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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 26<sup>th</sup> November, 2020*  
*Pronounced on: 24<sup>th</sup> December, 2021*

+ ARB. A. 5/2020 & IA No. 4389/2020

DINESH GUPTA AND ORS. .... Appellants  
Through: Mr. Rajiv Nayar and Mr. Ravi  
Gupta, Sr. Advocates with Mr. Rishi  
Agrawala, Adv. with Ms. Niyati Kohli,  
Adv., Mr. Pranjit Bhattacharya, Adv. & Ms.  
Megha Bengani, Adv.

versus

BECHU SINGH AND ANR. .... Respondents  
Through: Mr. Prashant Mehta, Adv.

*Reserved on: 6<sup>th</sup> September, 2021*  
*Pronounced on: 24<sup>th</sup> December, 2021*

+ ARB. A. 6/2020 & I.A. 6608/2020

DINESH GUPTA & ORS. .... Appellants  
Through Mr. Rajiv Nayar, Sr. Advocate  
with Mr. Rishi Agrawala, Ms. Niyati Kohli,  
Mr. Pranjit Bhattacharya, Mr. Saurabh Seth  
and Ms. Megha Bengani, Advs.

versus

RAJESH GUPTA & ORS. .... Respondents  
Through Mr. Sudhir Nandrajog,. Sr.  
Advocate with Mr. Sanjay Gupta, Mr. Ateev  
Mathur, Ms. Jagriti Ahuja and Mr. Amol  
Sharma, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**

## **J U D G M E N T**

**24.12.2021**

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1. Dinesh Gupta, Rajesh Gupta and Anand Gupta are brothers. Anand Gupta is the eldest, followed by Rajesh Gupta, and Dinesh Gupta is the youngest. They formed part of one large joint family which, in happier times, was managing a variety of businesses, incorporated and otherwise. Each was a patriarch of his own little group which, in the order from which these appeals emanate, are referred to as the “Dinesh Gupta Group”, “Rajesh Gupta Group” and “Anand Gupta Group”, abbreviated as DGG, RGG and AGG respectively. I will use the same acronyms.

2. Before relationships soured, DGG, RGG and AGG were jointly managing the family businesses. Bechu Singh was a shareholder in some of the Companies, and headed the “Bechu Singh Group” (BSG).

3. In 1992, Anand Gupta separated himself, with his group, from managing the family businesses. AGG continued, nonetheless, to retain shareholdings in some of the businesses. After the exit of AGG, the family businesses were being managed by DGG and RGG.

4. In 2017, DGG and RGG decided to part ways. This resulted in the execution of two written Family Settlement Agreements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2017. The genuineness and validity of these Family Settlements is not in dispute in the present proceedings though, according to DGG, it has been called into question by RGG in the proceedings from which these appeals

emanate.

5. Under the Family Settlements, the family businesses were divided between DGG and RGG. Of these businesses, M/s BDR Builders and Developers Pvt. Ltd. (“BDR”, hereinafter), M/s Renu Promoters Pvt. Ltd. (“Renu Promoters”, hereinafter), M/s Renu Proptech Pvt. Ltd. (“Renu Proptech” hereinafter), M/s R.N. Technobuild Pvt. Ltd. (“RNTPL” hereinafter) and M/s Nishit Capinvest Pvt. Ltd. (“NCPL” hereinafter) fell to the lot of DGG.

6. DGG contended, in the arbitral proceedings from which these appeals emanate, that, before and after the execution of the Family Settlements, DGG, RGG and AGG had taken steps to effectuate them. DGG, it was pointed out, had resigned from the firms/Companies which fell to the lot of RGG, and had also transferred its shares in all such Companies to RGG, and RGG had done likewise. AGG had also taken steps which, according to DGG, were towards furtherance and effectuation of the Family Settlements, by resigning from firms/Companies and surrendering, to the concerned Group, the shares held by it, in the Companies which fell to the lot of that Group. Additionally, it was urged, by DGG, that AGG had gifted ₹ 19.55 crores to DGG, towards redemption of Mutual Funds held by AGG, which was also in furtherance of the covenants of the Family Settlements.

7. The acts of AGG are not, however, relevant for disposal of the present appeals, in which the *lis* is between DGG and RGG, in Arb A

6/2020, and BSG, in Arb A 5/2020.

**8.** DGG alleged that, from January 2018, RGG stopped acting towards compliance of the Family Settlements. This resulted in disputes which resulted, according to DGG, in a mutual decision, between DGG and RGG, to appoint a respected firm of Chartered Accountants, namely, KPMG, to implement the terms of the Family Settlements. Having so agreed, DGG alleged that RGG resiled, and issued notices under Section 100 of the Companies Act, 2013 (“the Companies Act”, hereinafter), for holding of an Extra Ordinary General Meeting (EGM) to remove DGG from the Directorship of companies which, under the Family Settlements, fell to the lot of DGG.

**9.** DGG, in the circumstances, moved this Court, on 7<sup>th</sup> February, 2018, by way of CS (OS) 51/2018, seeking a restraint against RGG from acting in contravention of the Family Settlements, in respect of the Companies which fell to the lot of DGG thereunder and also for appointment of KPMG, or any other agency, to effectuate the Family Settlements.

**10.** A learned Single Judge of this Court, *vide* order dated 7<sup>th</sup> February, 2018 passed in CS (OS) 51/2018, restrained RGG from giving effect to the notices issued by it under Section 100 of the Companies Act, till the next date of hearing.

**11.** According to DGG, consequent on the passing of the aforesaid

interim order by the learned Single Judge of this Court on 7<sup>th</sup> February, 2018, RGG took several steps to frustrate the Family Settlements, and also instigated AGG and BSG to act against DGG. As already noted hereinabove, the acts of AGG are not strictly relevant for the purposes of the present appeals. Insofar as RGG and BSG are concerned, requisition notices under Section 100 of the Companies Act, were issued by Sanchit Gupta, the son of Anand Gupta and Renu Gupta, the wife of Rajesh Gupta, on behalf of Renu Promoters, to DGG, on 7<sup>th</sup> February, 2018 and a further similar notice, under Section 100 of the Companies Act, was issued by Sanchit Gupta in respect of Renu Promoters, dated 16<sup>th</sup> February, 2018. BSG, similarly, it was pointed out, had issued a notice to DGG on 16<sup>th</sup> February, 2018, seeking convening of an EGM for removing Dinesh Gupta, Shreyansh Gupta and Shivani Gupta as Directors of RNTPL and appointment of Bechu Singh and Shashank Gupta, the son of Rajesh Gupta, as its Directors. DGG claimed to be aggrieved by these Section 100 notices which, according to DGG, violate and frustrate the Family Settlements.

**12.** DGG, in the circumstances, filed two more suits on the Original Side of this Court, being CS (OS) 100/2018 (against AGG) and CS (OS) 101/2018 (against BSG). IA 3238/2018 and IA 3241/2018 were also filed in the said suits, under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC), seeking interim reliefs.

**13.** Before this Court, in the aforesaid suits filed by DGG, RGG alleged that breaches of the Family Settlements had, in fact, been

committed by DGG, who had sold properties belonging to the family businesses for greater amounts and misappropriated the differential. It was further alleged, by RGG, that DGG had failed to reimburse RGG, *pro rata*, against sale of certain properties. The appointment of KPMG, to resolve the disputes, it was further alleged, also could not fructify owing to the acts of DGG.

**14.** AGG, for its part, claimed not to be bound by the Family Settlements, not being a signatory thereto. While admitting that shares and funds had been transferred by AGG in favour of DGG and loans extended, it was alleged that these were fraudulent in nature. As the present appeals do not deal with the dispute between AGG and DGG, it is not necessary to allude, any further, thereto.

**15.** BSG, similarly, contended, before this Court, that, not being privy to the Family Settlements, it was not bound by the covenants thereof. It was further emphasised, by BSG, that it was not a part of DGG, RGG or AGG and was, in fact, a stranger to the family altogether. BSG, asserting its rights in respect of the investments made by it in the family businesses, submitted that these rights could not be taken away by implementing the Family Settlements, to which it was not a party. In the circumstances, BSG asserted its right to call for an EGM under Section 100 of the Companies Act in respect of RNTPL, as a shareholder in the said Company.

**16.** The applications preferred by DGG in the aforesaid three suits [CS (OS) 51/2018, CS (OS) 100/2018 and CS (OS) 101/2018] under

Order XXXIX Rules 1 and 2 of the CPC, were disposed of, by a learned Single Judge of this Court *vide* judgment dated 16<sup>th</sup> November, 2018. The interim order dated 7<sup>th</sup> February, 2018, passed in CS (OS) 51/2018 was made absolute during the pendency of the suits and similar orders were passed in IA 3238/2018 in CS (OS) 100/2018 and IA 3241/2018 in CS (OS) 101/2018. Additional directions were also issued by the learned Single Judge. Paras 53 and 54 of the judgment of the learned Single Judge, containing the operative portions thereof, read thus:

“53. Accordingly, in the interest of family amity and unity and to uphold the family settlement, I confirm the interim order passed by this Court dated 7.2.2018 in CS (OS) 51/2018. Similarly, in IA No. 3238/2018 in CS (OS) 100/2018, I pass an interim order restraining the defendants from giving effect to the notice dated 16.02.2018 issued under Section 100 of the Companies Act. An interim order was also passed against the defendants restraining them from giving effect to the notices/communication dated 12.02.2018, 22.02.2018 and 23.02.2018. As far as IA No. 32/2018 in CS (OS) 100/2018 is concerned, an interim order is passed restraining defendant No. 2 from giving effect to the notice dated 16.02.2018 issued under Section 100 of the Companies Act.

54. However, the above interim order shall continue to operate during the pendency of the accompanying suit provided the plaintiff – the following acts within 6 weeks from today:-

(i) He will pay to Mr. Rajesh Gupta a sum of ₹ 11.28 crores plus ₹ 5.28 crores which he is seeking to be told on his own interpretation of the family settlement. This amount would be in view of the redemption of mutual funds held by BDR Developers and Builders Private limited. This would also be subject to further orders that may be passed by the court.

(ii) The plaintiff will ensure resolution of the Board of Directors of the companies listed in Dinesh Gupta Group be given in favour of Mr. Rajesh Gupta to contest/pursue the case of actionable claim pertaining to the said companies/actionable claim to have been given to the Rajesh the Group. This is subject to further orders the court may pass.

