

**SUPREME COURT OF INDIA**

J.P. Srivastava & Sons (Rampur) Pvt. Ltd

Vs.

H.K. Srivastava (Dead) through L.Rs.

SLP (C) No.19235-19236 of 2005)

(Altamas Kabir and V.S. Sirpurkar)

03/09/2008

**JUDGMENT**

**V.S. SIRPURKAR, J**

1. Leave granted.

2. A common Judgment of High Court of Madhya Pradesh at Gwalior in Miscellaneous Company Appeals filed by the Respondents herein is in challenge before us. These Appeals were filed by the Respondents against the order of the Company Law Board (CLB) arising out of the applications filed by the appellants herein under Section 397 and 398 of the Companies Act (hereinafter referred to as 'the Act') alleging mismanagement of the company by the Respondents. Both the parties have already completed one round of litigation upto this Court and have come up before us in the second round. The factual matrix leading to the filing of the present appeals before us dates back to July, 1995 when the appellants herein filed the petitions under Section 397, 398 of the Act. The facts are as under.

3. This is a family dispute amongst two brothers, namely, J.K. Srivastava and H.K. Srivastava, both of whom have expired. Their Legal Representatives are before us. J.K. Srivastava Group (appellants herein) filed Company Petition No.27 of 1995 dated 1.7.1995 before the Company Law Board under Sections 397 and 398 of the Act alleging that M/s. Gwalior Sugar Company Ltd., which is a family concern, was being mismanaged by H.K. Srivastava Group.

4. The Company Law Board, on the basis of the aforementioned petition and the replies thereto by the respondents, was initially of the opinion that this being a family concern, the disputes should be resolved amicably and passed an order dated 22.1.1996 calling upon the parties to make efforts for compromise. The relevant extracts of the order are as under:

"In view of the close relationship between the parties, we suggested to the counsel for both the sides that they should try to work out an amicable settlement between the parties. The counsel have undertaken to do so. The result of their efforts will be intimated to us on 20th February 1996 at 2.30 p.m"

Thereafter, three hearings took place and ultimately on 7.5.1996, the CLB passed the following order:

"It was agreed by the parties that the petitioners 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 30.5.1996 at 4.15 p.m."

5. On 10.6.1996, with the consent of the parties, the CLB appointed M/s. Thakur Vaidyanathan Iyer & company Chartered Accountants, New Delhi to value the shares of the Company. On 22.11.1996, the Chartered Accountants valued the shares. As the respondents had reservations about the value, the matter was re-heard by the valuer and ultimately the value of equity shares was decided at Rs.6340/- per share. The valuation for a preference share of Rs.100/- was fixed at par. The respondents herein objected to this valuation also vide their C.A. No. 302 of 1997. They also filed C.A. No. 264 of 1997 for recalling the order dated 10.6.1996.

Their contention was that the other disputes relating to the family properties in possession of the petitioners should also be settled. The matter was fixed for hearing on 6.11.1998.

6. However, before that, respondent no. 8 Mrs. Radhika Srivastava filed an application C.A. No. 262 of 1998, challenging the order dated 10.6.1996 and praying for its recall. It was alleged in the application that respondent no. 8 had no knowledge of the compromise and that she was kept in dark about the settlement arrived at. She also further contended that the petition under Section 397 & 398 of the Act was not maintainable since as per Section 399 of the Act, the petitioner had to have 10% of the total issued share capital which would include preference shares. According to respondent no. 8, the petitioner did not have the shareholding of 10%. Hence the petition under Sections 397 and 398 of the Act before the CLB itself was not maintainable.

7. This application was replied to by the present appellants, more particularly, the appellant no. 3 Mrs. Nini Srivastava, wherein, it was stated that the petition filed before the CLB under the provisions of Sections 397 and 398 of the Act was on behalf of the appellant no. 3 herself and also as the trustee of J.K. Srivastava Family Trust (referred to as the 'Trust' hereinafter) and since the Trust had 1029 preference shares and since she had an authority to represent the Trust and file petition on its behalf, the petition was perfectly legal. It was also contended that the respondent no. 8 Mrs. Radhika Srivastava was fully aware of this situation since she had participated in the proceedings in which there had been 25 hearings over three and a half years till then. By an order dated 6.11.1998, the CLB directed the appellants to file the consent/authority, if any given by the Trust to Mrs. Nini Srivastava for filing the petition under Section 397 and 398 of the Act. On 9.11.1998, the appellants brought on record an affidavit dated 9.6.1995 and one affidavit of Mr. V.K. Srivastava dated 12.6.1995 was also brought on the record. A detailed reply was also filed to the application filed by Mrs. Radhika Srivastava that Mrs. Nini Srivastava, the 3rd appellant herein, was appointed as a trustee of the Trust on 24.8.1994 and she enjoyed the authority/consent to file the petition vide communication dated 9.2.1995 and she also had the consent of the co-trustee Mr. V.K. Srivastava as per the affidavit dated 12.6.1995.

