

(2002) 08 DEL CK 0287

In the Delhi High Court

Case No : CAs 639-640, 641-642 and 685-686 of 2002 and 707 of 2002 in C.P. 21 of 1986

D.K. Oswal and Others

APPELLANT

Vs

Mr. Akshay Finance and Others

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 10, 10(3), 155

Citation : (2003) 115 CompCas 577 : (2004) 50 SCL 303

Hon'ble Judges : Vikramajit Sen, J

Bench : Single Bench

Advocate : Atishi Dipanker, for the Appellant; Jayant Bhushan and Zuba Khan for Respondent No. 5, A.S. Chandiook Rajiv Shakdhar, Jyoti Mendiratta and Amita Sehgal, for the Respondent

Judgement

Vikramajit Sen, J.

CA 641/2002 & 642/2002

1. Allowed, subject to all just exceptions.

CA 685 & 686/2002 in CP 21/1986

2. Mr. Chandiook, Learned Senior Counsel for the Respondents, states that the applications may be allowed, subject to all just exceptions. Ordered accordingly. The amended applications are taken on record.

CA 639/2002, 640/2002, 707/2002 IN cp 21/1986

3. In order to fully appreciate the facts and issues that have been brought into focus in the context of the reliefs prayed for these applications, it is necessary to make a precis of the annals of this family litigation. Shri D.K. Oswal filed Petitions CP Nos. 21/1986 read with Rule 9 of the Company (Courts) Rules, for the rectification of the Register of Members of the Companies which were controlled

by the Oswal family. These Companies were Akshay Finance and Trading Company, Paras Finance and Trading Company, Arihant Investment and Trading Co., Victor Investment and Mercantile Co., Ambar Investment and Mercantile Co. and Adinath Investment and Trading Company. At that point of time four Public Limited Companies were also under the Oswal Family's management, i.e. M/s. Vardhman Spinning & General Mills Limited, Mahavir Spinning Mills Ltd., Sriyans Paper Mills Ltd. and Adinath Textiles Limited. It is not in dispute that Vardhman Polytex was not in existence in 1987 and was, Therefore, not within the purview of those Company Petitions. In those petitions the father of the Petitioner, namely late Shri R.C. Oswal, and the Petitioner's two brothers A.K. Oswal and S.P. Oswal were arrayed as Respondents. They put up a common response/defense in all the petitions.

4. After one year of the pendency of those Petitions, a settlement was brought about by Hon'ble Mr. Justice B.N. Kirpal (as the Learned Chief Justice of India then was) in terms of his Order dated August 12, 1987. It is not of only little significance that the opening sentence and paragraph of this judgment reads as follows, (underlining added for emphasis).

"This judgment will dispose of Company Petition Nos. 21 of 1986 to 26 of 1986."

5. A perusal of the afore-mentioned judgment dated August 12, 1987 will make it abundantly clear that there were two groups before the Court, that of the Petitioner/Shri K.K. Oswal on one side and his father and his two brothers on the other. No further fragmentation in the second group was either pleaded or had manifested in itself in any manner whatsoever.

6. The applications under consideration have been moved in Co. Petition No. 21/1986 above, but I do not propose to stand on strict technicalities and shall assume, wherever necessary, that reference has been made to all the erstwhile petitions viz. C.P. Nos. 21 to 26/1986. It is imperative to mention that all the Companies in contemplation in the earlier Petitions had their registered offices at 205 Surya Kiran Building, Kasturba Gandhi Marg. New Delhi. The prayer contained in CP 21/1986 was as follows:-

"Prayer

It is, Therefore, most respectfully prayed that the illegal redemption of:-

- (i) 2630 4% non-cumulative redeemable. preference shares of the Company; and
- (ii) 30 eight percent preference share of the Company belonging to the Petitioners be declared illegal, in-operative and being void in law and the Register of Members of the Company be rectified by inserting therein the names of the Petitioners as holders of the aforesaid shares.

Costs of Petition be allowed to the Petitioners:

Any other order deemed fit and proper in the circumstances of the case be also made."

