

SUPREME COURT OF INDIA

Mr. Vikram Bakshi

Vs.

Ms. Sonia Khosla (Dead) By Lrs.

(Surinder Singh Nijjar and A.K. Sikri JJ.)

08.05.2014

JUDGMENT

A.K. SIKRI, J.

1. A spate of litigation between the two groups depicts a severe fight between them where settlement appears to be a distant dream, at least as of now, with tough positions taken and on each and every facet/ nuance of the disputes, they have joined issues. However, we are happy to find consensual approach on one aspect at least viz. the future course of action that needs to be adopted in these matters which have landed in this Court (albeit against interim orders) as the proceedings are still pending at different levels either in the Company Law Board or in the High Court. This much positive stance, aimed at cutting the corners and edging out the niceties for early resolution of the main dispute between the parties needs to be commended. For this reason, apart from stating the controversy involved in each of the matters, our purpose would be served in stating the course of action which needs to be adopted, as agreed between the parties, without going into the nitty gritty of the issues involved. With this introduction we describe hereinbelow the nature of the dispute in these petitions.

SLP(Crl) No. 6873 of 2010

2. When the two parties joined together for collaborative business venture, it is but natural that the relationship starts with mutual trust and faith in each other. At the time of fostering such a relationship, they expect that with joint efforts in the proposed business venture, they would be able to achieve unparallel milestones, which would

otherwise be impossible with their individual efforts. The joining together is with the aim of making one plus one as eleven and not two. However, over a period of time, if due to unfortunate and unforeseen circumstances/ events, the relationship becomes bitter and the two collaborative partners fall apart, it results in a position where one minus one is not only reduced to zero but becomes negative. That perhaps is the story of the present litigation and if the disputes are not resolved early, either by adjudicatory process or amicably between the parties, the negative factor will keep growing and keep widening its fangs which may not be conducive to any of the litigants before us.

3. The respondents herein (hereinafter referred to as the Khosla Group) are the owners of the prime lands in Kasauli, District Solan, Himachal Pradesh. Legally, this land is owned by Montreaux Resort Pvt. Ltd. (MRL, for short) and share holding of the MRL was earlier exclusively held by the family members of the Khosla Group. It was their vision to develop this real estate into a tourist resort of repute. The Khosla group needed requisite finances and administrative expertise for this purpose. The petitioners (hereinafter referred to as the Bakshi Group) extended its helping hand. In fact it was conceived as a dream project of both the groups. For this purpose MOU dated 21.12.2005 was entered into between Mr. Deepak Khosla, Mr. R.P. Khosla, MRL and Mr. Vikram Bakshi. The project was joint venture between the Khosla Group and Mr. Vikram Bakshi wherein the Bakshi Group was to pump in the necessary finances and to take charge of administration by managing the entire project. MRL was the special purpose vehicle for the execution of the project. The MOU envisaged transfer of shareholding in MRL by Khosla Group to Vikram Bakshi on certain demands made by the latter to the former.

4. Pursuant to the MOU dated 23.12.2005, Mr. Vinod Surah and Mr. Wadia Prakash (nominees of Mr. Vikram bakshi) were appointed as Additional Directors of MRL. An agreement dated 31.3.2006 was entered, for executing the proposed project, between the respondent, Ms. Sonia Khosla, wife of Mr. Deepak Khosla, Mr. R.P. Khosla, MRL and Mr. Vikram Bakshi. The agreement recorded that 51% shareholding in the company had been transferred to Mr. Vikram Bakshi. The said agreement, inter alia, provided that:

(a) Land for the project shall be purchased in the name of MRL.

(b) The responsibility of development of lands, managing the project and arranging finances would be that of Mr. Vikram Bakshi.

(c) Khosla's would be paid a total consideration of Rs. 6.44 crores on completion of different milestones of which an amount of Rs. 3.30 crores was to be as a loan bearing interest @ 12% per annum.

(d) Khosla's would sell their entire shareholding in MRL to Mr. Vikram Bakshi.

5. For some reasons (both the groups have their own version in this behalf with blame game against each other) the project did not kick off and ran into rough weather with the sowing of the seeds of mutual distrust and lack of faith. It led to filing of a petition under Section 397 and 398 of the Companies Act by Ms. Sonia Khosla against Bakshi Group, though in that petition she impleaded some of the members of Khosla family also as respondents (may be performa respondents). Her allegation was that she held 49% shares in the Company which had been further reduced to 36% and that the affairs of the Company were being managed in a manner oppressive to the minority shareholders. In this petition she admitted that majority shareholding was with Mr. Vikram Bakshi.

