



W.P.No.17443 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.11.2024

Pronounced on : 07.01.2025

CORAM : JUSTICE N.SESHASAYEE

W.P.No.17443 of 2021
and WMP.Nos.18525, 18526 of 2021
and WMP.No.11564 of 2023

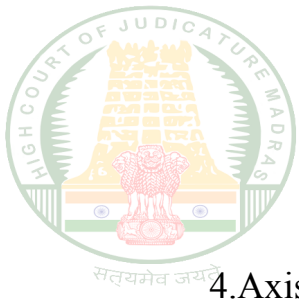
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Cheran Enterprises Private Limited
Rep by its Managing Director, K.C.Palanisamy
Cheran Towers
Arts College Road
Coimbatore - 641 018.

... Petitioner

Vs.

- 1.Union of India
Rep by Secretary to Government
Ministry of Finance
Department of Economic Affairs (FIPB Unit)
North Block, New Delhi - 110 001.
- 2.The Reserve Bank of India
Through its General Manager
6, Sansad Marg, New Delhi - 110 001.
- 3.The Reserve Bank of India
Through its Governor
Foreign Exchange Department
Central Office Building, 18th Floor
Shahid Bhagat Singh Marg, Fort
Mumbai - 400 001.



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4.Axis Bank Ltd.,
Trade Finance Center
5th Floor, Gigaplex, Plot No.IT 5, MIDC
Airoli Knowledge Park
Navi Mumbai - 400 708.

5.Axis Bank Ltd.,
Foreign Exchange Division
Avinashi Road Branch
1133, 1135 & 1136, Avinashi Road
Coimbatore - 641 037.

6. O.R.E.Holdings Limited
IFS Court, Twenty Eight, Cyber City
Ebene, Mauritius.

7.ORE Trust
Rep by its Trustee R.Ravichandran
9, Norton, II Street, Mandavelipakkam
Chennai - 600 028.

8.Nandakumar Athappan
96, Meyer Road
Singapore - 437 917.

9.Vasantha Mills Limited
Rep by its Director
78, Cheran Towers
Arts College Road
Coimbatore - 641 018.

10.CG Holdings Private Limited
Rep by its Director
No.44, Kothari Road
Chennai - 600 034.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, to call for the records of the in Letter No.DEL.FED.CO.IP.No.5/10.51.000/2020-21 dated 28.08.2020 on the file of the respondent No.2 and quash the same, and further direct respondent No.2 to strictly apply the provisions of all applicable laws including Regulation 9 and 10 of the Foreign Exchange Management (Transfer or issue of Security by a Person Resident Outside India) Regulations, 2000 (as was applicable then) for the buy-back of shares by the petitioner from respondent Nos.6 and 8, as mandated by this Court under its order dated 05.08.2011, and permit the respondent Nos.6 and 8 to recover only the value of the shares so arrived at in lines with the earlier final decision communicated by the Respondent No.3 under their letter dated 09.04.2012 and further order direct the respondents to ensure strict compliance with all applicable laws, including in particular Regulation 9 and 10 of Foreign Exchange Management (Transfer or issue of Security by a Person Resident Outside India) Regulations 2000 before acting pursuant to the letter in FED.CO.ND.(IP).1978/10.51.000/2014-15, dated 08.06.2015 issued by the respondent No.2.

For Petitioner : Mr.Darius Khambata, Senior Advocate &
Mr.Gopal Sankaranarayanan, Senior Advocate
Assisted by Mr.N.Ramakrishnan
for M/s.Waraon and Sai Rams



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For Respondents : Mr.Venkataswamy Babu
Central Government Standing Counsel for R1

Mr.T.Poornam
Assisted by Mr.V.S.Rishwanth for R2, R3

Mr.K.G.Raghavan, Senior Advocate
Assisted by Mr.K.Gowtham Kumar &
Mr.Aditya Vikram Bhat for R6 & R7

Mr.J.Sivanandaraj, Senior Advocate
Assisted by Ms.Ridhima Sharma for R8

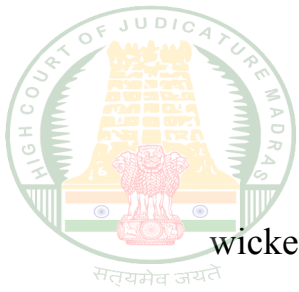
Mr.P.Wilson, Senior Advocate
for M/s.Arva Merchant for R9

Mr.Nithyaesh Natraj for R10

R4 & R5 - No Appearance

ORDER

1.1 I am required to umpire the final match of the series between the team-petitioner (comprising the petitioner, respondents 9 and 10) and the team-respondents (comprising respondents 6 to 8). It is being fought hard as in the body-line series. I realised that team-respondents had pushed the team-petitioner on the back-foot after securing few advantages in the earlier matches. Team-petitioner is batting. I saw the batsmen walking aggressively and restlessly outside the crease. It has to take its chances on this final day



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wicket of the final match, which looked the way it ordinarily will look on the final day – weary with cracks.

1.2 And, here I am, stepping into officiate the final moments of the game in this ground. *“How many times have I been here? How many matches would I have umpired?”* - A thought passed by. Cautioning my mind not to wander, I settled down to umpire another game. Will the petitioner hit its way to its team's victory or is the team-respondents going to steal the show? I am not interested in the outcome. For, I am neither a player nor a spectator.

An Overview of the Series

A. Setting the Tone – Backdrop facts:

2. Broadly, it is a story of two foreign investors collaborating with Indian Companies promoted by a certain K.C.Palanisami (KCP, for short), both of whom eventually losing their ways and struggling to part.