7. Mr. Jayant Bhusha, Learned Counsel appearing for the Applicants in CA 639/2002 and 702/2002 has relied heavily on the previous order passed on 6.5.1986 in the earlier proceedings so as to emphasise that the division and severance which took place was not just between Shri D.K. Oswal and the rest of the family, but also individually between the father late Shri R.C. Oswal and his three sons namely, Shri D.K. Oswal, Shri A.K. Oswal and Shri S.P. Oswal/ Respondent. This order is reproduced verbatim since separate portions thereof have been relied upon by the opposite parties. Mr. Bhushan has relied on paragraph 1 which mentions that the four branches of the family shall have 25% interest each. On the contrary Mr. Chandiook has relied on paragraph 5 since it mentions that the interests of Shri D.K. Oswal were being separated from the rest of the family.

"President : Mr. Shanti Bhushan Sr. Advocate with Mr. G.L. Rawal and Mr. K.M. Sharma, for the petitioner. Mr. Kapil Sibal, Sr. Advocate with Mr. S.S. Shroff and Mr. Pinaki Misra, for the respondent.

CP Nos. 21 to 26 of 1986

It is indeed gratifying to note that the parties are agreed to the manner in which the disputes between them are to be settled.

The agreement is that the share of each of the four branches involved in this case, namely, the petitioner, his father and his two brothers, should be deemed for working the settlement as being equal. The total value of the family's holdings in the various business concerns will be ascertained and thereafter the interest of the petitioner and his family members shall be separated. Payments made to any of the family members either from investment companies or trusts or otherwise for alleged redemption/cancellation of shares shall be properly adjusted.

The parties are agreed that in order to bring about a settlement between the parties, the various members of the family should file in Court undertakings by way of affidavits which would spell out the terms of the agreement between them and would also bind each one of the deponent. The affidavits by way of undertakings which would be filed by all the members of the family would be to the following effect:--

1. The deponent will accept that for the purpose of settling the dispute, the four branches of the family, namely, the petitioner, his two brothers and father, have 25% interest each.

2. The value of the total shareholding of the family determined on the basis of net worth of the companies as on 31st March, 1986 held in the name of the members of the family or thorough their investment companies in the four companies, namely, Vardhman Spinning & General Mills Ltd., Mahavir Spinning Mills Ltd., Sriyans Paper Mills Limited and Adinath Textiles Limited, will be determined as on 31.3.86.

3. The value of the family's total shareholding as on 31st march, 1986 in the aforesaid companies will be determined on net worth basis by M/s. S.B. Billimoria & Company, Chartered Accountants. They shall value the shareholding after giving opportunity of hearing to all the parties. The report to be submitted by M/s. S.B. Billimoria & Co. will be subject to confirmation/adoption, with or without modification, by the Court.

4. The deponent will undertake to this Court that he will not challenge, by way of appeal or otherwise, the valuation as finally determined by the Court.

5. Upon determination and confirmation of the valuation by then Court, the parties agree that the Court shall decide the manner in which the interest of the petitioner is to be separated from the interests or rest of the family and the decision so arrived at shall be final and binding on all the parties. In order to assist the Court in arriving at this decision, the Chartered Accountants shall not only value the family's total shareholdings in the said companies but they should also submit to the Court their report containing conclusions as to the net worth of each of the four companies as on 31st March, 1986.

6. The parties undertake, when called upon to do so by the Court, to transfer the shares etc. in order to give effect to the order of separation. Any transfer of shares necessary in the process of settlement, will be subject to such approvals or the Financial Institutions as may be required under the various agreements and undertakings to them. The deponent undertakes to take all necessary steps to obtain such approvals. In the meantime the suits, appeals and criminal complaints as are pending today will be stayed till further orders of the Courts.

Affidavits in the aforesaid terms should be filed in Court by all the members of Oswal Family who have shares in their names directly or indirectly within ten days from today and the case be listed in Chamber on 16th May, 1986 at 4 P.M.

Sd/- B.N. Kirpal

Judge.

May 6, 1986."

