

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No. 44, 45 and 46 of 2017

(arising out of Order dated 23rd December 2016 passed by NCLT, Kolkata Bench, Kolkata in I.A.No. 08/2016 in C.P.No. 20/2016)

The Punjab Produce & Trading Co. Pvt. Ltd.

...Appellant

Vs

Pilani Investments & Corporation Ltd & Ors

...Respondents

Present:

For Appellants: Dr. U.K. Chaudhary, Senior Advocate with Mr. Himanshu Vij, Mr. Krishnandu Datta, Mr. Abhrajit Mitra, Sr. Advocate, Mr. Sanjiv Trivedi, Mr. Siddharth Vaid and Mr Ishwar Mohanty, Advocates

For Respondent: Mr. Abhinav Vashisht, Sr. Advocate with Mr. Ajay Bhargava with Mr. Rohan Jaitly, Mr. Nikhil Jhunjunwala and Ms M. Anand, Advocates for Respondents No.1 to 8.

Mr. Sabyasachi Chaudhary, Sr. Advocate with Mr. Vikas Mehta and Mr. Karandeep Khanna, Advocates for Respondents No.9 to 11.

Mr. Abhijeet Sinha with Ms Pallavi Sharma and Ms Titash Sen, Advocates for Respondent No.12.

Mr. Nikhil Rohatgi with Mr. Mohit Khuubchandani, Advocates for Respondent No.13.

J U D G E M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

As these appeals have been preferred by the same appellant against similar order(s) all dated 23rd December 2016, therefore, they were heard together and are disposed of by this common judgement.

2. The appellants preferred Company Petition No. 20 of 2016 before erstwhile Company Law Board, Kolkata Bench under section 397, 398, 399, 402, 403, 406, 407 of the Companies Act 1956 read with section 210 of the Companies Act 2013, alleging 'Oppression and Mismanagement'.

3. In the arena of respondents, the appellants impleaded the following persons as party respondents; apart from others.

Respondent No. 9 : M/s Century Textiles and Industries Limited,

Respondent No. 10 : M/s Rajshree Birla

Respondent No. 11: M/s Bahdurlal Jain

Respondent No. 12: M/s Aditya Marketing & Manufacturing Limited

4. An Interlocutory Application No. 08/2016 was filed by 9th respondent - M/s Centure Textiles and Industries Limited (M/s 'Century Textiles' for short) with prayer to dismiss the Company Petition No. 20/2016 as against the said applicant/9th respondent company and its directors, who were impleaded as 10th and 11th respondents to the Company Petition. The main plea taken in the said application was that the 9th, 10th and 11th respondents are not shareholders of the 1st respondent company - M/s Pilani Investments & Corporation Ltd., nor the directors and against them no allegation of 'Oppression and Mismanagement' had been alleged.

5. Another Interlocutory Application No. 07/2016 was filed by 13th respondent with similar prayer and similar ground that he is not the shareholder of the 1st respondent company M/s Pilani Investments & Corporation Limited and to dismiss the case as against him.

6. The third Interlocutory Application No. 49/2016 was filed by 12th respondent with similar prayer and ground with prayer to dismiss the case as against him.

7. All the applications were heard and were allowed by the National Company Law Tribunal (hereinafter referred to as the 'Tribunal'), Kolkata Bench by three different orders all dated 23rd December 2016, against which three appeals have been preferred.

8. The relevant facts as pleaded in all the appeals are as follows.

The 2nd and 3rd respondents are common directors of 1st respondent company as also of the 9th respondent M/s Century Textiles. They are in control of both the 1st respondent and 9th respondent companies. That apart, the mother of the 3rd respondent, and the only daughter-in-law of the 2nd respondent, Mrs. Rajashree Birla is also a director of the 9th respondent Company - M/s Century Textile and Industries Limited.

9. The 1st respondent company is the single largest shareholders in the 9th respondent company. Shareholding of the 1st respondent company in the 9th

respondent company- M/s. Century Textiles prior to the impugned acts of oppression and mismanagement was 36.7% i.e. 3,42,20,520 shares. The shareholding of the 1st respondent company in the 9th respondent Company - M/s Century Textiles after the impugned acts of oppression and mismanagement has been declined and brought down to 30.64%.