(iii) Plaintiff will also passed a resolution of the Board of Directors in favour of Rajesh Gupta of Companies which have fallen to be share for the purpose of pursuing litigation with respect to immovable properties which are vested in the Rajesh Gupta Group. This is subject to further orders that the court may pass.

(iv) Mr. Rajesh Gupta will place on record accounts of any amounts which are recovered by him in the course of adjudication of proceedings regarding actionable claims/immovable properties.

(v) All the companies which are listed in the family settlement will ensure that the quarterly statement of accounts are regularly provided to the 2 main parties, namely Mr. Dinesh Gupta and Mr. Rajesh Gupta respectively.”

**17.** FAO (OS) 6/2019 was filed by DGG, challenging the aforesaid judgment dated 16<sup>th</sup> November, 2018, passed by the learned Single Judge. *Vide* order dated 14<sup>th</sup> January, 2019, while issuing notice in the appeal, the Division Bench of this Court stayed the operation of the directions contained in sub-paras (i) and (iv) of para 54 of the judgment of the learned Single Judge.

**18.** AGG also challenged the judgment dated 16<sup>th</sup> November, 2018 of the learned Single Judge, by way of FAO (OS) 18/2019.



**19.** Both these appeals, i.e. FAO (OS) 6/2019 and FAO (OS) 18/2019, were disposed of on 18<sup>th</sup> March, 2019 by the Division Bench of this Court, by a consent order, referring the disputes among the parties to arbitration by the learned sole arbitrator who has passed the present impugned order. The parties also agreed that the interim directions of the learned Single Judge, in the judgment dated 16<sup>th</sup> November, 2018 *supra*, as modified by the Division Bench *vide* order dated 14<sup>th</sup> January, 2019 *supra*, be continued, and that the appeals along with cross objections filed therein, be placed before the learned sole arbitrator, to be decided as applications under Section 17 of the Arbitration and Conciliation Act, 1996 (“the 1996 Act”). Parties were also at liberty to file further applications under Section 17 of the 1996 Act, before the learned arbitrator. The learned arbitrator was granted liberty to decide the applications uninfluenced by the judgment dated 16<sup>th</sup> November, 2018 of the learned Single Judge or 14<sup>th</sup> January, 2019 of the Division Bench.

**20.** Before the learned arbitrator, further applications under Section 17 were filed. Additionally, applications under Order VII Rule 11 of the CPC were also filed, for dismissing the suits filed by DGG. The learned arbitrator had, before him, the following applications:

- (i) Section 17 applications dated 13<sup>th</sup> April, 2019 and 11<sup>th</sup> October, 2019, filed by DGG,
- (ii) Section 17 application dated 30<sup>th</sup> April, 2019, filed by BSG,
- (iii) Section 17 applications dated 12<sup>th</sup> April, 2019 and 4<sup>th</sup> November, 2019, filed by RGG,

- (iv) a Section 17 application filed by Sanchit Gupta,
- (v) a Section 17 application filed by Sanchit Gupta and Anand Gupta HUF,
- (vi) a Section 17 application filed by Anand Gupta, Sanchit Gupta, Meena Gupta and Aashna Gupta,
- (vii) Order VII Rule 11 applications filed by RGG in CS (OS) 51/2018,
- (viii) Order VII Rule 11 application filed by AGG and
- (ix) Order VII Rule 11 application filed by BSG.

**21.** The impugned Order dated 18<sup>th</sup> February, 2020, of the learned arbitrator rejects all applications preferred under Order VII Rule 11, CPC. They need not, therefore, detain us.

**22.** On 14<sup>th</sup> May, 2020, RGG file its counterclaims before the learned arbitrator.

**23.** The applications filed by DGG and RGG against each other, and the Section 17 applications filed by DGG and BSG against each other, have been separately decided by the learned arbitrator, by the impugned Order. Aggrieved by the decision of the learned arbitrator on its disputes *vis-à-vis* RGG and BSG, DGG has preferred the present appeals.

**24.** As both appeals emanate from one impugned order, and involve the same fact situation – which I have hitherto attempted to place in *précis* – I have chosen to deal with both appeals in a single judgement, albeit individually.

**Arb A 6/2020 (Dinesh Gupta v. Rajesh Gupta)**

**Applications filed by the parties and the Impugned Orders**

25. DGG claims to be aggrieved by paras 3.14, 3.15, 3.16 and 3.21 of the impugned order dated 18<sup>th</sup> February, 2020, para 3.2 of order dated 14<sup>th</sup> May, 2020, para 4.3 and 4.8 of order dated 22<sup>nd</sup> July, 2020 and para 2 of order dated 23<sup>rd</sup> July, 2020, passed by the learned arbitrator on the applications filed by DGG against RGG, and *vice versa*.

26. One may, therefore, refer to these orders seriatim.

**Impugned Order dated 18<sup>th</sup> February, 2020**

27. This order disposes of two applications filed by DGG against RGG and two applications filed by RGG against DGG, in either case under Section 17 of the 1996 Act.

**28. Section 17 applications filed by DGG against RGG**

**28.1** DGG prayed, in its first application under Section 17, filed on 1<sup>st</sup> May, 2019, that

- (i) the directions contained in para 53 of the order dated 16<sup>th</sup> November, 2018 *supra*, of the learned Single Judge, be

continued during the pendency of the arbitral proceedings,

(ii) RGG be directed to deposit, before the learned arbitrator, all shares held by him in companies or entities which, under the Family Settlement dated 9<sup>th</sup> December, 2017, fell to the lot of DGG,

(iii) RGG be directed to remove any objection towards encashment of the Mutual Funds held by it, in favour of DGG, and

(iv) RGG be directed to provide authorisation to DGG to commence and prosecute actionable claims pertaining to the shares held by DGG in companies which, under the Family Settlements, had gone to RGG.

**28.2** The second Section 17 application filed by DGG on 11<sup>th</sup> October, 2019, was predicated on the allegedly surreptitious transfer by Rajesh Gupta, of 4,44,600 shares held by him in NCPL to two entities (Ram Kumar Gupta HUF and R. Dinesh Gupta HUF) which, under the Family Settlements, fell to the share of RGG. As NCPL fell, under the Family Settlements, to the share of DGG, DGG contended that RGG could not transfer its shareholding in NCPL to any other entity, and had necessarily to transfer the shareholding to DGG. Transfer to any other entity, it was contended, would infract the Family Settlements. In that view of the matter, the second Section 17 application filed by DGG sought a restraint against RGG from transferring, disposing of or creating any encumbrance in respect of shares of entities which, under the Family Settlement dated 9<sup>th</sup> December, 2017, fell to the lot of DGG.

**29. Section 17 applications filed by RGG against DGG**

**29.1** The first Section 17 application of RGG, filed on 12<sup>th</sup> April, 2019, was predicated on alleged admissions made by DGG in CS (OS) 51/2018 filed before this Court. It was asserted, by RGG, that, in the plaint, DGG had admitted its liability to pay, to RGG,

- (i) an amount of ₹ 6,60,75,000/ –, being the remaining sale consideration for transfer of shares of NCPL to Renu Gupta, along with interest @ 16% p.a. w.e.f. December, 2018, and
- (ii) an amount of ₹ 22,43,72,629/ –, towards redemption of mutual funds held in BDR.

Accordingly, the application sought a direction to DGG to pay these amounts to RGG.

**29.2** In its second Section 17 application dated 4<sup>th</sup> November, 2019, RGG alleged that DGG had, in contravention of the Family Settlements, transferred shares, which were held by it in companies which fell to the lot of RGG, to third parties. Additionally, RGG asserted its right to enforce actionable claims in respect of M/s Ninex Developers Ltd (“NDL”, hereinafter) (of ₹ 45,79,18,365/ -) and M/s Red Topaz Real Estate Pvt Ltd (“RTR”, hereinafter) (of ₹ 15,66,49,770/-), as these actionable claims fell to the share of RGG under the Family Settlements. Post Dated Cheques furnished by NDL and RTR, it was alleged, had bounced. RGG, in the circumstances, sought in its second Section 17 application, a restraint against DGG from selling/encumbering any immovable properties of the

Companies which was the subject matter of the Family Settlements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2017.

### 30. The Order

30.1 The learned arbitrator notes, at the outset, that DGG and RGG were both admitting the Family Settlements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2017. Thereafter, the learned arbitrator goes ahead to note paras 53 and 54 of the order dated 16<sup>th</sup> November, 2018, of the learned Single Judge.

30.2 The learned arbitrator proceeds, thereafter, relying on the well-known judgment of the Supreme Court in *Kale v. Deputy Director of Consolidation*<sup>1</sup>, as well as the decisions in *S. Shanmugam Pillai v. K. Shanmugam Pillai*<sup>2</sup> and *Hari Shankar Singhania v. Gaur ID Singhania*<sup>3</sup>, to emphasise the sanctity of family settlements, and to underscore the position that, once the parties to the dispute accepted the execution of the Family Settlements and had also taken actions in furtherance thereof, the effort of the court had to be to ensure that the fruits of the Family Settlements were earned and the Settlements implemented. In view thereof, the learned arbitrator holds, in para 3.9 of the impugned Order, that the act of RGG in issuing Section 100 notices, in respect of the Companies which under the Family Settlements went to DGG was *prima facie* contrary to the Family Settlements. Holding, therefore, that DGG was entitled to continuance

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<sup>1</sup> (1976) 3 SCC 119

<sup>2</sup> (1973) 3 SCC 312

<sup>3</sup> (2006) 4 SCC 658

of the interim protection granted by the learned Single Judge in para 53 of the order dated 16<sup>th</sup> November, 2018 *supra*, the learned arbitrator has directed that the said order would continue till the passing of the final Award.

**30.3** Apropos the other prayers of DGG in its Section 17 applications, the learned arbitrator has restrained RGG, Ram Kumar Gupta HUF and R. Dinesh Gupta HUF, from transferring, disposing of or creating any encumbrance, or otherwise dealing with the shares of entities which, under the Family Settlements, fell to the lot of DGG, and has further restrained RGG from creating any third party interest in respect of the shares held by it in any Companies/entities which, under the Family Settlements, went to DGG. RGG has, in para 3.12 of the impugned Order, further been directed to grant No Objection for encashment of the Mutual Funds in favour of DGG which, as per the Family Settlements, went to DGG.