8. The Company also filed its reply and naturally supported the respondents contending that since the petitioner was holding the shares less than 1/10th of the issued share capital of the company, the petition was not maintainable.

9. All the three applications (C.A.No. 262 of 1998, C.A. No. 264 of 1997 and C.A. No. 302 of 1997) and the objections thereto were heard by and decided by the CLB on 18.1.1999. The CLB took the view that the application C.A. No. 264 of 1997 was liable to be dismissed and C.A. No. 302 of 1997 was also liable to be dismissed, however, it arrived at a conclusion that the proper valuation of the shares would be Rs.6000/- per equity share. As far as the third application C.A. No. 262 of 1998 is concerned, the CLB took the view that though the other objections were without any merits, the objection pertaining to the maintainability of the petition was valid, as the petitioner did not have the authority of the Trust and the petitioner did not have shareholding exceeding 10% of the total shareholding. On this ground alone, the CLB dismissed the petition filed under Sections 397 and 398 of the Act.

10. Three appeals came to be filed against this order of the CLB. One of the appeals was by the present appellants against the finding of maintainability, while the other two appeals were by the respondents (herein), whereby their prayer for recall of order dated 10.6.1996 and the finding on the consent was rejected by the CLB. All the three appeals were dismissed by the learned single Judge of the High Court by its order dated 30.6.2000. The learned single Judge upheld the findings of the CLB on the maintainability of the petition and dismissed the appeal filed by the appellants. The learned Judge, however, observed that since the original petition itself was had to be not maintainable, nothing survived in the appeal filed by the respondents herein, challenging the other findings of the CLB.

11. The appellants filed Letters Patent Appeal against the order of the learned single Judge. The Division Bench, however, dismissed the appeal filed by the appellants vide its order dated 10.8.2001 and observed that since the appellants had filed a fresh application before the CLB, the CLB should decide the subsequent application on its merits ignoring the observations made by the CLB as well as the learned single Judge about the number of shares held by the Trust, and should further decide the case on merits.

12. All these appellate judgments of the learned single Judge as well as the Division Bench were challenged by the appellants before this Court and this Court allowed these appeals vide its judgment dated 26.10.2004. The Court specifically held that the third appellant Mrs. Nini Srivastava had the necessary authority to file the appeal on behalf of the Trust and she as well as the Trust had more than 10% of the share capital of the Company in control, and as such, there was no bar under Section 399(3) of the Act and also the Regulation 18 for the petition under Sections 397 and 398 of the Act.

13. Accordingly, the matter was remanded back to the learned single Judge. The learned single Judge, however, came to the conclusion that the CLB had not decided any other matter on merits, since it had taken the view that the original petition under Sections 397 and 398 of the Act for mismanagement of the company were not maintainable. The learned single Judge, therefore, without expressing anything, sent back the whole matter to the CLB by his order dated 27.7.2005. It was observed by the learned single Judge in his order:

"After hearing both the parties, I find that the Company Law Board had dismissed the petition on the ground that it is not maintainable and the said view was upheld upto the Division Bench. However, now the Apex Court has taken a different view and held that the petition is maintainable. From perusal of impugned order, I find that the Court below has not given any findings on the merits of the case, i.e., findings about the mismanagement. In such circumstances, this Court has no option but to remand the matter to the CLB for deciding the matter afresh. At the time of deciding the matter afresh, the Company Law Board shall consider the entire record available. At the time of arguments, it was also pointed out by both the parties that some subsequent events have taken place

during the last six years and a fresh petition against the company is also filed which is pending. Under regulation 24, the Company Law Board has to take into consideration all the events till the date of passing the order."

