

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

Co.A(SB). No.15/2008 and Co. A(SB) No. 16/2008

Date of decision: 30th September, 2008

Search Enviro Ltd. ...

Appellant

Through: Mr. Jay Savla, Ms. Meenakshi Ogra and
Mr. Rajpal Singh, Adv. for the appellant

VERSUS

UPL Djai Power Ltd. and Ors.Respondents

Through: Mr. P. Gautam for Mr. Rakesh Tiku, Adv.
for the Dena Bank Mr. Sanjiv Bahl and Mr. Jai Bir Sharma,
Adv. For the respondents

GITA MITTAL, J(Oral)

1. The appellant has assailed an order dated 21st May, 2008 and 9th June, 2008 whereby the Company Law Board prohibited conducting meetings of the board of directors as well as general meetings of the UPL Djai Power Limited (herein 'the company' for brevity) by way of the present appeals. It appears that the respondent no. 2 is the promoter-director of the respondent no. 1 company while respondent nos. 2 to 6 are closely related in friendship and in relationship. The appellant has claimed that it is holding majority shareholding in the respondent no. 1 company and consequently most concerned and effected by its affairs.

2. The appellant and the respondent no. 2 had negotiated and entered into a shareholder agreement on 26th August, 2005 relating to share subscription and allotment of the respondent no. 1 company. The respondent no. 1 was awarded a project by the Ahmedabad Municipal Corporation. As certain disputes arose in relation to the running of the company, the appellant filed a petition under section 397 and 398 of the Companies Act, 1956 before the Company Law Board which was registered as Case No. 18/ND/2008.

3. It is submitted that during the pendency of the matter before the Board, the name of the appellant concern has changed from Search Enviro Ltd. to Tatva Global Environment Ltd. and that, upon all statutory compliances, the Registrar of Companies has registered the change in name and issued a certificate dated 19th June, 2008. Copy of this certificate has been handed over in court which is taken on record. The change in name shall bind all parties concerned including the present respondent.

4. Notice was issued in the matter which was taken up on 25th August, 2008. On consideration of the issues raised, it was pointed out that the disputes between the parties were not unsurmountable and that the directors/shareholders deserve to make an effort in the interest of the company and its promoters to resolve all issues. The parties were referred to explore the possibility of an amicable resolution of disputes by recourse to mediation before the Delhi High Court Mediation Centre.

5. A report has been received from the mediators of the Delhi High Court Mediation Centre dated 25th September, 2008 placing a settlement agreement arrived at between the parties before this court. The settlement is in writing and has been signed on behalf of the respondent by Mr. Dinesh P. Lalwani representing respondent nos. 1 to 8. The settlement was arrived at pursuant to a request made for reference of the matter to mediation. Several meetings were held during the course of conciliation and mediation between 1st September, 2008 and 25th September, 2008 in the presence of mediators. It appears that the settlement has been entered into voluntarily. There appears to be no legal impediment for taking the same on record. The undertakings given by the parties in the settlement deed are accepted. The parties shall remain bound by the terms and conditions set out therein.

6. Apart from the present proceedings, my attention is drawn to certain other issues which require to be noticed herein. It appears that Dena Bank is a secured creditor of the company. The present respondent no. 2 namely Mr. Dinesh Lalwani has been arrayed as the respondent no. 2 in the proceedings before the Company Law Board as well. The Dena Bank had filed an application vide diary no. 55/3 in the Com.Pet.No. 18(ND)/08. Copy of this application has been placed before me. I find that in this application the Dena Bank had inter alia made the following prayers :- (a) pass such orders that in the event the Hon'ble Board decides to handover the management of respondent no. 1 company to respondent no. 2 and his other directors then all monies outstanding including interest and others costs as on date be repaid to the Applicant as the Applicant would not like to continue any banking relations with the Respondent no. 1 company if Respondent no. 2 and other related directors takeover the management of respondent no. 1 Company. The applicant is willing to continue the banking relations only if the directors nominated by petitioner takes over the management of the respondent no.1 company. (b) Pass such necessary orders pending the adjudication of this petition removing the respondent no. 2 from the post of managing director of the respondent no. 1 company and appointing the nominee of the petitioner as the managing director of the respondent no. 1 company.

