

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2021

BEFORE

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION No.6191 OF 2021 (GM-RES)

R

BETWEEN :

DEVAS EMPLOYEES MAURITIUS
PRIVATE LIMITED, (IN ITS
CAPACITY AS A SHAREHOLDER OF
DEVAS MULTIMEDIA PRIVATE LIMITED)
A COMPANY INCORPORATED
UNDER THE LAWS OF THE
REPUBLIC OF MAURITIUS, BEARING
COMPANY NO.C087664
HAVING ITS REGISTERED OFFICE AT
C/O INTERNATIONAL PROXIMITY
5TH FLOOR, EBENE ESPLANADE
24 CYBERCITY
EBENE-72201
REPUBLIC OF MAURITIUS
REPRESENTED BY ITS DIRECTOR
MR. RAMACHANDRAN VISWANATHAN
AGED ABOUT 53 YEARS

... PETITIONER

(BY SHRI. RAJIV NAYAR, SENIOR ADVOCATE FOR
SHRI. C.K. NANDA KUMAR, ADVOCATE)

[THROUGH VIDEO CONFERENCE]

AND :

1. UNION OF INDIA
THROUGH MINISTRY OF
CORPORATE AFFAIRS
5TH FLOOR, 'A' WING

SHASTRI BHAWAN
NEW DELHI-110 001
REPRESENTED BY ITS
SECRETARY

2. ANTRIX CORPORATION LTD
REGISTERED OFFICE AT
ANTARIKSH BHAVAN
CAMPUS, NEAR NEW BEL ROD
BANGALORE
KARNATAKA-560 094
REPRESENTED BY ITS
AUTHORISED SIGNATORY
CHAIRMAN AND MANAGING DIRECTOR
CIN:U85110KA1992GOI013570
EMAIL ID:cmd.ofnce@antrix.co.in
CONTACT NUMBER: +91 80 2217 8311

3. DEVAS MULTIMEDIA PVT LTD
(IN PROVISIONAL LIQUIDATION)
FIRST FLOOR, 29/1
KAVERIAPPA LAYOUT
MILLERS TANK
BUND ROAD
BANGALORE-560 052
REPRESENTED BY ITS
DIRECTOR

... RESPONDENTS

(BY SHRI. N. VENKATARAMAN, ASG/SENIOR ADVOCATE FOR
SHRI. SAJI P. JOHN, ADVOCATE FOR R2 - THROUGH VIDEO
CONFERENCE;
SHRI. M.B. NARAGUND, ASG A/W
SHRI. M.N. KUMAR, CGC FOR R1- THROUGH VIDEO
CONFERENCE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227
OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT THAT SECTION
272(1)(e) OF THE COMPANIES ACT 2013 IS ULTRA VIRES THE
CONSTITUTION OF INDIA 1950 ANNEXURE-B AND DECLARE THAT THE
SECOND PROVISIO TO SC.272(3) OF THE COMPANIES ACT 2013 MUST
BE READ TO BE APPLICABLE TO PETITION PRESENTED BY PERSONS
FAILING UNDER S.272(1)(e) OF THE COMPANIES ACT 2013 I.E ANY
PERSON AUTHORIZED BY THE CENTRAL GOVERNMENT IN THAT
BEHALF ANNEXURE-B AND ETC.

THIS WRIT PETITION, HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 19.04.2021, COMING ON FOR PRONOUNCEMENT OF ORDERS THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

ORDER

Devas Employees' Mauritius Pvt. Ltd., a Company incorporated under the laws of Republic of Mauritius has presented this writ petition with prayers to (i) declare Section 272(1)(e) of Companies Act, 2013 ('the Act' for short) as *ultra vires* Constitution of India; (ii) to declare that the second proviso to Section 272(3) of the Act, must be read to be applicable to the petitions presented by persons falling under Section 272(1)(e) of the Act; and to issue a writ of certiorari quashing sanction order dated January 18, 2021 and consequently to quash all proceedings in C.P. No. 06/BB/2021 before NCLT¹.

2. Brief facts of the case are, petitioner holds 3.48% shares in Devas Multimedia Pvt. Ltd., (respondent No.3 herein), (hereinafter referred to as 'Devas'). On January 28, 2005, Antrix Corporation Ltd., (respondent No.

