

(2013) 06 CAL CK 0050

In the Calcutta High Court

Case No : APO No's. 346 and 347 of 1996 in Company Petition No. 222 of 1991

Bhagwati Developers (P) Ltd.

APPELLANT

Vs

The Peerless General Finance and Investment Ltd.

RESPONDENT

Date of Decision : 10-06-2013

Acts Referred:

Citation : (2013) 4 CHN 451 : (2013) 117 CLA 475 : (2013) 181 CompCas 193 : (2013) 4 CompLJ 367

Hon'ble Judges : Mrinal Kanti Chaudhuri, J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : S.K. Kapoor, with Jishnu Saha, Debangshu Basak, Ravi Kapoor and Pawan Kumar Jhunjhunwala, for the Appellant; Bhaskar Prosad Gupta and Abhijeet Chatterjee with A. Basu, T. Nag Chowdhury, Dipayan Chowdhury and Suvradal Chowdhury, Advocates for the Respondents Nos. 1 and 2, for the Respondent

Final Decision : Disposed Off

Judgement

Ashim Kumar Banerjee, J.—This appeal had a checkered career as we find from the list of dates. Peerless General Finance and Investment Company Limited was incorporated in the year 1932 as a non-banking finance company guided by the regulations of the Reserve Bank of India. In 1979, Reserve Bank of India alleged, the business was hit by the Prize Chits and Money Circulation Schemes (Banning) Act, 1979, and called upon Peerless to close its business. The business was being run by two friends, namely, Sri Kali Kumar Chatterjee and Sri Sunil Kanti Roy. Kali Kumar Chatterjee died in September, 1979, when he was holding 520 shares in his own name and 4,500 shares jointly with his wife, Amiya Bala Chatterjee. Amiya Bala also held 200 shares in her own name. After the death of Kali Kumar Chatterjee, Amiya Bala became the owner of 5,220 shares that was accordingly recorded in the shareholder's register. In a settlement within the members of the Chatterjee family, Ajit Kumar Chatterjee, son of Amiya Bala, got 1,350 shares. In July 1986, Ashish Kumar, the younger brother of Ajit, became a director of Peerless. In 1987, Peerless succeeded in the litigation at the apex court level

holding that they did not fall within the mischief of the Money Circulation Act, however, the Supreme Court was critical about the forfeiture of the lapsed deposit amount. Ajit permanently settled at UK. His number of shares increased to 2,700 when Peerless issued bonus shares. In 13 October, 1987, paid up capital of Peerless was Rs. 73,61,200 divided into 73612 equity shares of Rs. 100 each. The dispute arose in 1988 when Peerless issued 30,000 equity shares of Rs. 100 each to the exclusion of Chatterjees that tilted the balance. In the meantime Amiya Bala died. Ajit became the sole owner of 2,700 shares that he held along with his mother. Bhagwati Developers Private Limited was also a shareholder having 3,515 shares. They subsequently purchased 5,600 equity shares from Sri R.L. Gaggar, an advocate of this court. Gaggar signed an irrevocable power of attorney in favour of one Manohar Mall Lodha and one J.M. Sharma being the nominee of Bhagwati. By virtue of the said power of attorney Lodha was empowered to deal with the shares. Gaggar, by a subsequent letter, confirmed having executed the power of attorney as irrevocable one.

Litigation

2. The dispute arose between Chatterjee family and Roy family. Chatterjees wanted to bring action against the company. They did not have the requisite shareholding. They obtained support from Lodhas. Lodhas gave consent to Chatterjees to file the petition. With the support of Lodhas, Ajit Kumar Chatterjee and his brother, Arghya Kusum Chatterjee, filed an application to this court u/s 397 and 398 of the Companies Act, 1956, inter alia, alleging mismanagement of the affairs of the company and complaining oppression to the minority shareholders. They also challenged allotment of 30,000 equity shares.

3. The learned judge passed interim order as against Peerless. Peerless filed an application for dismissal of the proceeding questioning its maintainability. The learned judge concluded the hearing on the preliminary issue and proceeded to hear the matter on merit. Peerless filed an appeal. The court of appeal did not interfere. The learned Company Judge concluded the hearing and delivered the judgment holding the proceeding not maintainable in law.