- a) On 31.01.2004, KCP and a few of the companies that he founded, namely C.G.Holdings (the 10th respondent), CEPL (the petitioner), Cheran Properties Ltd., (not a party to this case), and a certain ORE Holdings (the 6th respondent), a foreign company and one



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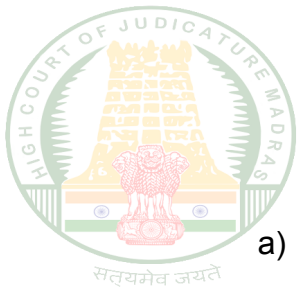
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Nandakumar Athappan (the 8th respondent and would be referred to as Athappan), a foreign national, entered into joint venture agreement.

- b) In terms of the JV Agreement, ORE, the 6th respondent had invested Rs.75.0 crores and acquired 45% stake. Athappan on his part invested Rs.4.0 crores. It may have to be underscored that both ORE and Athappan were foreign investors and they have obtained necessary approval for making investment in the Indian companies. And, both these foreign investors had nominated their directors to the Board.
- c) The JV was a non-starter, (reasons for the same are not very germane now) and it soon became a dis-joint venture, as both the sides namely the 10th respondent herein (C.G.Holdings) and ORE assembled before the Company Law Board, accusing each other of oppression and mismanagement.

B. Highlights of the First Match

3.1 In this segment what transpired in the company petitions filed by both sides and the Order which the CLB has passed and the judicial proceedings that followed are stated:



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a) On 13.08.2008, the CLB passed its final orders in the Company Petitions before it (reported in 2008 SCC OnLine CLB 67). Exercising its powers under Sec.402 of the Companies Act,1956, the CLB evolved an exit formula for ORE and Athappan, the foreign investors, to quit the JV company. The operative portions of the Order read:

“In view of the foregoing conclusions and in exercise of the powers under sections 397 & 398 read with section 402 and with a view to bringing to an end the grievances of CG holdings, KCP [i.e. K.C. Palanisamy, the Petitioner herein], ORE and Athappan, the following order is passed:

CEPL shall return a sum of Rs.75 crores and Rs.4 crores invested by ORE and Athappan respectively, together with simple interest at the rate of 8% per annum, from the date of investment till the date of repayment within a period of 12 months in one or more instalments, commencing from 01.11.2008. While making the payment CEPL, CG Holdings and KCP shall ensure that at least 25% of the amount due is paid in every quarter. CEPL, C.G. Holdings and KCP are at liberty to make use of the fixed deposit held by CEPL with SBI, Erode Main Branch, free of any liens or encumbrances towards refund of the investments of ORE and Athappan. VML [i.e.Vasantha Mills Ltd, the 9th respondent in this



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writ petition, and hereinafter “VML”] shall not alienate or sell any of its immovable properties till full payment is made to Ore, in terms of this order. In the event of any failure to make the repayment within the specified time, CEPL, CG Holdings, KCP and VML will duly convey the immovable properties of VML, namely 17.15 acres of land in favour of ORE and 7.80 acres of land in favour of Athappan by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws, as consideration for reduction of capital and surrender of the shares of ORE and Athappan, upon which ORE as well as Athappan will deliver the share certificates and blank transfer forms in respect of their holdings in CEPL and the subsidiaries, if any, in favour of CG Holdings and KCP. CEPL is consequently authorized to reduce its share capital and in the meantime, operation of the impugned agreements is suspended, to expedite and ensure due completion of the modalities of exit by ORE and Athappan, thereby, bringing to an end the acts complained of in the present proceedings. CEPL shall ensure necessary statutory compliances till the whole process, in accordance with the aforesaid direction, is properly completed. The parties are at liberty to apply in the event of any difficulty in implementation of the smooth exist of ORE and Athappan from CEPL.”



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WEB COPY b) CLB very apparently had realised that JV was an unworkable matrimony between the Indian companies and their foreign investors, and this is amply evident from the tenor of its above order. If the operating portion is dissected it reads:

- That CEPL shall return both the foreign investors the money they had invested (Rs.75 + Rs.4 crores) with interest at 8% p.a; and the entire liability must be discharged within one year with a rider that at least 25% should have been paid in each quarter;
- For mobilising funds for payment, KCP group was authorised to make use of its fixed deposits which it had with SBI;
- Till payment is made, the 9th respondent herein (VML) shall not alienate its properties;
- If CEPL failed to discharge its obligation to pay the foreign investors the money which they had invested with interest within the time stipulated for payment, then 17.15 acres of VML land should be sold to ORE and 7.80 acre of VML land should be conveyed to Athppan but *strictly in accordance with the applicable laws.*
- And upon the foreign investors being paid, they shall surrender



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their share certificates, following which there would be a reduction in the share capital of the company in which they had invested.

- And the payment of money or conveyance of land as contemplated was to be the consideration for reduction of share capital.

3. A perfectly workable solution through which the CLB attempted to restore the *status quo ante* as it was prior to the arrival of the foreign investors on the scene. While things stood thus, C.G.Holdings, the 10th respondent herein (one which moved the CLB with a company petition leading to the CLB passing the Order for exit of the foreign investors) along with K.C.Palanisamy on the one hand, and ORE and Athappan on the other had taken out separate applications for modification of the Order of CLB dated 13.08.2008. While the principal prayer in these applications revolved around the utilisation of the money of C.G.Holdings lying in fixed deposits for discharging the liability cast on CEPL, ORE on its part has sought a modification that instead of the land of VML being sold to it, the same may be sold to the one who ORE nominates. On 03.08.2009, the CLB came out with its Order modifying its earlier Order. In this Order it



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tweaked its direction vis-a-vis the utilisation of funds in the fixed deposits,

but as regards letting ORE's nominees to purchase the property is concerned, it allowed it.