**30.4** On the Section 17 applications filed by RGG against DGG, the learned arbitrator held thus, in paras 3.13 to 3.16 of the Order dated 18<sup>th</sup> February, 2020, under challenge herein:

“3.13 The RGG has also filed two applications under Section 17 of the Act, gist whereof is already given above. In the first application dated 12.04.2019, RGG has made the following prayers:

“It is, therefore, most respectfully prayed that this Hon'ble Tribunal may be pleased to:-

- a) Pass directions to Dinesh Gupta Group to immediately pay to Rajesh Gupta Group the admitted amount of liability, as disclosed by

them in Para 21 and 31 being an amount of Rs.6,60,75,000/- and Rs.22,43,72,629/- along with interest @ 16% per annum from December, 2017 and January, 2018 respectively.

b) Pass directions thereby appointing Rajesh Gupta as Director in Claimant Nos. 4 & 9.

c) Pass directions to Dinesh Gupta Group to issue Specific Board Resolutions in terms of draft provided by Rajesh Gupta Group vide their e-mail dated 25 November, 2018.

d) Pass directions to Dinesh Gupta Group to deposit an amount of Rs.20 crores, which is received by them from Nageshwar Builders Pvt. Ltd. as explained in the present application.

e) Any other relief or direction, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

3.14 By first prayer, RGG seeks direction to DGG to pay the admitted amount. RGG refers to para 21 and 31 of the plaint in this behalf. In para 21 of the plaint, DGG has accepted that Mrs. Renu Gupta of RGG has transferred 7,71,000 shares of Nishit to BDR Builders and Developers Pvt. Ltd. against which DGG has made a payment of 3,03,00,000. It is further stated that upon final accounting, if any amounts are outstanding from the DGG side, it is ready and willing to give benefit to RGG, “if the same is so directed by the Hon'ble Court” (now the arbitrator). Though the DGG states that it is ready to pay the amount “if” the same is found to be payable by the arbitrator, the admission in this para is to the effect that 7,70,000 shares have been transferred by RGG to DGG and against that DGG has made payment to the extent of Rs.3,03,00,000 only. It is an admitted case that the aforesaid payment does not represent the entire payment as a consideration for these shares and a sum of Rs.5.28 crores remains unpaid. When DGG is seeking enforcement of the Family Settlements, it is also obligated to discharge its obligation towards RGG under the same settlements. It is, therefore, equitable that DGG pays the aforesaid amount of Rs.5.28 crores to RGG.



3.15 In para 31 of the plaint, DGG has accepted that as per Family Settlement dated 02.12.2017, Rs.16.50 crores had to be paid to RGG from the mutual funds held by BDR Builders and Developers, though it is claimed that all accretions of such mutual funds were to the share of DGG. It is also mentioned that against Rs.16.50 crores, a sum of Rs.5.28 crores is adjusted as mentioned in the said settlement and balance amount of Rs.11.28 crores is payable. It is even stated that the said amount can be transferred to the account of RGG immediately and DGG has no intention of keeping these monies of RGG. Thus, there is a clear admission that amount of Rs.11.28 crores is payable by DGG to RGG against the aforesaid mutual funds, there is no reason not to direct DGG to pay the said amount to RGG. Insofar as accretion on the said mutual funds is concerned, that would be a matter of determination at the final stage and necessary directions would be issued in this behalf, depending upon such determination. Whether interest is payable or not, as claimed by RGG, would be a matter for final determination.

3.16 Accordingly, direction is given to DGG to pay the amount of Rs.5.28 crore and Rs.11.28 crores within two weeks from the date of passing this order. It would also be equitable to both the parties to give following directions as given by the learned Single Judge:

“54. \*\*\*\*

(iv) Mr. Rajesh Gupta will place on record accounts of any amounts which are recovered by him in the course of adjudication of proceedings regarding actionable claims/immovable properties.

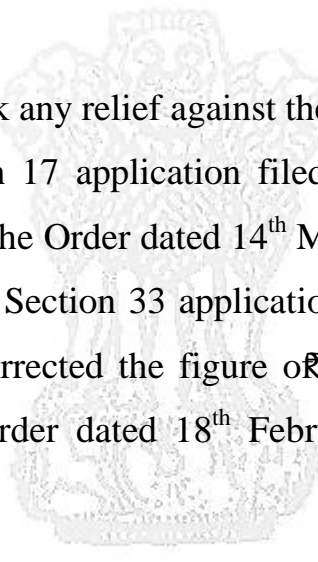
(v) All the companies which are listed in the family settlement will ensure that the quarterly statement of accounts are regularly provided to the two main parties, namely, Mr. Dinesh Gupta and Mr. Rajesh Gupta respectively.”

**30.5** Additionally, para 3.22 of the Order dated 18<sup>th</sup> February, 2020 read thus:

“3.22 It is possible that DGG is also to receive certain payments from RGG. In all fairness, RGG is also liable to make those payments to DGG. Therefore, liberty is given to DGG to move any such application.....”

**31. Impugned Order dated 14<sup>th</sup> May, 2020 and applications which led to its passing**

**31.1** Availing the liberty extended by para 3.22 of the order dated 18<sup>th</sup> February, 2020, DGG filed a further application under Section 17, before the learned arbitrator. RGG, too, moved an application before the learned arbitrator under Section 33 of the 1996 Act.

**28.2** DGG does not seek any relief against the decision of the learned arbitrator on the Section 17 application filed by it. It is aggrieved, however, by para 3.2 of the Order dated 14<sup>th</sup> May, 2020, passed by the learned arbitrator on the Section 33 application of RGG, wherein the learned arbitrator has corrected the figure of ₹ 5.28 crores, in paras 3.14 and 3.16 of the Order dated 18<sup>th</sup> February, 2020 *supra*, to ₹ 6,60,75,000/-.  


**32. Impugned Order dated 22<sup>nd</sup> July, 2020 and the application which led to its passing (to the extent impugned)**

**32.1** This order adjudicated several applications filed by DGG against RGG and *vice versa*. DGG, however, assails only paras 4.3 and 4.8 of the said Order, which were passed on prayer (d) in an application under Section 17 preferred by DGG before the learned arbitrator on 27<sup>th</sup> May, 2020. DGG sought, in the said prayer, deferral of the direction, by the learned arbitrator, as contained in para 3.16 of

the Order dated 18<sup>th</sup> February, 2020, as directed *vide* Order dated 14<sup>th</sup> May, 2020, to DGG, to pay, to RGG, ₹ 6,60,75,000/-.

**32.2** To support its plea for deferral, DGG urged that this amount was not an amount admitted as payable by DGG to RGG under the Family Settlements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2017.

**32.3** Prayers (a) to (c) of the Section 17 application dated 27<sup>th</sup> May, 2020, preferred by DGG, requested the learned arbitrator to take, on record, the Demand Drafts furnished by DGG, in favour of RGG, for ₹ 11.28 and ₹ 1.2 crores, in compliance with the directions issued by the learned arbitrator in para 3.15, 3.16 and 3.21 of the Order dated 18<sup>th</sup> February, 2020, and to release the said amounts to RGG and, reciprocally and simultaneously, to direct RGG to transfer, to DGG, the shares held by in the Companies named in the application which, under the Family Settlements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2020, fell to the lot of DGG.

**32.4** Qua these prayers, the learned arbitrator holds thus, in paras 4.5 to 4.8 of the Order dated 22<sup>nd</sup> July, 2020:

“4.5 With this, i.e. advert to the remaining prayers made by DGG in its application dated 27.05.2020 as well as prayer of the RGG in its application dated 16.03.2020. Both are interconnected. I have considered the arguments of both the parties in this behalf.

4.6 To recapitulate, the DGG has been directed to pay the following amounts in the Order dated 18.02.2020:

(a) An amount of ₹ 11.28 crores towards mutual

funds held by BDR Builders and Developers Ltd. The DGG has already prepared Demand Drafts in this behalf, though it is in the name of the arbitrator. DGG states that it is done to show the bona fides.

(b) DGG has to pay ₹ 12 crores, which is the amount received from M/s. Nageshwar Builders Pvt Ltd. At the same time, direction is also given in the order to RGG to give No Objection in respect of mutual funds held in the name of DGG in order to facilitate encashment of the said mutual funds by DGG which are to the tune of ₹ 0.8 crores. In these circumstances, the DGG states that it is ready to pay ₹ 1.2 crores immediately and to show its bona fides, again a Demand Draft in the sum of ₹ 1.2 crores in favour of the arbitrator is prepared. DGG submits that due to financial crunch faced by it, balance amount of ₹ 10.8 crores can be paid immediately on receiving the sum after encashing the mutual funds and DGG has given an undertaking in this behalf.

4.7 There is a deadlock as RGG does not agree with the modalities suggested by DGG. RGG is prepared to sign the No Objection for encashment of mutual funds, but states that it would give the said No Objection simultaneously with the over of the Demand Drafts by DGG to RGG of the entire amount of ₹ 28.5 crores. Because of the respective stowed positions taken by both the parties, directions contained in Order dated 18.02.2020 have not been complied with the date.

4.8 The aforesaid scenario suggests that both the parties are ready to comply with the directions (except directions for payment of ₹ 66,075,000/- in respect of which proceedings are pending in the High Court). In the interest of justice, following directions can be given for the purpose of ensuring compliance by both the parties:

(i) DGG shall arrange a Demand Draft in the sum of ₹ 11.28 crores in favour of RGG. Likewise, it will arrange another Demand Draft for ₹ 1.2 crores in favour of RGG.

(ii) The aforesaid 2 Demand Drafts shall be handed over to RGG on a particular date, which shall be fixed

for the next date of hearing, i.e. 23.07.2020. Simultaneously, on the said fixed a date, RGG shall give No Objection for encashment of mutual funds held in the name of Dinesh Gupta to enable DGG to encash these mutual funds amounting to ₹ 1.8 crores.

(iii) Dinesh Gupta shall furnish an Affidavit of Undertaking that as soon as ₹ 10.8 crores is received on encashment of the mutual funds, he shall immediately prepare a demand draft for the said amount in favour of RGG and hand over the same to RGG.

(iv) Insofar as direction to pay a ₹sum of 66,075,000/- by DGG to RGG is concerned, an appeal against the direction is pending in the High Court, no direction is given at this stage, except that DGG shall abide by the order passed in the appeal. In other words, DGG fails in its appeal, it shall immediately pay the said amount.”

