objection in any manner with regard thereto. The terms of Reference to be made to Ernst & Young for valuation of shares of Neora Hydro Ltd. is set out in a Schedule attached hereto.”

Reading Clause-K quoted above, the position which emerges is that there was a basic dispute regarding valuation of shares of Neora Hydro Ltd. and, in order to put an end to the said dispute, the parties agreed that the decision of Ernst & Young on the valuation of shares shall be final and binding upon Birla Group and Bagla Group and none of the parties shall be entitled to raise any objection in any manner with regard thereto. The terms of Reference

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to be made to Ernst & Young for valuation of shares of Neora Hydro Ltd. were also set out in the Schedule attached thereto. After the consent decree came to be passed on 26th April, 2002, the appellants-decree holders herein filed six Execution Applications, one of which was G.A.No.2036/2005. In the said Execution Applications, the respondents herein filed their objections and initiated Section 47

C.P.C. proceedings inter alia claiming that the valuation of shares by Ernst & Young be set aside.

To complete the chronology of events, the learned Executing Court came to the conclusion that since there was lack of transparency in preparation of the valuation report by Ernst & Young and since the Valuer did not understand the duty cast upon them pursuant to the consent decree, the Court directed the said Valuers to value the shares once again upon taking both the parties to the dispute in confidence. The Executing Court further observed, not by way of a finding but by way of an observation, that it (Ernst & Young) might be acting on behalf of the decree holder in different capacity and, under the circumstances, its opinion may not be independent on the question of valuation. At this stage, it may be noted that this finding of the Executing Court has been set aside by the Division Bench. In the present matter, Civil Appeal is filed against the judgment of the Division Bench. The Division Bench has

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further compounded the issue by holding that the method adopted by Ernst & Young in the matter of valuation of shares, namely, Discounted Cash Flow (DCF) method was not the correct method and that the Valuer should have adopted Net Asset Value method. It accordingly directed the Valuer to submit another Report based on the NAV method of valuation.

We are of the view that, in the present case, Section 47 C.P.C. application made by the respondents herein was totally misconceived. It was not maintainable. The Executing Court had no authority to set aside, modify or vary the consent decree dated 26th April, 2002. We have quoted above Clause-K of the Scheme

annexed to the consent decree. Clause-K makes the valuation by Ernst & Young final and binding on the disputing parties. If, according to the respondents, the opinion of the Valuer was tainted, biased or that they had failed to do their duty as a Valuer, then, appropriate proceedings ought to have been taken by the respondents either for setting aside or modifying the consent decree before the Competent Court but not in the Executing Court which has no power to set aside, modify or vary the decree. It was not open to the respondents to move under Section 47 C.P.C. for the relief, namely, to have the valuation report set aside as that would amount to virtually setting aside a portion of the consent decree which, as

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stated above, constituted very core and the basis of the consent decree.

In our view, therefore, without going into the merits of the matter, we hold that Section 47 C.P.C. application made by the respondents was not maintainable and ought not to have been entertained by the Executing Court. Consequently, we set aside the impugned judgment of the Division Bench of the High Court as well as the Order passed by the Executing Court.

It would be open to the respondents to adopt such remedy, as it may be advised and as it may be open to them in law. Since we have held that the proceedings adopted by the respondents were totally misconceived and not maintainable, observations made in the impugned judgment by the Division Bench will not preclude the Competent Court from deciding the matter on its own merits, uninfluenced by such observations.

Mr.Dutta, learned counsel appearing on behalf of the respondents, states that the respondents would take appropriate steps within four weeks from today.

We grant the said request and direct that for four weeks the Execution Proceedings (six in number), particulars of which are given at page 182 of the paper book, shall not proceed. The appellants would be at liberty to proceed with the execution applications on expiry of the period of four weeks.

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Civil Appeal is disposed of accordingly with no order as to costs.

**.....J.
(S.H. KAPADIA)**

**.....J.
(B. SUDERSHAN REDDY)**

**New Delhi,
July 16, 2008.**