
(1983) 06 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 189 of 1974

Dilbhajan Singh and Others	Vs	APPELLANT
New Samundri Transport Co. P. Ltd. and Others		RESPONDENT

Date of Decision : 03-06-1983

Acts Referred:

Company Regulations, 1956 — Regulation 10, 9

Citation : (1985) 58 CompCas 247

Hon'ble Judges : Rajendra Nath Mittal, J; Prem Chand Jain, J

Bench : Division Bench

Advocate : Laxmi Grover and H.S. Sawhney, for the Appellant; Mohinderjit Singh Sethi and Atul Lekhanpal, for the Respondent

Judgement

Prem Chand Jain, J.—Dilbhajan Singh and others have filed this petition under s. 155 of the Companies Act, 1956 (hereinafter referred to as " the Act"), for rectification of the register of the members of the company. Originally, the petition was filed by eight petitioners. The names of petitioners Nos. I and 6 were struck off, vide order dated December 1, 1978. Dalip Singh, petitioner No. 3, has died and his legal representatives have not been brought on record. In this situation, the present petition would be deemed to have been filed by five petitioners, i.e., Smt. Mohinder Kaur, Mota Singh, Smt. Basant Kaur, Smt. Ravinder Kaur and Smt. Gurmej Kaur.

2. In order to appreciate the controversy, certain salient features of the case may be noticed :

The petitioners are the shareholders of New Samundri Transport Co. (P.) Ltd., Ferozepur (hereinafter called " the company ". Smt. Mohinder Kaur holds 210 shares, Mota Singh Granthi 210 shares, Smt. Basant Kaur 420 shares, Ravinder Kaur 840 shares and Gurmej Kaur 420 shares worth Rs. 10 each, on which 75% has been paid up. The respondent company was registered as a private limited company with its registered office at Ferozepur in terms of the memorandum and articles of association of the company. The authorised capital of the company is

Rs. 4 lakhs divided into 40,000 equal shares of Rs. 10 each. The shares are paid up to the extent of 70%. Some of the petitioners had moved an application under Sections 397 and 398 of the Act (Petition No. 30 of 1973) in which serious irregularities of fraud against the managing director of respondent No. 1 had been alleged. That petition, to start with, was contested but later on was got dismissed as withdrawn. In that petition, the respondent company had filed a written statement in which the factum of the petitioners being the shareholders in the company was never challenged. It is further averred that in that company petition, an application on behalf of respondent No. 1 had been filed for the amendment of the written statement in which it was averred that the company had forfeited the shares of the petitioners for non-payment of the amount due from them. It is only then that the petitioners had come to know about the alleged forfeiture of the shares. That application was rejected by B.R. Tuli J. (as his Lordship then was) on January 4, 1974, vide order in Company Application No. 55 of 1971. Letters Patent Appeal against that judgment was also dismissed. The SLP in the Supreme Court was also dismissed.

3. It is further averred that in Company Application No. 55 of 19-71, it had also been alleged that the New Samundri Transport Co. (P.) Ltd. was bifurcated into separate groups, i.e., (i) New Samundri Bus Service, and (ii) Samundri Roadways (P.) Ltd., that the said separation was held to be illegal by this court as a result of which the permits and vehicles were retransferred to the New Samundri Transport (P.) Ltd., that on retransfer, the petitioners had failed to render proper accounts of the working and management, with the result that the total loss incurred by the petitioners amounted to Rs. 2,06,717"01; that this amount was due from the petitioners and that in lieu of this amount, a lien was created on the shares of the petitioners, which were sold to some other persons, the details of which are as under :

No. of shares

Originally held by

Transferred to

210

Smt. Mohinder Kaur

Sohan Singh s/o Dalip Singh

210

Mota Singh Granthi

Sohan Singh s/o Dalip Singh

420

Basant Kaur

Ravinder Kaur w/o Joginder Singh

840

Ravinder Kaur

Jaswant Singh s/o Daulat Singh

420

Gurmej Kaur

Amrik Singh s/o Daulat Singh

4. The petitioners allege that forfeiture of the shares of the company in this manner can neither be justified under the provisions of law nor by any provision in the articles of association; that no notice whatsoever for the forfeiture of the shares was served on the petitioners; that the procedure prescribed for forfeiture of the shares under reglns. 29 to 35 was never followed and that the forfeiture of the shares of the company is void ab initio. It is on these grounds that a prayer has been made that the register of members be rectified and the names of respondents Nos. 2 to 6, in whose favour the transfer of shares has been made, be deleted from the register of members of the company. A further prayer has been made that damages be also awarded to the petitioners for the wilful fraud " played by the respondents by violating the provisions of the articles of association and the Act.

