

MANISH MOHAN SHARMA AND CO.
v.
RAM BAHADUR THAKUR LTD. AND ORS.

MARCH 21, 2006

[RUMA PAL AND DALVEER BHANDARI, JJ.]

Companies Act, 1956—Sections 397, 398, 402 and 634A—Groups of family relatives having shareholding in a company—One group complaining under Sections 397 and 398 to Company Law Board of its ouster from management—Resolution of issues between parties by execution of Memorandum of family arrangement (MOFA) and Transfer Document—With these two documents as integral part, CLB passing order under Section 402 and directing parties to execute transfer deeds to effect transfer of relevant assets, with liberty to parties to approach it in case of difficulty in implementation of order—Thereafter, on dispute arising between parties on issue of gratuity, when they approached CLB, it found that this issue was not contemplated when parties executed the two documents, and as there was dispute between parties regarding interpretation clause in those documents, it could not pass any order under Section 634A—High Court upholding order of CLB—On appeal, held: Order of CLB under 402 was not an interim order; it was a preliminary decree enforceable under Section 634A—CLB was bound to execute it, if required, interpret its terms, and parties were bound by that interpretation—It was especially so as it was a consent order, and more so relating to a family settlement which is to be enforced even if agreed to on basis of error, mistake or ignorance of fact as to actual rights of parties.

Companies Act, 1956—Sections 397, 398 and 402—Powers of Company Law Board under Section 402—Held: These are residuary and in addition to powers available to it under Section 397(2) and Section 398(2), and permit it to make such order it thinks fit to bring to an end matters complained under Section 397(1) or preventing matters complained or apprehended under Section 398(1).

Companies Act, 1956—Sections 397, 398 and 634A—Enforcement of orders of Company Law Board under Section 634A—Held: Word 'any order' in opening of section indicates that all orders made by Company Law Board

A on application under Sections 397 and 398 are enforceable like decrees without any limit on nature of the order.

B Appellant and respondent are two groups of close family relatives having equal shareholding in respondent no. 1 company. Appellant filed a company petition before Company Law Board (CLB), under Sections
C 397 and 398 of Companies Act, 1956 complaining that they were ousted from management of the company. CLB removed the Chairman and Managing Director of the company. A retired judge was appointed as Chairman, who tried to resolve matters between the parties. A Memorandum of family arrangement (MOFA) and Transfer Document were executed between the parties. On 19th August, 1999, CLB passed an order with these two documents as integral part, and directed the parties to execute transfer deeds to affect transfer of relevant assets. This order was passed under Section 402. It also gave liberty to the parties to approach CLB in case there was some difficulty in implementing the order. In terms of MOFA, respondent gave a notice of completion. This notice
D was objected to by appellant as not being in terms of the Transfer Document. Hence they filed an application under Section 634A questioning validity of the notice, and praying for direction to respondent to proceed as per the MOFA and the Transfer Document. During the pendency of this application, respondent filed an application for recalling of order of the CLB. During hearing before the CLB, issue was raised as to accrued liability of gratuity, and there was dispute between the parties on it. CLB held that liabilities of gratuity were not contemplated by the parties when they entered the MOFA and the Transfer Document, that there was no meeting of mind on this issue and that there was a *bona fide* dispute
E between the parties with to regard to interpretation clause in these two documents. Accordingly, it held that it could not pass any order on application under Section 634A and rejected it. It also rejected application filed by respondents. Appellant appealed to the High Court against this order. High Court upheld the order of CLB and dismissed the appeal. Hence the present appeal.

G Appellants contended that the CLB could not refuse to execute its own order, especially as it was passed with consent of the parties. Respondent contended that order of CLB was not a final order, and that the appeal should be rejected under Article 136 of Constitution of India, 1950 keeping in view that investigation was being carried out by
H Government into mismanagement of assets held by appellants.

Allowing the appeals and remanding the matter to Company Law Board, the Court A

HELD : 1. Both the Company Law Board and the High Court erred in refusing to execute the order dated 19th August, 1999 under Section 634A of the Companies Act. They have thereby failed to exercise the jurisdiction with which they were vested. The failure is heightened given the nature of the order which they were bound to execute. They have erroneously proceeded upon principles applicable to contracts alone and have ignored the fact that the agreement between the parties had culminated in a consent order of the Company Law Board. [113-C-D] B