7. From the above, it is apparent that Dena Bank has objected to the conduct of further transactions with the respondent no. 1 only on grounds of its unwillingness to deal with the present respondent no. 2 in any manner in relation to the company. Obviously the respondent no. 2 shall include friends/relatives/nominees of the respondent no. 2 who had been appointed to the Board of Directors of the respondent no. 1 company or were its shareholders who were taking decision and acting alongside the respondent no. 2 so far as the conduct of the affairs of the company was concerned. From the above, it is apparent

that Dena Bank had no objection to the appellant herein (the petitioner before the Company Law Board) from taking over the management of the company.

8. Even otherwise my attention is drawn to the settlement agreement dated 25th September, 2008 arrived at between the parties wherein in clause 6(c), it is specifically recorded as hereunder :- c) The appellant undertakes and confirms to obtain discharge from Dena Bank being bankers to respondent no. 1 company, in respect of the personal guarantee of respondent no. 2 within 45 days from signing of the consent terms. In any eventuality the total liability of Dena Bank shall be exclusively the responsibility of appellant and they shall indemnify the respondent no. 2 from any claim of Dena Bank unconditionally and in principle clearance from Dena Bank.

9. The interest of Dena Bank therefore is fully provided for inasmuch as the appellant has undertaken to take over all liabilities towards the bank in respect of the respondent no. 1 and substitute all agreements and instruments executed by the other respondents in favour of Dena Bank.

10. In fact I find that the appellant has specifically undertaken to substitute the personal guarantees which have been executed by respondent no. 2 in favour of Dena Bank within a period of 45 days. The appellant shall remain bound by such undertaking and shall ensure that it takes immediate and appropriate steps for substitution of the personal guarantees given by respondent no. 2 to the satisfaction of Dena Bank. It would be in the interest of justice that in the meantime, Dena Bank does not enforce the personal guarantees which have been submitted by the respondent no. 2 in respect of the financial facilities granted to the respondent no.1 company.

11. Learned counsel for the parties submit that inasmuch as the management of the respondent no. 1 was in dispute and parties were litigating, the affairs of the Respondent no. 1 company had fallen into some disarray due to financial requirements and that emergent steps are being taken to revive the business and to ensure completion of the contract with the Ahmedabad Municipal Corporation. The respondent no. 2 has given an undertaking in the settlement terms that the contract with Ahmedabad Municipal Corporation still subsists. In any case, it has been pointed out that no cancellation has been effected of the contract. The appellant has prayed for a period of six months for completing the contractual obligations in the contract of the respondent no. 1 with the Ahmedabad Municipal Corporation. In the given facts this request appears to be reasonable and equitable.

12. It has been pointed out by learned counsel appearing for the respondent that apart from the present litigation, certain proceedings are pending between the respondent no. 8 i.e. M/s Taurant Projects Ltd. herein and M/s Baruch Enviro Infrastructure Ltd. and UPL Environment Engineers Ltd., stated to be two sister concerns of the petitioner in the Hon'ble High Court of Delhi being CS(OS) No. 1001/2008. Learned counsels who are present submit that necessary and bonafide efforts would be made to resolve all pending issues with regard to these concerns as well by seeking reference to mediation centre of Delhi High Court.

13. It has further been informed that the cheque for the initial payment which was made by the petitioner towards the accrued amounts as recorded in the settlement dated 25th September, 2008 has been dishonoured. Learned counsel for the petitioner has submitted that the cheque was represented on the instructions of the appellant. Mr. Savla, learned counsel has assured that this cheque was dishonoured on account of some misunderstanding and that the same shall be honoured by the bank.

14. These appeals and applications are disposed of in the above terms. The parties shall remain bound by the terms of the undertaking. A copy of the settlement shall be placed by the appellant before Dena Bank alongwith all assurances and undertakings which are required by the bank in order to ensure its rights and security. Dasti

Sd./-
GITA MITTAL, J

September 30, 2008