10. Further case of the appellants is that the management and directors of the 1st respondent company diluted the voting rights of the 1st respondent company in the 9th respondent Company - M/s Century Textiles. 9th respondent Company in its turn issued a notice to convene a meeting to issue 1,86,50,000 warrants on preferential basis to the 12th and 13th respondents convertible into equity shares at the ratio of 1:1 at an abysmally low price of Rs. 354.89/- per warrant.

11. According to appellants voting right is one of the rights of all the equity shareholders. One or other cannot give any advantage in favour of one or other shareholder.

12. Grievance of the appellants is that the issue of preferential warrants had the following detrimental effects on the 1st respondent Company.

- a. The shareholding of the 1st respondent Company has come down from 36.78% to 30.64% diluting the control of the 1st respondent Company over the 9th respondent Company - M/s Century Textiles.

- b. There would also be a decline in the value of the 1st respondent Companies shares once the 1st respondents' principal assets are diluted.

13. Learned counsel for the appellant submitted that the ill effects of such decision were brought to the notice of the Board of Directors and Chairman of 1st respondent Company by the appellants' letter dated 23rd May 2014. The 1st respondent Company was asked to oppose the preferential allotment. However, voting rights of 1st respondent Company was used to its detriment by voting in favour of the resolution dated 29th May 2014. The exercise of voting rights of 1st respondent Company had to be backed by a Board's resolution under section 113 of the Companies Act 2013, which was not done. Therefore, passing of such resolution was also a colossal abuse of the managerial powers by 2nd and 3rd respondents who are also directors of 9th respondent Company - M/s Century Textiles.

14. It was further submitted that 2nd and 3rd respondents who are Directors of the 1st respondent Company are the "beneficial owners" of the allottees i.e. 12th and 13th respondents. The 12th and 13th respondents are under the control and management of 2nd and 3rd respondents. 2nd and 3rd respondents have been shown as the "Beneficial Owners" of the preferential allottees in the Notice and minutes of the EOGM held on 14th June 2014.

15. It was also submitted that persons/entities such as 10th, 11th, 12th & 13th respondents would be affected, if principal reliefs claimed in the Section 397 petition are granted. The shareholders of 1st respondent do not form part of the promotor's groups, since upon preferential allotment of 1,86,50,000 warrants/shares, there would be a decline in the value of 1st respondent's Companies share. In fact, the preferential allotment of 1,86,50,000 warrants/shares of 9th respondent Company will go to 12th and 13th respondents. It was also submitted that through the instrumentality of 12th and 13th respondents, the 2nd and 3rd respondents will be the real beneficiaries of the preferential issue. The 9th respondent Company and its management would again include 2nd and 3rd respondents, since the resolution for preferential allotment of 1,86,50,000 warrants/shares would fail, if 1st respondent voted against the resolution.

16. Learned counsel for the appellants submitted that no direction has been given to look into the affairs of the 9th respondent Company though the 9th respondent Company is necessary and proper party for adjudication of the allegations of 'Oppression and Mismanagement'. If the prayer is allowed, it will have a direct bearing on the 9th to 13th respondents as the 9th respondent Company will have to pass necessary directions setting aside the allotments made by it in favour of the 12th and 13th respondents.

17. Learned Counsel for the appellant also contended that the impugned order does not answer the question whether the 9th to 13th respondents are

necessary parties or not. According to him there is no bar in a Section 397/398 in impleadment of entities other than the target company, and also claim reliefs against them by applying the principle that the affairs of a company include the affairs of other companies closely connected.

18. In support of contention that the affairs of one company includes the affairs of other companies closely connected, learned counsel for the appellant placed reliance on decision of Hon'ble Punjab and Haryana High Court in ***“Triangle Builders and Promoters P. Ltd. Vs. CPI Read Estate Ventures Ltd. and Others reported in [2015] 192 Company Cases 483 (P & H).”***

19. Reliance was also placed on ***“Bajranj Prasad Jalan Vs. Raigarh Jutes and Textiles Mills & Ors. reported in [2001] 104 Company Cases 555”*** to suggest that the maintainability of Section 397 of the petition in regard to 9th to 13th respondents who could not have been decided as a preliminary issue without thorough investigation into the facts as pleaded in the petition.

