

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

Company Appeal (AT) No. 235 of 2017

**[arising out of Order dated 9th June, 2017 by NCLT, Ahmedabad Bench,
Ahmedabad in C.P. No. 27/397-398/CLB/DL/1995(old)]**

IN THE MATTER OF :

1. J.P. Srivastava & Sons (Rampur) Pvt. Ltd.,
Through its Director Mr. Vijay K. Srivastava,
Kailash, Nawabganj,
Kanpur (U.P.)
2. Rampur Finance Corporation Pvt. Ltd.,
Through its Director Mr. Vijay K. Srivastava,
Kailash, Nawabganj,
Kanpur (U.P.)
3. Mrs. Nini Srivastava,
Ground Floor,
60, Sukhdev Vihar,
New Delhi.
4. J.K. Srivastava (deceased)
S/o Shri J.P. Srivastava,
Through his LRs :
Mrs. Raj Mohini Srivastava &
Mr. Vijay K. Srivastava,
Kailash, Nawabganj,
Kanpur (U.P.)
5. J.K. Srivastava Family Trust,
Through its Trustees,
Mr. Vijay K. Srivastava and
Mrs. Raj Mohini Srivastava,
Kailash, Nawabganj,
Kanpur (U.P.)
6. Kunal K. Srivastava,
R/o Kailash, Nawabganj,
Kanpur (UP)
7. Yatin K. Srivastava,
R/o Kailash, Nawabganj,
Kanpur (UP)

...Appellants

Versus

1. Gwalior Sugar Company Ltd.,
P.O. Dabtra,
Dist. Gwalior (M.P.)
2. Vikram Srivastava,
S/o Shri H.K. Srivastava,
Jt. Managing Director,
Gwalior Sugar Company Ltd.,
P.O. Dabra, Dist. Gwalior (M.P.)
3. Vir Srivastava,
S/o H.K. Srivastava,
Executive Director,
M/s. Gwalior Sugar Company Ltd.,
P.O. Dabra, Dist. Gwalior (M.P.)
4. Mrs. Hemlata Srivastava,
W/o Shri H.K. Srivastava,
C/o Gwalior Sugar Mill Colony,
P.O. Dabra, Dist. Gwalior (M. P.)
5. Mrs. Radhika Bhargava (Ne : Srivastava)
W/o D. Bhagwava, D/o H. K. Srivastava)
C/o EMA India Ltd.,
C-37 Panki Industrial Area,
P.O. Udyog Nagar, Kanpur - 22,
Uttar Pradesh.
6. J.P. Srivastava (Trading) P. Ltd.,
P.O. Dabra,
Dist. Gwalior (MP) ...Respondents

Present:

For Appellants : **Ms. Tasneem Ahmadi, Shri S. K. Gupta, Shri Abhinav Gupta and Ms. Shubhi Khare, Advocates**

For Respondents : **Shri Abhinav Vashist, Senior Advocate assisted by Ms. Bina Gupta, Shri Abhay Anand Jena, Advocates**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred by the appellants (hereinafter referred as the ‘petitioners’) against order dated 9th June, 2017 passed by the National Company Law Tribunal (hereinafter referred to as the ‘Tribunal’), Ahmedabad Bench, Ahmedabad in C.P. No. 27/397-398/CLB/DL/1995(old). By the impugned order, petitioners are directed to deposit the original share scripts along with blank transfer forms duly signed by the Transferors. This apart some other directions has been passed as mentioned in paragraph 49 of the impugned order, as quoted below :

“49 *Therefore, there is no impediment for this Tribunal to give direction to the petitioners to return the original share scripts along with bank transfer forms. In the result, application No. 227 of 2014 ((CA 203-B/16) & 228 of 2014 (CA 203-C/16) are dismissed. C.A. 216/16 (203-A/16) is allowed. Petitioner to deposit the original share scripts along with blank transfer forms duly signed by the Transferors relating to 5137 nos. of equity shares, 1279 nos. of redeemable cum preference shares and 63.50 nos. irredeemable cum preference shares with Registrar of this Tribunal within three months’ time from the date of this order. The respondents no. 3, 6 and 7 are entitled to receive the share scripts and transfer forms only after three months from the date of this order.”*