3.2 All the parties were apparently unhappy with some part of the modified Order, and this led to the institution of a batch of Company Appeals, and a Division Bench of this Court, vide its judgement dated 05.08.2011 (by R. Bhanumathi J, as the Hon'ble Judge then was) disposed of the same. In the context of the present case, it is significant to extract the following passage from the Order of this Court:

*145.... By the order dated 3.8.2009, Company Law Board modified the earlier order directing VML to execute the Sale Deed, conveying immovable properties of 17.15 Acres to the nominee of ORE and thereby modified its earlier order. **The Order of the Company Law Board modifying the earlier order directing VML to convey the properties to nominee of ORE is to be modified to the effect that any such conveyance should be subject to applicable laws and regulations and with required approval/permission to be obtained by ORE from the competent authorities. The order of the Company Law Board in O.A. No.135 of 2008 is to be modified to that extent.***

Thus both the CLB vide its Order dated 13.08.2008 and the Division in its Order



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have insisted that the formula as envisaged by the CLB shall have to be worked within the framework of all applicable laws: and the reference is obviously to FEMA compliance and obtaining RBI permission wherever necessary.

4.1 Even though the team-petitioner attempted to take a few points to its credit, the first match was eventually won by the team-respondents. ORE and Athappan obtained a workable and an obtainable solution. The takeaways for team-respondents are:

- a) Both ORE and Athappan would be entitled to get back the money that they had invested in CEPL with interest. And the petitioner which is under an obligation to pay the said sum, is required to pay the same within one year, with a rider that it should pay at least 25% every quarter.
- b) In the eventuality of the petitioner defaulting in making the payments as stipulated, the CLB had provided an alternate mode of settling the liability. VML, one of the companies of the KCP Group, the 9th respondent herein, will have to convey 17.15 acres to ORE and 7.80 acres to Athappan. The property could be sold to the nominee of ORE.
- c) On Cheran choosing any of the modes prescribed, the foreign



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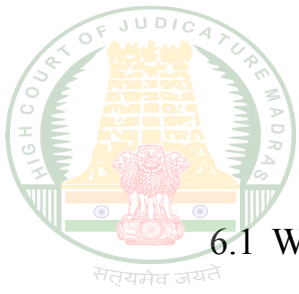
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investors will surrender the share certificates pursuant to which there will be a reduction of the share-capital of the petitioner company.

4.2 The only point which team-petitioner considers as favourable to it (on which it would base all its future strategies) was the insistence of both CLB and the Division Bench of this Court that the working of the terms delineated by the CLB's Order dated 13.08.2008 should comply with all applicable laws.

C. The Highlights of the Second Match

5.1 Right at this moment, the foreign investors have very little to worry about. They have to be paid either in cash or kind. However, no cash was paid by the CEPL as stipulated in the CLB's Order, and hence the foreign investors shifted their focus to property-component as provided in the CLB's Order, vis-a-vis the discharge of petitioner's liability. Indeed, it must be said to their credit, at the first instance they did not focus on the property as they had approached the CLB for disbursing the money of KCP group lying in fixed deposits.



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6.1 Will Team-Respondents wrest the advantage it gained in the first leg and obtain the conveyance of the property that CLB had directed? The duel will be what the theme of this segment is all about.

6.2 From here onwards both the teams adopted different strategies. Team-respondents had their only option left - to obtain conveyance of 17.15 acres in favour of ORE's nominee and 7.80 acres in favour of Athappan. They made the following moves, which sync well with their objective:

- a) As mentioned in an earlier paragraph on 05.08.2011, the Division bench of this Court had disposed of the batch of company appeals preferred by both sides challenging the Order of CLB modifying its earlier Order. Wasting no time on 22.09.2011, both ORE and Athappan had filed E.P 35 of 2011 and E.P.36 of 2011 for conveyance of the properties of VML which they are entitled to in terms of the Order of the CLB.
- b) Thereafter they began corresponding with the RBI vis-a-vis the modus for conveyance since they might have to negotiate FEMA clearance by the RBI. On 15.03.2012, ORE addressed a letter to the RBI, Mumbai, seeking permission to acquire the VML lands in terms of the Order of the CLB either in its name, and if it is



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considered impermissible then in favour of its nominee. On 09.04.2012, RBI, Mumbai, had intimated ORE that it being a foreign entity cannot acquire immovable property in India, but suggested the property might be sold to recover the dues. There is no specific reference as to whether an Indian nominee of a foreign company can acquire immovable property in India. The communication reads:

“2. Please note that as per extent FEMA provisions foreign entities are not permitted to acquire any immovable property in India but they may be permitted to recover the dues by selling the property.