¹ National Company Law Tribunal

2 herein) and Devas entered into an agreement for lease of space segment capacity on ISRO/Antrix S-Band Space Craft. According to the petitioner, investments were brought into Devas from different shareholders including State owned Deutsche Telekom, an enterprise of the German Government.

3. On February 25, 2011, Antrix Corporation terminated the agreement. Devas initiated arbitration proceedings in ICC². On September 14, 2015, ICC Arbitral Tribunal passed an Award for USD 562.5 Million with interest thereon, which according to the petitioner works out to about Rs.10,000 Crores and same is being enforced in several jurisdictions. The Central Government vide notification dated January 18, 2021 has authorised the Chairman & Managing Director of Antrix Corporation to present a petition to wind up Devas. Accordingly, Antrix Corporation has filed a Company Petition before NCLT, Bengaluru. By its order dated January 19, 2021, NCLT has

² International Chamber of Commerce

admitted the petition and granted time to the respondents therein to file replies; and appointed the official liquidator attached to this Court as provisional liquidator.

4. Petitioner has challenged NCLT's order before NCLAT³ Chennai in Company Appeal (AT)(CH)No.02/2021. The said appeal has been disposed of vide order dated February 11, 2021, by directing the petitioner to file necessary interlocutory application before NCLT seeking permission to implead itself and with liberty to raise all factual and legal pleas before the NCLT. Petitioner has filed an application seeking impleadment in the proceedings before NCLT.

5. Shri. Rajiv Nayar, for petitioner mainly urged following contentions:

- a winding up petition can be presented by persons specified in Section 272(1) of the Act, which includes both Registrar and 'any person authorized by the Central Government'. Section 272(3) provides that Registrar shall obtain previous sanction from the

³ National Company Law Appellate Tribunal

Central Government to present a winding up petition. The second proviso to Section 272(3) mandates that Central Government shall not accord sanction unless Company has been given an opportunity of making representation;

- in this case, no opportunity was given to Devas prior to the accord of sanction by the Central Government;
- the order passed by the Central Government authorizing the Chairman and Managing Director of Antrix Corporation to file winding up petition is *malafide* exercise of power;
- the agreement between Antrix and Devas has been terminated on the ground of *force majeure* after taking opinion from the learned Additional Solicitor General and not on the ground of fraud;
- the arbitral award passed by ICC is unanimous;

6. Shri. Nargund and Shri. Venkataraman, learned Additional Solicitors General for the Union of India and Antrix Corporation argued opposing the petition.

7. I have carefully considered rival contentions and perused the records. In the conspectus of facts of this case, following points arise for consideration:-

- (1) ***Whether Section 272 (1)(e) is ultra vires Constitution of India? and***
- (2) ***Whether order dated 18.01.2021 needs any interference?***

Re. Point No.1

8. Shri. Nayar has argued that both Registrar of Companies and a 'person authorized by the Central Government' stand on the same footing. In the case of Registrar, before according sanction, Central Government is required to give an opportunity to the Company and the same is missing in the case of a 'person authorized by Central Government'. Placing reliance on paragraph No.10 in *Ram Dial and others Vs. The State of Punjab*⁴, he argued that where one of the provisions provides for notice and hearing, and the other does not, it is drastic and arbitrary and on this ground, the Apex Court has declared Section 14(e) of the Punjab Municipalities Act, as unconstitutional.

9. Shri. N.Venkataraman, learned ASG, has submitted that there is a classic distinction between the

⁴ AIR 1965 SC 1518

Registrar of Companies and a person authorized by the Central Government because Registrar is a regulator and stands on a different footing.

10. In *Ram Dial*, the Apex Court was considering Section 14(e) and Section 16 of the Punjab Municipalities Act. Under Section 14(e) of the said Act, the State Government, in public interest, could direct that a seat of a specified member whether elected or appointed, shall be vacated on a given date. Section 16 of the said Act gave power to the State Government to remove any member of the Municipal Committee. Proviso to Section 16(1) of the said Act required the State Government to communicate the reasons for removal and provide an opportunity to the noticee to explain his stand. Thus, the Punjab Municipality Act had two distinct provisions, of which, one provided for notice and the other did not. Both provisions dealt with removal of a member. In contradistinction, in this case, Section 272 of the Companies Act permits different category of persons to present a petition for winding up.