2. The brief facts of the case are that a Company Petition No. 27/1995 was filed by the petitioners before the erstwhile Company Law Board (for

short, 'CLB') under sections 397 and 398 of the Companies Act, 1956. In the said petition the CLB passed order dated 7th May, 1996 as follows:

1. *It was agreed by the parties that the petitioner will sell their shares to the respondents for a value per share to be determined by a valuer appointed by us and the value will be binding on all the parties. The parties will approach jointly reputed valuers and suggest an acceptable name for our approval on 30.05.1996 at 04.15 p.m.*
2. *On 10.06.1996 the Company Law Board appointed M/s Thakur Vidyanathan Aiyer & Co., Chartered Accountants, New Delhi as the valuer to determine the value of the said shares, and accordingly value of the said shares were determined by freezing 30.06.1996 as date of valuation by consent of both the parties.*
3. *The Company Law Board by its order dated 18.01.1999 dismissed C.P. 27/95 as not maintainable in terms of Section 399 of the Companies Act, 1956. Nevertheless, it substantially upheld the valuation given by the valuer and rounded the same to Rs.6000/- per share.*
4. *Against the said order dated 18.01.1999 Section 10F appeals were filed before the High Court by the Respondents challenging the Valuation of Rs.6000 per share while the Petitioners challenged the findings of maintainability in the said order and did not challenge the valuation.*
5. *After several protracted rounds of litigation going up to the Supreme Court which finally remanded back the matter to the single judge, the Ld. Single Judge of the High Court upon hearing the said appeal filed on behalf of the Respondents challenging the valuation dismissed the same by its order dated 17.03.2009 while holding as follows :-*
 1. *The valuation as determined by the Valuer to be correct and based on sound principles.*

2. *The Valuation as determined by the CLB @ 6000 per share to be correct. It may be noted that the Petitioners never challenged the valuation as determined by the CLB @ 6000 and that upon a specific question being put to the counsel for the Petitioners they had categorically stated that they were satisfied with the said valuation report before the High Court. The said part of the order is extracted herein below:-*

“Counsel for the Respondents, however filed certain documents on record to show that certain lands which were acquired under the provisions of the ceiling act are released. This position is disputed by the counsel for the appellants. This Court has put a specific question to the counsel for the Respondents whether the Respondents want another report on valuation in the changed circumstances to which Ms. Ahmadi contended that she is satisfied with the earlier report. She has filed documents to show that certain land is released, however, she still relies on the earlier report and does not want to press for any fresh valuation report.”

It further held that subsequent events may only be considered for deciding the question of mismanagement.

6. *Against the aforesaid order dated 17.03.2009 the petitioners preferred the SLP 9643 of 2009 challenging the remand made to the CLB for giving its findings on the issue of mismanagement and failing to consider the subsequent events. However the Petitioner did not challenge the valuation as confirmed by the Ld. Single Judge. Moreover, in the said Special Leave Petition the Petitioners grounds were entirely on the aspect of certain alleged “subsequent events/ developments”.*

7. *The Respondents also preferred SLP 29768 of 2009 against the same order dated 17.03.2009 challenging the Valuation as determined by this Hon'ble Board and confirmed by the Ld. Single Judge of the High Court.*
8. *An interim order was passed in the said SLP and finally the same was vacated by order dated 25.04.2011 directing the Respondents 1 & 2 to secure the claim of the Petitioners in terms of the valuation of their shares at the rate of Rs.6000/- per share, by way of a Bank Guarantee.*
9. *The Hon'ble Supreme Court upon finally hearing the parties at length in the aforementioned SLP's was pleased to dismiss the SLP No.9643/2009 filed on behalf of the Petitioners by its order dated 09.12.2014 after hearing the arguments made on behalf of the Petitioners on the alleged subsequent events. Pursuant to the dismissal of the SLP No.9643/2009 the Respondents in order to put an end to the long drawn litigation also withdraw their challenge to the Valuation made by way of SLP No.28768/2009.*

3. In spite of aforesaid order the petitioners choose not to return the shares to the respondents though the matter reached finality after the order of the Hon'ble Supreme Court.

4. In this background, company applications were preferred by the parties placed before the Tribunal. The Tribunal formulated two points for consideration i.e. whether the Tribunal needs to take consideration the subsequent event as alleged by the petitioners for determination of the share value and whether the orders dated 7th May, 1996 and 18th January, 1999 passed by the erstwhile Company Law Board can be enforced by giving a direction to return the original share scripts.