Judgment and Order impugned

4. On a cursory glance to the judgment and order of the learned Company Judge we find, although His Lordship discussed the merits. His Lordship dismissed the application on the preliminary issue without deciding on merit.

Appeal and the parties crossing floor

5. Chatterjees filed two appeals, one as against the dismissal of their petition and the other against the order allowing the application for dismissal of the petition by Peerless. After travel to various division benches, the division bench ultimately dismissed the appeals at a stage when Chatterjees declined to continue with the appeals as they were gained over. Arghya was made a director of the company.

6. Bhagwati appeared in the scene. They applied for recall of the order of dismissal coupled with a prayer for transposition in the place of Chatterjee-appellants so that they could proceed with the appeals and, ultimately, the proceedings for mismanagement and oppression that was dismissed by the learned judge on the ground of maintainability. The division bench dismissed the application. Bhagwati approached the apex court. The apex court observed, Bhagwati should file independent appeal. Bhagwati preferred fresh appeals. The division bench condoned the delay and admitted the appeals, however, declined to pass any interim order. Bhagwati filed special leave petition. The apex court asked the division bench to dispose of the pending application. The division bench ultimately disposed of the pending application and the appeals. The division bench dismissed both the appeals. Bhagwati again approached the apex court. By an order dated 4 April, 2013 Bhagwati Developers Private Limited Vs. The Peerless General Finance Investment Company Limited and Others, the apex court set aside the order of the division bench and remanded the appeals back to this court for being heard afresh. We heard the appeal on the above mentioned dates.

7. Mr. S.K. Kapoor, learned senior counsel appearing for Bhagwati, would refer to volume-VII of the paper book in APO 347 of 1992, hence, the page numbers referred to hereinafter would relate to volume-VII of the paper book unless it is specifically mentioned otherwise.

Our appreciation of the judgment and order impugned

8. The judgment and order impugned would appear at page 219-250. We find, the petitioners therein raised several issues, however, principally, put emphasis on cornering of shares by one P.C. Sen and S.K. Roy by themselves and through their associates. The petitioners were critical about allotment/issuance of 30,000 equity shares that would tilt the balance, according to them. In 1987, the authorized paid up share capital was Rs. 73,61,200 however, with a special resolution passed u/s 81A of the Companies Act, 1956, the board of directors issued 30,000 shares. No notice of such meeting was given to Chatterjees. Moreover such issuance of shares would require appropriate approval from the authorities under the MRTTP Act that the management failed to obtain. His Lordship recorded each and every contention of the parties as well as the citations relied on by them. The learned judge, after recording the rival contentions held, the petition was not maintainable as the petitioners did not have requisite share qualification.

9. On the issue of supporters, His Lordship observed, "It would be unsafe on the part of the court to entertain this application on behalf of R.L. Gaggar as also Bhagwati Developers Private Limited, as supporters of the petitioners in instituting these proceeding".

10. Thirty one pages judgment would record the rival contentions of the parties and an observation of His Lordship to the extent, the petitioners did not have

share qualification and the support was unsafe. His Lordship, however, did not deliberate on the issue at all.

Contentions:

11. Appearing for the appellants, Mr. Kapoor would contend, the learned judge was otherwise satisfied about the share qualification of the petitioners coupled with the support. His Lordship observed: support was unsafe. Why was it unsafe, was not spelt out. In any event, the support given by Bhagwati was unequivocal as would appear from the letter written by Bhagwati appearing at page 9 of the second compilation. With regard to share of R.L. Gaggar, Mr. Kapoor would rely upon copies of documents filed before us. We would find, Mr. Gaggar executed a power of attorney in favour of Lodhas on 26 February, 1991. On that date, Mr. Gaggar also confirmed having executed the power of attorney, through a letter. The power of attorney would also have a schedule mentioning about 5600 shares being the subject matter of the document. Bhagwati Developers took a board resolution on 27 May, 1991, deciding to support Ajit and Arghya in making the petition for mismanagement and oppression. Lodha accordingly informed Chatterjees through a letter dated 29 May, 1991, they would extend support on the strength of the shares belonged to them as also purchased from Sri Gaggar. Mr. Kapoor would rely upon the relevant provisions of corporate law particularly section 153C and 153D of the Indian Companies Act, 1913, that stood repealed and replaced by the Companies Act, 1956, particularly, section 399 thereof. Mr. Kapoor would contend, expression of interest to support the petition in the prescribed format would be sufficient. The supporter need not go through the petition or take responsibility of the averments made therein "expression of interest" was enough for the purpose. He was critical about the subsequent affidavit of Mr. Gaggar where he would contend, he did not go through the petition or instruct Lodha to support. Mr. Gaggar, however, did not deny execution and sale of the shares in favour of Bhagwati, execution of the power of attorney in respect of the subject shares and the confirmation made by him of such execution.

12. Mr. Kapoor relied on eight decisions which are as follows:

1. Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others,
2. Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another,
3. Syed Abdul Khader Vs. Rami Reddy and Others,
4. Killick Nixon Limited and others Vs. Bank of India and others,
- 5 M/s. World Wide Agencies Pvt. Ltd. and another Vs. Mrs. Margarat T. Desor and others,
6. P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others,
- 7 Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others,

8. J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others,

13. Citing the decisions Mr. Kapoor would contend, section 153C was diluted by section 399 of the new law that would not put any obligation on the supporter to read the petition and take responsibility of the averments.

14. In the case of Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, the contention was raised, petition was not maintainable as there was no proof as to the consent being obtained. The apex court observed,

The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. In our opinion, the withdrawal of consent by 13 of the members, even if true, cannot affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits.

14.1 Relying on this decision, Mr. Kapoor would contend, subsequent gaining over of Chatterjees would not make the situation different. The Chatterjees had requisite qualification taking into account the shares of Bhagwati. Hence, on the date of the presentation of the petition, the petition was maintainable and the learned Judge was not right in dismissing the same. Similar view was observed by the other decisions cited by Mr. Kapoor on the issue.

15. Counteracting the argument advanced by Peerless, Ajit being an NRI was not entitled to acquire share without appropriate permission from the Reserve Bank, Mr. Kapoor would rely upon the decision in Dale and Dale and Carrington Inv't. (P) Ltd. and Another Vs. P.K. Prathapan and Others, , particularly paragraphs 10 and 32, where the question of locus standi was discussed. In paragraph 33, the apex court discarded the contention on FERA violation by observing, --

Since they were registered as shareholders of the company on the date of filing of the petition and they held the requisite number of shares in the company, they could maintain the petition.

16. Appearing for Peerless, Mr. Bhaskar Prosad Gupta, learned senior counsel being assisted by Mr. Abhijeet Chatterjee, learned senior counsel and Sri Aninda Basu, learned advocate, advanced argument on behalf of Peerless. Mr. Gupta divided his argument in three compartments:

(i) The order of remand and its effect;

(ii) The impact of the shareholdings of Sri R.L. Gaggar; and

(iii) Overview of the entire situation post-filing of the proceeding u/s 397 in the year 1991.

17. Mr. Gupta resumed his argument on the second issue first. He drew our attention to section 41 to have an idea, what was meant by the word "member" in respect of a company limited by shares. According to him, the company and all concerned would only recognize someone as a member of the company having distinctive share, once his name is entered into the shareholders register. So long shareholder was not registered with the company, the company was not obliged to recognize him. According to him, such position of law was prevalent till the date when the corporate law was amended to give right to the beneficial owner. Mr. Gupta would contend, we should not take any note of such amendment as this petition was filed admittedly before the amended law coming into force.

18. Section 399(3) would require consent in writing from members to have their support. Under rule 88, the letter of consent was to be annexed to the petition.

19. Elaborating his submissions on the point of law, as discussed above, Mr. Gupta was critical about the decision in P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others,

20. According to him, the apex court perhaps misconstrued the provision before making the observations, the law was changed with regard to the support. Significant to note, section 153C of the old law and section 399(3) of the new law would both require consent in writing to extend support to the petitioning member for oppression and mismanagement.