The Registrar of Companies is privy to all information of the Company and when he proposes to move a petition for winding up under Section 271(c) of the Companies Act, it shall be based on his opinion and satisfaction that the affairs of that Company were conducted in a fraudulent manner which is not the case of a person authorised by the Central Government.

11. Shri. Rajiv Nayar, placed reliance on another authority, *Subramanian Swamy Vs. Director, Central Bureau of Investigation and another*⁵ (paragraphs No.57, 58, 59 and 68) and contended that discrimination cannot be justified on the ground that there is reasonable classification. In the said authority, the issue was whether classification be made creating a class of Government officers at the level of Joint Secretary and above on one hand and certain officials in Public Sector Undertakings on the other, for the purpose of enquiry/ investigation into offences alleged to have been committed under the

⁵ (2014)8 SCC 682

Prevention of Corruption Act, whereas, in the case on hand, the distinction is with regard to sanction to be accorded by the Central Government to the Registrar of Companies on one hand and 'any authorized person' on the other.

12. Therefore, both authorities are not applicable to the facts of this case and do not lend any support to the petitioner's case.

13. On the other hand, Shri. Venkataram, learned ASG is right in his submission that 'Registrar' falls in a category as a 'Regulator'. This can also be gathered from the powers and duties of the Registrar of Companies enumerated in Sections 77, 77(2), 78, 81, 83, 93, 137, 157, 206, 208, 209 and 248 of the Companies Act. Therefore, I am persuaded to accept the submission of learned ASG that Registrar falls in a different category.

14. Shri. Nayar next relied upon paragraph No.255 in *Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress*

*and others*⁶ and paragraph No. 11 in *Sultana Begum Vs. Prem Chand Jain*⁷, and urged that proviso to Sec. 272(3) may be read to be applicable to petitions presented by 'any person authorised by the Central Government'. In *Delhi Transport Corporation* case, the issue is with regard to applicability of certain rules in case of retrenchment on account of reduction in establishment and other circumstances such as probationary period. In *Sultana Begum* it is held that statute has to be read as a whole. As recorded hereinabove, the Registrar being the Regulator, falls in a distinct category and these authorities do not lead petitioner's case any further.

15. Shri. Venkataraman, learned Addl. SG has placed reliance on the following authorities and contended that sanction is an administrative act and therefore affording any opportunity of hearing is not contemplated at that stage:

⁶ 1991 Supp (1) SCC 600

⁷ (1997)1 SCC 373

- *Superintendent of Police (C.B.I.) Vs. Deepak Chowdhary and others*⁸ (paragraph No.5);
- *Sultan Singh vs. State of Haryana and another*⁹ (paragraph No.4);
- *Designated Authority (Anti-Dumping Directorate), Ministry of Commerce Vs. Haldor Topsoe A/S*¹⁰ (paragraphs No.24 & 25);
- *State of Maharashtra Vs. Ishwar Piraji Kalpatri and others*¹¹(paragraphs No.16 & 17); and
- *Asst. Commissioner, Assessment-II, Bangalore and others Vs. Velliappa Textiles Ltd., and another*¹² (paragraphs No.7 & 8).

16. In *Velliappa Textiles*, the Apex Court has quoted Lord Reid's statement in *Wiseman Vs. Borneman*¹³ that 'every public officer who has to decide whether to prosecute or raise proceedings, ought, first to decide whether there is *prima facie* case, but no one supposes that justice requires that he should first seek the comments of the accused or

⁸ (1995)6 SCC 225

⁹ (1996)2 SCC 66

¹⁰ (2000)6 SCC 626

¹¹ (1996)1 SCC 542

¹² (2003)11 SCC 405

¹³ (1969)3 All ER 275

the defendant on the material before him. So, there is nothing inherently unjust in reaching such a decision in the absence of other party'.

17. To buttress his argument that two distinct procedures can be prescribed in a statute, Shri. Venkataraman relied upon paragraphs No. 14, 17 & 30 in *Manganlal Chhanganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and others*¹⁴. In this authority, the Constitution Bench of Supreme Court of India has held as follows:

"14. To summarise: Where a statute providing for a more drastic procedure different from the ordinary procedure The fact that in such cases the executive will choose which cases are to be tried under the special procedure will not affect the validity of the statute. Therefore, the contention that the mere availability of two procedures will vitiate one of them, that is the special procedure, is not supported by reason or authority."

