



CHERAN PROPERTIES LIMITED V. KASTURI AND SONS LIMITED AND ORS. (APRIL 24, 2018, SUPREME COURT)

BRIEF BACKGROUND

Sporting Pastime India Limited (Respondent No. 2, “**SPIL**”) was a fully owned subsidiary of Kasturi and Sons Limited (Respondent No. 1, “**KSL**”). On 19 July 2004, K.C. Palanisamy (Respondent No. 3, “**KCP**”) entered into an agreement (“**Agreement**”) with KSL, SPIL and another company, Hindcorp Resorts Pvt. Ltd. (“**Hindcorp**”). In lieu of certain book debts due from SPIL to KSL, SPIL was to allot 240 lakh equity shares of Rs. 10 each fully paid up at par to KSL. Under the Agreement, KSL further offered to sell 243 lakh equity shares (representing 90% total paid up share capital) in SPIL to KCP or his nominees, for a consideration of Rs. 2,31,50,000, with the understanding that after assuming control of SPIL, KCP or his nominees would discharge the liabilities of SPIL towards KSL. It was further recorded in the Agreement that while KCP or his nominees were at liberty to transfer such shareholding in SPIL, such a transaction would be premised on the proposed buyer accepting the terms and conditions of the Agreement. The Agreement also contained an arbitration clause for the resolution of disputes.

KCP vide a letter dated 17 August 2004 (“**Letter**”), acting in its capacity as the authorised signatory of Cheran Properties Limited (the Appellant), requested that in accordance with the Agreement, the shares be transferred to itself and its group companies, including the Appellant. KCP also enclosed a Demand Draft for an amount of INR 2.43 crores along with the Letter towards share consideration in accordance with the terms of the Agreement. KSL duly transferred the shares to the Appellant and other specified parties, but KCP or its nominees did not follow through on their obligation to relieve certain guarantees issued by KSL, as required under the Agreement. Therefore, KSL invoked arbitration against KCP and SPIL, while Hindcorp was the impleaded as the second Claimant.

The Arbitral Tribunal passed an award dated 16 December 2009 (“**Award**”), whereby KCP and SPIL were directed to return the title documents and share certificates which had been transferred by KSL, and KSL would simultaneously return to KCP an amount of Rs. 3,58,11,000 (which was inclusive of interest on the amount earlier received by KSL).

KCP challenged the Award before the Madras High Court as well as the Supreme Court (“**SC**”), but the petitions were dismissed. Thereafter, upon the Award having attained finality, KSL approached the National Company Law Tribunal (“**NCLT**”) under section 111 of the Companies Act, 1956 for rectification of the register of SPIL to effectuate the re-transfer of shares from the Appellant to KSL. NCLT allowed the said application for rectification of the register. The said order of the NCLT was challenged before the National Company Law Appellate Tribunal (“**NCLAT**”), and was dismissed on the grounds that the Appellant being a nominee of KSP, held the shares on its behalf, and thus the Award could be enforced against it.

Thus, the Appellant moved the SC against the NCLAT’s order.

ISSUES AND FINDINGS

The two issues before the SC in this case were as follows:

- a) Whether the Appellant was bound by the Award, though it was neither a party to the arbitration agreement, nor a party in the arbitral proceedings;
- b) Whether proceedings for enforcement of the Award would be maintainable before the NCLT.

With respect to the first issue, the SC relied on the decision of *Chloro Controls Pvt. Ltd. v. Severn Trent Water Purification Inc.*¹ and the English “group of companies doctrine”, whereunder, depending on the nature of the transaction, an arbitration agreement which is entered into by a company within a group of companies may bind non-signatory affiliates, if the circumstances are such as to demonstrate the mutual intention of parties to bind both signatories and non-signatories. The SC stated that the law has evolved to recognise that modern business transactions are increasingly carried out through multiple agreements, and there may be intrinsically related transactions within a corporate group. In holding a non-signatory bound by an arbitration agreement, factors such as relationship of a third party to the signatory party, commonality of the subject matter, and the composite nature of the transaction must be taken into account.

The SC also relied on section 35 of the Arbitration and Conciliation Act, 1996 (“**Act**”), which states that an arbitral award “shall be final and binding on the parties and the persons claiming under them respectively”. The SC found that the Letter had contained a clear reference to the Agreement, and it was in pursuance of that Agreement that the group companies had agreed to purchase the

¹ (2013) 1 SCC 641

shares of SPIL. KCP had been acting in the capacity of the authorised signatory of the Appellant and therefore, the Appellant had clear knowledge and intention that it would be bound by the terms of the Agreement. Further, the Agreement itself provided that KCP could transfer shares to its nominees only on the express condition that the nominee would abide by the terms of the Agreement. Therefore, the SC found that the elements of section 35 of the Act were sufficiently met, and that the Appellant was claiming under KCP. In the circumstances, the Appellant would be bound by the Award, notwithstanding the fact that it was not a party to the arbitration agreement or proceedings.

Insofar as the maintainability of proceedings before the NCLT was concerned, the SC opined that the terms of the Award required transmission of the shares back to KSL, which could only be effectuated by rectification of the register of SPIL. The Court rejected the Appellant's submission that, in light of section 42 of the Act, the Respondent could only enforce the Award in Madras High Court, which had previously heard and decided applications under section 9 and 34 of the Act. The SC relied on its judgment in *Sundaram Finance Limited v. Abdul Samad*², wherein it was held that section 42 has no application to execution proceedings since the arbitral proceedings stand terminated once the Award is passed, and that proceedings for execution of an arbitral award can be initiated in the most apposite court – usually having jurisdiction over the assets. Transposing this principle to the case at hand, the only recourse available to KSL for giving effect to the Award was an application to the NCLT under Section 111 of the Companies Act, 1956 for the rectification of the register. Thus, the proceedings before the NCLT were held to be maintainable.

CONCLUSION

This judgment has now widened the scope of *Sundaram Finance* and has made it clear that an award-holder is not just restricted to the ordinary civil courts for enforcement of the Award and can approach even the NCLT for effective enforcement in appropriate cases.

However, the SC's finding that a third-party, which is not a party to the arbitration agreement nor to the arbitral proceedings, could be bound by the Award, may have serious ramifications. Although the SC relied on the fact that the Agreement clearly specified that any subsequent buyer would be bound by the terms of the Agreement, it is pertinent to note that there was no agreement between KCP and the Appellant which refers to the arbitration clause in the Agreement, as required under section 7 of the Act. The decision is yet another example of the pro-Award stance being taken by courts in India, and the possible intent behind this ruling may have been to ensure that the Award is not vitiated at the enforcement stage.

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**ECONOMIC
LAWS
PRACTICE**
ADVOCATES & SOLICITORS

MUMBAI
mumbai@elp-in.com

AHMEDABAD
ahmedabad@elp-in.com

NEW DELHI
delhi@elp-in.com

PUNE
pune@elp-in.com

BENGALURU
bengaluru@elp-in.com

CHENNAI
chennai@elp-in.com

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² (2018) 2 SCALE 467.