3. In this connection, we may consider your request for outright sale of such immovable property to Indian Resident Entity acquiring 17.15 Acres of Land held by M/s. Vasantha Mills Ltd by executing and registering necessary deeds of conveyance in strict compliance with all applicable laws and subject to final decision given by the Appropriate Authority. If, however, such consideration for land to be received by ORE needs to be capitalized form of shares, it would require prior FIPB approval.”

c) On 20.03.2012, Athappan wrote a similar letter to RBI about the acquisition of immovable property of VML, wherein he had indicated that he being a Person of Indian Origin, he might be able



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to buy the property in his name. And, it was responded to by the RBI vide its communication dated 04.04.2012 that a person of Indian Origin might be able to purchase non-agricultural and non plantation immovable property in India

6.3 If the opposite camp (Team-Petitioner) is observed, they were entirely engrossed in the pricing of the shares which their foreign investors owned. Indeed, CEPL even made its own share pricing and offered a value which is nowhere near the value that the CLB had directed CEPL to pay. Thereafter, CEPL has been corresponding with RBI vide its communications dated 05.03.2012, 27.06.2013 and 19.08.2012 vis-a-vis share pricing, FC-TRS, etc. RBI had responded with its reply dated, 28.03.2013 and 07.08.2013 on the subject.

6.4 Even as the CEPL was busy corresponding with RBI on share pricing etc., on 10.12.2014, ORE constituted ORE Trust, with all Indian Trustees and ORE as the sole beneficiary. It is the 7th respondent. It is a kind of special vehicle formed by ORE to be its nominee for purchase of the immovable property. Now, on one hand RBI, Mumbai had indicated that ORE, being a foreign company cannot acquire property in India. On the



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other hand, CLB had authorised ORE to acquire property through its nominee. And the RBI, Mumbai, had not said that ORE's Indian nominee cannot purchase immovable property in India. On 01.05.2015, RBI, Mumbai was addressed for permission to purchase the VML lands through the nominee of ORE, namely ORE Trust. On 08.06.2015 RBI, Delhi granted necessary permission and this communication makes a reference to a letter, dated 05.05.2015, seeking identical permission.

6.5 When once the permission was obtained, on 31.12.2015, the CLB passed separate Orders in E.P.35 and 36 of 2011 and inter alia directed VML to execute the sale deed pertaining to 7.80 acres in favour of Athappan and 17.15 acres in favour of nominee of ORE, namely ORE Trust.

6.6 Be that as it may, VML preferred W.P. (Civil) 834 of 2016, before the Delhi High Court challenging the letter of RBI, dated 08.06.2015, but on 15.02.2016, it was withdrawn.

6.7 Thereafter, both VML and C.G. Holdings (respondents 9 and 10 herein) filed separate Company Appeals before this Court in C.A 7 to 10 of 2016. In addition, VML had also preferred appeals (C.A. 5 and 6 of 2016) against



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certain Orders passed by the CLB in some applications filed in the course of execution of E.P.35 of 2011 and E.P.36 of 2011.

6.8 On 25.05.2021, a learned Single Judge of this Court (Hon'ble Dr. G. Jayachandran) dismissed all these appeals and confirmed the sale ordered by the Execution Court. It could be gathered from that Order, which is relevant in the context of the present case, the issue on share-pricing was raised as a point before the Company bench, and the Court has recorded that the petitioner has abandoned it during hearing.

6.9 In the meantime, on 28.06.2019 the Order in E.P. 35 of 2011 in favour of Athappan was registered at the Singanallur SRO, and the ORE Trust followed it on 30.08.2019.

7. The second match ends here, and in this round while team-petitioner was trying to stop the sale of immovable property of VML through its plea of share-pricing, eventually both ORE and Athappan achieved what they intended to achieve. Needless to mention that team-respondents have wrested the advantage they gained in the first match. Undeterred VML and



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C.G. Holdings of team-Petitioner had respectively preferred S.L.P.(C) 18088 of 2021, S.L.P.(C) 17302 of 2021, S.L.P.(C) 18282 of 2021, S.L.P.(C) 17198 of 2021, S.L.P.(C) 4447 of 2022, and S.L.P.(C) 4448 of 2022 before the Hon'ble Supreme Court challenging the order this Court dated 25.05.2021 in C.A. No. 5 to 10 of 2016.

The Final Match:

8. Having lost the series 2-0 already, team-Petitioner is now keen to salvage anything that it could salvage in this match.

9.1 Hitherto CEPL was only observing C.G.Holdings and VML batting (or were they battling?) to save the team-petitioner without helping its team's cause with a substantial score on the board. Hence CEPL itself now, chose to pad up this time and step into bat. It should not be forgotten that all the directions were given by the CLB vis-a-vis payment of amounts to ORE and Athappan were directed only against CEPL. Now, for it to stay at the wicket, it needed a cause of action: Its strategy can now be explained:

- a) As seen in the narration above, vide its Communication dated 08.06.2015, the RBI, New Delhi, had permitted sale of 17.15 acres to



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the nominee of ORE. And, this precisely is the communication which VML had earlier challenged in W.P. (Civil) 834 of 2016 before the Delhi High Court and withdrew. However, in his pursuit to save the property (even after its sale and registration), KCP (the promoter of his group of companies that constitute the team-petitioner), had been addressing multiple correspondences to the RBI and also the Prime Minister of India questioning the RBI's letter dated 08.06.2015.

b) On 27.01.2016, the Petitioner wrote to the RBI seeking modification of the letter dated 08.06.2015 to the extent that:

- 1. the value of the shares be determined as per the FEMA Pricing Guidelines;*
- 2. buyback of shares by the Petitioner be permitted on the basis of FC-TRS Form submitted already; and*
- 3. to clarify that the 6th and 8th Respondents have to comply with the requirements in Form FC-TRS and the valuation has to be done based on the Pricing Guidelines.*

c) Eventually, RBI, vide its clarificatory note, dated 28.08.2020, made it clear that it (RBI) will not re-visit the permission for purchase of VML lands by ORE's nominee (read it as ORE Trust) which it had accorded vide its letter dated 08.06.2015. CEPL now chose to make use of this clarificatory note of the RBI to help it with a cause for the



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present action.