Thus, the matter stood remanded further to the CLB. It is against this order of the learned single Judge that the appellants have filed the present appeals.

14. Ms. Ahmadi, the learned counsel for the appellants strenuously took us through all the orders and firstly contended that the learned single Judge has completely ignored the findings given by the CLB on the questions other than the maintainability of the petition. She pointed out that the CLB had very categorically found that the respondents had given consent for settling the matters amicably and accepting such consent, the CLB had passed the final order. She also pointed out that the CLB had also fixed the valuation of the shares at Rs.6000/- per equity share, though the Chartered Accountants appointed by the CLB had initially fixed the price at Rs.6340/- per equity share. She also pointed out further that the petition filed by Mrs. Radhika Srivastava (C.A. No. 262 of 1998) was fully dealt with and the objections raised by Mrs. Radhika regarding her not even having consented to the agreement, was rejected. Her further contention for recall of the order dated 10.6.1996 was also rejected by the CLB. It was only her objection regarding the maintainability, which was entertained by the CLB holding that the petition under Sections 397 and 398 of the Act was not maintainable. But, however, since this Court has held the petition to be maintainable, it is obvious that the other findings were also very much alive in that order. She further pointed out that appeals were filed before the learned single Judge in the first round, precisely against those findings. She, therefore, urges that the learned single Judge was in error in ignoring all these findings and refusing to decide the appeals which were against those findings. The learned counsel carries the arguments further and suggests that this Court now should put an end to the controversy by upholding the order of the CLB regarding the consent agreement on the part of the respondents. She has also relied on a number of decisions, which pertain to the effect of the party even having consent for the compromise.

15. As against this, the respondents, however had supported the order of the learned single Judge, saying that all the questions were open before the CLB and the learned single Judge is right in remanding the matter further for re-hearing and re-decision on all the other questions.

16. On this background, we would have to see as to whether the learned single Judge was right in making a wholesale remand. It would be proper for us to first consider the order passed by the CLB in details, as it will have to be examined as to whether the CLB has actually not decided upon any other point excepting the maintainability of the petition as held by the single Judge in impugned judgment.

17. In the first two paragraphs, the CLB referred to the facts of the petition and subsequent

settlement arrived at regarding the sale of shares by the petitioner at a value to be determined by a valuer appointed by the CLB. It also referred to the appointment of M/s. Thakur Vaidyanathan Iyer & Company, Chartered Accountants, New Delhi to value the shares of the company. In third paragraph, the CLB referred to the presence of Mr. Vikram Srivastava, Joint Managing Director, respondent no. 3 as also the per share value arrived at by the Chartered Accountants as per their valuer report, which was arrived at Rs.7031/- per equity share. The CLB then makes a reference to the date 5.3.1997, when the counsel for the petitioners accepted the value determined by the valuer, whereas, the respondents' counsel had sought some time as also to the order dated 18.3.1997, wherein, it was held that the valuers should give hearing to the petitioners as also to the respondents within three weeks. In the fourth paragraph, the CLB then refers to the written submissions before the valuer as also the revised report of 8.10.1997 and the ultimate value computed by the valuer per equity share of Rs.100 each being Rs.6340/-. It also made a reference to C.A. No. 264 of 1997 seeking for recalling the order of the Bench of valuation of the shares and for abandoning the valuation process and to proceed with the petition in accordance with law. It then made a reference to the hearing which took place on 15.12.1997, wherein, the request was made by the respondents to file objections to the valuation report as also to the further developments dated 20.12.1997 etc. and ultimately to the instructions by the CLB, wherein, the CLB had advised the parties to send notes to the Bench stating specifically the points on which they had reservations on the reports of the valuer, so that the Bench itself could take up the matter with the valuer. After referring to the fact of the parties, sending the details of their petitions, the CLB ultimately referred in this paragraph the possibility of settling the prices between the parties.