**33. Impugned Procedural Order dated 23<sup>rd</sup> July, 2020**

**33.1** This Order came to be passed by the learned arbitrator as a corrigendum to the Order dated 22<sup>nd</sup> July, 2020, on the learned arbitrator being informed that the proceedings pending before this Court did not, at that stage, involve any challenge to the direction, by the learned arbitrator to DGG, to pay ₹ 6,60,75,000/- to RGG. In view thereof, para 2 of the Procedural Order dated 23<sup>rd</sup> July, 2020 amended the Order dated 22<sup>nd</sup> July, 2020, in so far as it dealt with the liability of DGG to pay ₹ 6,60,75,000/- to RGG. The said para reads thus:

“In view of the aforesaid, wherever it is mentioned in the Order dated 22.07.2020 that appeal is filed against the direction in respect of payment of Rs.6,60,75,000/-, that will be treated as deleted. Further, insofar as direction (iv) in para 4.8 of the order is concerned, it stands substituted by the following direction:

“Insofar as direction to pay a sum of Rs.6,60,75,000/- by DGG to RGG is concerned, bank draft of this amount shall also be prepared by DGG and handover to RGG along with other to drafts mentioned above on the date when RGG shall also give No Objection for encashment of mutual funds held in the name of Dinesh Gupta.” ”

### **Rival Submissions**

**34.** I have heard Mr. Rajiv Nayar, learned Senior Counsel for DGG and Mr. Sudhir Nandrajog, learned Senior Counsel for RGG, at length. Written submissions have also been filed by learned Senior Counsel.

**35.** Mr. Nayar faults the learned arbitrator in directing payment, by DGG to RGG, of amounts, the payability of which was dependent on the Family Settlements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2017, even before adjudicating on the enforceability thereof. He submits that RGG was contesting the enforceability of the Family Settlements and could not, therefore, derive any benefit therefrom. Mr. Nayar has emphasised paras 14 to 16 of the application under Section 17 filed by RGG on 12<sup>th</sup> April, 2019, in which RGG contended that the propounding of the Family Settlements was merely a ploy on the part of DGG which, at every step, breached their terms. RGG further alleged, in the said paras, that the parties to the *lis* were not *ad idem* regarding the terms of the Family Settlements which, even otherwise, were incomplete and inchoate documents. DGG, it was further alleged, was not acting in accordance with the Family Settlements, as it was withholding, from RGG, the documents on the basis of which

RGG would pursue actionable claims against Companies which felt which to the lot of RGG. In para 16, RGG pointed out that, in terms of the Family Settlements, it had acquired right, title and interest to the said actionable claims. Mr. Nayar submits that, in the circumstances, the learned arbitrator was in error in opining, in para 3.7 of the impugned Order dated 18<sup>th</sup> February, 2020, that the tenor of the written statement filed by RGG, as also the Section 17 application filed by it, indicated that RGG desired DGG to adhere to the terms of the Family Settlements. In fact, points out Mr. Nayar, the very opening paras of the Section 17 application, preferred by RGG on 12<sup>th</sup> April, 2019, asserted that the Family Settlements were only draft working papers and were incomplete documents, incapable of enforcement.

**36.** Readiness and willingness, on the part of RGG, to abide by the Family Settlements, submits Mr. Nayar, was the *sine qua non* for RGG to be entitled to any benefits dependent on the Family Settlements. Such readiness and willingness, submits Mr. Nayar, was entirely wanting, on the part of RGG. Mr. Nayar points out that, in para 3.2 of the impugned Order dated 18<sup>th</sup> February, 2020, the learned arbitrator has acknowledged the fact that the claims of RGG, in its Section 17 application, arose out of the Family Settlements.

**37.** Mr. Nayar further submits that the learned arbitrator was misguided in proceeding on the premise that DGG had admitted payability to RGG of the amount of ₹ 11.28 crores, in paras 21 and 31 of CS (OS) 51/2018. He submits that the admission in these paras, if

any, was not unequivocal in nature, but was on the premise that the Family Settlements were enforceable at law. This admission was tendered only to comply with Section 16 of the Specific Relief Act, 1963 to demonstrate the readiness and willingness of DGG to abide by its obligations under the Family Settlements. If RGG were to reap any benefit out of this “admission”, submits Mr. Nayar, RGG was also required to abide by the obligations which the Family Settlements cast on it. Besides, points out Mr. Nayar, in so far as the amount of ₹ 5.28 crores was concerned, the readiness and willingness expressed by DGG, to make payment to RGG, was only “upon final accounting”. These words, according to him, had been ignored by the learned arbitrator. The words “upon final accounting”, in his submission, indicated that the willingness of DGG to pay the said amounts was only after obligations between DGG and RGG were reciprocally settled. In view thereof, he submits that the learned arbitrator could not, justifiably, have regarded DGG as having “admitted” its liability to pay ₹ 5.28 crores ( later modified to ₹ 6.6 crores) to RGG. In so far as the remaining amount of ₹ 11.28 crores and ₹ 12 crores were concerned, Mr. Nayar reiterates his submission that the entitlement, if any, of RGG, to these amounts, arose only under the Family Settlements and could not, therefore, lead to any windfall to RGG at an interim stage.

**38.** In fact, contends Mr. Nayar, the impugned Order dated 18<sup>th</sup> February, 2020 effectively granted, to RGG, final relief at the interim stage. In the circumstances, DGG, in its subsequent application dated 14<sup>th</sup> March, 2020, also under Section 17, sought a corresponding final



relief, in the form of a direction to RGG to transfer to DGG the shares of the Companies specified in the application which under the Family Settlements fell to the lot of DGG. This prayer, he submits, was completely overlooked by the learned arbitrator in the Order dated 14<sup>th</sup> May, 2020.

39. Adverting, next, to the Order dated 22<sup>nd</sup> July, 2020, of the learned arbitrator, Mr. Nayar submits that there was no justification for the learned arbitrator to defer consideration of the prayer, of DGG, for a direction to RGG to transfer to DGG the shares held by it in the Companies which under the Family Settlements, fell to the lot of DGG, even while directing DGG to pay, to RGG, amounts which also were payable only in accordance with the Family Settlements.

40. In support of his submissions, Mr. Nayar has relied on the judgment of the Supreme Court in *State of Orissa v. Madan Gopal Rungta*<sup>4</sup> for the proposition that, in the absence of a substantive claim for final relief, no claim for interim relief could be maintained, the judgments of the Supreme Court in *Bhagwat Sharan v Purshottam*<sup>5</sup>, *Rajasthan State Industrial Development & Investment Corpn v. Diamond & Gem Development Corporation Ltd*<sup>6</sup>, *Karam Kapahi v. Lal Chand Public Charitable Trust*<sup>7</sup>, *New Bihar Biri Leave Co. v. State of Bihar*<sup>8</sup>, *Mumbai International Airport Pvt Ltd v. Golden Chariot Airport*<sup>9</sup> and *Suzuki Parasrampurua Suitings Pvt Ltd v.*

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<sup>4</sup> AIR 1952 SC 12

<sup>5</sup> (2020) 6 SCC 387

<sup>6</sup> (2013) 5 SCC 470

<sup>7</sup> (2010) 4 SCC 752

<sup>8</sup> (1981) 1 SCC 537

<sup>9</sup> (2010) 10 SCC 422

*Official Liquidator of Mahindra Petrochemicals Ltd*<sup>10</sup> for the proposition that one who knowingly accepts the benefits of an instrument is estopped from denying the validity or binding effect thereof, as that would amount to approbate and reprobate, and the judgments of the Supreme Court in *Orissa Manganese & Mineral Ltd v. Synergy Ispat Pvt Ltd*<sup>11</sup> and *Adhunik Steels Ltd. v. Orissa Manganese & Minerals (P) Ltd*<sup>12</sup> and of this Court in *Amit Sinha v. Sumit Mittal*<sup>13</sup> for the proposition that the Arbitral Tribunal, while passing interim order under the 1996 Act, have to follow the principles contained in the Specific Relief Act, 1963.

41. Finally, Mr. Nayar contends that any direction for deposit, under Section 17 of the 1996 Act, would be justified only if the case satisfies the requisites of Order XXXVIII Rule 5 of the CPC, and not otherwise.

42. Responding to the submissions of Mr. Nayar, Mr. Nandrajog, learned Senior Counsel for RGG, contests, at the outset, the contention of Mr. Nayar that, in the absence of a substantive counter claim, the learned arbitrator was not justified in granting interim relief, under Section 17, to his client. Mr. Nandrajog submits that, where the liability was admitted by DGG, RGG was entitled to an order for payment even in the absence of a substantive counter claim. Further, he submits, the direction for payment being based on admissions made by DGG, which were not denied before this Court, DGG could not

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<sup>10</sup> (2018) 10 SCC 707

<sup>11</sup> (2014) 16 SCC 654

<sup>12</sup> (2007) 7 SCC 125

<sup>13</sup> 2011 (122) DRJ 273 (DB)

seek to challenge the order.

**43.** Mr. Nandrajog submits that Mr. Nayar is seeking to confuse the issue by conflating the consideration of payments, as admitted by DGG, with transfer of shares in terms of the Family Settlements. These issues, he submits, are not interlinked, but independent. He points out that DGG never submitted, before the learned arbitrator, that no direction for interim payment could be passed in the absence of a parallel order directing transfer of shares by RGG to DGG. Rather, he submits, the learned arbitrator protected DGG's interest by restraining RGG from dealing with the shares held by it in the Companies which, under the Family Settlements, went to DGG. The direction for payment, as issued to DGG by the learned arbitrator, he submits, had nothing to do with transfer of shares, but was based on admission of liability by DGG. In fact, submits Mr. Nandrajog, DGG had never, in its initial Section 17 applications, sought interim directions to RGG to transfer shares held by RGG in any Company which enured to DGG under the Family Settlements. Nonetheless, he points out, the learned arbitrator ensured that the shares remained protected, by restraining RGG from dealing therein.

**44.** Mr. Nandrajog further points out that, even in its appeal before this Court, DGG admitted that both sides were acting towards implementation of the Family Settlements, and that he was not seeking to join issue thereon. In fact, contends Mr. Nandrajog, para 19 of CS (OS) 51/2018, filed by DGG, accepted that the only dispute that survived related to the mechanism for implementation of the Family

Settlements. He has emphasised para 31 of the said suit, in which DGG not only admitted its liability to pay, to RGG, ₹ 11.28 crores, but offered for transfer of the said amount to the account of RGG immediately. Even in its application under Section 17 read with Section 33 of the 1996 Act, filed on 20<sup>th</sup> February, 2020 before the learned arbitrator, DGG had expressed its readiness and willingness to transfer to RGG the amount of ₹ 11.28 crores, after deduction of tax at source. Further, in its next application under Section 17, filed on 27<sup>th</sup> May, 2020, DGG again admitted, in para 4, the liability to pay, to RGG, under the Family Settlements, ₹ 11.28 crores and ₹ 12 crores. Having so admitted its liability to make payment to RGG, DGG, for the first time prayed, in the application, for a direction to RGG to transfer shares to DGG.