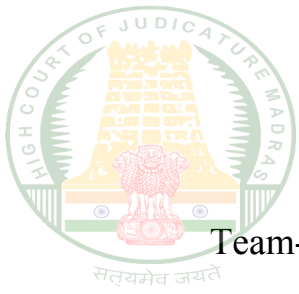
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d) Having arrived at the crease, what strategy has it now? It chose to fall back on the very issue of share-pricing of the shares of its investors as *sine quo non* in the matter of complying with the terms of the Order of the CLB dated 13.08.2008, something C.G.Holdings and VML had raised in the company appeals before the learned Single Judge, but abandoned by them during the final hearing of these appeals.

9.2 There are two aspects that immediately strikes the notice of this court: (a) the letter now under challenge was not addressed to any specific companies of the KCP group, but to KCP himself; (b) that this communication was available even when the Company Appeals 7 to 10 were pending before the learned Single Judge. And there is a third aspect: That the present petition was filed after the dismissal of the aforesaid batch of company-appeals.

The Match Goes Live – Arguments

10. Led by Mr. Darius Kambatta along with Shri Gopal Shankaranayanan



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Team- Petitioner argued very extensively (for several hours) but the pith of

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- a) That the exit-formula formulated by the CLB's Order dated 13.08.2008 is that the ORE be paid Rs.75.0 crores and Athappan be paid Rs.4.0 crores plus interest. And once both these investors are paid by CEPL the former shall surrender their share certificates. In other words, the amounts which CEPL was required to pay are towards the buy-back of its shares which both ORE and Athappan hold. However, both the Order of CLB and the subsequent Order modifying the earlier Order as well as the judgement of R. Bhanumathi J for the Division bench in the batch of company appeals, dated 05.08.2011 all insist that the entire exit formula as devised by the CLB should comply with all applicable laws. And since the amounts involved are required to be paid for buy-back of shares held by foreign entities, then it is mandatory that they shall comply with pricing guidelines under FEMA. To state it differently, notwithstanding the fact that the CLB has directed payment of specific sum for the buy-back of shares, what is required to be paid is the value of the shares which is computed as per the pricing

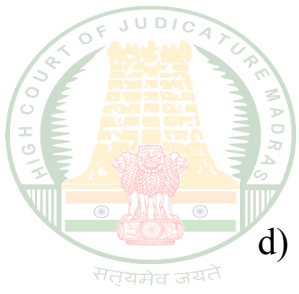


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guidelines under the FEMA. In its correspondence, dated 28.03.2013, 07.08.2013, 21.12.2015 and 05.04.2016 to KCP RBI, Mumbai, has clarified that for buy back of shares, pricing must be done. But it has not happened till now.

- b) Secondly, when immovable property of VML has to be sold by a resident Indian to a foreigner, then it is mandatory that FEMA compliance is fulfilled and necessary approval of RBI is obtained. Both ORE and Athappan indeed had approached RBI, Mumbai, but it vide its communication dated 09.04.2012 and 04.04.2012 had underscored that immovable property of a resident cannot be sold to a foreign national or a company. However, RBI, New Delhi vide its communication dated 08.06.2015 has allowed the very sale which RBI Mumbai had disallowed.
- c) Eventually 17.15 acres and 7.80 acres of VML lands were sold by CLB to ORE Trust, a Special Purpose Vehicle for bypassing the FEMA Regulations that passed for the nominee of ORE Holdings and also Athappan's nominee, but inasmuch as the shares are not valued for paying which sale of land is an alternative mode or a substituted mode of performance of the obligation as directed by the CLB, the same is bad in law.



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- d) For payment of Rs.80 crores plus interest, a property worth more than Rs.500 crores had been sold by the CLB in breach of FEMA Regulations. In other words, even though the CLB had subjected the compliance of the mechanism that it devised to all the applicable laws which was later reiterated by a Division Bench of this Court in its judgement dated 05.08.2011, CLB has ignored to ensure that before sale of land to ORE Holdings and Athappan the FEMA compliance had been made.

11. The submissions of the Team-Respondent were candid. It submitted:

- a) The concept of buy back of shares is petitioner's invention. The tone and tenor of the Order of the CLB dated 13.08.2008, nowhere leaves an understanding that it intended any buy-back of shares held by ORE and Athappan by CEPL, but only lets these foreign investors of CEPL to take the money that they had invested in CEPL with interest. This is made evident by the fact CLB required both ORE and Athappan to surrender their share certificates not with a view to let CEPL buy back their shares but to bring about a reduction in the share capital of the company.
- b) The CLB did not direct any sale of immovable property of a resident



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Indian to foreign company or a foreign national as is being projected.

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It only directed the CEPL to pay the money that they had invested. CEPL having received the investment is under an obligation to kick-start the JV, but it did not. When the investment so made by the foreign investors was in the doldrums, and when they also alleged oppression of minority shareholders, CLB thought the ideal option under the circumstance is to restore the status quo ante as was prior to their investment and exercised its authority under Sec.402 of the Companies Act. Since CEPL was in no mood to pay the money invested by the foreign investors, they labled the need for the foreign investors and the surrender the share certificates by the latter for reducing the share capital as buy back of shares. After all, even without valuing the shares held by these two foreign investors of CEPL in the manner mandated by FEMA regime, it can be safely stated that it would be no more than the value of the paper on which it is printed and therefore, the CEPL is keen to knock off the investments which ORE and Athappan had made by insisting on share-pricing.

c) The sale of VML land is not the primary objective of the Order of the



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CLB. Nor did these foreign investors of CEPL approach the CLB with a prayer for the same. Nor VML was under any obligation to sell the land at the first instance. Nor these respondents insisted for the purchase of the lands as a consideration for reduction in the share capital which the share certificates they hold evidence. It was because the CEPL was not inclined to pay the money invested in terms of the spirit of the CLB order, it invited upon itself a circumstance where the sale of VML land to the investors became inevitable.

