

SUPREME COURT OF INDIA

National Organic Chemical Industries Limited

Vs.

Miheer H. Mafatlal

C.A.No.4796 of 1997

(N. Santosh Hegde and S.B.Sinha JJ.)

21.07.2004

JUDGMENT

Santosh Hegde, J.

1. This appeal with permission of this Court has been filed by the appellant against a judgment of the High Court of Gujarat at Ahmedabad whereby a cross objection filed in O.J. Appeal No. 16 of 1994 in Company Petition No. 22 of 1994 by Mafatlal Industries Limited (MIL) the appellant in the connected appeal herein was dismissed, confirming certain finding given by the Learned Company Judge in Company Petition No. 22 of 1994 in a petition seeking sanction of Amalgamation Petition under Section 391 of the Companies Act.

2. Brief facts necessary for the disposal of this appeal are as follows:-

“The appellant herein is a Public Limited Company having its registered office in Mumbai. Certain shares of M.I.L. were allotted to the appellant. The allotment of the said shares was challenged by 3 members of the MIL in 2 suits in City Civil Court. Ahmedabad being Suit No. 3181 of 1987 and Suit No. 3182 of 1987. The appellant herein was not a party in that suit. The plaintiff in that suit obtained an order of interim injunction from the City Civil Court, Ahmedabad, inter alia directing MIL to maintain status-quo in respect of the allotment of shares, said order was made on 27.6.1987. During the currency of the said interim order the MIL made a Rights Issue which doubled the holding of the appellant herein bringing the title holding of the appellant in MIL to about 3% of the total shareholding. MIL made an application for approving a Scheme of Amalgamation before the Company Court of the Gujarat High Court under Section 391 of the Companies Act in the month of November 1994. It is seen from the record that the said Scheme had received approval of more than 94% of shareholders of the MIL, which is much beyond the statutory requirement under the Companies Act. In the said petition for approving the Amalgamation Scheme, the first respondent herein questioned the allotment of shares by MIL to the appellant herein. Though, such allotment was made very much earlier to the proposed Amalgamation Scheme. The contention of the 1st respondent before the Company Court was that the

shares allotted to the appellant were, inter alia, in contravention of the injunction issued by the City Civil Court. It is to be noted at this stage that the appellant was not a party to the proceedings before the Company Judge, in the proceedings for approval of the Scheme under Section 391 of Companies Act. The Learned Company Judge whose jurisdiction under Sections 391 to 394 was limited to either approving or not approving the Scheme filed before him for amalgamation, by his order dated 14.11.1994 sanctioned that said Scheme on Amalgamation, he also came to the conclusion that even if the votes cast by the appellant were to be excluded from consideration the proposed Scheme had the support of the requisite majority in the General Body of the MIL. Hence, the objection of the 1st respondent in regard to the proposed Scheme of Amalgamation was not sustainable. However, the Learned Single Judge gave a finding that the allotment of shares in favour of the appellant was in breach of the injunction order of the City Civil Court.”

3. Against the said order, the 1st respondent herein and MIL filed original appeal (OJ No. 16 of 1994) and cross appeal before the Division Bench of the said High Court. Even in the said appeal the appellant was not made a party. The Appellate Bench dismissed the challenge of the 1st respondent for the grant of approval to the Amalgamation Scheme but confirmed the findings of the Trial Court that the allotment of the shares in favour of appellant by the MIL was in contravention of the injunction order. The approval of the scheme of amalgamation has since become final.

4. In this appeal the appellant who is directly affected by the findings of the Learned Company Judge as well as the Appellate Court after obtaining permission to file S.L.P. and leave to appeal is challenging the said finding before us.

5. Learned Senior Counsel appearing for the appellant herein raised the following contentions for our consideration:-

“(1) In a Section 391-394 petition, the Company Court could have only decided the question as to grant of sanction or reject the Scheme of Amalgamation placed before it.

(2) The Company Court could not have gone into the question of title of individual shareholders in a proceedings under Sections 391-394.

(3) In any event, in the present case, as a Scheme was approved by well over 75% in value of the shareholders in the General Body Meeting even after excluding the Shareholding of the Appellant the issue of validity of allotment of shares to the Appellant did not arise. Hence, the Company Court could not have gone into the question of title of appellant's share in MIL.

(4) Under the Companies Act a person could assail the allotment of shares only by a petition for rectification under Section 155 of the Companies Act as it stood at the relevant time and no such petition having been filed at that time, a challenge to the

allotment of share in favour of the appellant had become time barred by December, 1990. Hence, it was not open to the Company Court to go into the validity of the issuance of the shares by the MIL in favour of the appellant.”

6. At this stage, we must notice in spite of service of notice through publication in newspapers, the respondent has not chosen to appear and contest the case. We are also told that so far as the allegation of violation of the injunction granted by the City Civil Court is concerned, the same is being adjudicated in the said Court by initiating contempt proceedings by the concerned parties and it is still pending.

7. Learned Counsel for the appellant in this appeal apart from the above recorded arguments, contends that the appellant will be seriously affected by the findings recorded by the Company Court as well as by the Appellate Court in regard to the violation of the injunction order which in turn affects the title of the appellant over the shares held by it in MIL. He submitted that the appellant has not been made a party either to the suit, the Company Petition or in appeal and in spite of the same, adverse order has been passed affecting its right. He also contends that the Company Court had no jurisdiction whatsoever to have gone into the question of validity of the transaction between the appellant MIL in an Amalgamation Proceedings where the scope of enquiry is only to examine whether the statutorily required members of the Company have approved the Scheme or not. It was pointed out from the findings of the courts below that the Scheme has been approved by more than 75% of the members of the MIL even excluding the voting strength of the appellant.

8. Having heard the learned Counsel for the appellant in this appeal and the connected appeals we are satisfied that the courts below in the impugned order have gone far beyond their jurisdiction by giving findings as to the validity of shares acquired by the appellant. Before the Company Court this issue did not arise at all consequently, even before the Appellate Court this question did not arise. The question whether the transfer of shares by the MIL to the appellant was in contravention of the interim order of the injunction granted by the City Civil Court or not, is a matter to be decided by the City Civil Court in the pending proceedings before it and it could not have been decided in an alien proceedings before the Company Court. There was no statutory need to have decided this issue while dealing with the application for approval of the Scheme under Section 391 of the Companies Act, indeed, that issue did not arise before the Company Court. That apart basic principles of natural justice are violated by the courts below in deciding an issue against the appellant in proceedings to which the appellant was not even party. By this finding, the appellant's right to hold shares in the MIL gets affected and even the question of violation of the terms of injunction on facts of this case, was not a matter before these forums. Therefore, we are of the considered opinion that the findings given by the Company Court as affirmed by the Appellate Court as to the violation of the injunction order also as to the validity of the transfer and the title of the appellant over the shares held by it in the MIL being findings which are made beyond the jurisdiction of the courts below, we have no hesitation in setting aside these findings. This issue as to the violation of injunction order or any other issue pertaining to the validity of title of the shares transferred in favour of the appellant by MIL is

a matter if at all, to be decided by the City Civil Court in the pending suits if it arises for consideration. Therefore, we allow this appeal, set aside the findings impugned in this appeal.

Civil Appeal Nos. 4797 and 4798 of 1997:--

9. In view of the judgment rendered in C.A. No. 4796 of 1997, these appeals are also allowed.