2.1. The Company Law Board in the order dated 19th August, 1999 had itself recorded that if there was any difficulty in the implementation of the order 'the parties shall be at liberty to apply to us for implementation of this order'. Yet when the application was made for such implementation the Company Law Board did not abide by its own direction. [110-G-H; 111-A] C
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2.2. It is nobody's case that the order dated 19th August 1999 was a nullity. The respondents had filed an application for recalling it. The Company Law Board dismissed that application. An appeal has been filed before the Patna High Court is said to be pending. However, it has not been shown that the application for recall was founded on the submission that the order dated 19th August 1999 was a nullity. In the absence of such an issue being raised and decided, the Company Law Board was bound to execute the order. If the Board found that the decree or any of its terms called for interpretation, it was within the Board's jurisdiction to interpret that particular term and to execute the decree on the basis of such interpretation. [111-F-H; 112-A] E
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Topnmal Chhotamal v. M/s Kundomal Gangaram and Ors., AIR (1960) SC 388 and *Central Bank of India v. Rajagopalan*, AIR (1964) SC 743, relied on. G

2.3. Once having agreed to particular terms of settlement which were incorporated which were incorporated in a decree, the parties concerned are bound to comply with the terms as may be interpreted by the executing Court. Once the interpretation is done, the decree must be executed as interpreted. [112-C-D] H

A 3.1. The order dated 19th August, 1999 was not an interim order.
[109-B-E]

B 3.2. Doubtless the Company Law Board speaks of ‘final disposal of the petition and the various interim application’. This was because in terms of the order itself (which included the MOFA and the Transfer Document), various steps had to be taken to complete the severance of the relationship finally between the MMS Groups and the respondents. This did not make the affirmation of the MOFA and Transfer Document and interim arrangement. The operative portion of the order directed the execution of the MOFA and Transfer Document by the parties after completion of the schedules thereto. The entire order was passed by consent. Parties cannot resile therefrom. Therefore, the order cannot be described as an interim order in the sense that the issues decided thereby could be reopened. [109-G-H; 110-A-B]

C 4.1. The order dated 19th August, 1999 was passed expressly under Section 402 of the Companies Act. [109-B]

D 4.2. The powers under Section 402 are residuary in nature and in addition to the powers available to the Company Law Board under Section 397(2) and Section 398(2) which permit the Company Law Board to make such order it thinks fit with a view to bringing to an end the matters complained of under Section 397(1) and with a view to bringing to an end or preventing the matters complained or apprehended under Section 398(1). [109-F-G]

E 5.1. The order dated 19th August, 1999 was in fact a preliminary decree. Final disposal of the matter or the final decree would be after full implementation of the terms of the MOFA and Transfer Document. The interim orders passed relating to joint management were therefore directed to be continued until such time. [110-F-G]

F 5.2. All decrees whether preliminary or final are susceptible to execution. [110-F]

G 5.3. Section 634A provides for enforcement of orders of the Company Law Board. The word ‘any order’ used in the opening of the section, indicates that all the orders made by the Company Law Board on an application under Sections 397 and 398 are enforceable like decrees without any limit on the nature of the order passed by the Company Law Board. [110-B-C]

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Lyallpur Bank Ltd. v. Ramji Das (deceased) through his sons and Anr., AIR (1945) PC 60, relied on. A

5.4. Since the Company Law Board when it deals with an application under Section 634A sits as an executing court it is subject to all the limitations to which a Court executing a decree is subject. It is well settled that an executing court cannot go behind the decree, unless the decree sought to be executed is a nullity for a lack of inherent jurisdiction. B

[111-A-B]

Sunder Dass v. Ram Prakash, [1977] 2 SCC 662, *Seth Hiralal Patni v. Sri Kalinath*, [1962] 2 SCR 747, *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Ors.*, [1970] 1 SCC 670 and *Rafique Bibi (dead) by Lrs. v. Syed Waliuddin (dead) by Lrs. and Ors.*, [2004] 1 SCC 287, relied on. C

6. The order dated 19th August, 1999 was a consent order. Its terms and conditions were contained in the MOFA and the Transfer Document which expressly formed an integral part of the order itself. A consent decree has been held to be a contract with the imprimatur of the Court superadded. It is something more than a mere contract and has the elements of both a command and contract. [111-D-E] D

C.F. Angadi v. Y.S. Hirannayya, [1972] 1 SCC 191, relied on.