6. The relief prayed for in the said petition, inter alia, was for passing an order for removal of the petitioners from the Board of Directors of the Company. Various miscellaneous applications came to be filed in the aforesaid petition. Notably among those was an application under Section 8 of the Arbitration and Conciliation Act filed by Mr. Vikram Bakshi. Mr. Vineet Khosla also filed an application claiming himself to be the Director of the Company and alleging that Mr. Wadia Prakash and Mr. Vinod Surah had ceased to be the Directors of the Company on 30.9.2006 since they were not confirmed in the AGM of the Company and, therefore, the subsequent appointment of Mr. Vikram Bakshi by the Board was bad in law.

7. Another significant development which took place was that on 18.12.2007 purported meeting of the Company was held by Ms. Sonia Khosla and Mr. Vinay Khosla wherein Mr. Deepak Khosla and Mr. R.K. Garg were appointed as the Directors of the Company and in this meeting the Board of the Company allotted 6.58 lakhs equity shares to eleven persons of the Khosla Group. It hardly needs to be mentioned that the Bakshi Group contends that this alleged meeting on 18.12.2007

was of illegally constituted Board. The Bakshi Group also taken the position that Mr. Wadia Prakash and Mr. Vinod Surah continue to be legally appointed Directors and likewise appointment of Mr. Vikram Bakshi by the Board of the Company was also as per law.

8. The Company Law Board (CLB) passed orders dated 31.1.2008 directing the maintenance of status quo with regard to the shareholding and the Directors of the Company as it existed on the date of the filing of the petition i.e. 13.8.2007. Observations were made in this order that the respondent-Sonia Khosla had tried to overreach the CLB by changing its composition and to increase the share capital of the Company.

9. Aggrieved by this order of the CLB, Mr. R.P. Khosla filed the appeal in the High Court of Delhi. However, he sought permission to withdraw the appeal. On 11.4.2008, noticing that the parties had agreed that C.P. No. 114/2007 is to be withdrawn and the status quo as on the date of filing of the said petition would be maintained, the said C.P. was dismissed as withdrawn. Sonia Khosla had also filed appeal against the same very order dated 31.1.2008 of the CLB. This was also dismissed by the High Court on 22.4.2008, albeit on merits. Both Mr. R.P. Khosla as well as Sonia Khosla filed Review Petitions seeking review of orders dated 11.4.2008 and 22.4.2008 respectively. These Review Petitions were also dismissed on 6.5.2008.

10. As the things stood at that stage, the effect of the aforesaid proceedings was that the order dated 31.1.2008 passed by CLB continued to operate. It is at that stage, the litigation started taking a different turn altogether.

11. Ms. Sonia Khosla filed an application under Section 340 of the Code of Criminal Procedure (Cr.PC) before the CLB alleging that forged documents were filed before the CLB. However, while this application is still pending before the CLB, in October, 2008 she filed another application under Section 340 Cr. PC in the High Court of Delhi on the same very grounds which were taken in the application before CLB. She sought prosecution of the petitioners under Section 195(i)(b)(ii) read with Section 340 Cr. PC alleging that the minutes of the AGM of the Company allegedly held on 30.9.2006 were forged. The reason given therein to approach the High Court was that she was forced to file the petition in the High Court as there was a complete inaction on the part of CLB on her application before it. She sought to rest her application on

sub-section 2 of Section 340 Cr. PC for its maintainability in the High Court. In this application orders dated 15.2.2010 are passed by the High Court and that order is the subject matter of challenge in the present proceedings. As can be easily discerned, the petitioners' main contention is that application u/s 340 Cr. PC is not maintainable.