**45.** Mr. Nandrajog points out that the shares of NCPL, against which payment of ₹ 6.6 crores had been directed, already stood transferred by RGG to DGG. The basis for this figure, he points out, is forthcoming even from the pleadings contained in CS (OS) 51/2018 and the documents filed by DGG with the said suit. Apropos the amount of ₹ 12 crores, also directed to be paid, by the impugned Order dated 18<sup>th</sup> February, 2020, by DGG to RGG, Mr. Nandrajog invites attention to para 6 of IA 17132/2018, preferred by RGG in CS (OS) 51/2018 before this Court, in which RGG specifically alleged that DGG had clandestinely entered into a settlement with M/s. Nageshwar Builders Pvt Ltd (“Nageshwar Builders” hereinafter), without the consent of RGG, to settle the criminal proceedings pending against the said Company for a total consideration of ₹ 20 crores, of which ₹ 12

crores had actually been received by DGG by way of Demand Drafts favouring BDR. These allegations, he points out, were stated, in the reply of DGG, to the application, to be “matters of record” which needed no reply; ergo, they stood admitted.

**46.** Mr. Nayar is in error, contends Mr. Nandrajog, in submitting that the learned arbitrator had granted final relief to RGG at an interim stage. The value of the total corpus which, according to the Family Settlement, was to be divided between DGG and RGG was in the region of ₹ 1300 crores.

**47.** Mr. Nandrajog submits that, as an applicant seeking implementation of the Family Settlements, the onus of proof was on DGG to exhibit readiness and willingness to comply with their covenants. Apparently for this reason, he submits, DGG had expressed its willingness to make payment, to RGG, of ₹ 11.28 crores and ₹ 12 crores. As against this, DGG sought a stay of exercise, by RGG, of its rights in BDR and of transfer, by RGG, of the shares held by it in Companies which, under the Family Settlements, went to DGG. If, therefore, the learned arbitrator granted these reliefs, as sought by DGG and as a condition, to balance the equities, directed DGG to comply with its admitted obligations under the Family Settlements, the exercise of jurisdiction was eminently equitable in nature, not deserving of interference by this Court. He submits that a party seeking interim relief could always be put to terms, irrespective of whether there was, or was not, any admission on its part. According to Mr. Nandrajog, the learned arbitrator has granted all the reliefs

sought by DGG, while restricting the relief granted to RGG only to payment of the amounts admitted to be payable by DGG. He reiterates that, till the passing of the said order, there was no request, by DGG, for any direction to RGG to transfer, to DGG, any shares held by it.

48. Mr. Nandrajog submits, with emphasis, that his client does not dispute the enforceability of the Family Settlements, or their binding nature, but echoes the sentiment, voiced by DGG in its plaint before this Court, that the modalities for execution of the Family Settlements were required to be ironed out.

49. Mr. Nandrajog points out, finally, that, in similar circumstances, this Court has already rejected a challenge, to the impugned Order dated 18<sup>th</sup> February, 2020, by DGG against AGG, in *Dinesh Gupta v. Anand Gupta*<sup>14</sup>. The judgment, according to him, covers the present case.

### **Analysis and findings**

50. I have had occasion, in *Dinesh Gupta v. Anand Gupta*<sup>14</sup>, *Augmont Gold Pvt Ltd v. One97 Communication Ltd*<sup>15</sup>, *Sanjay Arora v Rajan Chadha*<sup>16</sup> and *World Window Infrastructure Pvt. Ltd. v. Central Warehousing Corporation*<sup>17</sup> to opine that the restraints which operate on the Court, while exercising jurisdiction under

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<sup>14</sup> 273 (2020) DLT 381

<sup>15</sup> 2021 SCC OnLine Del 4484

<sup>16</sup> MANU/DE/2643/2021

<sup>17</sup> 2021 SCC OnLine Del 5099

Section 34 of the 1996 Act, would apply with equal, if not greater force, while exercising jurisdiction under Section 37(2)(b). This is because, while Section 34 jurisdiction is exercised against the final award, the Court, acting under Section 37(2)(b), is examining an interlocutory order. Interlocutory orders are, by their very nature, discretionary and the scope of interference, in judicial review, with discretionary orders is classically limited. Where the discretion exercised is towards direction for a deposit, the Court has to be additionally circumspect, as the issue of whether a deposit ought, or ought not, to be directed, so as to secure the sanctity of the arbitral proceedings and ensure that they proceed to fruition, is essentially a matter to be assessed by the learned Arbitral Tribunal. Unless such assessment is perverse or suffers from manifest illegality, the approach of the Court, ordinarily, should be one of restraint.

**51.** Though DGG has, formally, challenged four orders passed by the learned arbitrator on 18<sup>th</sup> February, 2020, 14<sup>th</sup> May, 2020, 22<sup>nd</sup> July, 2020 and 23<sup>rd</sup> July, 2020, it is clear that the challenge essentially is against the direction to DGG to pay to RGG, ₹ 6.6 crores, ₹ 11.28 crores and ₹ 12 crores.

**52.** The learned arbitrator was, in passing the said order, adjudicating on rival Section 17 applications, preferred by DGG and RGG against each other. DGG, in its applications, sought (i) continuation of the restraint imposed on RGG by para 53 of the order dated 16<sup>th</sup> November, 2018 (*supra*), passed by the learned Single Judge, against giving effect to the notices issued by RGG under

Section 100 of the Companies Act, (ii) a direction to RGG to deposit, before the learned arbitrator, the shares held by RGG in companies/entities which, under the Family Settlements, went to DGG, (iii) a direction to RGG to grant no objection for encashment of the mutual funds held by RGG in favour of DGG and (iv) a restraint on RGG from creating any third party interests in respect of the shares of the companies held by RGG which, under the Family Settlements, fell to the lot of DGG.

**53.** As against this, RGG, in its Section 17 application against DGG, sought a direction to DGG to pay to RGG, (i) ₹ 6,60,75,000/-, as the sale consideration remaining to be paid against transfer to shares of NCPL to Renu Gupta, with interest, (ii) ₹ 22,43,72,629/- towards redemption of mutual funds, held by RGG in BDR and (iii) a restraint against DGG from encumbering any immovable properties of the companies, which were subject matter of the Family Settlements. The prayer for a direction to DGG to pay to RGG, the amounts of ₹ 6,60,75,000/- and ₹ 22,43,72,629/- was sought to be justified on the ground that, in CS (OS) 51/2018, DGG had admitted its liability to pay the said amounts to RGG.

**54.** Apropos the Section 17 application of DGG, the learned arbitrator has, in paras 3.9 to 3.12 of the impugned order, granted all the reliefs sought by DGG, except for the prayer of a direction to RGG to deposit, with the learned arbitrator, all the shares held by RGG in the companies which fell to the lot of DGG under the Family Settlements. The learned arbitrator has continued, during the pendency of the arbitral proceedings, the restraint against RGG, from acting on



the notices issued by it under Section 100 of the Companies Act, thereby making absolute the interim directions contained in para 53 of the order dated 16<sup>th</sup> November, 2018 (*supra*), passed by the learned Single Judge, in the three suits filed by DGG. Additionally, the learned arbitrator has restrained RGG from transferring, disposing of, creating any encumbrances in respect of, or otherwise dealing with the shares of any entity which, under the Family Settlements, fell to the lot of the DGG. The learned arbitrator has also directed RGG to accord 'no objection', so as to enable DGG to encash the mutual funds held by RGG. From the letter dated 1<sup>st</sup> January, 2018, it appears that the value of four of these mutual funds (excluding the value of the Kotak & Reliance folios, which is not forthcoming from the record), itself works out to ₹ 6.15 crores.

**55.** The only prayer of DGG, in its Section 17 applications, which was not granted by the learned arbitrator, as prayed by DGG, was the prayer for a direction to RGG to deposit, with the learned arbitrator, the shares held by RGG in companies which, under the Family Settlements, went to DGG. Instead, the learned arbitrator has restrained RGG from creating any third party interest in respect of these shares. To all intents and purposes, therefore, the shares stand fully secured, and the order achieves the same effect as an order for deposit of the shares with the learned arbitrator, as prayed by DGG, would have had.

**56.** In essence, therefore, all reliefs sought by DGG, in its two Section 17 applications, dated 1<sup>st</sup> May, 2019 and 11<sup>th</sup> October, 2019,

stand granted by the learned arbitrator.

**57.** DGG, needless to say, has no grievance with the aforesaid directions passed by the learned arbitrator on the Section 17 applications filed by it.

**58.** The grievance of DGG is with respect to the directions issued by the learned arbitrator to DGG, in paras 3.14 to 3.16 of the impugned order dated 18<sup>th</sup> February, 2020, to pay, to RGG, ₹ 5.28 crores (later enhanced to ₹ 6.6 crores), ₹ 11.28 crores and ₹ 12 crores, as contained in paras 3.14, 3.15, 3.16 and 3.21 of the impugned order.

**59.** In so directing, the learned arbitrator has taken into account the following facts:

(i) In paras 21 and 31 of CS (OS) 51/2018, DGG had admitted its liability to pay, to RGG, any outstanding amount remaining to be paid against the transfer, by RGG, of the shares held by RGG in NCPL, to BDR. Admittedly, 771000 shares held by RGG in NCPL, had been transferred to BDR (though, at one point in para 3.14 of the impugned order, it appears to have been erroneously recorded that the transfer was made by RGG to DGG). Against this transfer, DGG had paid, to RGG, only ₹ 3,03,00,000/-. The remaining consideration, to be paid against the said transfer, was ₹ 6.6 crores. It was in these circumstances that the direction for payment of the said amount to RGG was passed.

(ii) Further, in para 31 of CS(OS) 51/2018, DGG had admitted that, under the family settlements dated 2<sup>nd</sup> December, 2017, it was liable to pay a differential amount of ₹ 11.28 crores to RGG against the mutual funds held by BDR.

(iii) BDR had filed a claim against M/s Nageshwar Builder Pvt. Ltd., in arbitral proceedings. The proceedings were settled at the instance of DGG, resulting in DGG receiving an amount of ₹ 12 crores. Under the family settlements, there being no dispute that actionable claims of BDR fell to the share of RGG, and DGG having admitted the settlement that had taken place in the arbitral proceedings relating to M/s Nageshwar Builders Pvt. Ltd., DGG was liable to pay, to RGG, the amount of ₹ 12 crores.