8. Even on a bare reading of the afore-mentioned order I am unable to subscribe to the view proposed by Mr. Bhushan that the Court had divided and partitioned the shares of late Shri R.C. Oswal and each of his three sons in equal shares of 1/4th each. The division that was postulated even on 6.5.1986 was a severance of the 1/4th share of Shri D.K. Oswal from the Oswal Family fortunes. Though this is the tenor of the orders passed by Hon"ble Justice B.N. Kirpal, this is apparent on a perusal of the following extracts from the judgment dated 12th August, 1987:-

"In order to give effect to separation of petitioners" interests from the rest of the family, necessary directions have to be issued so as to ensure that shares of Vardhman and Mahavir held by D.K. Oswal and his associates are transferred in

favor of R.C. Oswal Group and, at the same time, shares of Shreyans and Adinath held by R.C. Oswal, S.P. Oswal and Ashok Oswal and their group be transferred in favor of D.K. Oswal and his nominees. Appropriate directions have also to be issued with regard to the divesting of shares of Shreyans by Vardhman as has been proposed by the respondents in their written arguments.

The transfer of shares which are involved, to give effect to the aforesaid, as has been indicated by the respondents, is as follows:-

"A SHARE TRANSFERS INVOLVED FROM RESPONDENTS TO SHRI O.K.OSWAL AND HIS GROUP

I. SHREYANS PAPER MILLS LIMITED

I-A: DIRECT HOLDING OF THE RESPONDENTS:

Name of individuals	Number of shares
---------------------	------------------

- | | |
|--|----------|
| (a) Shri R.C.Oswal | 1 |
| (b) M/s. R.C.Oswal & Sons | 65,500. |
| (c) Shri S.P.bswal | 95,450 |
| (d) Smt . Banarso Devi will a/c (Registered the name of Shri Ashok Oswal) | 450 |
| Total | 1,61,401 |

IB.NAME OF INVESTMENT COS. WHICH

HOLD SHARES IN SHREYANS AND WHERE SHARES ALONE WILL BE TRANSFERRED

- | | |
|--|--------|
| (a) Metro Investment & Marketing Co. Pvt.Ltd. | 14,000 |
| (b) Eastern Investment & Marketing Co. Pvt. Ltd. | 13,900 |
| (c) Sanmati Investment & Trading Co.Pvt. Ltd. | 15,500 |
| (d) Nahar Investors & Traders Pvt. Ltd. | 10,100 |
| Total | 53,550 |

II. ADINATH TEXTILES LTD

IIA. Direct holding of Respondents

Name of the individual	No. of Shares
------------------------	---------------

- | | |
|----------------------------|-----|
| (a) Shri S.P. Oswal | 800 |
| (b) M/s. S.P. Oswal & Sons | 700 |
| (c) Mrs. Shakun Oswal | 200 |
| (d) Shri R.C. Oswal | 70 |

- (e) M/s. R.C. Oswal & Sons 500
- (f) Mr. Ashok Oswal 320
- (g) M/s. Ashok Kumar & Sons 14,600
- (h) Mrs. Manju Oswal 4,500

"II.B. NAME OF THE INVESTMENT COS.WHICH HOLD SHARES IN ADHINATH AND WHERE SHARES ALONE WILL BE TRANSFERRED

Name of Investment Company No.of shares

- (a) Amber Investment & Mercantile Co. 400
- (b) Paras Finance & Trading Co. 50
- (c) Victor Investment & Mercantile Co. 1,030
- (d) Arihant Investment & Trading Co. 75
- (e) Akshay Finance & Trading Co. 200
- (f) Adinath Investment & Trading Co. 500
- (g) Devakar Investment & Trading Co.Pvt. Ltd. 330
- (h) Nahar Investors & Traders Pvt. Ltd. 50

Total 3,065

II.C NAMES OF THREE PUBLIC LIMITED COS. WHICH HOLD SHARES IN ADHINATH AND WHERE SHARES ALONE WILL BE TRANSFERRED

Name of the Company

No. of shares

- a) Santon Finance & Investment Co. Ltd. 19,995
- b) Flamingo Finance & Investment Co. Ltd. 30,000
- c) Ramaniya Finance & Investment Co. Ltd. 50,000

Total 99,995

IID NAMES OF THE FIRMS WHICH HOLD SHARES IN ADHINATH AND WHERE SHARES ALONE WILL BE TRANSFERRED

Name of the Firm

No. of shares Registered in the name of

- (a) Amber Syndicate 25,350 Sh.D.K.Oswal 25000

Sh.R.C.Oswal 350

- (b) Paras Syndicate 30,000 Shri D.K.Oswal

(c) Adhinath

Syndicate 30,000 Shri S.P. Oswal

85,350

III NAMES OF THE INVESTMENT COS. WHICH HOLD SHARES IN SHREYANS AND ADHINATH AND THE CONTROL OF THE SAME WILL BE HANDED OVER TO SHRI D.K. OSWAL'S GROUP.