5. The petition has been contested on behalf of the respondents in which material allegations made in the petition have been controverted and the action of forfeiture of the shares has been defended. The petitioners Chose to file replication in which the allegations made in the written statement have been controverted.

6. This petition was tried by me. I had heard arguments in this petition. The learned counsel for the parties did not refer to any piece of evidence on the record. The only point that required determination was whether for the acts done and the alleged losses incurred by the petitioners during the period when their group had run certain buses separately in the name and style of New Samundri Bus Service, could their shares be forfeited?

7. Finding that the aforesaid point of law was of considerable importance, I directed that the same be decided by a larger Bench. That is how we are seized of the matter.

8. Before I deal with the legal point, it would be appropriate to trace a little history of the case. The respondent company was bifurcated into two groups by mutual agreement on August 13, 1970. One group was named Gurdas Singh group and the other as Gardhara Singh group/ Under that mutual agreement, the possession of the buses and permits falling to the respective shares of the groups was also taken. Later on, a question arose whether the bifurcation had

been done in accordance with law or not. B.R. Tuli J., on July 28, 1972, held that there has been no splitting up of the company into two groups and all the buses with permits and other properties of the company taken by these groups must be restored to the present company, i.e., New Samunduri Transport Co (P.) Ltd., Ferozepur. Shri Sewa Singh was appointed as a receiver for the purpose of carrying on the whole business of the company after taking into possession all the buses, permits and properties from both the groups. It is after this order of the learned judge that on July 2, 1973, the board of directors passed a resolution, copy of which is Ex. R.W. 11/5, by which the shares of the petitioners were transferred. It may be observed at this stage that the main plea of the respondents justifying the transfer is that as the petitioners had not paid the claim of the company, their shares were forfeited on July 2, 1973. The claim which is laid against the petitioners is for the period when under the agreement they had formed separate groups and had run certain buses and had incurred some losses to the (company).

9. It was vehemently contended by Mr. Grover that for the alleged loss of the company, the shares of the petitioners could not be forfeited, that the shares could be forfeited only when a call is made or money is borrowed by the shareholders and the same becomes payable, and that there could be no Hen on, or forfeiture of, fully paid up shares. What was sought to be argued by the learned counsel was that, in the instant case, for the period for which the two groups worked separately, there were claims and counter-claims and accounts had been submitted and for the alleged loss, the board of directors of its own could not legally forfeit the shares of the petitioners.

10. On the other hand, Mr. Sethi, learned counsel for the respondents, very vehemently argued that the petitioners had obtained certain benefits under the agreement, i.e., that they had been given certain buses and permits to ply ; that, after the order of B. R. Tuli J. dated July 28, 1972, the petitioners were bound to return the buses and the other property of the company in the same condition as it was handed over to them; that whatever benefit was taken by the petitioners under the contract (the agreement separating the original company into two groups), they were liable to return the same and that as the benefits earned by the petitioners as a result of the bifurcation of the original company were not being returned, their shares could legally be forfeited. Mr. Setbi had also referred to certain evidence in order to show that the petitioners created a huge liability and, as such, the action of forfeiture was justified.

11. After giving-our thoughtful consideration to the entire matter, we find that there is considerable force in the contentions raised by Mr. Grover, learned counsel for the petitioners.

12. On the respective contentions of the learned counsel for the parties and on admitted facts, the question that arises for determination is whether for the losses incurred by certain shareholders in running the business of the company, can their shares be forfeited ? Relevant provisions with regard to creation of lien

on the shares of the members of the company and with regard to enforcement of the lien by sale of the shares by the company, to which our attention was drawn, are contained in reglns, 9 and 10 in Table " A", Schedule I, entitled "REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES " to the Act and read as under:

"9. (1) The company shall have a first and paramount lien--

(a) on every share (not being a fully-paid share), for all moneys (whether presently payable or not) called, or payable at a fixed time, in respect of that share; and

(b) on all shares (not being fully paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company:

Provided that the board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(2) The company's lien, if any, on a share shall extend to all dividends payable thereon.

16. The company may sell, in such manner as the board thinks fit, any shares on which the company has a lien :

Provided that no sale shall be made--

(a) unless a sum in respect of which the lien exists is presently payable ; or

(b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency."

