
(2007) 09 AHC CK 0138
In the Allahabad High Court

Ajit Kumar Gupta and Prashant Glass Works (Pvt.) Ltd.	APPELLANT
Vs	
Company Law Board, Principal Bench and Others	RESPONDENT

Date of Decision : 11-09-2007

Acts Referred:

COMPANIES ACT, 1956 — Section 10F, 111, 397, 398, 399

Citation : (2007) 09 AHC CK 0138

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Shri P.N. Saxena, Senior Advocate assisted by Shri Ishan Shishu for the appellants, and Shri R.P. Agarwal for respondent No. 2 and 3. Shri Navin Sinha, learned Senior Advocate assisted by Shri Vi, in Sinha appears for respondent No. 9 in both the appeals.

2. The Company Appeal No. 7 of 2007 arises out of the order dated 4.7.2007 of the Company Law Board (CLB) by which it has disposed of the Company Petition No. 14 of 1999 under Sections 397/398 of the Companies Act, 1956 on the basis of compromise; as also the three Company Application Nos. 14/1 11 of 1999, 15/111 of 1999 and 1/111 of 20m, by Shri Ajit Kumar Gupta, the appellant in these appeals, (the 2nd petitioner in the Company Petitions) u/s 111 of the Companies Act, 1956.

3. The Company Appeal No. (1) of 2007 arises out of an order dated 3.8.2007 passed by the CLB on Company Application No. 288/292 & 293 of 2007 filed by Shri Raj Kumar Gupta-1st petitioner's group and Ashok Kumar Gupta-the 2nd respondent's Group in Company Petition No. 14 of 1999 for certain modifications in the operative portion of the order dated 4.7.2007 accepting the compromise.

4. The Company Petition No. 14 was filed in the CLB under Sections 397 and 398 of the Companies Act, 1956 in the year 1999, alleging oppression; mismanagement; irregularities and siphoning of funds generated from the public

issue. The company petition was based on allegations made by Shri Raj Kumar Gupta-the 1st petitioner's group, having 14,18,518 shares; Ajit Kumar with 770 shares, Smt. Pushpa Gupta having 3,37,400 shares; Mr. Akash Gupta having 9,67,400 shares; Ms. Nidhi Gupta having 3,44,170 shares; Raj Kumar Gupta (HUF) having 1,91,200 shares; Smt. Rajni Gupta with 660 shares and Ms. Monica Gupta 550 shares, as petitioners, collectively claiming to hold 41.6% shares in the company.

5. The petitioners jointly prayed to restrain Shri Ashok Kumar Gupta-respondent No. 2 from alienating in any manner by sale/transfer/mortgage/pledge or lease the assets and properties of the respondent-company; restrain the respondent No. 2 from giving or taking loans, advances, contributions, donations, or entering into any long time contracts with any proprietary/partnership firm/companies in which the respondent No. 2 is interested; direct the respondent No. 2 to restore back to the respondent company about Rs. 18.5 crores which he has fraudulently diverted to various parties in a clandestine manner; remove the respondent Nos. 2, 3 4, 7 and 8 from the management of the respondent company and restraining them from interfering in the management; declare that the respondent No. 2 is deemed to have vacated office of Chairman and Managing Director of respondent-company; and to restrain the respondent No. 2 from holding out, or functioning or acting in any manner whatsoever as Chairman and Managing Director of respondent company.

6. The detailed facts and circumstances, in which several rounds of talk took place between the parties and that shares were valued firstly by M/s R.S. Ahuja and Company, Chartered Accountant for Rs. 34.81 per share and thereafter by Shri Shri A.R. Ramanathan, recommending a lump sum payment of Rs. 15 crores by 2nd respondent group to 1st petitioner group as fair payment, are given in the order of the CLB. These details are not relevant for deciding these appeals. Finally the parties entered into a compromise in-principle on 19.2.2007, by which the 1st petitioner decided to part way with the Company retaining the divided assets and liabilities of the Delhi unit. The Varanasi unit of the company was decided to be retained by the 2nd respondent group. The appellant in these appeals was 2nd petitioner before CLB and had signed the order dated 19.2.2007. Paragraph 10 and 11 of the order by which the compromise was accepted is relevant for the purposes of these appeals and is quoted as below:

10. Before parting with this order, it is necessary to note that during the process of settlement, a number of applications were filed by the 1st petitioner and the 2nd petitioner as also by the 2nd respondent. Since the matter of compromise was being discussed, even though pleadings had been completed in some of the applications, they were never pressed. The 2nd petitioner filed CA 23 of 2006 seeking for an investigation into the affairs of the company and CA 56 of 2006 seeking for convening an EOGM. After the order dated 6th March, 2006 was passed when the 2nd respondent has consented to register the shares relating to the 2nd petitioner, he filed CA 118 on 7.4.2006 seeking for a direction to the 2nd

respondent to produce certain documents and also for disposing of CA 23 and 56 of 2006 before certain documents and also for disposing of CA 23 and 56 of 2006 before any order on the settlement. Thereafter he filed CA 156 of 2006 on 12.5.2006 for recording that he was withdrawing from compromise talks and that the petition should be heard on merits and an order of investigation should be passed. Thereafter, he filed CA 60 of 2007 on 10.1.2007 seeking various directions regarding the annual general me rings. However, when further discussions between the parties took place on 19.2.2007 when the 2nd petitioner was also present, he did not press for hearing of any of the applications and instead expressed his desire to continue as a shareholder of the company. Accordingly, the following order was passed which was signed by the 1st and 2nd petitioner and the 2nd respondent: "Compromise talks held. 2nd petitioner desires to continue as a shareholder in the company. Regarding parting of ways between the V petitioner and the company, in terms of the earlier order, final order will be issued dividing the company with the Delhi Unit with the 1st petitioner and Varanasi Unit with the 2nd respondent." This statement that he would like to continue as a shareholder is because of the season, that on an earlier occasion, he demanded Rs. 200 per share to go out of the company. Having not pressed any of the applications and having consented for the division of the company with his desire to continue as a shareholder, the 2nd petitioner appears to have filed a writ petition before the Allahabad High Court, a copy of which has been sent to this Board by the Standing Government Counsel (received on 29.6.2007). In the writ petition, he has sought for a direction to this Board to dispose of CA 118 of 2006 and CA 60 of 2007, however, without disclosing the orders of this Board dated 6.3.2006 and 19.2.2007. With the consent order dated 19.2.2007, the petition had reached a finality and only a formal of order in terms of the order dated 19.2.2007 remained to be issued, and which is the present order. Therefore, the question of hearing any pending application did not arise after 19.2.2007.

11. I dispose of the petition and also the 3 petitions filed u/s 111 by the 2nd petitioner's group with the following directions. Within 60 days from the date of this order:

(1) The Company should transfer all the assets belonging to Delhi Units to the Is" petitioner or any of his company at the choice of the petitioner and shall also pay a sum of Rs. 2 crores. In case the 1st petitioner desires to have the property at G.K. Enclave, then the same should be. handed over to him and the cash payment shall be reduced to Rs. 1 crore. Likewise all the shares held by the company in the 1st petitioner's companies shall also be transferred free of cost. All the expenses connected with the. transfer of assets/shares shall be borne by the F" petitioner's group as also all.

(2) The 1st petitioner shall hand over all the books of accounts and other documents connected with the company maintained in Delhi Office to the 2nd respondent within the same period as also all stocks and other inventory

available as on date to the company. He shall not create any new liability in the name of the company on any account. All outside liabilities of Delhi office, except relating to the properties transferred to the 1st petitioner group shall be taken over by the company. Likewise, all clues to Delhi office, shall be collected by the company. The 1st petitioner shall assist the auditors to carry out the upto date audit of Delhi units.

(3) After this period, the 1st petitioner shall not use the name of or the logo of the company.

(4) Even after parting of ways, both the sides will cooperate with each other in case, of any necessity on matters relating to Delhi office or Varanasi office or the company relating to the past periods. Dealing with all pending proceedings relating to the affairs of Delhi unit, shall be the responsibility of the 1st petitioner and the company, wherever necessary assist him in dealing with the cases.

(5) All the shares which are registered in the name of the petitioners' group in the register of members shall be cancelled and the company is authorized to reduce its paid up capital to the extent of the face value of shares so cancelled. The book value of the assets of the company transferred to the 1st petitioner's group and together with the sum of Rs. 2 crores on Rs. 1.5 and the face value of the shares held by the company and directed to be transferred to the 1st petitioner shall be deemed to be the consideration paid by the company for the shares. The 1st petitioner's group shall surrender all the share scripts to the company. Effective from today, till the surrender of the shares, the 1st petitioner shall not transfer any of the shares held by it nor acquire further shares of the company.