SLP(C)No. 23796-98 of 2010

12. As mentioned above, in the Company Petition filed by Ms. Sonia Khosla interim orders dated 31.1.2008 were passed by the CLB directing the parties to maintain status quo with regard to shareholding and the Directors of the Company as it existed on the date of filing of the Company Petition i.e. 13.8.2007. The consequences thereof was not to give effect to the purported Board meeting of the Company on 14.12.2007 wherein Mr. Deepak Khosla and Mr. R.K. Garg were inducted as Directors and there was also an allotment of 6.58 lakhs equity shares to the persons of Khosla Group. Further, as mentioned above this order was challenged both by R.P. Khosla as well as Ms. Sonia Khosla by filing appeal in the High Court. Whereas appeal filed by Mr. R.P. Khosla was dismissed on 11.4.2008, the appeal of Ms. Sonia was dismissed on merits on 22.4.2008 and the Review Petitions filed by both of them were also dismissed on 6.5.2008. However, Mr. R.K. Garg who was taken as Director in the purported meeting held on 14.12.2007 also felt aggrieved by the order of the CLB. The effect of the status quo ante order was that he could not be treated as the Director of the Company during the subsistence of the said order. Mr. R.K. Garg challenged this order by filing a writ petition in the High Court of Delhi on 26.2.2008. In that writ petition orders of status quo were passed on 7.4.2008. However, on 9.4.2009, Mr. R.K. Garg (Respondent No. 1 herein) withdrew this petition as alternate remedy of filing appeal against the impugned order of the CLB is provided under Section 10 F of the Companies Act. After withdrawing the writ petition the Respondent No. 1 filed Co. Appeal No. (SB) 23 of 2009. In this appeal the company judge of the High Court has passed orders dated 13.4.2010 issuing notice in the said appeal, in the application for condonation of delay as well as in the stay application. Simultaneously, the High Court has also stayed the operation of the orders dated 31.1.2008 passed by CLB in so far as it has cancelled the shareholding and Directorship of Respondent No. 1. The instant present Special Leave Petition impugns the aforesaid order dated 13.4.2010 passed by the High Court, primarily on the ground that since the appeal is time barred till the delay is condoned there is no appeal in the eyes of law and, therefore, the High Court could not have passed interim orders.

13. Though the aforesaid two SLP's are the main proceedings before us, even in these proceedings Contempt Petitions and petitions under Section 340 Cr. PC are filed. Moreover, narration of the events disclosed above would demonstrate that main proceedings are the Co. Petition filed by Ms. Sonia Khosla under Section 397-98 of the Companies Act before the CLB where issues relating to the affairs of the Company are to be thrashed out. However, from this on case, number of other proceedings have sprung up. In fact, as of today more than 80 cases are pending between the parties. Most of these do not even touch the main dispute as they are in the nature of either Contempt Petitions, (Civil or Criminal) or petitions under Section 340 Cr. PC etc.

14. As stated in the beginning of this order, though it was going to be collaborative efforts of the two groups in developing a dream project and for certain reasons the parties have drifted apart, one legal action which was triggered with the filing of the Company Petition by Ms. Sonia Khosla before the CLB, has today swollen into an acrimony of gigantic proportion. With all these incidental and peripheral proceedings, which are allowed to take centre stage, the main dispute which is the subject matter of company petition before the CLB has taken a back seat. There have been attempts made on different levels, during court proceedings, to see whether there could be amicable resolution of the disputes between the parties. However, as on date these attempts have been of no avail.

15. According to us it would have been more appropriate for the parties to atleast agree to resort to mediation as provided under Section 89 if CPC and make an endeavour to find amicable solution of the dispute, agreeable to both the parties. One of the aims of mediation is to find an early resolution of the dispute. The sooner dispute is resolved the better for all the parties concerned, in particular, and the society, in general. For parties, dispute not only strains the relationship but also destroy it. And, so far as society is concerned it affects its peace. So what is required is resolution of dispute at the earliest possible opportunity and via such a mechanism where the relationship between individual goes on in a healthy manner. Warren Burger, once said:

The obligation of the legal profession is to serve as healers of human conflict (we) should provide mechanisms that can produce an acceptable result in

shortest possible time, with the least possible expense and with a minimum of stress on the participants. That is what justice is all about.

MEDIATION is one such mechanism which has been statutorily brought into place in our Justice System. It is one of the methods of Alternative Dispute Resolution and resolves the dispute in a way that is private, fast and economical. It is a process in which a neutral intervener assists two or more negotiating parties to identify matters of concern, develop a better understanding of their situation, and based upon that improved understanding, develop mutually acceptable proposals to resolve those concerns. It embraces the philosophy of democratic decision-making [Alfin, et al., *Mediation theory & Practice*, (2nd Ed. 2006) Lexis Nexis.

16. Thus, mediation being a form of Alternative Dispute Resolution is a shift from adversarial litigation. When the parties desire an on-going relationship, mediation can build and improve their relationships. To preserve, develop and improve communication, build bridges of understanding, find out options for settlement for mutual gains, search unobvious from obvious, dive underneath a problem and dig out underlying interests of the disputing parties, preserve and maintain relationships and collaborative problem solving are some of the fundamental advantages of mediation. Even in those cases where relationships have turned bitter, mediation has been able to produce positive outcomes, restoring the peace and amity between the parties.