- d) This Order of the CLB was not challenged by CEPL and has become final. What was challenged by it was the Order of CLB modifying its earlier Order by which it allowed the nominee of the foreign investors to take the sale. And it has become final.
- e) Eventually sale of land did take place in the Execution proceedings before the CLB. It was first challenged by VML before the Delhi High Court and it withdrew it. Then it challenged it in C.A.Nos: 7,8,9 &10 of 2016 before this Court. In its Order dated 25.05.2021, the learned Single Judge listed the list of issues which were required to be decided in that case and one relates to the aspect on pricing, something which the petitioner now canvasses. However, the Court



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has recorded that at the time of arguments the petitioner had given up its plea on pricing. What has been consciously abandoned cannot be revived now, and CEPL is estopped from reviving it.

- f) Today the sale is complete, and it has been resold to a certain Martin, and the sale consideration is in the bank and what remains to be done is only repatriation of the sale consideration. Therefore unless the sale is set aside CEPL may not even obtain a right to challenge anything concerning the sale. And this issue is pending before the Hon'ble Supreme Court in the batch of the SLPs listed out in para 7 of this judgment. The petitioner therefore, attempts to achieve that which it cannot achieve directly by this devious method.

Duckworth-Lewis-Stern (DLS) Step In

12.1 The argument in this case was spread over several months. What happened in the meantime was that on 19.02.2024 and 05.04.2024, the Hon'ble Supreme Court has dismissed the batch of SLPs (mentioned in para 7 of this judgment) which C.G Holdings Private Limited, VML and KCP filed against the Order of the learned Single Judge of this Court in C.A. 5 to 10 of 2016, confirming the sale of VML land by CLB in E.P.35 and 36 of



2011. This implied there is an unquestionable stamp of approval to the sale

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of the lands by CLB in the Execution proceedings. This implies that the title to the lands thus sold was vested in the foreign investors of the CEPL, which today enures to the advantage of their purchaser Martin.

12.2 Things look absolutely bleak since the woes of Team-Petitioner are augmented by an unexpected turn of events when the Supreme Court (the DLS) determined what appears to be an insurmountable target to achieve. But they are in no mood to concede and continue to battle with their bat.

The Umpire's Decision: Discussion & Decision of the Court

13. The team - petitioner's fundamental flaw was in reading the way it had read the order of CLB dated 13.08.2008. The dissection of the order of CLB is already done (see paragraph 3.1 (b) above) but its salient features are required to be reiterated now for spotlighting the fault line in the strategy of the petitioner :

- a) that CEPL shall pay Rs.75.0 crores to ORE Holdings and Rs.4.0 crores to Athappan with interest at 8% per annum within a period of one year;
- b) on breach of the above condition, then 17.15 acres of VML properties



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must be sold to ORE, and 7.80 acres to Athappan;

WEB COPY c) on performance of any one of these conditions in the order indicated, both ORE and Athappan must surrender their share certificates, pursuant to which, there shall be a reduction in the share capital of CEPL.

14.1 While the team-respondents chose to read the terms set out by the CLB for their exit from CEPL in the above-mentioned order (from top to bottom), the team-petitioner had opted to read it in the reverse direction – from bottom to top, and if it may be stated, deliberately with pretended innocence.

14.2 It was very obvious from the strategy of KCP and his group of companies who have been litigating since CLB took cognizance of the controversy, that they were keen to knock off the money invested by ORE and Athappan, but when KCP strategies were halted by the CLB vide its Order dated 13.08.2008, he appeared to have entertained a belief that by reading the exit-formula the way he and his group of companies had since chosen to read, they could deflect the focus from their need to abide by the directions of the CLB and bypass the exit-route prescribed for the self-



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preservation of both. This perhaps might have been the reason why the team-petitioner have chosen not to challenge the Order prescribing the exit-route for the foreign investors of the CEPL to quit from the company.

14.3 The amount which CLB had directed CEPL to pay is the specific amount which its foreign investors had invested in it, plus the interest thereon. The Order of the CLB did not enable CEPL to buy-back the shares of its foreign investors. Indeed, the expression '*buy-back of shares*' does not find any reference in the Order of the CLB. Only team-petitioner seems to spot something on buy-back of the shares of ORE where there is none.

14.4 The tenor and the spirit of the unchallenged CLB's Order dated 13.08.2008 informs that on foreign investors of CEPL being paid in cash or kind, the share certificates they hold will be surrendered and the share capital will be reduced. If it is only buy-back of shares, then it does not bring about a reduction in the share capital, but only alters the share-holding pattern of the company. To reiterate and to re-emphasis, the idea is to let the foreign investors in KCP group exit with the cash they had invested, and thereby to restore *status quo ante* that would place KCP group in the same



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state of affairs before ORE and Athappan chose to invest. Hence the CLB contemplated on reduction in the share capital when it pronounced its set of directions. Does not KCP, the captain of team-petitioner know it? He does. He knew it. His team's think-tank knew it. But he came to the wicket not to play cricket, a game considered as synonymous with fairness associated with the gentlemen who played it. Did KCP shrewdly tried to manipulate an argument to equate the surrender of shares for achieving reduction of share capital as buy-back of shares? Indeed, the CLB in the operative portion of its Order dated 13.08.2008 has underscored that its direction to CEPL to pay ORE and Athappan in cash or in kind will be the consideration for reduction of share capital, and has not described it as consideration for the purchase of shares from its foreign investors.