21. Mr. Gupta also distinguished J.P. Srivastava and Sons Pvt. Ltd. and Others Vs. Gwalior Sugar Co. Ltd. and Others, on the issue, taking a consistent stand, the law was clear on the subject. Consent of recorded shareholder was a must, nothing short of it, would be possible to maintain the petition at least at the time when the law was not amended. According to him, the beneficial owner had no right to consent. He would refer to three decisions reported in Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta., Balkrishan Gupta and Others Vs. Swadeshi Polytext Ltd. and Another, and Life Insurance Corporation of India Vs. Escorts Ltd. and Others,

22. He would further contend, even if R.L. Gaggar was competent to extend support, question would still be germane as to whether Lodha was competent to extend such support on behalf of Gaggar on the strength of the power of attorney. Mr. Gupta would refer to the clauses of the power of attorney and the affidavit subsequently filed by Mr. Gaggar and Mr. Lodha to contend, Gaggar categorically stated, he did not instruct Lodha to give consent. He did not go through the petition at all. Even if we take it, Lodha was competent in terms of the power of attorney, the power of attorney would itself show, the main purpose was to have the formalities of registration of shares and not for any other purpose. Mr. Gupta would rely on a particular clause of the power of attorney that is quoted below:

To sign, execute and deliver the transfer deeds concerning or relating to the "said shares" as may from time to time be necessary or required for effecting

the sale and/or transfer in respect of the said shares in favour of the said Bhagwati Developers (P) Ltd. and/or its transferees assignees and/or nominees and for the said purpose to do all acts deeds matters and things as the said attorneys or either of them shall think proper including any letter of consent for any proceeding.

23. According to him, on a plain reading of the aforesaid clause, the main purpose was to facilitate registration of share in the name of BDPL. The handwritten portion could not override the main purpose and, as such, the letter of consent in a proceeding under sections 397 and 398 by Lodha on behalf of Gaggar was without any authority. In this regard, he would rely upon the decisions reported in *Glynn v. Margetson* (1893) AC 351 and *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*,

24. On the construction of the power of attorney he would also rely on *Killick Nixon Limited and others Vs. Bank of India and others*, particularly the observation of the Bombay High Court appearing at page-853 wherein the Bombay High Court considered the power of attorneys to find out the true purport of it.

25. Deliberating on the power of attorney, Mr. Gupta would contend, in case clause 1 could not help, the general clause could not extend the power as the general clause could not override the main clause describing the main purpose. He would lastly draw support from the apex court decision in the case of *Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another*, Paragraphs 11 and 18 were relied upon to support general words cannot be construed so as to enlarge restricted powers therein mentioned. He would lastly distinguish *Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others*, by observing, in view of his argument so advanced with regard to shares of R.L. Gaggar, the decision would have no application. He would lastly contend, the shares of Chatterjees should also be kept out of the purview as they did withdraw their grievance against the company. He informed, the original petitioners also left this world. He would pray for dismissal of the appeals.

26. While giving reply Mr. Kapoor initially dealt with the cases cited by Mr. Gupta. According to him, the first seven cases in the compilation would suggest interpretation of "consent" as stipulated u/s 399, by various High Courts. According to him, the said decisions were impliedly overruled by apex court in *P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others*,

27. With regard to the scope of power of attorney, Mr. Gupta cited *Glynn v. Margetson* (1893) Appeal Cases 351 and *Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others*, According to Mr. Kapoor, both cases would relate to policy of insurance. The ratio decided therein could not be applied in a case where power of attorney was issued coupled with interest that would have an irrevocable status.