(Emphasis Supplied)

18. Shri. Venkataraman also urged that the State enjoys a special status. In support of this contention, he

¹⁴ (1974)2 SCC 402

has relied upon paragraph No.14 in *M. Jhangir Bhatusha and others Vs. Union of India and others*¹⁵. In this case, the Constitution Bench of the Supreme Court of India was considering the exemption granted to STC, but denied to private importers. It is held that the State can ordinarily claim no flavoured treatment but there may be clear and good reason for making a departure.

19. In the next authority, *P.M.Ashwathanarayana Setty and others Vs. State of Karnataka and others*¹⁶, the Apex Court has held that State enjoys widest latitude where measures of economic regulation are concerned. In *State of Gujarat Vs. Ambica Mills Ltd.*¹⁷, referred in this authority, it is held that more complicated Society becomes, the greater the diversity of its problems and the more does Legislation direct itself to the diversities. In the utilities, tax and economic regulation cases, there are good reasons of judicial self restraint if not, official deference to Legislative

¹⁵ 1989 Supp (2) SCC 201

¹⁶ 1989 Supp (1) SCC 696

¹⁷ (1974) 4 SCC 656

judgment. The Courts have only the power to destroy, but not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events, self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability.

20. Shri. Venkataram also relied upon paragraph No.17, in *K.B. Nagur Vs. UOI*¹⁸ and contended that presumption of constitutionality is always in favour of legislation, unless, the contrary is shown. In this authority is also held as follows:

"20. It is also a settled and deeply-rooted canon of constitutional jurisprudence, that in the process of constitutional adjudication, the courts ought not to pass decisions on questions of constitutionality unless such adjudication is unavoidable. In this sense, the courts have followed a policy of strict necessity in disposing of a constitutional issue. In dealing with the issues of constitutionality, the courts are slow to embark upon an unnecessary, wide or general enquiry and should confine

¹⁸ (2012)4 SCC 483

*their decision as far as may be reasonably practicable,
within the narrow limits required on the facts of a case."*

(Emphasis supplied)

21. It is settled that when a provision of law is challenged, Courts are required to exercise restraint and be cautious in striking down a provision. It may be profitable to note the decision of the Apex Court in *Government of Andhra Pradesh and others Vs. P. Laxmi Devi (Smt)*¹⁹, wherein it is held as follows:

46. But before declaring the statute to be unconstitutional, the court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide Rt. Rev. Msgr. Mark Netto v. State of Kerala [(1979) 1 SCC 23 : AIR 1979 SC 83] SCC para 6 : AIR para 6. Also, it is none of the concern of the court whether the legislation in its opinion is wise or unwise.

(Emphasis Supplied)

¹⁹ (2008)4 SCC 720

Re. Point No.2

22. It is urged on behalf of the petitioner that Central Government's decision to accord sanction is malafide.

23. Shri. Venkataraman has argued that Devas was incorporated on December 17, 2004. On January 28, 2005, Antrix Corporation has entered into the agreement wherein Devas has made following representations:

- "b. DEVAS hereby represents and warrants ANTRIX as under:*
- i) DEVAS has the capacity and power to enter into and perform this Agreement in terms thereof;*
 - ii) DEVAS has the ability to design Digital Multimedia Receivers ("DMR");*
 - iii) DEVAS has the ability to design Commercial Information Devices ("CID");*
 - iv) DEVAS has the ownership and right to use the Intellectual Property used in the design of DMR and CID;*
 - v) The fulfillment of DEVAS' obligations under this Agreement by DEVAS will not violate any Laws;*
 - vi) DEVAS shall assign, transfer and/or sub-let its rights and obligations hereunder in accordance with law.*

vii) DEVAS shall be solely responsible for securing and obtaining all licenses and approval (Statutory or otherwise) for the delivery of Devas Services via satellite and terrestrial network."

24. He has submitted that Devas did not have the ownership of any intellectual property as the technical know-how mentioned in the agreement was unknown in the world at that point of time. Thus, all that Devas has done is bringing money into India under different channels, and siphoning off a major portion of it.