Wentworth v. Bullen, 141 ELR 769 and *Charles Huber Kinch v. Edward Keith Walcott and Ors.*, AIR (1929) PC 289, referred to. E

7.1. The effort of the executing Court must be to see that the parties are given the fruits of the decree. The mandate is reinforced when it is a consent decree and doubly reinforced when the consent decree is a family settlement. Clause 3.1 and 3.6 of the MOFA make it clear that the agreements were arrived at between the parties to resolve finally long pending disputes between the family members relating to jointly owned assets. [111-D-E] F

7.2. Family settlements are governed by a special equity and are to be enforced if honestly made. This would be so 'even if the terms may have been agreed to on the basis of an error of the parties or originate in a mistake or ignorance of fact as to what the rights of the parties actually are, or of the points on which their rights actually depend'. This is because the object of an arrangement is to protect the family from long drawn out litigation, and to bring about harmony and goodwill in the family. G H

A 8. The plea of the respondents that this Court should not interfere in the matter under Article 136 by reason of any alleged misconduct on the part of appellants in managing the 5 estates in unacceptable. The appellant's alleged lack of efficiency in running of the five tea estates is not a material consideration for deciding whether the order dated 19th August, 1999 should be enforced. [113-D-E]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9446 of 2003.

From the Judgment and Final Order dated 14.2.2003 of the Patna High Court in Company Appeal No. 1 of 2001.

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C.A. No. 9445 of 2003

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C.A. Sundram, Ms. Rohini Musa, Ms. Shiva Santanam Shivanathan, Mrs. Jayshree, Ashish Wad, Neeraj Kumar, Arvind Gupta and Ms. Sumanti Chakraborti (for M/s. J.S. Wad & Co.) for the Appellants.

A.N. Haksar and Ashok Kumar for the Respondents.

The Judgment of the Court was delivered by

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RUMA PAL, J. Ram Bahadur Thakur Ltd., the respondent No.1 was founded by Chatur Bhuj Sharma and Madan Mohan Sharma. They were first cousins, their fathers being brothers. The shareholding of the two cousins in the respondent No.1 was equal. Since 1992, disputes arose between the two groups, who are referred to respectively as the CBS Group and the MMS Group. The MMS Group is in appeal before us and the CBS Group is represented by the respondents No.2 to 4. The disputes related primarily to the management of the various companies owned by the family including and in particular the Respondent No.1.

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In 1996 the MMS Group filed a company petition (No.56 of 1996) before the Company Law Board, New Delhi under the provisions of Sections 397 and 398 of the Companies Act, 1956, complaining *inter alia* of having been ousted from management of the companies and seeking a role in such management. Various interim orders were passed. On 9th January, 1997, the Company Law Board removed the respondent No.2 as Chairman and Managing Director of the Company and appointed a retired Judge, Justice A.N. Varma as the Chairman of the Company. In 1998, pursuant to another interim order

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passed by the Company Law Board, the MMS Group was put in joint management of the Company. A

The creditors of the Companies including the company's bankers, namely Syndicate Bank initiated proceedings against the company inter alia for recovery of outstanding dues. The matter was ultimately resolved between the parties with the persuasion of the Company Law Board and praiseworthy efforts of the Chairman, Justice A.N. Varma. The terms of the family settlement were set down in a Memorandum of Family Arrangement and Transfer Document. B

By an order dated 19th August, 1999, the Company Law Board recorded the history of the disputes between the parties and the proceedings taken by each against the other and ultimately the resolution of the differences of the parties. The Company Law Board recorded that the Board had in the course of hearing suggested various terms of settlement to resolve the matters amicably between parties having regard to their close relationship. It had expressed its opinion that in order to achieve a fair and equitable settlement, out of the nine tea estates owned by respondent No.1, five tea estates together with certain other assets should be vested in the MMS Group. The suggestion was accepted by the parties in the settlement arrived at between them. They identified the tea estates and other assets to be given to the MMS Group and also quantified the share of the liability of the respondent No.1 which had to be paid by the MMS Group which came to Rs. 7,24,67,708.90 (Rupees seven crores twenty four lacs sixty seven thousand seven hundred and eight and paise ninety only). The order records that the Memorandum of Family Arrangement and Transfer Document executed between the parties would form an integral part of the order. As far as the figure of Rs. 7,24,67,708.90 was concerned, the Company Law Board stated that it would be subject to all deductions and adjustments as set out in the Transfer Document. One Mr. M.C. Joseph, Chartered Accountant was appointed as an independent auditor for the purpose of clause 4.1.1.12 of the Transfer Document, who would verify and certify the figures stated therein. It was also recorded that on completion of the settlement, the five estates and certain other assets would vest in the MMS Group. In order to perfect their title thereto, the Company Law Board directed the parties to execute the transfer deeds to affect the transfer of the relevant assets. Accordingly, the Board pursuant to powers vested in it under Section 402 of the Companies Act 1956, directed that:- C
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(a) both parties fill up and complete Schedules 1,4,7,8,11 and 12 in H