20. Further, according to the appellants where a case of collusion and conspiracy between the management of the target company with other entities is made out in a petition under Section 397/398, other entities should be impleaded as necessary parties.

21. Reliance was placed on Hon'ble Supreme Court decision in "**State of Punjab Vs. Davinder Pal Singh and Others reported in [2011] 14 SCC 770**" wherein the Hon'ble Supreme court held: -

"107. It is a settled legal proposition that if initial action is not in consonance with law all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim 'sublato fundamento cadit opus' meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case."

22. Learned counsel appearing on behalf of the respondents opposed the prayer and submitted that the 9th to 13th Respondents not being shareholders of 1st respondent company, cannot be impleaded as a party to petition under section 397 and 398 of the Companies Act 1956. While in regard to oppression and mismanagement of the 1st respondent company.

23. Admittedly, 1st respondent company is not the holding company of the 9th respondent company.

24. In the petition under section 397 and 398 of the Companies Act, 1956, the case has been made one in respect to affairs of the 1st respondent company though entire allegation of 'oppression and mismanagement' has been made

against 9th respondent company, on the pretext that the 9th respondent company is under the control of the 1st respondent company. If the allegation in the petition is accepted as true, then a petition against the allegation of 'oppression and mismanagement' of 9th respondent company could have been preferred only in respect of 9th respondent company before the Tribunal having territorial jurisdiction subject to possessing requisite qualification of applicant as per section 399 of the Act 1956, qua the 9th respondent company.

25. It is not in dispute that 1st respondent company is the shareholder of the 9th respondent company and mismanagement in regard to 9th respondent company has not been alleged.

26. On the perusal of the petition, the Tribunal noticed that appellants have not mentioned anywhere in the petition that 1st respondent company is holding company of the 9th respondent company. Even before this Appellate Tribunal it is not the case that the 1st respondent company is holding company of the 9th respondent company or that the 9th respondent company is subsidiary company of the 1st respondent company.

27. In "**Vodafone International Holdings BV Vs. Union of India & Ors. reported in [2012] 6 SCC 613**" the Hon'ble Supreme Court has laid down the principle that the right of a shareholder may assume the character of a controlling interest where the extent of the shareholding enables the shareholder to control the management. Shares, and the rights which

emanate from them, flow together and cannot be dissected. Therefore, control and management is a facet of the holding of shares.

28. As per the averment in the petition, the appellant has not claimed that the 9th respondent is a subsidiary of 1st respondent. On the date of presentation of the petition, the 1st respondent company was a single largest shareholder of the 9th respondent company. But in spite of these facts, the 1st respondent company has no controlling power over the affairs of the 9th respondent company.

29. The Tribunal rightly held that the holding company and subsidiary company remain distinct legal entities and even if appellant/petitioner has a cause of action under Sections 397 and 398 against 1st respondent company, and they qualified the criteria of Section 399 of the Companies Act, even on that basis, the appellant, will not get any right to question 'oppression and mismanagement' against the 9th respondent company, as the appellant does not possess the requisite qualification for bringing a petition against the 9th respondent company.

30. Therefore, once the appellant has no right to question the 'oppression and mismanagement' of the 9th respondent company, it cannot raise any question of act of 'oppression and mismanagement' qua the 9th respondent company in so far it relates to 10th, 11th, 12th and 13th respondents are

concerned, who were not the shareholders of the 1st respondent company but shareholders of the 9th respondent company.

31. If the action of the other respondents are held to be oppressive against the appellant or mismanagement of the 1st respondent company, that will not render any decision taken in another company i.e. the 9th respondent company as void or illegal.

32. In view of the aforesaid ground, the Tribunal having directed to delete the 9th, 10th, 11th, 12th and 13th respondents from arena of the respondents, we find no ground to interfere with impugned orders all dated 23rd December 2016. In absence of any merit, the appeals are dismissed. However, in the facts and circumstances of the case there shall be no order as to cost.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
31st March, 2017

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