Name of the Company

No. of shares

Adhinath Shreyans

(a) Achin Investment & Mercantile Co. 55,500 55,500

(b) Levina Investment & Mercantile Co. 76,600 78,900

(c) Ojasvi Investment & Mercantile Co. 40,500 95,000

(d) Adeep Investment Co 17,900 30,000

(e) Virat Investment & Mercantile Co. 36,100 30,000

Total 2,26,600 2,88,900

In order to give effect to the aforesaid transfer, the following directions are issued:

i) Within two weeks from today all the parties will deposit with the Registrar of this Court, duly executed, share transfer deeds along with share scrips in the manner indicated above.

ii) The Registrar shall deliver the blank share transfer deeds duly signed as well as share scripts of Shreyans and Adhinath to Shri D.K. Oswal or his nominee and of Vardhman and Mahavir to Shri R.C. Oswal or his nominee.

iii) With the lodging and handing over of the transfer deeds, the respondents will, within one week thereof, ensure the registration of the transfer of shares of Shreyana and Adinath in favor of Shri D.K. Oswal and his nominees and will ensure that the Board of Directors of Shreyans and Adhinath co-opt Shri D.K. Oswal and his nominees as Directors of Shreyans and Adinath and thereupon Shri S.P. Oswal, R.C. 1 Oswal and Ashok Oswal shall resign from the Board of Directors of Shreyans and Adinath.

iv) Shri S.P. Oswal and Shri R.C. Oswal are further directed to give effect to the resolution dated 26th February, 1981 passed by Vardhman regarding the compliance of condition No. J. attached to the letter dated 12th November, 1981 issued by the Controller of Capital Issues, Government of India to Shreyans Paper Mills Limited and to sell shares of Shreyans held by Vardhman in excess of 40% held by the promoters at the market value of the shares. It is further

directed that these shares will first be offered for sale of Shri D.K. Oswal and his Group and in order to make up the difference Shri R.C. Oswal and members of his Group are further directed to give to Shri D.K. Oswal and his Group Rs. 21,75,586/- which would enable him to purchase the said shares of Shreyans to be sold by Vardhman.

v) Both the Groups will file appropriate applications with the financial institutions and see the release of personal guarantees of the petitioner and members of his group which may have been given for financial arrangement extended by the institutions to Vardhman and Mahavir and also the release of guarantees of R.C. Oswal and members of his group which may similarly have been given to the financial institutions or other institutions for extending the financial assistance to Shreyans and Adinath.

vi) Both the groups are directed to take all steps which may be necessary to give effect to the transfer of shares and management of Shreyans and Adinath to D.K. Oswal and his Group and the transfer of shares of Vardhman and Mahavir by D.K. Oswal and members of his group in favor of R.C. Oswal and his group.

vii) Parties are at liberty to apply to this Court, from time to time if the need arises, for directions or clarifications which may be necessary in order to give effect to the settlement of dispute between the parties.

The Company Petitions are disposed of in the aforesaid terms. The parties shall bear their own costs."

9. Although the lis had been disposed of by the afore-mentioned orders, since some delay or difficulty was encountered in its implementation, applications were subsequently filed and entertained by the Court. However, even on a perusal of the Orders dated 25.9.1987 in terms of which CA 643/1987 had been disposed of, it will be evident that the severance which took place in CP 21/1986 was the separation of the share of Shri D.K. Oswal only. What was clarified by the Court was merely that each person had an equal shares i.e. one quarter each. This is also manifested from the fact that from 1987 onwards, till the death of the patriarch Late Shri R.C. Oswal, the business ventures of the respondent group which included the two brothers who are now adversaries in these applications were jointly carried out by all three of them. The contention of Mr. Bhushan that the Oswal Family businesses were, in fact, partitioned in 1/4th share each is accordingly rejected. Once this conclusion is reached, it will not be possible to view the present applications as having the character and merely endeavoring to implement the earlier orders and effecting a distribution of assets by metes and bounds, so as to bring them within the parameters set down in para (vii) of the above extracted orders.