- A the Transfer Document relating to the Assets of Ram Bahadur Thakur Ltd. (which are currently blank/incomplete), the mutual agreement and following the completion of the said Schedules the parties shall forthwith execute the Transfer Documents Relating to the Assets of Ram Bahadur Thakur Ltd;
- B (b) both parties fill up and complete Schedules 1 4(Part B), 5,6,7,8 and 9 in Memorandum of family arrangement (which are currently blank/incomplete), by mutual agreement and following the completion of the said Schedules the parties shall forthwith execute the Memorandum of Family Arrangement. And both parties shall take all necessary steps to implement the settlement contemplated under the said documents which must be completed by 30th September, 1999. The Memorandum of Family Arrangement and the Transfer Document Relating to the Assets of Ram Bahadur Thakur Ltd. set out the entire agreement the parties and there are no understandings and/or arrangements other than expressly stated in these documents.”
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Paragraph 8 of the Order is also of some consequence and is quoted verbatim:-

- E “Time shall be of the essence in affecting the settlement. If either party fails to perform it’s obligations undertaken pursuant to the Memorandum of Family Arrangement or the Transfer Document relating to the Assets of Ram Bahadur Thakur Ltd., within the time specified therein, the aggrieved party shall be at liberty to approach us for appropriate orders/directions and for expediting the final disposal of the petition and the various interim Applications. After the completion of all the transactions both sides shall appear before us for the final disposal of the petition and the various Interim Applications. In the event of any further difficulties in the implementation of this order the parties shall be at liberty to apply to us for implementation of this order”.
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In paragraph 12 of the order the Company Law Board recorded that the order had been read out to the parties and the parties had confirmed their consent to the terms of the order.

- H In terms of the Memorandum of Family Arrangement (referred to hereafter as the ‘MOFA’), the CBS Group was required to give a completion

notice to the MMS Group signifying that the five estates were free from all encumbrances and ready to be transferred by the Respondent No.1 to the MMS group. According to the CBS Group, such notice was given on 17th January, 2000. The notice was objected to by the MMS Group by letters dated 18th January, 2000 and 20th January, 2000 on the ground that it was not in terms of Clauses 7.2 and 7.3 of the Transfer Document.

On 7th February, 2000 the MMS Group filed an application under Section 634A of the Companies Act 1956 praying for a decision as to whether the notice dated 17th January, 2000 was valid and if so, to direct the CBS Group to proceed with the completion as per the Transfer Document and the MOFA. Alternatively it was prayed that if the notice was held to be invalid the CBS Group should be directed to handover the entire Management of the Respondent No.1 to the MMS Group and the MMS Group should complete the agreement. In the further alternative it was prayed that a Special Officer should be appointed to take over the responsibilities of the CBS Group in the Management of the Company and should be directed to complete the agreement between the parties.

While this application was being heard, the CBS Group filed an application on 5th July, 2000 seeking for recalling of the orders of the Company Law Board including the order dated 19th August, 1999 and to take up the matter for final hearing and to permit the respondent No.1 to sell one or more of its assets to clear the outstandings of the Syndicate Bank or in the alternative appoint an administrator to sell the respondent No.1's assets and property to clear the dues of the Syndicate Bank and other statutory dues.

Apart from other contentions raised by the MMS Group, it was contended by them before the Company Law Board that they were not liable to pay the accrued gratuity liability amounting to Rs. 8.5 crores or the portion attributable to the 5 estates agreed to be sold to the MMS Group amounting to Rs. 4.74 crores. It was stated that they had already paid several amounts to the respondent No.1 and were entitled to deductions in terms of the agreement. They sought for enforcement of the order of the Company Law Board dated 19th August, 1999 as a decree.

The CBS Group contested the submissions before the Company Law Board and stated that they were still interested in working out the settlement provided the MMS Group adhered to the terms of the agreement. According to the CBS Group if the MMS Group had paid their outstanding liability of Rs. 3.6 crores directly to the Syndicate Bank, the CBS Group could have paid

A the balance of 4 crores demanded by the Bank and the 5 sale estates could have been transferred free of all charges and the MMS Group would have become absolute owner of the estates. It was also stated that because of the failure of the MMS Group to clear their dues, the Bank had got a decree from the Debt Recovery Tribunal and the properties of the Company had been attached.