28. Distinguishing the *Life Insurance Corporation of India Vs. Escorts Ltd. and*

Others, , Mr. Kapoor would contend, question of delay in applying for mutation was not at all in issue. He had no quarrel with the definition of "member" as interpreted in the case of Howrah Trading Co. Ltd. Vs. Commissioner of Income Tax, Central, Calcutta., and Balkrishan Gupta and Others Vs. Swadeshi Polytex Ltd. and Another, He would also rely upon In Re: Bengal Luxmi Cotton Mills Ltd., while this court held, contrary to the other High Court's view as discussed above, rather it would have the support of the apex court in the case of P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others, He would again refer to Killick Nixon Limited and others Vs. Bank of India and others,) itself to contend, consent given in writing was enough. It was not necessary to be a part of the proceeding.

Cases cited at the Bar

29. Before we deal with the issue on merits, let us first understand the law on the subject with reference to the decisions cited at the Bar. Mr. Kapoor cited eight decisions as above whereas Mr. Gupta would rely upon altogether thirteen decisions appearing in the compilation in addition to the decision in the case of Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another,

30. We need not deal with all the cases in the compilation submitted by Mr. Gupta except those specifically referred to by him as above. The decisions could be classified in three groups--construction of power of attorney apropos the purpose for which it was given, the effect of parties crossing the floor and what would be the actual requirement in law to give consent to a petition for oppression and mismanagement.

31. On the first issue, Mr. Gupta placed reliance on Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another, , Glynn v. Margetson (1893) Appeal Cases 351, and Skandia Insurance Co. Ltd. Vs. Kokilaben Chandravadan and Others, No one would be disputing the well settled rule of construction of a document.

Our view

Law on the subject:

32. Considering the cases cited at the Bar, our understanding of the law is:

(i) Section 399 would make a petition maintainable even if the petitioners do not have the requisite share ratio provided they would get support from others to make good the short fall.

(ii) The section would only require express consent being given to be made part of the petition in Form No. 43 and 44 of the Company (Court) Rules 1959. It would not be necessary for the supporter either to file petition and/or pleadings expressing their support or read and confirm the petition that would be filed by the petitioner. A letter of consent would be enough that should be annexed with the petition.

(iii) The shares held as on the date of filing of the petition should only be considered while filing and/or supporting a petition u/s 397 and 398. Subsequent change in ratio is immaterial.

(iv) Once the Chatterjees were already in the roll of the shareholders having distinctive number of shares that would be enough to extend support on the basis of the shares held by them. There would be no FERA violation as alleged.

(v) The share percentage of the petitioners as on the date of filing of the petition coupled with the share percentage of the supporter as on that date, taken together, would be sufficient to maintain a petition for oppression and mismanagement. The rigid compliance as suggested in the old law would not be mandatory.

Floor crossing-Its effect

33. The significant issue would have support from Rajahmundry Electric Supply Corporation Ltd. Vs. A. Nageswara Rao and Others, and we would hold against Mr. Gupta on this count. The apex court in most uncertain terms held:

The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. In our opinion, the withdrawal of consent by thirteen of the members, even if true, could not affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits.

33.1 Such clear view of the apex court is still holding the field. We need not deliberate on the issue any further.

34. Chatterjees had a particular percentage of shareholding that they admittedly held on the day of presentation of the petition. Learned judge did not find fault on that score, at least not specifically mentioned. Lodhas extended support in respect of the shares held by them as also the share purchased from Sri R.L. Gaggar. Gaggar did not deny the transaction. He did not deny the execution of power of attorney or the letter confirming the same. His subsequent assertion, he did not read the petition or was not aware of the consent being given, was irrelevant and would not make the petition as not maintainable.

35. We hold, on the date of filing of the petition, Chatterjees had the requisite support that would make the petition maintainable. Once the petition is held to be maintainable the transposition would be obvious consequence. Chatterjees do not want to continue with the litigation. Bhagwati would be entitled to be transposed in the place and stead of Chatterjees.

Power of attorney-Construction

36. The golden rule would suggest as follows:

- (i) A document would be read as a whole to get the true purport;
- (ii) The main purpose would be the dominating factor and the ancillary purpose could not override the same.