17. There is always a difference between winning a case and seeking a solution. Via mediation, the parties will become partners in the solution rather than partners in problems. The beauty of settlement through mediation is that it may bring about a solution which may not only be to the satisfaction of the parties and, therefore, create a win win situation, the outcome which cannot be achieved by means of judicial adjudication. Thus, life as well as relationship goes on with Mediation for all the parties concerned and thus resulting into peace and harmony in the society. While providing satisfaction to the litigants, it also solves the problem of delay in our system and further contributes towards economic, commercial and financial growth and development of the country.

18. This Bench is of firm opinion that mediation is new dimension of access to justice. As it is one of the best forms, if not the best, of conflict resolution. The concept of

Justice in mediation is advanced in the oeuvres of Professors Stulberg, Love, Hyman, and Menkel-Meadow (Self-Determination Theorists). Their definition of justice is drawn primarily from the exercise of party self-determination. They are hopeful about the magic that can occur when people open up honestly and empathetically about their needs and fears in uninhibited private discussion. And, as thinkers, these jurists are optimistic that the magnanimity of the human spirit can conquer structural imbalances and resource constraints.

Professor Stulberg, in his masterful comment on the drafting of the Uniform Model Mediation Act, Fairness and Mediation, begins with the understated predicate that the meaning of fairness is not exhausted by the concept of legal justice. In truth, the more pointed argument advanced in the article is that legal norms often diverge quite dramatically from our notion of fairness and the notion of fairness of many disputants. Legal rules, in Stulbergs vision, are ill-equipped to do justice because of their rigidity and inflexibility. Professors Lela Love and Jonathan M. Hyman argue that mediation is successful because it provides a model for future collaboration. The authors state that the process of mediation entails the lesson that when people are put together in the same room and made to understand each others goals, they will together reach a fair resolution. They cite Abraham Lincolns inaugural address which proposed that in a democracy, a patient confidence in the ultimate justice of the people to do justice among themselves . . . is a pillar of our social order. Professor Carrie Menkel-Meadow presents a related point of view in making the case that settlement has a political and ethical economy of its own and writes:

Justice, it is often claimed, emerges only when lawyers and their clients argue over its meaning, and, in turn, some authoritative figure or body pronounces on its meaning, such as in the canonical cases of the late-twentieth century For many years now, I have suggested that there are other components to the achievement of justice. Most notably, I refer to the process by which we seek justice (party participation and empowerment, consensus rather than compromise or command) and the particular types of outcomes that might help to achieve it (not binary win- lose solutions, but creative, pie-expanding or even shared solutions).

Justice in mediation also encompasses external developments, beliefs about

human nature and legal regulation. Various jurists are drawn to mediation in the belief that litigation and adversarial warring are not the only, or the best ways to approach conflict. And how optimistically and skeptically mediators assess the capabilities of individual parties and institutional actors to construct fair outcomes from the raw material of human conduct.

Mediation ensures a just solution acceptable to all the parties to dispute thereby achieving win-win situation. It is only mediation that puts the parties in control of both their disputes and its resolution. It is mediation through which the parties can communicate in a real sense with each other, which they have not been able to do since the dispute started. It is mediation which makes the process voluntary and does not bind the parties against their wish. It is mediation that saves precious time, energy as well as cost which can result in lesser burden on exchequer when poor litigants are to be provided legal aid. It is mediation which focuses on long term interest and helps the parties in creating numerous options for settlement. It is mediation that restores broken relationship and focuses on improving the future not of dissecting past. It is based on an alternative set of values in which formalism is replaced by informality of procedure, fair trial procedures by direct participation of parties, consistent norm enforcement by norm creation, judicial independence by the involvement of trusted peers, and so on. This presents an alternative conceptualization of justice.

19. We have purposely stated the aforesaid advantages of mediation process in a hope that if not now, in near future the parties may agree on exploiting this mechanism to their advantage.

