



DECCAN EDUCATION SOCIETY'S
BRIHAN MAHARASHTRA COLLEGE OF COMMERCE, PUNE
(AUTONOMOUS)
MOOT COURT SOCIETY
8th EDITION (2024)



Mr. Anil Sudhakar Khandelwal & Anr.

Versus

Mrs. Snehal Sharma & Ors.

Parties to the Dispute

Mr. Anil Sudhakar Khandelwal	PETITIONERS
Mrs. Shamita Mehta	

Mrs. Snehal Sharma	RESPONDENTS
Mr. Shashi Anil Khandelwal	
Mrs. Anita Anil Khandelwal	
Mr. Manish Mehrotra	

Forum

HIGH COURT OF JUDICATURE AT BOMBAY

Facts of the Case

The Khandelwal Family is very well known in the city of Satara, Maharashtra. The family is well known due to its varied businesses spread across the city and also other cities like Mumbai, Pune and Nashik. Mr. Anil Sudhakar Khandelwal (ASK) is the head of the family and Karta of the Anil Khandelwal HUF. The other members of the

said HUF are Mrs. Anita Anil Khandelwal (Wife), Mrs. Shamita Mehta (Daughter), Mrs. Snehal Sharma (Daughter) and Mr. Shashi Anil Khandelwal (Son).

During the course of 4 decades Mr. Anil Khandelwal developed multiple business and huge assets by way of 5 private limited companies, landed assets and other residential properties. Mr. Anil Khandelwal was the Director / Chairman / Promoter in all the said companies and his children and wife were the other promoters in separate companies. The other immovable properties were owned by the Anil Khandelwal HUF.

That during the course of time several disputes started arising between the promoters of the companies i.e., the family members. Particularly between the two sisters i.e., Mrs. Snehal Sharma and Mrs. Shamita Mehta. So much so the Mrs. Snehal Sharma filed a Company Petition under Sections 241-242 (Oppression & Mismanagement) of the Companies Act on behalf of Imperial Systems Private Limited (ISPL) against Imperial Financial Solutions Private Limited (IFSPL) owned by Mr. Anil Khandelwal and Mrs. Shamita Mehta. The said petition was pending adjudication before the Hon'ble National Company Law Tribunal, Mumbai (the NCLT).

Further as time passed, due to strained relations between the family members, more and more disputes cropped up between the family members and the same was sought to be amicably settled by entering into a Family Arrangement and thereby distribute the assets of the Anil Khandelwal HUF by granting exclusive 20% Share to each of the members of the said HUF. Accordingly with the help of the legal professional a detailed family arrangement titled as 'Agreement for Distribution of Assets of Anil Khandelwal HUF' (hereinafter referred to as the 'ADA') was duly entered into between the members of the HUF.

It was agreed in the ADA that the parties with the mutual consent shall appoint a valuer to ascertain the valuation of the assets and liabilities of the Anil Khandelwal HUF and accordingly the distribution of the assets was to take place. The parties in order to validate the ADA filed the same as compromise terms before the NCLT in the already pending Company Petition filed by ISPL. The said ADA contained terms for valuation and distribution of assets of not only the Companies involved but other

immovable and movable assets of the Anil Khandelwal HUF. Furthermore, the parties also agreed to Arbitration as mode of dispute resolution in case of any future disputes in respect of implementation of the terms of the ADA

That vide its order the NCLT appointed Mr. Manish Mehrotra a well-known Chartered Accountant as a Court Commissioner to impartially ascertain the value of the shares of the Company and its group companies (all five companies of Anil Khandelwal HUF) and submit a comprehensive report to both the parties and to the NCLT as well. Furthermore, the NCLT disposed of the company petition as withdrawn in view of the ADA (consent terms) and also the question of implementation of the ADA was left to the convenience of the parties. The parties were also put a liberty to again approach the NCLT in case of any violation.

In pursuance of the same Mr. Manish Mehrotra assumed charge and issued notices to the parties to submit all relevant documents to conduct the valuation and for preparation of the valuation report as direct by the NCLT. The parties were given a time of 60 days to submit the details as called for by the Valuer. Accordingly, all the parties submitted documents within the said deadline and the Valuer thereby prepared the Valuation Report. It was decided to keep the valuation report in Escrow and the same was to be disclosed at the time mutually agreed by the Parties.