37. If we look to the age old decision in the case of Glynn v. Margetson (1893) Appeal Cases 351 we would find, "looking at the whole of the instrument, and seeing what one must regard, for a reason which I will give in a moment, as its main purpose, one must reject words, intend whole provisions, if they are inconsistent with what one assumes to be the main purpose of the contract". The apex court in Timblo Irmaos Ltd., Margo Vs. Jorge Anibal Matos Sequeira and Another, observed in paragraph 18, "general words following words conferring specifically enumerated power cannot be construed so as to enlarge the restricted powers there mentioned". The words highlighted and underlined in clause 1 of the general power of attorney quoted (supra) could not run contrary to the main purpose of the power of attorney.

38. On a plain reading of the power of attorney, it would appear the power of attorney was signed by Gaggar to facilitate compliance with all formalities of registration of the shares as also the utilization of shares so long it was not registered with the company. Mr. Gupta would contend, the company could not recognize someone who would claim to be the beneficial owner. Share is a moveable property. Once the share was sold the purchaser would have every right to enjoy the same. Even if we take the power of attorney as well as affidavits of Gaggar and Lodha together we would find, Gaggar did not deny sale of shares: Even if Lodha exercised power on behalf of Gaggar that would relate to only the shares that were sold by Gaggar to Lodha. It is true, if we give a restrictive meaning to clause 1, the handwritten portion may not go well with the main purpose. Taking the entire power of attorney as a whole and the conduct of Gaggar so surfaced in his affidavit, we wish to give a liberal meaning of the handwritten portion. Power of attorney coupled with interest would have a different connotation. Once the shares were sold Gaggar would lose all his rights over the shares and the purchaser would be free to use it. It would be unjust to deny exercise of such right by the purchaser. The Legislature thought it fit and thus amended the law. Such amendment, in our view, was to make the provisions more clear, the equitable right of the purchaser under the common law was already existing. The company was not a party to the sale. Company thus could not take any notice of it unless the shares were properly lodged for recording such change. So long it is not done, the company would recognize only the recorded shareholder and nobody else, hence, u/s 399(3) the recorded shareholder, meaning thereby, Gaggar was only authorized to deal with the company and his consent would be sufficient.

39. Gaggar executed the power of attorney so that such power could be used by the purchaser through the constituted attorney being two directors of BDPL. Hence, the consent was valid. We do not wish to give rigid restricted meaning of power of attorney in this regard. Matter may be viewed from another angle,

Gaggar never authorized his attorneys to use his power other than his right over the shares. Once the shares were transferred, Gaggar would have no moral or legal authority to deal with the same. The purchaser was entitled to enjoy the same. To facilitate such enjoyment he executed power of attorney. Giving consent in filing of the petition of the like nature is also the right of a shareholder. The beneficial owners exercised such right. After the amendment, Lodha could have directly extended consent claiming to be the beneficial owners of the shares giving proof of it. In a petition prior to the amendment, the consent given by the erstwhile owner was appropriate. We wish to view this problem from a different angle. Could Gaggar do anything contrary to the interest of the purchasers? The answer is definitely in the negative. Existing right cannot be unlawfully suspended. A shareholder has every right to support a petition of the like nature. Gaggar admittedly sold his shares to Lodha being BDPL. We do not find any reason or hindrance in getting their support to file the petition by the Chatterjees.

Ratio decided in P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others,

40. Two judge-bench decision of the apex court was placed by Mr. Gupta as well as by Mr. Kapoor with different connotation. Mr. Gupta would say, Justice Hansaria while concurring, made observation, he accepted the argument of Mr. Sibal that would support him. Mr. Kapoor would however contend, Justice Jeevan Reddy categorically rejected the contention of Mr. Sibal. Justice Hansaria concurred with the said decision, agreed with the ultimate conclusion that rejected the contention of Mr. Sibal. Hence, Mr. Gupta's interpretation was not correct. Since controversy arose we need to discuss in detail the decision in P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others, . The daughter was holding the shares. She was staying abroad. She gave a general power of attorney to her father dealing with her personal business and property. On the strength of the power of attorney the father gave consent that was called in question. The daughter subsequently came and supported the father. In this backdrop, the apex court held, consent was validly given. In paragraph-6 Jeevan Reddy, J., considered the relevant clauses of the power of attorney and observed, the daughter empowered her father to manage and otherwise administer her moveable and immoveable property including shares and stocks. His Lordship observed, "there appears no reason why the consent could not have been given by the power of attorney holder which is only a step towards protecting the interest of Rajeswari". In paragraph-7 His Lordship discussed the argument advanced by Mr. Sibal to the effect, the right or power to grant consent was a personal right that could not be delegated to an agent and it must be a personal decision of the member. In paragraph-8 His Lordship categorically held, "we are unable to agree with the said reasoning". In paragraph-15 His Lordship allowed the appeal holding, the consent given by the power of attorney holder was a valid consent.