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The Company Law Board by its order dated 18th August, 2000 noted that the MMS Group had submitted that they were not liable to make any payments towards the outstanding Bank dues, and that according to the MMS Group nothing would become payable by the MMS Group to the CBS Group in terms of the agreement after giving effect to all the clauses. In fact according to the MMS Group, the CBS Group had to pay an amount to the MMS Group after the adjustment of the account. The Board noted that the only question was whether the accrued gratuity liabilities in respect of the employees of the 5 estates had been taken into account by the parties when they entered into the agreements and what the parties had intended in including clauses 4.1.1.11 in the MOFA. The Board found that there was substance in the contention of the CBS Group that the liabilities on account of gratuity was never contemplated by the parties when they entered into agreement fixing the MMS Group's share of liabilities. Thus although they found that the MMS Group was "legally right in claiming the amount", the CBS Group was justified in its stand that this was not in contemplation of the parties. It was, therefore, found that there was no meeting of minds and there was *bona fide* dispute between the parties with regard to the interpretation of the clause relating to the accrued gratuity liability. In these circumstances, the Board found that it could not pass any order on the application under Section 634A filed by the MMS Group. As far as the CBS Group's application was concerned, their prayer for recalling the orders passed by the Board was rejected. Both the applications were accordingly dismissed but it was observed that:-

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"In case the parties still desire to have the disputes decided amicably, they are at liberty to do so failing which the petition will have to be heard on merits and till that time all the interim orders including the present arrangement in relation to the management of the affairs of the company will continue."

The MMS Group carried the matter before the High Court of Patna by way of an appeal under Section 10F of the Companies Act, 1956. The appeal was dismissed by the learned Single Judge holding that the clause relating to

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gratuity namely clause 4.1.1.11 clearly showed that the liability to pay the gratuity was on the MMS Group. However, the High Court also found that the Company Law Board was correct that the same was not in contemplation of the parties and accordingly dismissed the appeal. A

Learned counsel appearing on behalf of the appellant has submitted that the Court could not refuse to implement the consent order dated 19th August, 1999. It was stated that the Company Law Board while dealing with an application under Section 634A sits as an executing Court and in such a situation its powers are curtailed to the extent that it is bound to take the judgment as it stands. The Executing Court can interpret the decree and proceed with its execution as interpreted but could not refuse to execute it. C
It was argued that the legal effect of the consent order is that it is binding on the parties and could not be set aside except on very limited grounds, none of which was present. It was submitted that even if there was an ambiguity in the consent order that could have been interpreted. There was in fact no mistake of fact that had arisen either with respect to the agreement or the consent order. As far as the issue of the liability of the MMS Group under clause 4.1.1.11 of the Transfer Document to pay the gratuity which had accrued to the employees of the estate transferred to the MMS Group was concerned, it was submitted that the MMS Group without prejudice to its rights and contentions had agreed before the Company Law Board and were still willing to take over that liability. In any event, it was submitted that the disputed clause could be severed and the remaining clauses of the agreement could be implemented. D
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Learned counsel appearing on behalf of the CBS Group submitted that the order of the Company Law Board recording the MOFA and Transfer Document was not a final order. It was submitted that the parties never understood the order of the Board dated 9th August, 1999 to have finally disposed of the disputes. In fact after the order of the High Court, the appellants themselves had gone back to the Company Law Board and filed an application praying for enforcement of the agreement after severing clause 4.1.1.11. That application was pending. Secondly it was submitted that in terms of the agreement, the payment of amounts in terms of the agreement by the MMS Group to the CBS Group was to be simultaneous with the completion. The MMS Group defaulted in carrying out its obligation and in fact the parties therefore had the right in terms of the MOFA to rescind the agreement. As far as the Transfer Document was concerned, it was stated that the CBS Group had acted strictly in terms thereof. It was stated that had the MMS F
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A Group carried out their obligations under the agreement, the Bank's dues would have been discharged. As matters now stood the Bank dues had increased from approximately Rs. 8 crores to a demand of about 18 crores. It was stated that in an adjustment of the equities, the MMS Group would have to bear its share of the Bank dues as at present obtaining. Finally it was submitted that the appeal of the MMS Group should not be entertained under Article 136 having regard to their conduct. Our attention was drawn to an investigation initiated by the Government against the 5 tea estates under the Management of the MMS Group.