However, after passage of about 2 months Mrs. Snehal Sharma upon perusal of the report claimed that various contingent liabilities were not considered in the valuation report and as such it had resulted in erroneous valuation of the shares of the Companies involved. Mrs. Shamita Mehta and Mr. Anil Khandelwal contended that as the valuation report imposed more liability on Mrs. Snehal Sharma, she was attempting to include contingent liabilities to reduce her payable share. As such the same was an afterthought and an attempt to avoid liabilities on part of Mrs. Snehal Sharma. However, Mr. Manish Mehrotra rejected the request made on behalf of Mrs. Snehal Sharma as according to him his mandate had concluded upon the submission of the final report and the same could not be review or re-assessed under any circumstance.

Having no redressal Mrs. Snehal Sharma issued a legal notice invoking arbitration as per the terms of ADA and a Sole Arbitrator was appointed to adjudicate upon the disputes between the party.

Mrs. Snehal Sharma preferred a detailed Statement of Claim before the Sole Arbitrator thereby impleading all the members of the HUF i.e., parties to the ADA and in addition to the same also impleaded Mr. Manish Mehrotra as a party to the arbitral proceedings. The Proceedings were heavily contested by Mrs. Snehal Sharma at one end and Mr. Anil Khandelwal and Mrs. Shamita Mehta on the other end. Mr. Shashi Khandelwal and Mrs. Anita Khandelwal played a rather passive role in the said proceedings. It was contended by Mrs. Snehal Sharma that Mr. Manish Mehrotra (Valuer) was a formal party and therefore Mr. Manish Mehrotra neither contested nor filed his Statement of Defence in the said proceedings.

Mr. Anil Khandelwal and Mrs. Shamita Mehta preferred an application under Section 16 of the Arbitration and Conciliation Act thereby challenging the jurisdiction of the Arbitral Tribunal as re-assessing and re-visiting the valuation report of the valuer appointed by the NCLT was not amenable to the jurisdiction of the Sole Arbitrator. Furthermore, they also challenged the said proceedings on the ground that as there was no privity of contract and Mr. Manish Mehrotra is not a signatory to the ADA he cannot be made a party respondent in the Arbitral Proceedings. In addition to the same they also raised the objection that, the NCLT vide its order had afforded liberty to the parties to approach the NCLT for any violation. As such with express orders and the law in place the Arbitral Proceedings were bad in law and ought to be rejected for want of Jurisdiction. The Objections were contested by the Claimant Mrs. Snehal Sharma, that as the ADA had the provision of appointment of Valuer for valuation of assets privity extends to the Valuer and as the parties had agreed to Arbitration as a mode of dispute resolution, NCLT did not have jurisdiction to entertain the dispute.

It was also contested between the parties that as the dispute between the parties was in relation to Companies, the same being 'juristic entities' ought to have been made party

to the present proceedings. However, the application under Section 16 was rejected by the Arbitrator and the Arbitrator came to a conclusion that the Arbitrator had the necessary jurisdiction. Accordingly, the proceedings were concluded and an award was passed in favor of Mrs. Snehal Sharma thereby directing the Mr. Manish Mehrotra to re-assess the valuation report and undertake the exercise of valuation afresh. Being aggrieved by the said award Mrs. Shamita Mehta and Mr. Anil Khandelwal preferred an Application under Section 34 of the Arbitration Act and sought setting aside of the Arbitral Award as the same was outside the scope of the ADA and beyond the scope of submission to arbitration and also against the public policy of India including other grounds. However, the said application was rejected by the Ld. District Judge Satara.

The Petitioners have now preferred a Writ Petition assailing the order of rejection of Section 34 Application by the Ld. District Judge, Satara.

The matter is now posted for final hearing before the Hon'ble High Court of Bombay and following issues have to be determined;

- A. Whether the dispute referred to Arbitration was beyond the scope of submission to Arbitration as the same involved valuation of private limited company?
- B. Whether the dispute referred to Arbitration was beyond the scope of submission to Arbitration as ISPL and IFSPL were not privy to the ADA?
- C. Whether the Ld. Sole Arbitrator erred in holding that it had jurisdiction over the Court Commissioner / Valuer appointed by the order of NCLT?
- D. Whether the Ld. Sole Arbitrator erred in holding that Mr. Manish Mehrotra, Valuer could be considered to be privy to the ADA as the ADA contemplated appointment of Valuer?

- E. Whether Petitioners are barred to raise any objection as no appeal was preferred against the order rejecting application under Section 16 during the Arbitral Proceedings?
- F. Whether the Arbitrator has any inherent power to implead third parties in the Arbitral Proceedings without the consent of the contracting parties?
- G. Whether the Arbitrator has rightly applied the doctrine of *kompetenz-kompetenz*?