18. In paragraph 5, the CLB referred to the contentions of the respondents about the valuation made by the valuer through Mr. Vijay Gupta, counsel for the respondents, mainly to the effect that the valuation was vitiated, as the person who had done the valuation on behalf of the valuers was earlier a director of the Board of a company in which one petitioner was a director. In paragraph 6, the arguments of the advocate for the petitioner were dealt with to the effect that the consent terms recorded was an independent one without having any connection with the disputes between the parties and, therefore, they should be independently implemented. The CLB also referred to the readiness on the part of the petitioners to settle all the disputes, as also to settle the other disputes through arbitration. The CLB also referred to the further arguments that, however, the payment for the shares held by the petitioner should be independent of the arbitration. In paragraph 7, the reply on the part of the advocate for the respondents was referred to, while in paragraph 8, the CLB referred to the application by respondent no. 8 being C.A. No. 262 of 1998 dated 3.11.1998. It also referred to the fact that replies were permitted to be filed to the aforementioned C.A. No. 262 of 1998, and it is ultimately in paragraphs 9 and 10 that the CLB initially dealt with the applications C.A. No. 264 of 1997 and 302 of 1997. After considering the arguments in detail, and after referring to the happenings at the earlier stage of the proceedings as also after considering a decision of the CLB in Mrs. Michelle Jawad-A1-A1-Fahoum Vs. Indo Saudi Travels P. Ltd. (1988- 30 CLA 42), the CLB observed in the present case also that:

"there is absolutely no reference to the private understandings between the parties in the order dated 10.6.1996 and the petitioners are not agreeable for any modification in the said consent order. Once the parties consent to certain terms of settlement and the same is recorded by a judicial forum, then the parties are bound by the said settlement terms. Therefore, there is no scope for recalling the

order dated 10.6.1996 on this ground."

Thereafter, the CLB also rejected the contention raised on behalf of the respondents that even if the consent terms were to be implemented by which the respondents would purchase the shares of the petitioners, then it could be only after the other disputes between the parties are settled and till such time, no payment need be made for the shares. The CLB observed that:

"this argument also deserves to be rejected as no such reference is found in the order dated 10.6.1996. Further, after this order, a few hearings took place and at no point of time this issue was raised by the respondents". It further went on to hold:

"Thus it is clear that even if there has been an agreement to settle the other disputes, it was to be after the shares of the petitioners are bought out by the respondents".

The CLB then referred to the proposal by the counsel of the petitioners to refer all other disputes to the arbitrator to be appointed by the CLB and observed:

"We think that it is a very fair proposal as the same would put an end to all the disputes between the parties and a time frame of 9 months for completion of the arbitration proceedings should be sufficient and that on expiry of 9 months, the respondents should pay the consideration for the shares irrespective of the fact whether the arbitration proceedings are concluded or not."

In paragraph 10, the CLB referred to the valuation arrived at by the Chartered Accountants. The CLB ultimately recorded a finding:

"Thus on the basis of the valuation report, we consider that a sum of Rs.6000/- per equity share would be an appropriate value for these shares and Rs.100/- each for the preference shares.

19. It is then that the CLB considered the objections and prayers raised by respondent no. 8 in C.A. No. 262 of 1998 including the contention that the petition under Section 397 and 398 of the Act was not maintainable as the petitioner did not hold 10% of the share capital. The CLB firstly held that the prayer of the 8th respondent for recall of the order dated 10.6.1996 on the ground that she was not a party to consent agreement, had to be rejected.

20. The CLB took into consideration the various facts that the respondent no. 8 had kept quiet on large number of hearings, though, her counsel was present all through. It also made a reference that no explanation was given as to why respondent no. 8 had waited for nearly an year to present this application (C.A. No. 262 of 1998), challenging the consent terms.

21. On the second and the main aspect, concerning the Section 399 of the Act, it was referred that the petitioners holding less than 10% of the share capital could not move application under Section 397 and 398 of the Act. The CLB in paragraph 25 held as follows:

"Thus, this petition suffers from either one or more of the following: Consent in writing was not filed along with the petition; The Trust did not, on the day of filing the petition control all the 1029 preference shares; all the trustees have not been made parties to the petition and the trustees cannot, in law give consent to a co-trustee to file the petition. If it is so, then the shares held by the Trust cannot be taken into account for the purposes of the provisions of Section 399 and as such without passing any directions in pursuance to our conclusions at paragraphs 9 and 10, we dismiss this petition. However, since we ourselves feel that the correctness of our decision needs to be tested on appeal, we also stipulate that all subsisting interim orders will continue up to 31st March, 1999 so as to provide for some time to the parties to initiate appeal proceedings. Petition is dismissed. No order on cost".