(6) Neither of the groups shall have any claim against the other on the company and all the claims and counter claims made in the petition/applications shall be cancelled/withdrawn/written off in the books of accounts of the company at the time of consolidation of the accounts.

(7) Within 30 days from the date of this order, all the shares involved in Cps 14/111, 15/111 of 1999 and 1/111 of 2001 shall be registered in the name of the petitioners therein without any further act or deed.

(8) The 1st petitioner shall cease to be a director of the company effective from 60 days of this order.

(9) Even though it is reported that the loans payable to the SBI have already been cleared by the company, yet, if the 1st petitioner's personal guarantee still subsists, the company should take immediate action to relieve the 1st petitioner of his personal guarantee.

(10) All the litigations initiated by both the parties against each other including criminal complaints shall be withdrawn immediately.

(11) All the employees of Delhi Units of the company shall be deemed to be the

employees of the 1st petitioner with continuity of service and benefits and all the accrued benefits in respect of the such employees shall be transferred along with them.

(12) All the pending applications are disposed of without any orders in view of the above directions.

(12) Liberty to the parties to apply in case of any difficulty in working out this order including for seeking clarifications, if any.

7. Shri P.N. Saxena, Senior Advocate appearing for the appellants opened his argument by making a positive statement, that the appellant is not aggrieved with the compromise. He however has filed these Appeals along with Prashant Glass Works (Pvt) Ltd, which claims to have 4,29,900 shares, making the total shares with the appellants to be less than 5%.

8. Shri Saxena submits that the main application, alleging acts of financial mismanagement by the company, was not decided. The appellants had all along pressed the application u/s 397/398 of the Act filed by him in CLB. His grievance has not been considered by the CLB. The compromise may not affect him but that the issues raised in the Company Petition u/s 397/398 were required to be decided by the CLB to end the oppression and mismanagement.

9. Shri R.P. Agarwal has raised preliminary objections :o the maintainability of the appeals. It is submitted by him that an appeal u/s 10F of the Companies Act may be filed against the order of CLB by an aggrieved person on a question of law. The appellant has accepted the compromise between the 1st petitioner and 2nd respondent, with which all the disputes or issues in the company petition have come to an end. The appellant cannot be said to be individually aggrieved by the allegations which had constituted the cause of action to file the Company Petition in CLB u/s 397/398 of the Companies Act 1956. It is contended that the Company Appeal No. 1/2007 is definitely not maintainable as the clarifications, on the operative portion of the compromise between the 1st petitioner and 2nd respondent in the CLB do not affect or cause any prejudice to the appellant and have nothing to do with the grounds taken in the appeal. He submits that the claim of the appellant Shri Ajit Kumar Gupta, over the shares of Prashant Glass Works (Pvt) Ltd. is still under cloud, as Shri Prashant Kumar son of the appellant has filed objections to their transfer in the name of Prashant Glass Works (Pvt) Ltd.-appellant No. 2. The application of Shri Prashant Kumar, alleges that his father has played fraud on him in signing the share transfer forms on his behalf, is still to be considered by the CLB. These two appeals have been filed by Shri Ajit Kumar Gupta having only 777 shares which comes only to 0.008% of the share holding of the company.

10. The object of the Company Petition u/s 397/398 of the Companies Act, 1956 is to save a company and not its winding up. The observations of the CLB, are that the appellant No. 1-Ajit Kumar Gupta had joined with their brother Shri Raj Kumar Gupta having 32% shares, after giving him a power of attorney along

with power of attorney of his wife Smt. Rajni Gupta and daughter Ms. Monika Gupta. Ajit Kumar Gupta could not have maintained the petition on his own or even with his wife and daughter, and that he did not press his application in the CLB after the talks of compromise were initiated. He was a silent spectator to the talks of settlement and in fact wanted that he should be paid Rs. 200/- per share. His three appeals u/s 111 of the Companies Act 1956 against rejection of the transfer of the shares were connected with the present Company Petition and were allowed subject only to the objection raised by Shri Prashant Gupta to the transfer of the shares of Prashant Glass Works Pvt. Ltd to his father, Shri Ajit Kumar Gupta-appellant No. 1 in the Appeal No. 7 of 2007. The appellant Shri Ajit Kumar Gupta signed the order dated 19.2.2007, expressing his willingness and approval of parting of ways between the 1st petitioner and 2nd respondent. He gave his consent for the company to remain with the 2nd respondent and thus accepted the order in the company petition leaving nothing more to be decided in the matter. After the matter was settled, in which he opted to hold on to his shares, he could not have stood alone or even with his wife and daughter with a total of only 1980 shares, which is less than 1% of the shares of the company, to maintain an the company petition to be heard on the plea of oppression and mismanagement.