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C Broadly speaking, the Memorandum of MOFA and Transfer Document provide for a Transfer of 5 tea estates by the respondent No.1 to the MMS Group subject to the MMS Group paying a certain amount towards its share of liabilities of the respondent No.1. The CBS Group would get to retain the respondent No.1 and all its other assets moveable and immoveable including four tea estates. The interpretation of the clauses which are called into question before us are those which dealt with;

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- (a) The sequence in which the clauses in the agreements were to be implemented;
 - (b) The requirements of the completion notice;
 - (c) The quantification of the liabilities undertaken to be borne by the MMS Group;
 - (d) The consequence of the failure of either of the parties to abide by the terms of the MOFA and Transfer Document.
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F The Company Law Board and the High Court did not decide questions (a) (b) or (d). As far as (c) was concerned the question was limited to the interpretation of Clause 4.1.1.11. That Clause reads:-

“Any statutory dues or dues in respect of labour and executives employed at the Sale Estates accrued upto 31st May, 1998”.

G The ‘sale estates’ are the five estates which were to be transferred by the respondent No.1 to the MMS group. As we have noted learned counsel for the appellants submitted that although they had an arguable case on the incorrectness of the finding of the High Court which held that the MMS Group was liable to pay the gratuity liability, they were agreeable to concede this point so that the differences between the parties could be resolved. We H have therefore not heard them on the interpretation of clause 4.1.1.11. Their

basic grievance was that the Company Law Board could not refuse to execute the order dated 19th August, 1999 and the terms of the MOFA and Transfer Document which were incorporated therein and that is the issue which calls for resolution by us. A

In our opinion the order dated 19th August, 1999 was not an interim order as contended by the respondents. The issues resolved thereby could not be reopened or reargued for a different disposal of those issues. The order was passed expressly under Section 402 of the Companies Act which reads:- B

“402. Powers of (Tribunal) on application under Section 397 or 398.— Without prejudice to the generality of the powers of the (Tribunal) under section 397 or 398, any order under either section may provide for C

- (a) the regulation of the conduct of the company’s affairs in future;
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company; D
- (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
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- (e) E
- (f)
- (g) Any other matter for which in the opinion of the (Tribunal) it is just and equitable that provision should be made.

The powers under Section 402 are residuary in nature and in addition to the powers available to the Company Law Board under Sections 397 (2) and Section 398(2) which permit the Company Law Board to make such order as it thinks fit with a view to bringing to an end the matters complained of under Section 397(1) and with a view to bringing to an end or preventing the matters complained or apprehended under Section 398(1). F

Doubtless the Company Law Board speaks of ‘final disposal of the petition and the various interim applications’. This was because in terms of the order itself (which included the MOFA and the Transfer Document), various steps had to be taken to complete the severance of the relationship finally between the MMS Groups and the respondents. This did not make the G
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A affirmation of the MOFA and the Transfer Document an interim arrangement. The operative portion of the order directed the execution of the MOFA and Transfer Document by the parties after completion of the schedules thereto. The entire order was passed by consent. Parties cannot resile therefrom. Therefore the order cannot be described as an interim order in the sense that the issues decided thereby could be reopened.

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Under Section 634A which provides for enforcement of orders of the Company Law Board,

“Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein”.

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The word ‘any order’ used in the opening of the section, indicates that all orders made by the Company Law Board on an application under Sections 397 and 398 are enforceable like decrees without any limit on the nature of the order passed by the Company Law Board. (See: *Lyalpur Bank Ltd. v. Ramji Das (deceased) through his sons & Anr.*, AIR (32) 1945 Privy Council 60).

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A “decree” under the Code of Civil Procedure has been defined as meaning

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“.....the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final”.

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All decrees whether preliminary or final are susceptible to execution. (vide Section 36 of the Code of Civil Procedure.)

The order dated 19th August, 1999 was in fact a preliminary decree. Final disposal of the matter or the final decree would be after full implementation of the terms of the MOFA and Transfer Document. The interim orders passed relating to joint management were therefore directed to be continued until such time.

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Significantly, the Company Law Board in the order dated 19th August, 1999 had itself recorded that if there was any difficulty in the implementation of the order “the parties shall be at liberty to apply to us for implementation of this order”. Yet when the application was made for such implementation,

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the Company Law Board did not abide by its own direction. A

Since the Company Law Board when it deals with an application under Section 634A sits as an executing court it is subject to all the limitations to which a Court executing a decree is subject. It is well settled that an executing court cannot go behind the decree, unless the decree sought to be executed is a nullity for a lack of inherent jurisdiction. A decree is without jurisdiction if the Court passing the decree usurps a jurisdiction which it did not have and which could not be waived by the parties. (See: *Sunder Dass v. Ram Prakash*, [1977] 2 SCC 662, 667; *Seth Hiralal Patni v. Sri Kalinath*, [1962] 2 SCR 747, 750; *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman & Ors.*, [1970] 1 SCC 670, 672; *Rafique Bibi (dead) by Lrs. v. Sayed Waliuddin (dead) by Lrs. & Ors.*, [2004] 1 SCC 287,292). The last two decisions have also held that the lack of jurisdiction must be patent of the face of the decree in order to enable the executing court to come to the conclusion that the decree is a nullity. B C