22. We have carefully seen and noted that this Court upset only the later part of the order, particularly pertaining to the maintainability of the petition under Section 397 and 398 of the Act on account of the provision of Section 399 (3) of the Act. It specifically held in its judgment dated 26.10.2004 that the CLB had incorrectly held the said petition to be not maintainable. This Court found specifically that the objection regarding the applicability of Section 399(3) of the Act could not hold water, and it was categorically declared that the 3rd appellant (herein) had the necessary authority to file the appeal on behalf of the Trust and she as well as the Trust had more than 10% of the share capital alongwith the appellant Mrs. Nini Srivastava. Thus, it is clear that the order of the CLB only on the question of maintainability was held to be erroneous. It is to be noted that no other aspect and the finding in that order were even touched by this Court. Since this Court remanded the whole matter to the learned single Judge before which the appeals against the order of the CLB were filed, on this background, when we consider the judgment now passed after remand, by the learned single Judge, it is seen that the learned single Judge has miserably failed to decide any questions whatsoever. The parties were at issues on all the aspects of the order passed by the CLB besides the finding of the CLB on the maintainability of the petition. This Court specifically held that the objection regarding the maintainability, more particularly, raised by the respondent no. 8 was not tenable and the petition under the Company Act was perfectly maintainable. This Court had deliberately not expressed on any other aspect of the matter. A careful scanning of the order passed by this Court shows that this Court had decided the matter only on the question of applicability of Section 399 (3) of the Act and had come to a clear conclusion that the petition under Section 397 and 398 of the Act was perfectly maintainable. In short, this Court had left it to the learned single Judge to decide every other question dealt with by the CLB in its order, since the appeals against those questions were pending before the learned single Judge and since those appeals were not

decided at the first instance by either the single Judge or the Division Bench.

23. On this background, we find that the single Judge has taken a very strange view of the matter and has proceeded to hold that the CLB had not decided the matter on merits, and, therefore, the whole matter was liable to be re-decided by the CLB. In this behalf, we must point out that the CLB had given the findings on C.A. No. 264 of 1997, C.A. No. 302 of 1997, C.A. No. 262 of 1998 as also the objections raised thereto by the appellants. It is for this reason that we have dealt with the order passed by the CLB in great details in the earlier part of the judgment. According to us, it cannot be said that the CLB had not decided all the other matters, since, it had found the original petition to be untenable. We, however, desist from dealing with any other findings of the CLB to which we have already made reference. We refuse to express anything, since this Court had expected the learned single Judge to decide all those matters covered by the appeals filed by both the parties and to decide upon the correctness of the order passed by the CLB on all the other issues excepting the issue of maintainability, which issue was already finally dealt with by this Court in the judgment dated 26.10.2004. We are, therefore, of the clear opinion that the matter should be referred back to the learned single Judge for deciding all the three appeals filed by the respective parties with the time frame.

24. As regards the contentions raised by Ms. Ahmadi, learned counsel for the appellants as also the contentions raised by the opponents, we have already held that it would not be feasible for us to consider the merits of the appeals filed by the parties against the order of the CLB. We have pointed out that in its order, the CLB had considered number of questions raised by the parties vide their objections and independent applications filed from time to time. Barring the question of tenability - which is finally decided upon - this Court had not considered any other questions covered in those appeals and had left the same to be decided by the single Judge. We, therefore, would not go beyond the directions of remand, earlier issued by this Court. That would be neither a proper nor an appropriate course to follow. However, we must clarify that it would be open for the High Court to go into the question as to whether the parties hereto were bound by the terms of compromise, which have been affirmed by the CLB. In that, the High Court would also be bound to consider the tenability of the appeals filed by H.K. Srivastava Group. We have clarified this position, as so far there has been no debate on the tenability of the appeals against the orders effected through compromise.

25. We, therefore, would reiterate the earlier order of remand to the single Judge passed by this Court. In that view, we direct:

(1) That the single Judge will now take up all the three appeals filed by the parties against the order of the CLB and dispose of the same in the light of the observations made by us.

(2) This shall be done within six (6) months from the date of this order reaches the High

Court.

(3) All the other contentions would be allowed to be raised and considered except the question of tenability of the petition under Section 397 and 398, which has been finally decided by this Court in the earlier round of litigation.

(4) The parties are also permitted to raise the questions regarding the subsequent developments directly in accordance with law and only if they are germane to the matter in question.

The appeals are disposed of in above terms. There shall be no orders as to costs.