14.5 KCP's strategy is far too transparent, except that he did not realise it. And, sadly despite suffering heavy bruises in the earlier matches – read it as earlier rounds of litigations, he continues to believe that his strategy to deny ORE and Athappan will work:

- a) When it comes to payment to ORE and Athappan in cash, he brought in his theory of share-pricing. And as against Rs.75 crores plus



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interest payable to ORE, he offered Rs.12,41,419/- which is an insignificant **0.165%**, and Rs.45,663 to Athappan as against his entitlement of Rs.4.0 crores which represents an inconsequential **0.11%** of the principal amount receivable by him. It is therefore, far too evident that if the shares of the foreign investors in a dysfunctional company were to be valued under the FEMA regime, their worth will bear no relationship to the amounts which CEPL was under an obligation to pay to ORE and Athappan;

- b) When it came to an alternate mode of discharging CEPL's obligation to its foreign investors through the property of VML, he took up a contention that foreigners cannot buy immovable property in India under the FEMA regime.

But where his strategy had gone awry and let him down was when CLB vide its second Order dated 03.08.2009 (modifying the first order), allowed the nominee of the foreign investors of CEPL to purchase immovable property in India. He obviously had begun hearing the knell of his strategy failing him right then, anticipated what was awaiting him, and hence he chose to challenge the second Order of CLB and not the first Order.

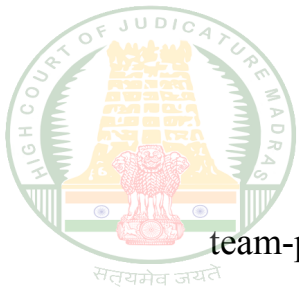


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14.4 Here the foresight of the CLB deserves appreciation. It had displayed exemplary perspicacity to evaluate KCP far too early, and did not try to tie up its direction to sell the lands of VML to ORE and Athappan, a contingency it expected, with the cash component which it directed to pay as the first option, but equated both to the reduction of share-capital following the exit of the foreign investors in the KCP group.

14.5 KCP's approach to the match he played, and is playing is a case study in the art of avoiding the legal obligation. This Court has read KCP's intent as like the other Courts earlier, for his moves are childish and pretentious – something a lower division club may attempt in a league match, but they may not work at this level. Despite the scars of earlier defeats only he and his team-mates believe his strategy may still work.

15.1 How does this game now stand? As outlined earlier, the Hon'ble Supreme Court has confirmed the Order of Hon'ble Mr. Justice Dr. G. Jayachandran in a batch of S.L.Ps, and thereby it has approved the sale of VML property by the CLB on the execution side to the nominee of ORE and Athappan. It surely has been a re-set target under the DLS method, which



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team-petitioner might have to now chase. But when I see the score-board the run-rate required has already touched near infinity.

15.2 And, it must be stated that the Order of the Hon'ble Supreme Court in the batch of SLPs referred to has made considering many aspects of the counter-arguments of the team-respondents, which included arguments on the maintainability of this petition and also the ratio of the various authorities they have cited as irrelevant.

16.1 I see KCP now stranded at the wicket, deserted by his own strategies. For me, team-petitioner has lost yet another match. But I hasten to add that despite the cricketing analogies and terminologies lavishly employed, this continues to be a judicial order, and hence I need confirmation on the correctness of my conclusion.

16.2 How does his plea of share-pricing likely to aid KCP or his companies now? His team still harps on the communication from the RBI dated 28.03.2013, 07.08.2013, 21.12.2015 and 05.04.2016 wherein the RBI has indicated the need for share-pricing or what is required to be done vis-a-vis



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share pricing, and this does not help the petitioner in any way. After all RBI

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had respondent the question which KCP has raised and since KCP posed the question touching on share-pricing, RBI had answered what is to be done, as the case may be. And, shifting back to the sale of VML lands to the nominee of ORE and Athappan, they have ensured that the objective contemplated by the CLB's Order dated 13.08.2008 has been accomplished after about 16 years and after few rounds of litigations. ORE and Athappan had surrendered the share certificates, and the final ritual that possibly remains to be done is to formally bring about a reduction in share capital. Now whether canvassing share-pricing will help him gain an advantage? Today both ORE and Athappan have sold their properties to a certain Martin, and the consideration received from Martin is in the bank and waiting to be repatriated.

16.3 The petitioner would now shift its focus on the sale consideration of the properties which VML had lost in the execution of the Order of the CLB, and tries to relate share pricing to the sale consideration received by the nominee of ORE and Athappan. When vesting of title in the lands of VML in the nominee of ORE and Athappan has become conclusive, they



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are free to deal with it the way they consider appropriate. What legal or moral foundation the petitioner has to aim for the money which ORE and Athappan had obtained by the sale of their respective properties, to repeat *their properties*? It has already been found that the argument on share-pricing was never available to the team-petitioner, and it is perhaps the reason why both 9th and 10th respondents (VML and C.G.Holdings) have abandoned their plea founded on share-pricing in their challenge to the order of sale of the CLB in E.P.35 of 2011 and E.P.36 of 2011 despite taking the plea in C.A.7 to 10 of 2016. Now KCP has set up CEPL which is after all another company in its group, to press hard the very plea that had been earlier abandoned. And KCP's invisible presence is there behind every move his companies make.