**60.** It is on this basis that the learned arbitrator has directed DGG to pay, to RGG, ₹ 6.6 crores, ₹ 11.28 crores and ₹ 12 crores.

**61.** Mr. Nayar has, in challenging the aforesaid directions of the learned arbitrator, contended that the entitlement of RGG, to the aforesaid amounts, was in terms of the family settlements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2017. RGG, he submits, had disputed the enforceability of the family settlements. The learned arbitrator was in error in opining that the tenor of the pleadings of RGG indicated that it desired DGG to abide by the family settlements. Having disputed the family settlements, RGG, submits Mr. Nayar,

could not be entitled, at the interim stage, to any benefit which accrued under the family settlements. There was complete absence of any readiness and willingness on the part of RGG, according to Mr. Nayar, to abide by the family settlements and, in the absence of any such readiness and willingness on its part, RGG could not be regarded as entitled to any interim relief which required implementation of the family settlements. It is sought to be pointed that, in para 3.2 of the impugned order, the learned arbitrator has acknowledged the fact that the claim of RGG arose out of the family settlements.

**62.** If RGG were to be granted any benefit arising out of the family settlements, Mr. Nayar submits that RGG would equally be bound to comply with its obligations under the family settlements. These would include transfer of the shareholding, held by RGG, in the companies which fell to the lot of DGG under the family settlements, to DGG.

**63.** The prayer of DGG to this effect had, however, not been granted by the learned arbitrator. Effectively, therefore, submits Mr. Nayar, the learned arbitrator had granted, to RGG, the final relief sought by it at the interim stage, while denying a similar benefice to DGG.

**64.** Apropos the admission of DGG, in paras 21 and 31 of CS (OS) 51/2018, on which the learned arbitrator has relied, Mr. Nayar submits that these admissions were not unequivocal in nature. They were predicated on the premise that the family settlements were enforceable in law, and had been advanced only to comply with Section 16 of the

Specific Relief Act and demonstrate the readiness and willingness of DGG to abide by the family settlements. Even so, Mr. Nayar submits, the willingness was only at the stage of “final accounting”, as was specifically averred in para 21 of the plaint in CS(OS) 51/2018; a factor which the learned arbitrator had ignored.

**65.** Mr. Nayar has also advanced a procedural objection, by submitting that, at the time of passing of the order dated 18<sup>th</sup> February, 2020, on the Section 17 applications of RGG, no counter claim was filed by RGG. In the absence of a substantive counter claim, Mr. Nayar submits that interim relief, under Section 17 of the 1996 Act, could not have been granted.

**66.** Mr. Nayar finally relies on Order XXXVIII Rule 5 of the CPC, to submit that any direction for deposit, under Section 17, had to be governed by the considerations which applied to Order XXXVIII Rule 5, and which were lacking in the present case.

**67.** As against this, Mr. Nandrajog submits that DGG had never contended, before the learned arbitrator, that any direction to DGG, to make payment to RGG, could be issued only conditional on a parallel order, directing RGG to transfer shares to DGG. In fact, submits Mr. Nandrajog, Mr. Nayar is conflating two entirely unconnected issues. The direction to DGG, to pay amounts, to RGG, the payability of which stood admitted by DGG, he submits, had nothing to do with transfer of shares by RGG to DGG. In fact, the learned arbitrator had adequately protected DGG, in this regard, by restraining RGG from

transferring the shares held by RGG in the companies falling to the lot of DGG under the family settlements and directing RGG to maintain *status quo* in respect thereof.

**68.** Mr. Nandrajog submits that DGG had admitted, in its Section 17 application before the learned arbitrator, that both DGG and RGG were acting towards implementation of the family settlements, and the surviving dispute was only with respect to the modalities of such implementation.

**69.** Mr. Nandrajog submits that, as the learned arbitrator has passed the impugned order on the basis of admissions by DGG, there was no occasion for this Court to interfere therewith.

**70.** Even on merits, he submits, the order was entirely justified. The entitlement of RGG, to the amount of ₹ 6.6. crores, ₹ 12 crores and ₹ 11.28 crores, was clearly established from the record. He submits that, in this regard, that the amount of ₹ 6.6 crores represented the consideration remaining to be paid by DGG in respect of the shares held by RGG in NCPL, which had already been transferred by RGG to BDR. Apropos the amount of ₹ 12 crores relating to the arbitration proceedings with respect of Nageshwar Builders, Mr. Nandrajog submits that DGG had as much as admitted its liability to pay the said amount, in the reply filed by it in response to para 6 of IA 17132/2018 preferred by RGG in CS(OS) 51/2018.

**71.** Mr. Nandrajog disputes the contention of Mr. Nayar that the learned arbitrator has granted final relief to RGG at the interim stage.

Rather, he submits that, in fact, the learned arbitrator has allowed all the prayers of DGG in its Section 17 applications and has only, by directing payment to be made, subjected DGG to terms. This, he submits, was well within the jurisdiction of the learned arbitrator, even in the absence of any admission by DGG or counter claim by RGG.

72. Having perused the record and applied my mind to the submissions advanced by learned Counsel for both parties, I find, in principle, no ground to interfere with the direction, by the learned arbitral tribunal, to DGG, to make payments of ₹ 6.6 crores, ₹ 11.28 crores and ₹ 12 crores.

73. Paras 21 and 31 of CS(OS) 51/2018 read thus:

“21. Thereafter around 11.12.2017, Mrs. Renu Gupta (Defendant No. 3) transferred 7,71,000 shares of M/s Nishit Capinvest Pvt. Ltd. to M/s BDR Builders & Developers Pvt. Ltd. against which the Plaintiffs Group had already made payment of Rs. 3,03,00,000/-. The Plaintiffs submit that the internal accounting of the family members with respect to payment of consideration of such transfer of shares already shows an adjustment of all rights and liabilities in this regard. *That upon the final accounting if any amounts are outstanding from the Plaintiff's side, the Plaintiff's are ready and willing to give benefit to the Defendants if the same is so directed by the Hon'ble Court.* Reciprocating the same, the Defendants also ought to make final adjustment of accounts and provide all monetary gain thereunder to the Plaintiffs.

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31. The Plaintiffs submit that *as per the Family Settlement dated 02.12.2017, Rs. 16.50 crores had to be paid to Rajesh Gupta Group from the mutual funds held by BDR Builders and Developers Pvt. Ltd.* but all accretions of such mutual funds were to the share of Dinesh Gupta Group. The Plaintiffs submit that as per the said settlement Rs. 5.22 crores had to be paid by Rajesh Gupta Group to Dinesh Gupta Group. *Accordingly, expecting the general market to fall post-budget,*

*on 11.12.2017 and 09.01.2018, the Plaintiffs Group redeemed the Mutual Funds held by BDR Builders & Developers Pvt. Ltd. and got Rs.22,43,72,629/- from the said Mutual Funds. Out of the said monies, Rs. 16.50 crores are being held by the Plaintiffs in trust for the benefit of the Rajesh Gupta Group. However, upon adjustment. of Rs. 5.22 crores mentioned in the settlement dated 02.12.2017, the balance amount of Rs.11.28 crores can be transferred to the account of Rajesh Gupta & Associates immediately. The Plaintiffs submit that the Plaintiffs have no intention of keeping any monies of Rajesh Gupta & Associates and are wishing for a complete closure of inter se rights and obligations amongst the parties in terms of the family settlement dated 02.12.2017.”*

*(Italics and underscoring supplied)*

**74. Re. direction to pay ₹ 6.6 crores:**

**74.1** This amount, according to the impugned order, relates to 771000 shares of NCPL, transferred by Renu Gupta to BDR, and the consideration that remains to be paid by DGG (into whose kitty BDR has fallen under the Family Settlements) against such transfer.

**74.2** DGG has, in para 21 of CS (OS) 51/2018, acknowledged the fact that 771000 shares of NCPL were indeed transferred by Renu Gupta to BDR and that, against the said transfer, DGG had paid ₹ 3,03,00,000/-. DGG had also agreed that, if upon final accounting, any further amounts were found outstanding to be paid by it against the said transfer, it was ready and willing to do so, if directed by the court.

**74.3** The learned arbitrator has, in para 3.14 of the impugned order, observed that, against the transfer of the aforesaid 771000 shares of NCPL to BDR, DGG had paid only ₹ 3,03,00,000. An amount of ₹ 5.28 crores, it has been noted in the said paragraph, remained to be



paid. This amount was directed, by the learned arbitrator, to be paid to RGG. Subsequently, on an application being filed by RGG under Section 33 of the 1996 Act on 20<sup>th</sup> February, 2020, the learned arbitrator, by a subsequent order dated 14<sup>th</sup> May, 2020 corrected the aforesaid figure of ₹ 5.28 crores to ₹ 6.6 crores. In this regard, it is merely observed, in para 3.2 of the order dated 14<sup>th</sup> May, 2020 thus:

“3.2 Insofar as correcting the figure of Rs.5.28 crores to Rs.6,60,75,000/- is concerned, the RGG is justified in his submission. DGG also could not dispute the same. Accordingly, in Para 3.14 and 3.16 of Orders dated 18.02.2020 where the figure of Rs. 5.28 crores is mentioned, it would be read as Rs.6,60,75,000/-.”

**74.4** The basis for the aforesaid figure of ₹ 6.6 crores becomes apparent from the documents filed by DGG with its Statement of Claims. DGG had placed on record, with its Statement of Claims before the learned arbitrator, a share transfer certificate dated 12<sup>th</sup> December, 2017, which has not been filed with the present appeal, but has been placed on record by the respondent under cover of an additional affidavit filed under index dated 25<sup>th</sup> August, 2020. This share transfer certificate reveals that 771000 shares of NCPL were sold for ₹ 9,63,75,000/-. This document having been placed on record by DGG itself, along with its Statement of Claim (though not disclosed before this Court), no fault can be found with the learned arbitrator in recording the aforesaid figure as admitted by DGG.

**74.5** It is admitted that DGG had paid, to RGG, only an amount of ₹ 3,03,00,000/-, against the transfer of the aforesaid shares. Subtracting this figure from ₹ 9,63,75,000/-, the amount remaining to be paid works out to ₹ 6,60,75,000/-. The learned arbitrator cannot, therefore,

be faulted in finding that the liability of DGG to pay, the RGG, the aforesaid amount of ₹ 6,60,75,000/- stood admitted.