20. In this backdrop, Mr. Dushyant Dave, the learned Senior Counsel who appeared for Bakshi Group in SLP (C) No. 6873 of 2010 made a fervent plea before this Court to invoke the provisions of Article 142 of the Constitution and put an end to the entire litigation between the parties pending in various courts by putting the parties to such terms, which this court finds to be equitable for both the parties. On behalf of Bakshi Group he also gave the offer to surrender/give 50% of land to the Khosla Group and also an amount of Rs. 6.40 Crores, He even submitted that if this Court finds the said amount to be inadequate the Court would be empowered to fix higher amount. However, that was not acceptable to the other side as according to them not only they

are entitled to get the entire land which belongs to them but the amount of compensation which Bakshi Group is liable to pay to them would be many times more than the amount offered. Lest we be misunderstood, we are not blaming either side. We have indicated this, just to give a hint of the magnitude of imbroglio that has occurred between the parties. At the same time, as there are many cases of different nature pending in different courts it is not possible to exercise powers under Article 142 of the Constitution and to resolve all those cases. However, we feel sad about the state of affairs. The dispute which has arisen, out of MOU/ collaboration agreement between the parties is not unique or unprecedented. Such type of differences do arise. Day in and day out there are litigations of the kind which is filed in the CLB by Ms. Sonia Khosla. However, what is unprecedented is the monstrous proportions which this litigation has assumed with the multiplication of proceedings between the parties today which arose out of one petition before the CLB.

21. In fact, though the learned Senior Counsel for the parties had argued the matters before us at length on the previous occasions, at the stage of conclusions of the arguments, the learned Senior Counsel Mr. Cama appearing for Khosla Group suggested for an early decision of the Company Petition before the CLB as a better alternative so that at least main dispute between the parties is adjudicated upon at an early date. He was candid in his submission that the issues which are subject matter of these two Special Leave Petitions and arise out of the proceedings in the High Court, have their origin in the orders dated 31.1.2008, which is an interim order passed by the CLB. He thus, pointed out that once the Company Petition itself is decided, the issues involved therein namely whether Board meeting dated 14.12.2007 was illegal or whether Board meeting dated 30.9.2006 was barred in law would also get decided. In the process the CLB would also be in a position to decide as to whether minutes of AGM of the Company allegedly held on 30.9.2006 are forged or not and on that basis application under Section 340 Cr. PC which is filed before the Company Law Board would also be taken care of by the CLB itself. Learned Senior Counsels appearing for the Bakshi Group immediately agreed with the aforesaid course of action suggested by Mr. Cama. We are happy that at least there is an agreement between both the parties on the procedural course of action, to give quietus to the matters before us as well. In view of the aforesaid consensus, about the course of action to be adopted in deciding the disputes between the parties, we direct the Company Law Board to decide Company Petition No. 114 of 2007 filed before it by Ms. Sonia Khosla within a period of six months from the date of receiving a copy of this order. Since, it is the CLB

which will be deciding the application under Section 340 Cr. PC filed by Ms. Sonia Khosla in the CLB, High Court need not proceed further with the Criminal Misc. (Co.). No. 3 of 2008. Likewise the question whether Mr. R.K. Garg was validly inducted as a Director or not would be gone into by the CLB, the proceedings in Co. Appeal No. (SB) 23 of 2009 filed by Mr. R.K. Garg in the High Court, also become otiose.

22. The only aspect on which some directions need to be given are, as to what should be the interim arrangement. The Bakshi Group wants orders dated 31.1.2008 passed by CLB to continue the interregnum. The Khosla Group on the other hand refers to orders dated 11.4.2008 as it is their submission that this was a consent order passed by the High Court after the orders of the CLB and, therefore, this order should govern the field in the meantime..

23. After considering the matter, we are of the opinion that it is not necessary to either enforce orders dated 31.1.2008 passed by the CLB or orders dated 11.4.2008 passed by the High Court. Fact remains that there has been a complete deadlock, as far as affairs of the Company are concerned. The project has not taken off. It is almost dead at present. Unless the parties re-concile, there is no chance for a joint venture i.e. to develop the resort, as per the MOU dated 21.12.2005. It is only after the decision of CLB, whereby the respective rights of the parties are crystallised, it would be possible to know about the future of this project. Even the Company in question is also defunct at present as it has no other business activity or venture. In a situation like this, we are of the opinion that more appropriate orders would be to direct the parties to maintain status quo in the meantime, during the pendency of the aforesaid company petition before the CLB. However, we make it clear that if any exigency arises necessitating some interim orders, it would be open to the parties to approach the CLB for appropriate directions.

24. Both these petitions are disposed of in the aforesaid terms. All other pending I.As including criminal contempt petitions and petitions filed under Section 340 Cr. PC are also disposed of as in the facts of this case, we are not inclined to entertain such application. No costs.