11. Shri R.P. Agarwal has relied upon judgments in K.R.S. Narayana Iyengar and Others Vs. T.A. Mani and Others, ; Raghunath Swaroop Mathur v. Har Swaruoop Mathur 1970 Company Cases 282 (Alln) and Casmo Steels v. Jairam 1978 (44) Company Cases 312 in support of his submission that the jurisdiction of the Court u/s 397/398 of the Companies Act, 1956 is equitable and discretionary. It is not to be exercised as a punitive measure. The Court can even thrust a Compromise if it is just and equitable. The Court may, with a view to bring to an end the matters between the warring shareholders, make such order as it thinks fit. If the Court is of the opinion that the winding up of the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order, on the ground that it was just and equitable that the company should be wound up the efforts should be made to save the company unless the affairs are being cone acted in a manner prejudicial to the public interest or in a manner oppressive to any member or members.

12. The right to apply u/s 399 of the Act is given to any member or members holding not less than one-tenth of the issued share capital of the company. Under Sub-section (2) of Section 399 if any share or shares are held by two or more members jointly they shall be counted only as one member. Any member of a company is entitled under Sub-section (3) to make an application by virtue of Sub-section (1) after having obtained the consent in writing of anyone or more of them, having obtained the consent in writing of the rest. It is not necessary that the requisite number must join the petition. They have to only give their consent. Where a petition is maintainable, by the members or a member having consent of other members in writing holding not less than one-tenth of the issued share capital of the company and that during the pendency of the proceedings the

majority of them withdraw from the contest or enter into compromise with the majority shareholders, the members left in minority would not be competent to continue with the action, unless the minority is reduced below 10%, by issue of bonus shares or by reduction of the authorised share capital. In such case the member or members cannot be said to have the consent in writing of the other members to continue to seek reliefs in the petition. In the present case the petition was filed by members having 41.6% shares in the company. With the settlement dated 19.2.2007, resulting into an order of compromise dated 4.7.2007 between the 1st petitioner and the 2nd respondent, by which they parted their ways, the 2nd petitioner was left with less than 1% shares held by him, his wife Smt. Rajni Gupta and his daughter Ms. Monica Gupta. The 4,29,900 shares held by M/s Prashant Glass Works (Pvt) Ltd. and in respect of which three petitions were filed by the 2nd petitioner's group u/s 111 of the Companies Act, 1956, the matter is still pending on an application filed by the appellant, Shri Prashant son of appellant Ajit Kumar Gupta with serious allegations against his father the 2nd petitioner, for forging his signatures on the shares transfer forms. The CLB has issued notice to the 2nd petitioner on this application and that the application is likely to be heard by the CLB. With these subsequent developments the appellant could not have continued to maintain the petition on his own along with his wife and daughter.

13. I find substance in the preliminary objections raised by Shri R.P. Agarwal and Shri Navin Sinha that the appellant standing alone or with his wife and daughter after the compromise between the 1st petitioner and 2nd respondent to which he is a party, could not have continued to maintain the company petition u/s 397 and 398 of the Act. Section 399 of the Act requires atleast 10% shareholdings to file such a petition. Where the percentage of shares held by the petitioners falls during the pendency of the company, on any action attributable to the majority shareholders, the petition may be still maintainable but when the petitioner or any group of petitioner having majority of more than 10% share in the shareholders enter into an agreement and are satisfied with the arrangement, the shareholders having shareholding value of less than 1% cannot maintain the petition on their own. Since the appellant is not aggrieved by the compromise and has allowed the company to be saved with respondent No. 2 as Managing Director with absolute majority, his complaints which he had at the time of joining with Shri Ajit Kumar Gupta, are not to be heard independently for any effective relief in these proceedings. There was nothing left to be decided in the company petition. I do not find that appellant could have continued with and maintained the company petition on his own and with his wife and daughter. He is no longer an aggrieved person to maintain these appeals, nor any question of law arises to be considered and decided in these appeals.

14. Both these appeals u/s 10F of the Companies Act 1956 are consequently dismissed.