**75. Re: direction to pay ₹ 11.28 crores**

**75.1** The reasoning of the learned arbitrator, in support of this direction is to be found in para 3.15 of the impugned order. The learned arbitrator has relied on para 31 of CS (OS) 51/2018, filed by DGG before this Court, in which DGG accepted that, under the family settlement dated 2<sup>nd</sup> December, 2017, it was liable to pay ₹ 16.50 crores to RGG, from the mutual funds held by BDR. After adjusting ₹ 5.22 crores, DGG expressed its willingness to pay, to RGG ₹ 11.28 crores. A reading of para 31 of the plaint reveals that these findings of the learned arbitrator are perfectly in order. DGG has indeed admitted, in para 31 of CS (OS) 51/2018, its liability to pay ₹ 16.50 crores to RGG out of which, after deducting ₹ 5.22 crores (mistakenly stated as ₹ 5.28 crores in para 3.15 of the impugned order) ₹ 11.28 crores remains to be paid. In fact, DGG had offered to hand over, to RGG, the said payment, so as to bring a quietus to that controversy. Nothing amiss can be found, therefore, with the learned arbitrator treating the liability of DGG to this effect as admitted in para 31 of CS (OS) 51/2018.

**75.2** Mr. Nayar has sought to question the legitimacy of the finding, by the learned arbitrator, of DGG having admitted its liability to pay ₹ 11.28 crores in para 31 of CS (OS) 51/2018, on the ground that this admission was not unconditional, but was on the premise that the

Family Settlements dated 2<sup>nd</sup> December, 2017 and 9<sup>th</sup> December, 2017 were enforceable in law. It has been sought to be submitted that, as RGG was disputing the enforceability of the family settlements, DGG could not be asked to make payment to RGG in terms of the family settlements, which RGG itself disputed. The submission is, therefore, that RGG could not reap a windfall out of Family Settlements which were disputed by it.

**75.3** If at all, RGG was to be entitled to payment under the Family Settlements, Mr. Nayar submits that DGG would also be entitled to all the benefits that accrued to it thereunder, from RGG. In other words, Mr. Nayar submits that the learned arbitrator ought, simultaneously, to have directed RGG to deposit, with the learned arbitrator, the shares held by it in the companies which fell to the lot of DGG under the Family Settlements.

**75.4** This last submission of Mr. Nayar, in my view, is not of much substance, as the learned arbitrator has indeed restrained RGG from dealing in any manner with the shares held by it in the companies which, under the Family Settlements, fell to the lot of DGG. This, in my view, is as good as a direction to deposit the shares with the learned arbitrator, as *status quo* in respect of the shares would, in any event, be maintained.

**75.5** Adverting, now, to the submissions of Mr. Nayar that RGG could not be granted interim relief under Family Settlements which it sought to dispute, this submission, though superfluously attractive, misses, in my opinion, the wood for the trees.

**75.6** The learned arbitrator proceeded on the basis of admissions contained by DGG in para 31 of CS (OS) 51/2018. Had DGG disputed the Family Settlements and advanced, without prejudice, a submission that, were the Family Settlements to be treated as enforceable, it would be bound to pay, to RGG, ₹ 11.28 crores, then, perhaps, the submission of Mr. Nayar that the learned arbitrator had erred in treating the liability of DGG to RGG to pay ₹ 11.28 crores as admitted by DGG, might have passed muster. That, however, is not the case. DGG asserts the Family Settlements. In fact, before me, even RGG asserts the Family Settlements, and Mr. Sudhir Nandrajog went to the extent of submitting, categorically on instructions, that RGG was not questioning the enforceability of the Family Settlements, and wanted to abide by them in totality. In any event, once DGG asserted the enforceability of the Family Settlements and further submitted that, under the Family Settlements, it was bound to pay ₹ 11.28 crores to RGG, the learned arbitrator cannot be faulted, in law, in acting on the basis of the said admission, while passing the impugned interim order.

**75.7** It must be remembered, in this context, that the direction for payment, in the impugned order, has been made only as a *pro tem* measure, and subject to the outcome of arbitral proceedings. It is not, therefore, as though the learned arbitrator has passed an *interim award*, finally directing the DGG to pay, to RGG, the amounts with which the DGG is aggrieved. These are interlocutory directions, and would abide by the final decision in the arbitral proceedings. The character of these directions has necessarily to be borne in mind, while

assessing whether they are deserving of interference, in the exercise of jurisdiction under Section 37(2)(b) of the 1996 Act.

**75.8** Viewed thus, I am of the opinion that, as DGG had asserted the enforceability of the Family Settlements and its liability to pay ₹ 11.28 crores to RGG thereunder, no occasion exists for characterising the observation or the finding of the learned arbitral tribunal in that regard, as contained in para 3.15 of the impugned order as misguided or deserving of interference.

**76.** Re: direction to pay ₹ 12 crores.

**76.1** The justification for the direction, of the learned arbitrator to DGG, to pay ₹ 12 crores to RGG, is to be found in paras 3.20 and 3.21 of the impugned order, which read as under:

“3.20 Prayer (d) in the application is premised on the averments that during the pendency of the suit proceedings, DGG clandestinely entered into a settlement with Nageshwar Builders Pvt. Ltd. without any consent or authority of Rajesh Gupta and settled all the disputes with Nageshwar Builders Pvt. Ltd., which has caused immense loss to RGG. It appears that BDR Builders and Developers Pvt. Ltd. had filed claim against Nageshwar Builders Pvt. Ltd. before Mr. Manish Goyal, Advocate and Sole arbitrator and in the said proceedings, settlement took place under which BDR received the amount as per the settlement. RGG had filed application in the High Court (which is annexed as Annexure R5 to the present application under Section 17 of the Act) wherein it is stated that DGG received an amount of Rs.12 crores by demand drafts as per the said statement. However, the actual amount was Rs.20 crores and the balance has been received in cash by BDR.

3.21 It is a matter of record that actionable claims of BDR

had fallen into the share of RGG. Therefore, amount in question received under the settlement belongs to RGG. In reply to this application, DGG has not denied the settlement. It is only averred that the settlement was with the consent of RGG. The receipt of the amount in cash, however, is denied. In the aforesaid circumstances, DGG is also liable to pay the sum of Rs.12 crores to RGG. It would be subject to the final Award on this aspect.”

**76.2** The learned arbitrator has, therefore, proceeded, in directing payment of ₹ 12 crores by DGG, to RGG, on the premise that, in the arbitral proceedings between BDR and Nageshwar Builders, a settlement had been arrived at, under which Nageshwar Builders paid to BDR an amount of ₹ 12 crores. He has noted the fact that the assertion, to this effect, as contained in IA 17132/2018, preferred by RGG before this Court in CS (OS) 51/2018, was not disputed by DGG in its reply to the said application. RGG had specifically asserted, in the said paragraph, that an amount of ₹ 12 crores had been received by DGG, on the basis of the said settlement. Under the Family Settlements, the learned arbitrator has noted that actionable claims of BDR fell to the lot of RGG. This finding has not been traversed by Mr. Nayar before me. The amount of ₹ 12 crores, received consequent on the settlement between BDR and Nageshwar Builders Pvt. Ltd., which took place in the arbitral proceedings before Mr. Maneesh Goyal, therefore, accrued to RGG under the Family Settlements. This position is found to be correct, on reading para 6 of IA 17132/2018, preferred by RGG before this Court in CS(OS) 51/2018, and the corresponding paragraphs in the reply filed by DGG thereto. These paragraphs may, for ready reference, be reproduced thus:

Para 6 of IA 17132/2018 filed by RGG

“6. That taking advantage of the pendency of the presents proceeding and the matter being reserved for orders, the plaintiffs clandestinely entered into a settlement with Nageshwar Builders Pvt. Ltd., without any consent or authority of the applicant/defendant no.1, whereby the plaintiffs attempted to settle all the aforesaid three proceedings for a total consideration of Rs.12 Crores. The defendant no.1 was shocked to know about the said settlement in the last week of October, 2018 from Nageshwar Builders Pvt. Ltd., who also supplied a copy of the settlement to the defendant no.1. Enquiries further revealed that in fact the actual settlement was for approximately Rs.20 crores, out of which Rs.12 crores was received by the plaintiffs by Demand Drafts in favour of BDR Builders and Developers Pvt. Ltd. (plaintiff no.4 herein) and the balance amount has been received in cash by the other plaintiff.”

Reply of DGG to para 6 of IA 17132/2018

“The contents of the order dated 16.11.2018 passed by the Hon’ble Delhi High Court are a matter of record and need no reply.”

**76.3** Again, the only submission of Mr. Nayar in this regard, is that the entitlement of RGG, to the amount of ₹ 12 crores paid by Nageshwar Builders to BDR flows only from the Family Settlements and that, RGG having disputed the Family Settlements, no benefit could accrue to it, which was dependent thereon. I have already dealt with this submission hereinabove. I cannot fault the learned arbitrator in, at the interim stage, treating the amounts which DGG had admitted to be payable to RGG, under the Family Settlements, to be so payable, especially as DGG was asserting the Family Settlements.

**76.4** As a result, the finding, of the learned arbitrator that DGG had

to be regarded as having admitted its liability to pay 12 crores to RGG, consequent on the settlement in the arbitral proceedings between BDR and Nageshwar Builders, cannot be said to be suffering from patent illegality, as would justify interference in appeal.

77. There is also substance, in this context, in the submission of Mr. Nandrajog, that, even *de hors* the aspect of any admission having been made by DGG, *qua* the aforesaid amounts of ₹ 6.6 crores, ₹ 11.28 crores and ₹ 12 crores, the findings of the learned arbitrator would, nonetheless, be sustainable as imposing conditions, on DGG, for grant of the reliefs which DGG sought in its Section 17 applications.

78. As has already been observed by me hereinabove, the learned arbitrator allowed the Section 17 applications of DGG, to the extent that (i) RGG was restrained from enforcing the notices issued by it under Section 100 of the Companies Act, (ii) RGG was further restrained from transferring, disposing of, creating any encumbrance or dealing with shares of any of the entities which, under the Family Settlements, fell to the lot of DGG, and (iii) RGG was directed to issue a no objection so that DGG could encash the mutual funds bearing Folio Nos. 9051496351, 9051498822, 9051500892, 9051489878 of Edelweiss Mutual Fund; Folio Nos. 4602943/91 of Kotak Mutual Fund and Folio Nos. 403166914243 and 403173224241 of Reliance Mutual Fund, which, under the Family Settlements, fell to the lot of DGG. These were benefits which DGG claimed under the Family Settlements, in its Section 17 applications and which have been allowed by the learned arbitrator in DGG's favour. If, therefore,



against grant of such relief, the learned arbitrator chose to impose a condition on DGG too, at an interim stage, and subject to the final decision in the arbitral proceedings, on the basis of its obligations under the Family Settlements, nothing amiss can be found therein.