25. Shri. Venkataraman has further submitted that CBI²⁰ has investigated and filed charge sheet in 2016. The ED²¹ and Authorities under PMLA²² have also investigated into the matter. Letters of Rogatory have been issued to France, USA and Singapore. The Director of petitioner's Company, Shri. Ramachandran Vishwanath, who is the deponent verifying the Affidavit annexed to the writ petition, is an accused in Criminal Proceedings and he is

²⁰ Central Bureau of Investigation

²¹ Enforcement Directorate

²² Prevention of Money Laundering Act, 2002

avoiding service of summons sent to the very address mentioned in the Affidavit. Therefore, petitioner has not come to this Court with clean hands. He submitted that Officers of ISRO, the Chairman and Executive Director of Antrix Corporation and other Officers are also accused in the Criminal cases.

26. The Secretary of Department of Space will also be ex-officio Chairman of ISRO and Antrix Corporation. The material on record (Annexure-G) discloses that on January 14, 2021, the Chairman-cum-Managing Director of Antrix Corporation has written a detailed letter to the Secretary, Ministry of Corporate Affairs giving chronological events and sought sanction to file winding-up proceeding against Devas. It is stated in the letter that Devas had committed fraud in collusion with earlier Officers of Antrix Corporation, Department of Space and ISRO and it has resulted in huge financial loss to the Government of India.

27. It is further stated in the letter that in the year 2011, Newspapers reported a mega scam and fraud in the Department of Space and views of various Ministries were sought. They had replied that the Contract and subsequent transactions had involved serious contraventions and breach of laws and it was completely overlooked and a misrepresented Cabinet note was prepared seeking termination of agreement dated 28.01.2005.

28. While filing application before the FIPB,²³ Devas had projected investments only as Internet Service Provider (ISP), and the Department of Telecom had issued a license to Devas for ISP services only. The application filed before FIPB does not refer to multimedia services to be employed in the use of S-Band transponder facility for which Antrix Corporation and Devas had entered into the agreement. It is further stated that Devas was incorporated with a Share capital of Rs.1,00,000/- about one month prior to the

²³ Foreign Investment Promotion Board

agreement with Antrix Corporation and Devas itself had valued the Company at Rs.579 Crores.

29. It was argued by Shri. Nayar that Antrix Corporation is the judgment debtor. Therefore, in order to avoid payment under the Arbitration Award, the Antrix Corporation has chosen to seek liquidation of Devas and the request made by Antrix has been acceded in great hurry by according sanction. He contended that the aspect of fraud has been designed to deprive Devas of its legitimate dues.

30. Admittedly, Antrix Corporation is fully owned by the Government of India and the Secretary of the Department of Space is the Ex-officio Chairman of Antrix Corporation. It is no doubt true that agreement has been cancelled on the ground of *force majeure* and Devas has obtained an Arbitral Award. But, at the same time, the contents of the letter dated January 14, 2021 written by the Antrix Corporation cannot be brushed aside. The Managing Director of Antrix Corporation has stated that with an

Investment of Rs. 579 Crores, Devas have provided ISP services for about 25 people and earned a revenue of Rs.80,000/-. It is also stated that out of Rs.579 Crores, Rs.233 Crores have been moved out towards litigation services and large sum of money has been transferred to the wholly owned subsidiary of Devas in USA.

31. Petitioner has annexed a copy of the Company petition filed by Antrix Corporation before NCLT as Annexure-H to the writ petition. Averment with regard to siphoning of money reads thus:

"13(dd). Monies to the tune of Rs.579 Crores were brought in, and when the same were not being used for the stipulated ends, the investment would be rendered illegal and loses the eligibility as a protected investment.

13(ee). The investment of Rs.579 Crores instead of being used to render internet services, was used in the following manner that resulted in a case of Money Laundering:

- i) Around of Rs.75 Crores were sent out of India by creating a wholly owned subsidiary in the USA, with the directors of Devas controlling the subsidiary.*
- ii) Over Rs.180 Crores were sent out as payment towards business support services, without receiving either*

assets or services and writing them off as losses in the books.