16.4 If the present petition is keenly observed KCP finds himself on an unplayable and slippery wicket. He even struggles for a cause of action. Therefore, he has laid his hands on a clarificatory note of the RBI, dated 28.08.2020, which decides nothing but only affirms its earlier decision dated 08.06.2015, permitting sale of 17.15 acres of VML land to the nominee of ORE. And, when VML chose to withdraw W.P. (Civil) 834

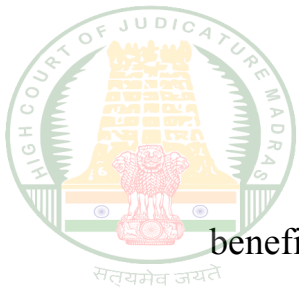


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which it had laid before the Delhi High Court, challenging the proceedings of the RBI dated 08.06.2015, this Order became final. And necessarily what has been done pursuant to it has also attained finality, thanks to the Order of the Supreme Court in the batch of SLP filed against the Order of this Court in C.A 5 to 10 of 2016. What remains to be done is the repatriation of sale proceeds from India, for which permission has been sought from the RBI.

16.5 Today, except KCP and his team's overwhelming fascination to their theory on share-pricing, which they still hold like a child clutching to its pet teddy bear, there is nothing to interest or impress this court. Couch dolls do not, and cannot win cricket matches.

17. Another argument canvassed was that a property worth more than Rs.500 crores has been sold for nothing. If it is true, KCP has lot to introspect. Is it not he who created the situation? The CLB did not direct the sale of VML lands, but only payment of money. And both ORE and Athappan did not want the lands either, but only their money. As indicated elsewhere in this Order KCP took up share-pricing only to pull the wool from everyone's eyes, including the Court, to deny ORE and Athappan the

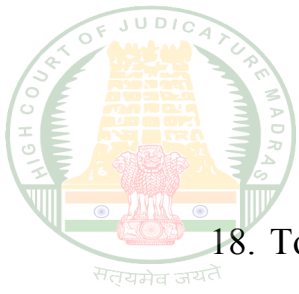


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benefit of the Order of the CLB, but they needed an entry-point to canvass

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it. A search for a window took them to the stipulation in the Order of the CLB dated 13.08.2008 as well as the Division bench of this Court (by R. Bhanumathi J.) where both the Tribunal and this Court had insisted that the exit-formula devised by CLB (for ORE and Athappan to sever from KCP group) must be worked out only within the framework of the applicable laws. If share-pricing was to be the working mechanism of the exit-formula of the CLB, then it would have been made its bottom-line by the CLB. It did not. And, when KCP valued the shares of ORE and Athappan, it was not even 1% of the value which CEPL was under an obligation to pay them. KCP and his team's game-plan is very evident, to unravel which not even the IQ required to solve a beginners' *sudoku* is necessary. If he had gone to the CLB or the Court to seek clarification on the point, he knew what to expect. It is hence he tried to circumnavigate the CLB and the Court and approached RBI and even the PMO, faking a grievance where there is none, and avoided seeking clarification whether share-pricing could be telescoped into the clause in the Order of the CLB directing payment of money invested by ORE and Athappan.

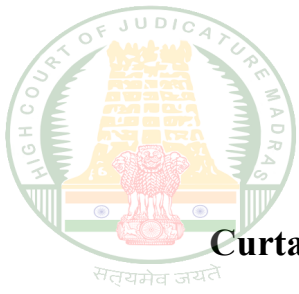


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18. Today the team-petitioner cannot even bat for its pride. It knows that the inevitable is waiting to embrace it but it is delaying it.

Bails are off

19. The match is over. The victorious fielding team has retired to the pavilion. I see the batsman still at the crease. It may require some time for team-petitioner to realise that it has lost a match that it was desperate to win. Indeed it had its moments when it could have settled for a very peaceful draw which the order of the CLB has offered, but prolonged the game over-ambitiously. Apparently, KCP and his team failed to realise that cricket is synonymous with fairness, and it knows how to assert itself. In retrospect I thought it was not petitioner's bad strategy that let it down, but its unfairness in developing the very strategy. Unfairness may tempt; unfairness may even pay at times; but unfairness certainly fails. And, it must fail. Fairness in thought and equity in conduct, form the soul of *dharmā*, and it must permeate into the deeper layers of conscience in guiding every action and every conduct. '*Yato Dharma-sthato Jayah*', for '*Dharmo rakshathi rakshitah*'.



Curtain Drops



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20. I thanked all the players and the groundsmen for making my journey through the game engaging and comfortable. There will be another match here the next day, and yet another match, and yet another. I see the groundsmen already in action. They go through their motion. I see the sun slowly setting on the ground spreading the shadow. Time reminds me that my moment to leave the ground has arrived. I begin to walk, a long lonely walk to the world beyond the cheers of the crowd this ground has witnessed many times and will be witnessing in times to come. As I step out of the ground I see the horizon decked in golden streaks interspersed with many silver lines waiting to welcome me. I turn towards the ground, give it a smile and salute it with gratitude after officiating my last match. As I walk to melt in the wilderness of this world, I heard a feeble echo of the Shakespearian lines within me: *“If we do meet again, why, we shall smile; if not this parting was well made.”*¹

21. And, the breaking-news eventually broke: The petition is dismissed and all the connected miscellaneous petitions too are closed, and there will be no order as to costs.

¹ William Shakespeare, “Julius Caesar”, Act 5 Scene 1.



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