5. On appreciation of the submissions made by the parties, the Tribunal by the impugned order dated 9th June, 2017 held that the subsequent events as alleged by the petitioners cannot be taken into account for the following reasons :

- a) The issue of subsequent development of alleged lands being released was raised for the first time before the Hon'ble Supreme Court.
- b) The reference of subsequent events in the earlier orders was in respect of subsequent events which had resulted in filing of a second Company Petition by the Petitioners.
- c) Valuation as fixed by CLB @Rs.6000/- per share has been confirmed by the Supreme Court in view of the dismissal of the SLP preferred on behalf of the Respondents challenging the valuation.
- d) Consideration of alleged subsequent release of land would result in fresh valuation of shares.
- e) There being a specific direction of Hon'ble Supreme Court it would not be possible for the NCLT to take into consideration subsequent release of lands.
- f) Tribunal is not required to go into any subsequent events in view of the affidavit filed before it by the Petitioners clarifying that they did not wish to press for an order on the question of oppression and mismanagement.

6. In view of the aforesaid observations the impugned order was passed directing the petitioners to transfer the shares.

7. Learned counsel for the petitioners submitted that the Hon'ble High Court by judgment dated 17.03.2009 and the Hon'ble Supreme Court by order dated 09.12.2014, have not passed any order for transfer of shares as it is clear that the final decision on the fair value of the shares was to be taken by the CLB. It was further submitted that by order dated 25.04.2011 Hon'ble Supreme Court has protected the land released from ceiling and by order dated 09.12.2014 permitted encashment of the Bank Guarantee in pursuance of order dated 25.04.2011. Therefore, according to the learned counsel for the petitioners release of additional land has a bearing on the computation of the valuation which clearly weighed with the Hon'ble Supreme Court, which did not set aside the judgment of the High Court. It was also contended that the question of valuation of the shares was kept open by the Hon'ble Supreme Court and for the said reason, there was no order was passed by the Hon'ble Supreme Court for transfer of shares, while permitting the Petitioners to encash the Bank Guarantee. According to the learned counsel for the petitioners the effect of withdrawal by the Respondents of their SLP amounts to acceptance of mode and method of valuation of shares.

Therefore, according to counsel for the petitioners as given the direction in the impugned judgment for transfer of shares is erroneous.

8. Initially, the parties requested for time to enable them to settle the dispute amicably. The counsel for the petitioners filed an affidavit with suggestion of terms and conditions in principle was accepted by the

respondent with certain variations in view of the order(s) passed by the Company Law Board, followed by order of Hon'ble High Court and Hon'ble Supreme Court. The parties were given time to file a joint petition for compromise but in spite of long adjournment of about four months, they having failed to reach settlement, the case was heard on merits.

9. We have noticed the relevant facts and submissions made on behalf of the parties,

10. From the impugned order, we find that the Tribunal, observed that in view of the decision of the High Court and the Hon'ble Supreme Court the question of 'oppression and mismanagement' is not required to be decided and observed as follows:

"47. In view of these facts, this Tribunal need not give any finding on the aspects of oppression and mismanagement alleged by the petitioner in CP 27 of 1995 or/in 46 of 2000. The only controversy left is whether the subsequent development viz. release of 4759.69 acres of land in favour of Gwalior Agricultural Company Ltd. can be taken into consideration or not in determining the value of the equity shares. This question has already been answered by this Tribunal."

11. In the case in hand as the consent order relating to fixation of value of the shares of the company has reached finality as confirmed by the Hon'ble Supreme Court, it is open to Tribunal to pass order for enforcing the order by giving directions under Section 634(A) of the Companies Act, 1956 (corresponding provision). In view of the power vested with the Tribunal and

the decision which has already reached finality, if the Tribunal has directed the petitioner to deposit the original share scripts along with blank transfer forms duly signed by the transferors relating to 5137 nos. of equity shares and 1279 nos. of redeemable-cum-preference shares and 63.50 nos. irredeemable-cum-preference shares with Registrar of the Tribunal and held that Respondent Nos. 3, 6 and 7 are entitled to receive the same no interference is called for. We find no merit in this appeal, it is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

New Delhi
17th November, 2017

/ns/