Furthermore, the order dated 19th August, 1999 was a consent order. Its terms and conditions were contained in the MOFA and the Transfer Document which expressly formed an integral part of the order itself. A consent decree has been held to be a contract with the imprimatur of the Court superadded. It is something more than a mere contract and has the elements of both a command and a contract. (See: *Wentworth v. Bullen*, 141 ELR 769; *C.F. Angadi v. Y.S. Hirannayya*, [1972] 1 SCC 191, 197). As was said by the Privy Council as early as 1929, "The only difference in this respect between an order made by consent and one not so made is that the first stands unless and until it is discharged by mutual agreement or is set aside by another order of the Court; the second stands until and unless it is discharged on an appeal (See: *Charles Hubert Kinch v. Edward Keith Walcott and Ors.*, AIR (1929) Privy Council 289). D E F

It is nobody's case that the order dated 19th August, 1999 was a nullity. The respondents had filed an application for recalling the order dated 19th August, 1999. The Company Law Board dismissed that application. An appeal has been filed before the Patna High Court which is said to be pending. However, it has not been drawn to our attention by the respondent that the application for recall was founded on the submission that the order dated 19th August, 1999 was a nullity. In the absence of such an issue being raised and decided, the Company Law Board was bound to execute the order. If the Board found that the decree or any of its terms called for interpretation, it H

A was within the Board's jurisdiction to interpret that particular term and to execute the decree on the basis of such interpretation. As was said by this Court in *Topanmal Chhotamal, v. M/s. Kundomal Gangaram and Ors.*, AIR (1960) SC 388, 390, if a decree is ambiguous, it is the duty of the Executing Court to construe the decree. (see also *Central Bank of India v. Rajagopalan*, AIR (1964) SC 743,748).

B Both the Company Law Board and the High Court in fact interpreted Clause 4.1.1.11 and came to definite, albeit different, conclusions as to what the clause meant. It may be that the conclusion was not what was being contended for by the appellants. It may also be that the interpretation put on the clause by the Board or the High Court was not in the contemplation of the parties. Nevertheless once having agreed to particular terms of settlement which were incorporated in a decree, the parties concerned are bound to comply with the terms as may be interpreted by the executing Court. Once the interpretation is done the decree must be executed as interpreted.

C D The effort of the executing Court must be to see that the parties are given the fruits of the decree. The mandate is reinforced when it is a consent decree and doubly reinforced when the consent decree is a family settlement. Clauses 3.1 and 3.6 of the MOFA make it clear that the agreements were arrived at between the parties to resolve finally long pending disputes between the family members relating to jointly owned assets. The clauses read as follows:-

E F "For the sake of resolving the disputes of the Sharma Family and the Companies owned by them and to regain the harmony, peace, love and affection amongst the two groups and for the welfare and prosperity of the Sharma Family and the Companies owned by them;

The Memorandum of Family Arrangement will also take into its fold and include the Transfer Document Relating to the Assets of Ram Bahadur Thakur Ltd. (RBTL), executed as per the directions of the CLB, Annexed hereto and marked as Schedule

G 5. The above mentioned Transfer Document Relating to the Assets of Ram Bam Bahadur Thakur Ltd. is in implementation of and forms an integral part of this Memorandum of Family Arrangement."

H It has been repeatedly emphasized in several decisions that family settlements are governed by a special equity and are to be enforced if honestly

made. This would be so “even if the terms may have been agreed to on the basis of an error of the parties or originate in a mistake or ignorance of fact as to what the rights of the parties actually are, or of the points on which their rights actually depend”. This is because the object of an arrangement is to protect the family from long drawn out litigation, and to bring about harmony and goodwill in the family (see *Kale v. Deputy Director of Consolidation*, [1976] 1 SCR 202,122,123,125). The courts lean heavily in favour of family arrangements and, “matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements”. This view has been reiterated recently in *Amteshwar Anand v. Virender Mohan Singh & Ors.*, [2006] 1 SCC 148.