10. What must be decided is whether this Court possesses the requisite jurisdiction to entertain applications which, in essence, seek to carry out rectifications in the Register of Members of Companies within the management of the further fragmented Oswal Group subsequent to the death of Late R.C. Oswal.

At the time when CP 21/1986 had been filed Section 155 of the Companies Act vested the power to rectify the Register of Members in the Company Judge. This provision, however, has been repealed by the Companies (Amendment) Act, 1988, with effect from 31.5.1991 and its provisions have been assimilated in the amended Section 111 with the consequence that the avenue of relief now leads to the Company Law Board. Where a totally new case is being put forward, the Court must not revive a Petition which has already been disposed of and thereby assume a jurisdiction which it no longer possesses. No doubt, applications have been entertained in this Petition till quite recently, but the distinction which must be honoured is that the Court may retain the power to pass orders which are calculated to implement the orders previously passed by it when it possesses jurisdiction over the lis. The present dispute, as has already been stated is essentially different to the factual matrix and the prayers contained in CP 21/1986, and for that matter in all the other CPs 21/1986 to 26/1986. Mr. Bhushan has himself adverted to the Will of Late R.C. Oswal, which has become operative several years after the disposal of CP 21/1986. The genesis of the present disputes can be traced back to the allotment of 10,000 shares in 1998, and the resultant alteration of the control of Vardhman Polytex. Mr. Bhushan has also mentioned changes in the Board of Directors of that Company and Mahavir Spinning and General Mills which occurred in August 2000. Quite obviously, this has no bearing on the facts which existed in 1986. The heading of the applications mention that they are pursuant to the demise of Shri R.C. Oswal.

11. Before departing from this aspect of the case it is of extreme relevance that the Registered Office of the companies which were within the purview of the six petitions which had received the attention of this Court, were all at the same address, i.e. 205, Surya Kiran Building, Barakhamba Road, New Delhi. At the present moment the Registered Offices have been shifted out of Delhi to Ludhiana (Punjab) after obtaining the approval of the Company Law Board.

12. Section 10 of the Companies Act stipulates that the Court having jurisdiction shall be the High Court having jurisdiction in addition to the place at which the registered office of the company is situated. Sub-section (3) of Section 10 is not relevant inasmuch as it refers to winding-up petitions. However, it is interesting to note that even in the context of the period of six months, it has been clarified that the location of only that registered office will be taken into consideration which has existed in the longest portion of the six months immediately preceding the presentation of such a petition. The effort in these applications is to resurrect a petition filed almost over fifteen years ago, despite the fact that the registered offices are located in Ludhiana since last four years.

13. This is also how the applicants had themselves viewed the legal position. A Scheme of amalgamation u/s 394 of the Companies Act was moved by the parties hereby not in this High Court but in the High Court of Punjab and Haryana at Chandigarh. The Scheme was approved by that Court on August 1, 2000. Thereafter, C.P. No. 49/2001 was filed by the Applicant himself before the

Company Law Board, Principal Branch, New Delhi as recently as 25th February, 2002. The Company Law Board had passed an order in respect of M/s. Panchasheel Textile Manufacturing and Trading Co. (Pvt.) Ltd., at the instance of the applicant and directed that the prevailing position in the said company will continue till such time the obligations resting on the Petitioner are discharged. An Appeal from this order is pending in the High Court of Punjab and Haryana at Chandigarh. It has been ordered that status quo as it existed on 24.4.2002 shall be maintained.

14. As I see it the present applications have been filed in 2002, in an attempt to open up another frontier in the family dispute between the two brothers. This Court no longer possesses any jurisdiction over these disputes.

15. CA 639/2002 and CA 640/2002 are, accordingly rejected. CA 707/2002 is allowed. Interim Orders dated 31.5.2002 are recalled.