- iii) Over Rs.233 Crores moved out of India in the guise of litigation services. When the earlier payments were made as business support, it resulted in service tax exposure on reverse charge basis. To avoid payment of such taxes, the monies were laundered in the guise of litigation support services.*
- iv) Rs.92 Crores remained in India out of which a sum of Rs.21 Crores was lying in fixed deposits which have been seized by the PMLA authorities and Rs.59 Crores was paid as upfront capacity fee to Antrix. The balance monies were paid out as salaries to the Directors of Devas."*

32. It is the specific case of Antrix Corporation that there was collusion of its officials and it is narrated as follows:

"46. Because the officials of Antrix in collusion with the Respondents No.1 Company, illegally and arbitrarily arrived at a separate pricing of spectrums including the lease charges to be paid by the Respondent No.1 company, even when "Devas Services" which involved both Mobile Satellite Services and Broadcasting Satellite Services, was absent from the price stipulation available at that time."

"55. Because it is revealed that in 58th Meeting of the Board of Directors, held on 17/03/2005 at Bangalore, Mr.G.Madhavan Nair, the then Chairman, while welcoming

the Directors, informed the Board that Antrix had signed a contract worth US\$ 144 Million with the Respondent for leasing of S-Band Transponders over a period of 12 years. Ms. Veena S Rao, the then Additional Secretary (AS), Department of Space, being one of the Directors on the Board of Antrix was also present in the said meeting and as such she was aware of the agreement between Antrix and the Respondent No.1 Company for leasing of S-Band Transponders, an agreement which is illegal and unenforceable. However, the same was concealed before the 104th Space Commissioner meeting which was attended by the aforementioned persons forming part of the 58th Board Meeting of Antrix."

33. With regard to the valuation of the Company, it is stated thus in the Company petition:

"74. Because for a company with no commercial antecedent and hardly in vogue for more than six months, the shares of the Respondent No.1 Company were sold at exorbitant rates as high as Rs.1.26 Lakhs per equity share. The officials of the Respondent No.1 Company were not able to give any valid justification to the investigating agencies for pricing the shares at such high premiums, thus leading to the conclusion that the foreign investments were brought into India only for fraudulent activities including money laundering. This is evident from the subsequent actions of the Respondent No.1 Company, whereby Rs.487 Crores out of Rs.579 Crores investment, were laundered out of Indian

through the US subsidiary of the Respondent No.1 Company."

34. The averment with regard to financial transactions reads as follows:

"79. Because of the Rs.579 Crores of foreign investment amounts of Rs.76,19,04,563/- as share subscription/investment in Devas America Inc (a wholly owned subsidiary of the Respondent No.1 Company) and Rs.180,77,58,989/- (Rupees One Hundred and Eighty Crores Seventy-Seven Lakhs Fifty-Eight Thousand Nine Hundred and Eighty-Nine) in the guise of service fee towards business support services, were laundered out of India. Out of the Rs.180 Crores, the Respondent No.1 Company paid around 40 crores for the period 2006 October 2010 for which there was no agreement at all. The agreement was entered into only in October 2010 with the US subsidiary. If one adds the share subscription of Rs.76,19,04,563 (Rupees Seventy Six Crores Nineteen Lakhs Four Thousand Five Hundred and Sixty Three), it would total upto Rs.256,96,63,544 (Rupees Two Hundred and Fifty Six Crores Ninety-Six Lakhs Sixty-Three Thousand Five Hundred and Forty Four). Over and above this between 2011 and 2014, Devas India had sent monies out of India into US to the extent of Rs.230,11,14,734 (Rupees towards legal fees to USA firms. Thus, a total of around Rs.487,07,78,278, (Rupees Crores had been taken out of the Indian entity and migrated into US entities. Devas had a balance of 21,38,66,041 (Rupees of which 3 Crores was in the form of Inter Corporate loan

deposits to DCP Networks Pvt Ltd., Bangalore. The balance of Rs.18,38,66,041 (Rupees in the from of mutual funds/bank deposits. Devas had totally spent Rs.12,23,64,178 (Rupees towards expenses between 2005 and 2016 of which Rs.6 Crores and Rs.4 Crores respectively (totalling 10 Crores) had been paid to 2 of its/directors. Other than 12 Crore spend over 11 years, out of the 579 Crores, the balance 568 Crores way lying as liquidity of which around Rs.487,07,78,278 (Rupees Crores have been taken out of India into the US subsidiaries and other US firms. When the PMLA authorities confronted these details with the Directors/employees of Devas Multimedia India, a confessional statement was made that the whole operations were driven from USA and through the US subsidiary entity and the Indian holding company had not bid role to play. The entire payment of Rs.487,07,78,278, (Rupees comprising of share subsription money, service fee towards business support and legal fees cannot be supported with any evidence and nothing in fact was furnished by Devas India to the PMLA authorities."