**79.** As Mr. Nandrajog correctly submitted, grant of the reliefs sought by DGG in its Section 17 applications, whether in whole or in part, could always be subjected, by the learned arbitrator, to conditions as the learned arbitrator deemed appropriate. It is not as though the learned arbitrator rejected all the prayers made by DGG and, nonetheless, directed DGG to make payments to RGG, in which case, it might have been possible to argue that the impugned order was skewed in favour of RGG. That, however, is not the case. The learned arbitrator has substantially granted relief to DGG, as claimed by DGG in its Section 17 applications. Having done so, it was within the province of the jurisdiction of the learned arbitrator to impose appropriate conditions therefor. Even if the learned arbitrator were to direct a deposit by DGG, as a condition for grant of such reliefs, irrespective of whether there was or was not any admission by DGG to that effect, the direction might have been sustainable in law. The power to impose such directions was not dependent, either, on the existence, or otherwise, of any counter-claim by RGG. The submission, of Mr Nayar, that, in the absence of any substantive counter-claim by RGG, the learned arbitrator could not have directed DGG to make payments to RGG at the interim stage, is, therefore, off the point. The directions, as imposed, could as well have been imposed as a condition for grant of the reliefs sought by DGG in its

Section 17 applications, to balance grant of the said reliefs. What the learned arbitrator did was, therefore, within his jurisdiction and in lawful exercise thereof. That the learned arbitrator proceeded, in doing so, on the basis of admissions contained by DGG in its pleadings only substantiates, further, the findings in the impugned award.

**80.** Having said that, I am also of the view that it would have been more appropriate for the direction for payment to be made by way of a deposit, by DGG, with the learned arbitrator, rather than by way of outright payment to RGG. Directing payment to RGG, of the amounts forming subject matter of the claims of RGG before the learned arbitrator does, to an extent, have a flavour of grant of the final reliefs at an interim stage.

**81.** As this Court is presently exercising jurisdiction under Section 37(2)(b), and not under Section 34, of the 1996 Act, it is permissible for this Court to appropriately modify the impugned order *ex debito justitiae*, as already held by this Court in *Augmont Gold Pvt. Ltd.*<sup>15</sup> and *Edelweiss Asset Reconstruction Company v GTL Infrastructure Ltd.*<sup>18</sup>

**82.** In view thereof, I deem it appropriate to modify the direction, in the impugned order, in respect of payments having to be made by DGG, to the extent of directing that the payments would be made by way of deposit with the learned arbitrator, and not directly to RGG. In other words, DGG would be required to deposit ₹ 12 crores, ₹ 11.28 crores and ₹ 6.6 crores with the learned arbitrator. The deposit would,

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<sup>18</sup> MANU/DE/2017/2020

needless to say, abide by the outcome of the arbitral proceedings.

**83.** Subject to the aforesaid limited modification, I find no reason to interfere with the impugned order, as sought by DGG in Arb A 6/2020. The appeal is, therefore, dismissed subject to the aforesaid limited modification.

**Arb A 5/2020**

**84.** This is an appeal by DGG against BSG, challenging para 3.36 of the impugned order, to the limited extent that the learned arbitrator directs DGG, in the said para, to deposit ₹ 2 crores in a fixed deposit in the name of Bechu Singh HUF and to deposit the fixed deposit receipt with the learned arbitrator. The order has been passed on opposing Section 17 applications, filed by DGG against BSG and by BSG against DGG.

**85.** DGG, in its Section 17 application, merely sought a restraint against BSG from acting on the basis of the notices issued by it under Section 100 of the Companies Act. This relief has been granted by the learned arbitrator, who directed continuance, during the pendency of the arbitral proceedings, of the directions contained in para 53 of the order dated 16<sup>th</sup> November, 2018 *supra* passed by the learned Single Judge in CS(OS) 51/2018 and connected suits, interdicting enforcement of the notices issued under Section 100 of the Companies Act.

**86.** No other relief was sought by DGG against BSG in its Section 17 application. As such, the impugned order in this appeal is

essentially relatable only to the Section 17 application filed by BSG against DGG.

**87.** The prayer clause of BSG, in its Section 17 application against DGG stands reproduced in para 3.31 of the impugned order. BSG, in its application, sought directions, from the learned arbitral tribunal to

a. modify the order restraining the Respondents/Applicants from giving effect to the notice dated 16.02.2018 issued under Section 100 of the Companies Act, 2013.

b. restrain the Claimant from taking any decision in the capacity of being the director during the pendency of the present proceedings;

c. restrain the Claimant from interfering in the day to day operations and working of the Company which is to be managed by the Respondent/Applicant Group.

d. restrain the Claimant from siphoning off any assets of the Company which is to be managed by the Respondent/Applicant Group;

e. restrain the Claimant from making any changes in the shareholding pattern of the Company which is to be managed by the Respondent/Applicant Group;

f. direct the Claimant not to utilize any money received on behalf of the Company;

g. permit the Applicants to give effect to the notice under section 100 of the Companies Act 2013;

h. permit the Applicants to conduct the EOGM in respect of the proposed agenda as provided for in the notice calling such EOGM;

i. pass any other or further order, which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

It may be mentioned that the “company” to which the aforesaid prayers allude, is RNTPL.

**88.** There was, therefore, clearly no prayer by BSG, in its Section 17 application, to DGG, to secure any amount in the arbitral proceedings.

**89.** That the absence of such a prayer may not necessarily be fatal to a direction for deposit has already held by me in *Dinesh Gupta v. Anand Gupta*<sup>14</sup>. At the same time, there must be due justification for directing such deposit. The learned arbitrator, in exercising jurisdiction under Section 17 can, no doubt, act *ex debito justitiae*, but for valid reasons.

**90.** BSG had, in its Section 17 application, sought a restraint, against DGG from (i) taking any decision in the capacity of Director of RNTPL, (ii) interfering in the day to day operations and working of RNTPL, (iii) siphoning any of the assets of RNTPL, (iv) making any changes in the shareholding pattern of RNTPL, and, (v) utilising any money received on behalf of RNTPL.

**91.** The learned arbitrator holds, in para 3.34 of the impugned order that, not being a part of the Gupta family or a signatory to the Family Settlements, BSG could not be bound by the covenants thereof. As such, according to the learned arbitrator, the case of BSG was on a sounder footing than that of AGG.

**92.** The extent to which BSG could be bound, in the circumstances, by the covenants of the Family Settlements, has been held by the learned arbitrator in Para 3.36 of the impugned order, to be a matter of trial. This finding is unexceptionable. For this reason, the learned arbitrator has deemed it appropriate to restrain BSG, during the pendency of the arbitral proceedings, from taking any further action in pursuance of its Section 100 notices.

**93.** The learned arbitrator has also, in the circumstances, deemed it appropriate to restrain DGG from making any changes in the shareholding pattern of RNTPL, during the pendency of the arbitral proceedings. In other words, *status quo*, regarding the shareholdings in RNTPL, has been directed to be maintained during the currency of arbitration. This direction resulted in grant, to BSG, of prayers 'd' and 'e' in its Section 17 application.

**94.** The issue that arises for consideration is, therefore, whether, having thus restrained DGG from interfering with the shareholding pattern of RNTPL, the learned arbitrator was justified in further directing DGG to deposit ₹ 2 crores with the learned arbitrator, to secure the interests of BSG.

**95.** Had it been the view of the learned arbitrator that BSG had any interest in RNTPL *over and above* its shareholding therein, then, perhaps, the direction for such deposit may have been justified. The learned arbitrator, however, specifically holds, in para 3.36 of the impugned order, that “prime interest of BSG is to receive the

consideration in respect of shares which are held by BSG in RN Technobuild”. That being so, once *this interest* was secured by the learned arbitrator by directing DGG to maintain *status quo* in respect of the shareholding in RNTPL, in my opinion, and with greatest respect to the learned arbitrator whom I hold in the highest esteem, the justifiability of the further direction to deposit ₹ 2 crores, even if passed *ex debito justitiae*, becomes, in the context of Section 17 of the 1996 Act, debatable.

**96.** In my view, once the learned arbitrator had held that the prime interest of BSG was with respect to its shareholding in RNTPL, and once this interest stood secured by directing DGG to maintain *status quo qua* shareholding in RNTPL, the interest of BSG, *prima facie*, stood adequately secured. In these circumstances, and particularly in the absence of any prayer by BSG, in its Section 17 application, for any deposit to be made by DGG, I am of the opinion that the direction, of the learned arbitrator, to DGG, to deposit ₹ 2 crores in a fixed deposit favouring BSG, pending the arbitral proceedings, was not justified.

**97.** This is the only challenge by DGG, in Arb A 5/2020 against BSG and, in my view, the challenge has to succeed. Once the interest of BSG in RNTPL, which, even as per the learned arbitrator, was only *qua* its shareholding, was sufficiently secured by directing DGG to maintain *status quo* regarding the said shareholding, the learned arbitrator could not, in my respectful view, *further direct* furnishing of ₹ 2 crores by way of fixed deposit, especially in the absence of any such prayer being made by DGG in its Section 17 application. This

would, in a sense, amount to granting relief twice over to BSG, beyond the prayers made by it before the learned arbitrator.

**98.** In view thereof, the challenge by DGG in this appeal has to succeed.

### **Conclusion**

**99.** In the circumstances, Arb A 6/2020 stands dismissed, with the limited modification that DGG would be required to pay the amounts as directed by the learned arbitral tribunal i.₹. 12 crores, ₹ 11.28 crores and ₹ 6,60,75,000/- by way of deposit, before the learned Arbitral Tribunal, rather than by way of payment to RGG.

**100.** Arb A 5/2020 is allowed.

**101.** DGG is directed to comply with the direction contained in para 99 *supra* within four weeks from the date of receipt, by it, or its Counsel, of a copy of this judgement, by e-mail from the Registry, whichever is earlier.

**102.** The Registry is directed to provide certified copies of this judgement to learned Counsel for the parties as well as e-mail the judgement to their respective e-mail ids.

**C. HARI SHANKAR, J.**

**DECEMBER 24, 2021**

*r.bararia/dsn/SS*