13. Regulation 9 deals with the company's right of lien on the shares. This regulation has two clauses. Clause (a) envisages a situation where the shares are not fully paid up and a call is made for all moneys, whether presently payable or not, or payable at a fixed time. Clause (b) envisages a situation where the shares, not being fully paid up shares, stand registered in the name of a single person and the money is presently payable by him or his estate to the company. Regulation 10 provides the sale of the shares on which the company has a lien. Thus, a joint reading of the aforesaid regulations would go to show that the lien of the company is on those shares which are not fully paid up and when some money becomes presently payable on those shares or a call is made for all moneys (whether presently payable or not or payable at a fixed time) in respect of those shares. No other provision was brought to our notice under the Act which might have some bearing on the question of forfeiture of shares or lien of the company. It was argued by Mr. Sethi, learned counsel for the respondents, that the buses were run for two years by the petitioners' group and heavy losses

were incurred by them and for the losses which had been incurred, the petitioners would be termed debtors and each, one of them would be jointly and severally liable. According to the learned counsel, the amount of loss incurred by the petitioners would be the amount presently payable. To us, this argument does not appear to be sound and plausible. It was as a result of the order of B. R. Tuli J., dated July 28, 1972, that the original company would be deemed not to have been bifurcated into two groups; with the result that during the period when the two groups worked separately, if some losses were incurred, then those losses would be of the company which have to be met out of the assets of the company. For the alleged losses incurred during the period when the two groups worked separately, the petitioners would not become the debtors of the original company. Moreover, the company may have some grudge against a particular shareholder if he has caused some loss to the company, but forfeiture of shares of all the shareholders without finding out or determining the individual liability and without giving separate notice to all of them, would certainly be illegal and improper. There is nothing on the record to show as to which individual shareholder was responsible for causing the loss, or whether the loss had occurred, as a result of mismanagement or was it a loss in the ordinary course of business. Viewed from any angle, the petitioners cannot be termed as debtors for the alleged loss.

14. Mr. Sethi, learned counsel, had also relied on Sections 65 and 70 of the Indian Contract Act, 1872, for the proposition that the petitioners were bound to return the assets which they got under the mutual agreement. In support of this proposition, the learned counsel placed reliance on *Mulamchand Vs. State of Madhya Pradesh*, *State of West Bengal Vs. B.K. Mondal and Sons*, and *The New Marine Coal Co. (Bengal) Private Ltd. Vs. Union of India (UOI)*. In our view, these provisions of the Indian Contract Act, 1872, and the judgments cited by the learned counsel have no relevance to the facts of the case in hand. Under the agreement, two groups separated and started running two separate companies. By virtue of an order of this court passed by B. R. Tuli J., dated July 28, 1972, it was held that bifurcation was illegal and not sustainable in the eye of law with the result that the New Samundri Transport Co. (P.) Ltd., i.e., the old company, continued to remain in existence and the petitioners and respondents continued to be its shareholders. Whatever business was done by the two groups separately was the business of the old company. Whatever losses suffered during that period were by the company. For such losses, the individual shareholders could not be held as debtors.

15. Faced with this situation, Mr. Sethi, learned counsel for the respondents, sought to raise a point that no relief should be granted to the petitioners in this petition and they be directed to seek their remedy in the civil court as complicated questions of fact were involved in the petition which could not properly be determined in this petition. In support of his contention, the learned counsel placed reliance on the judgments in *Dewan Singk v. Minerva Films Ltd.* [1959] 29 Comp Cas 263 (P & H), *S. Bhagat Singh and Another Vs. The Piar Bus*

Service Ltd., Amritsar and Others, , Peoples Insurance Co. Ltd. Vs. C.R.E. Wood and Co. Ltd. and Others, , Smt. Soma Vati Devi Chand Vs. Krishna Sugar Mills Ltd. and Others, , and The Public Passenger Service Limited Vs. M.A. Khader and Others, and a few others. We are afraid, we are unable to agree with this submission of the learned counsel. No complicated question of fact is involved in this petition. On a pure question of law, a reference was made and the same has been decided without any difficulty. In this view of the matter, the petition cannot be thrown out on the ground that the petitioners should seek relief in the civil court.

16. No other point arises for consideration.

17. For the reasons recorded above, we allow this petition and direct that the names of the petitioners be restored and that of the respondents be deleted and necessary rectification in the register of members be made. In the circumstances of the case, we make no order as to costs.