35. It is averred in the Company petition [paragraph No.11(f)] that the existence of Contract dated 28.01.2005 was suppressed by the 'then officials' from various Government Authorities while seeking approval for the project. It is also averred that a Cabinet note dated 17.11.2005 put up for the consideration of Union Cabinet

suppressed the existence of Contract which had already been executed on 28.01.2005, and stated, instead, that ISRO was in receipt of "several firm expressions of interest" by different service providers for utilization of Satellite capacity.

36. It is further averred in the Company Petition that Devas, a Company incorporated without any commercial antecedents and hardly in existence for six months had sold its shares at exorbitant rates, as high as Rs.1.26 Lakhs per share, to foreign investors. [paragraph 13(v)].

37. It is further averred in paragraph No.42 that the agreement between Devas and Antrix was signed by one Shri. S.R. Gururaj, who was an Article Clerk of Shri. M. Umesh, a Chartered Accountant, who was one of the Directors of Devas. It is also averred that Shri. Gururaj has gone on record vide his statement dated 15.01.2016 before the CBI.

38. Petitioner has produced a copy of the agreement between Antrix Corporation and Devas dated 28.01.2005, as Annexure-C and it shows that on behalf of Antrix Corporation, the agreement is signed by its Executive Director, Shri. K.R. Sridhara Murthi and on behalf of Devas, the agreement is signed by Shri. S.R. Gururaj.

39. It is further alleged in paragraph No.55 of the Company petition that in the 58th meeting of the Board of Directors of Antrix Corporation, Shri. Madhavan Nair, the then Chairman had informed the Board that Antrix Corporation had signed a Contract with Devas. Ms. Veena S. Rao, the then Additional Secretary, Department of Space being one of the Directors on the Board of Antrix Corporation was also present in the said meeting and she was aware of the said agreement. However, the same was concealed before the 104th Space Commission Meeting which was attended by the aforementioned persons forming part of 58th Board Meeting of Antrix Corporation.

40. Shri. Venkataraman, placing reliance on the words of Lord Herschell in *Derry Vs. Peek*²⁴ referred in paragraph No.78 of *Venture Gopal Engineering LLC Vs. Tech Mahindra Ltd., and another*²⁵, submitted that fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth or recklessly. He argued that facts of this case clearly show that false representations have been made both by Devas and the officers of Antrix Corporation. He submitted that fraud unravels everything and therefore, Antrix Corporation has taken appropriate steps to file the petition seeking liquidation of Devas.

41. It is further averred in the complaint at paragraph No.80 that neither Devas nor the Overseas investors had ever sought for an approval from FIPB for investing funds other than for ISP Services.

²⁴ 1889(LR) 14 AC 337 (HL)

²⁵ (2018)1 SCC 656

42. Admittedly, petitioner has challenged the order passed by NCLT before NCLAT. Pursuant to the order passed by NCLAT, petitioner has filed an impleading application in the Company winding up Petition pending before NCLT. Thus, petitioner is privy to all averments contained in the Company Petition. It has approached this Court under Article 226 of the Constitution of India as one of the shareholders of Devas. However, petitioner has not whispered anything about the serious allegations of siphoning of the money, levelled against Devas and other illegalities alleged in the Company Petition.

43. Antrix Corporation is fully owned by the Government of India. It's specific case is, its officers are involved in the fraud. Law enforcing agencies such as CBI, ED, Authorities under PMLA have conducted investigation. As recorded hereinabove, Secretary, Department of Space is ex-officio Chairman of Antrix Corporation and he has sought for sanction to liquidate Devas. It is settled that Courts must presume that all actions of the executive shall

be in consonance with the Rules of business of the Government. In order to substantiate the *malafides* on the part of the Central Government, one of the arguments advanced by Shri. Nayar is that the sanction has been accorded in a hurried manner.

44. Shri. M.B. Naragund, learned ASG has made available the original file containing the requisition and the sanction. I have carefully perused it. It is has been dealt with by concerned personnel in the Ministry and their file notings are on record.