In our opinion both the Company Law Board and the High Court erred in refusing to execute the order dated 19th August, 1999 under Section 634A of the Companies Act. They have thereby failed to exercise the jurisdiction with which they were vested. The failure is heightened given the nature of the order which they were bound to execute. They have erroneously proceeded upon principles applicable to contracts alone and have ignored the fact that the agreement between the parties had culminated in a consent order of the Company Law Board. The plea of the respondents that this Court should not interfere in the matter under Article 136 by reason of any alleged misconduct on the part of the appellants in managing the 5 estates is unacceptable. The appellant’s alleged lack of efficiency in running of the five tea estates is not a material consideration for deciding whether the order dated 19th August, 1999 should be enforced.

The respondent’s contention that the appellants were not themselves willing to abide by the terms of the consent order appears to us to be erroneous. The application under Section 634A was for implementation of the order dated 19th August, 1999 if necessary by appointing a Special Officer to carry it into completion. In fact even while the application under Section 634A was pending in the Company Law Board, the Vice Chairman had suggested to the appellants that they waive their claim in respect of the accrued gratuity under clause 4.1.1.11 of the Transfer Document and a certain portion of the interest claimed under the Transfer Document. The appellants confirmed that they would accept the Vice Chairman’s suggestion but would do so on the basis that a consent order was passed in terms thereof on the same date. This was recorded by the appellant’s advocates in their letter dated 19th December, 2000 addressed to the Company Law Board and its Members and the Advocate for the respondents and has not been disputed before us as not reflecting the

A correct position. This is not the conduct of a party which is not willing to abide by the terms of the decree.

B On the question whether the appellants had defaulted in payment of purchase price simultaneously with the completion in terms of Clause 4 of the Transfer Document, this again relates to an interpretation of the terms of the MOFA and the Transfer Document. According to the respondents, there was no default on their part as the respondents were required not only to settle all outstanding claims relating to the five estates prior to giving of the completion Notice but also to annex the necessary documents evidencing that the sale estates could be transferred free from all encumbrances to the MMS group by the respondent No.1. The Company Law Board and the High Court have proceeded on the basis that the only dispute between the parties was as to the interpretation of Clause 4.1.1 11. Elaborate arguments have however been addressed to us on the merits of the four contentions noted by us earlier by both parties. We were initially of the view that the dispute should be resolved by us finally. However on a reconsideration, we deem it fit to remand this issues for determination by the Company Law Board if it is satisfied that the issues could be said to have been fairly raised by the parties before it. We make it clear that whatever interpretation may be put by the Company Law Board on the clauses of the MOFA and Transfer Document, the Board must implement the clauses as interpreted.

E Moreover Clause 4 which relates to the payment of the purchase price by the MMS group specifically mentions the total amount payable by them to the respondent No.1 namely Rs. 7,24,67,708.90 less certain deductions. As far as the deductions are concerned, some of the clauses have quantified the deductions, whereas others have left them undetermined in the sense that no quantum has been mentioned. In the first category are Clause 4.1.1.1 to Clause 4.1.1.5. Under Clauses 4.1.1.6 to 4.1.1.11 the amounts were required to be determined. This exercise will have to be carried out by the Board. The figures mentioned in Clauses 4.1.1.1 to 4.1.1.5 and 4.1.1.11 were also subject to verification under Clause 4.1.1.12 by the independent auditor appointed by the Company Law Board. The Company Law Board had by order dated 19th August, 1999 appointed Mr. M.C. Joseph, Chartered Accountant. We have not been told whether the independent auditor has carried out the verification.

H We ourselves do not propose to go into the issues raised by the parties, namely whether the completion notice was valid nor the quantification of the deductions under Clause 4 of the Transfer Document. These are issues that

must be worked out by the Company Law Board in executing the consent order in terms of the MOFA and Transfer Document. It is unnecessary for us to go into the powers of the parties to rescind the settlement (assuming that such rescission were at all possible at this stage) as neither of the groups have taken any steps to issue any notice of rescission till today. A

We note that the MOFA and Transfer Document were the outcome of the commendable and determined efforts on the part of the Company Law Board to bring to an end disputes between the parties in a manner which would have been in the interest of the respondent No.1 given the impasse between the two blocks of shareholders and saved the parties a lot of unnecessary harassment, expenditure and acrimony. We also sought to bring an end the dispute by proposing measures which might be acceptable to both. However, such resolution does not appear to be possible. Therefore it must be left to the Company Law Board to execute its order dated 19th August, 1999 in accordance with the settled principles of law and in terms of the opinion expressed by us in this judgment. The impugned decisions of the Company Law Board and the High Court are for the reasons earlier stated set aside. The appeals are allowed and the matter remanded back to the Company Law Board for completing the implementation of the order dated 19th August, 1999 by executing the same. B C D

There will be no order as to costs.

V.S.

Appeals allowed. E