41. Hansaria, J. while concurring observed as follows:

I am in respectful agreement with my learned brother in the conclusion arrived at by him. Though it may be that on the legal question under consideration the contention of Shri Sibal is correct for the reasons advanced by him, but as Smt. Rajeshwari made her position clear in the affidavit filed in the High Court, to which brother Jeevan Reddy has adverted to, I do think she had authorized her father to act on her behalf in the matter at hand, and the application under sections 397/398 of the Companies Act, 1956, as filed in the Court, ought to be taken as one to which she had consented.

42. In our view, once His Lordship concurred with the judgment of Jeevan Reddy, J, the reasoning given by His Lordship in the conclusion was also concurred P. Punnaiah and others Vs. Jeypore Sugar Co. Ltd. and others, would thus hold the field on the strength of the conclusion arrived at by Jeevan Reddy, J., and concurred by Hansaria, J.

Consent in writing:

43. We could not get full support from the decisions for Mr. Gupta. We do not wish to make any comment on the High Court decisions as the apex court decisions would clinch the issue apart from the clear and unambiguous statute. Section 153C may not be of so much importance to us as it would relate to the repealed law. Section 399(3) would require consent in writing from the shareholders; Mr. Gupta would contend, such consent must be backed up by application on mind and such application of mind could never be had once the supporters would not go through the petition and appraise themselves about the allegations made by the petitioners. We do not subscribe to the said idea. The law would require, consent must be in writing. The letter of consent should be annexed It is true, such consent must have application of mind when supporters would give consent to the petitioner. The court would presuppose that the supporters applied their mind unless the supporters themselves come to court and say otherwise: Once support was given in writing that must be taken into account while computing the total holding of the petitioner in maintaining a petition of the like nature. The law would not require supporters to read the petition and vouch for the same. Mr. Gupta's argument on the issue might sound logic. It would be for the legislature to consider. We do not find any scope to deny a supporter who applied the provisions of the statute. We would only say, if Lodha was competent to give support to Chatterjees, the way consent was given was valid and justified. We hold it accordingly.

Conclusion:

44. We are of the considered view, the learned judge did not apply His Lordship's mind on the issue. His Lordship did not assign any reason why it would be unsafe to rely on the support of Gaggar when it was in consonance with the wishes of the beneficial owners. Mr. Gaggar never raised his finger towards the transactions. He denied having read the petition. Even if we give full credence to what he had said, such positive averment on behalf of Chatterjees in

their petition would be superfluous as it was not the legal necessity. We hold, the petition filed by Chatterjees is maintainable.

45. We have already observed, we should ignore subsequent crossing of the floor. Hence, BDPL would be entitled to be transposed and/or substituted in place of Chatterjees in the proceeding.

Result

46. We, accordingly, direct the department to substitute BDPL as the petitioner with permission to proceed with the application. We would request the learned Single Judge to give priority to the matter as it was pending for last 22 years. The parties would be at liberty to bring on record, the subsequent events, if they so desire. BDPL, being the petitioner, would file the same within one week from date. Counter affidavit, if any, by Peerless within one week thereafter: The rejoinder, if any, by BDPL within a week thereafter. Place the application for hearing on merit after completion of affidavits.

47. There would be stay of operation of this judgment and order for a period of four weeks from date. Both appeals are disposed of accordingly however without any order as to costs.

Dr. Mrinal Kanti Chaudhuri, J.

I agree.