45. Shri. Rajiv Nayar contended that the sanction order has been gazetted on January 18, 2021 and petition has also been filed on the same day. The original file discloses communications by email and proposal for e-publication of the Notification in the Official Gazette. We are in the electronic era of instant communication and therefore no exception can be taken if a department functions with speed/efficiency.

46. Placing reliance on paragraph No.7 in *S.L.Kapoor Vs. Jagmohan and others*.²⁶ Shri. Nayar, contended that an administrative order which involves civil consequences must be made consistently with the Principles of Natural justice. The comprehensive connotation of 'civil consequences' as held in *Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi*²⁷ extracted therein, is, everything that affects a citizen in his civil life.

47. In the case on hand, petitioner is a miniscule shareholder in Devas. It has already filed an application for impleadment before the appropriate forum namely the NCLT. Devas is not aggrieved by the sanction order. Petitioner has all opportunity to urge its contentions before NCLT. At this juncture, there is no order, which has any civil consequences.

48. Shri. Nayar also urged that where malafides are alleged, it is necessary for the person against whom such

²⁶ (1980)4 SCC 379

²⁷ (1978)1 SCC 405

allegations are made should come forward with an answer refuting or denying the allegations. To buttress this argument, he relied upon paragraphs No. 115 and 116 in *Express Newspapers Pvt. Ltd., and others Vs. Union of India and others*²⁸. He argued that respondents have not refuted the allegations of malafides urged in paragraphs No.5 and 44 of the writ petition and they read as follows:

"5. In any event the exercise of power by Respondent No.1 in the present case is malafide exercise of power and the sanction dated 18.01.2021 ought to be struck down."

"44.....This action of the debtor i.e., Antrix, to prevent the creditor, i.e., Devas, to pursue its remedies in law are untenable and wholly malafide, including the grant of sanction by Respondent No.1 to Antrix, and the initiation of winding up proceedings against Devas."

49. Above pleadings are vague. In any event, petitioner has challenged the order dated January 19, 2021 passed by the NCLT before the NCLAT and the NCLAT has disposed of the said appeal by its order dated February 11, 2021 by directing petitioner to file necessary interlocutory application before the NCLT seeking permission to implead

²⁸ (1986)1 SCC 133

itself in the main pending Company Petition. NCLAT has also granted liberty to raise all factual and legal pleas before the NCLT. Petitioner has accepted the said order and proceeded further and filed an application under Rules 11 and 34 of the NCLT Rules, 2016 for impleadment in the main petition.

50. Shri. Venkataram has submitted that pleadings are complete before the NCLT and the company petition was listed for final hearing. NCLT's order dated March 2, 2021, shows that the learned Senior Advocate for the petitioner herein has agreed to file objection to the main Company Petition on or before March 12, 2021. Accordingly, the matter was adjourned to March 23, 2021 for final hearing. Thus, having elected the appropriate forum to oppose the Company petition, this writ has been filed a day prior to the date fixed for final hearing namely March 22, 2021. This amounts to abuse of process of law and a proxy war on behalf of Devas.

51. One of the most profound tenets of Constitutionalism is presumption of Constitutionality assigned to each legislation enacted. Indubitably, Parliament has competence. The sanction accorded by the Central Government does not meet petitioner with any Civil consequence. Devas has not challenged the sanction order. Petitioner has failed to demonstrate infringement of any rights enshrined in Part-III of Constitution of India.

52. Having held that Registrar and 'a person authorized by the Central Government' fall into different categories, it does not warrant reading down Section 272(3) of the Companies Act.

53. Accordingly, both points for consideration are held in the negative.

54. Resultantly, this writ petition must fail and it is accordingly **dismissed** with cost of Rs.Five Lakhs payable in the name of the Registrar General of this Court within

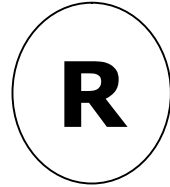
four weeks from today and Registrar General shall report compliance.

55. In view of the dismissal of this petition, pending interlocutory applications, if any, do not survive for consideration and they stand disposed of.

(P.S. DINESH KUMAR)
JUDGE

SPS

PSDJ:
28.04.2021



ORDER
IN
WRIT PETITION No.6191 OF 2021 (GM-RES)

