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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CHAMBER SUMMONS NO. 78 OF 2017
IN
COMM EXECUTION APPLICATION NO. 947 OF 2018
IN
ARBITRATION AWARD DATED 26TH JUNE 2013

GIA (MBA) Holdings Ltd ...Applicant
Versus
Katra Holdings Ltd & Anr ...Respondents

Ms Silpa Nair, *with Lizun Wangdi, i/b Trilegal, for the Applicant.*
Mr Ashish Kamat, *with Chirag Kamdar & MP Priyanka, i/b Naik Naik & Co., for Respondents Nos. 1 and 2.*

CORAM: G.S. PATEL, J
DATED: 19th July 2018

PC:-

1. The application is on Affidavit but I will take it as an application made by the Respondents pursuant to my order dated 3rd July 2018.

2. In paragraph 2 of that order, I said:

> "2. The Respondents are put to notice that they are not to create any further encumbrances on any of their assets movable or immovable in India without prior leave of the Court obtained after at least 48 hours' prior notice to the Advocates for the Advocates for the Petitioner. This is of course necessarily subject to any orders that may be passed by the Arbitration Court hearing the Application under Section 36 or the Petition under Section 34 of the Arbitration and Conciliation Act."

3. The application today, one that is to my surprise quite vigorously opposed, is to seek a clarification that what the Respondents seek to do is not covered by paragraph 2 of that order.

4. The 1st Respondent had equity in company known as Kerala Ayurveda Limited (**"KAL"**). It took finance from ECL Finance Limited, an Edelweiss company. The repayment of this loan was *inter alia* secured by a pledge of part of the 1st Respondent's equity holding in KAL. Some 23.42% of KAL's share capital, held by the 1st Respondent, was thus pledged with ECL. The transaction between KAL and ECL require a pledge of 32.88%. In the meantime, the 1st Respondent pledged another 9.46% of its equity holding in KAL with Axis Bank Ltd to secure the repayment of loan by another company, Mason & Summers Leisure Private Limited. That loan is now proposed to be repaid and the security of 9.46% of 9,98,990 shares of KAL held by the 1st Respondent and pledged to Axis Bank is proposed to be transferred or given as a pledge to ECL as the deficit pledge security required for repayment of KAL's loan. The loan to Axis Bank is to be repaid entirely.

5. The application is opposed on the ground that once the loan to Axis Bank is repaid 9,98,990 equity shares in KAL will be "free"; meaning, possibly, that the Decree Holder can proceed against them. Indeed they will not, at least not for this Decree Holder. The fact that there is an arbitral award that is being executed as a decree does not make the Award Holder a secured creditor. There are other secured creditors, and other priority claims. The Decree Holder is in no way prejudiced by what is proposed. All that is sought is a sideways shift of an already encumbered or securitized asset. Looking at it from another perspective, had this application not been made, there was simply nothing that the Decree Holder could have done because the 9,98,990 shares were already in pledge to one secured creditor, Axis Bank. Whether they are in pledge to one secured creditor or to another does not improve the Decree Holder's position.

6. It is sufficient for this purpose to clarify that the proposed transaction by the 1st Respondent, Katra Holdings Ltd is not contrary to my order of 3rd July 2018. This will not constitute a further encumbrance within the meaning of paragraph 2 of that order.

7. Mr Kamat points out that both the securities in favour of ECL Finance Ltd and Axis Bank Ltd were created well before my order dated 3rd July 2018.

(G. S. PATEL, J)