

SUPREME COURT OF INDIA

Bagri Synthetics Private Ltd.

Vs.

Hanuman Prasad Bagri

C.A.No.2923 of 2006

(Vikramajit Sen and Shiva Kirti Singh,JJ.,)

29.09.2015

JUDGMENT

Shiva Kirti Singh,J.,

1. Appellant is a company against whom a winding up petition filed by the respondent under Sections 433, 434 and 439 of the Companies Act bearing Company Petition No. 112 of 2002 is pending in the High Court at Calcutta. The plea for winding up is based upon just and equitable grounds. In the facts of the case, after hearing the parties the Court ordered that the shares of the company be valued by an approved auditor so that company would settle the dispute by purchasing the three hundred shares held by the respondent in the company and bring the dispute to a quietus. The Valuation Report was submitted in January 2004. The appellant raised objections to the report to which reply was filed by the respondent. The learned Single Judge on 17.3.2004 directed the appellant company to purchase the shares of the respondent as per Valuation Report in respect of the rate of the shares. That order was partly modified on 29.3.2004 to provide that in case of default by the company, the respondents shall be at liberty to make publication in “The Statesman” and “Anand Bazar Patrika”. By yet another order dated 20.4.2004 learned Single Judge fixed 1.6.2004 as the time schedule by which the appellant company was required to pay the due amount. All the aforesaid three orders were challenged by the appellant through an intra-court appeal before the Division Bench bearing Civil Appeal No. 266 of 2004. Ultimately that appeal was dismissed by an order dated 12.7.2004 and that order of the Division Bench is the subject matter of the present appeal.

2. The order of the learned Single Judge dated 17.3.2004 refers to an earlier order dated 7.5.2003 which records that in course of hearing of application for winding up, the parties agreed that the shares of the company be valued so that the management could offer purchase of the shares of the petitioner (respondent herein). At the first instance the cost of valuation of shares was ordered to be borne by the respondent herein. On 17.3.2004 the Court noted that the Valuation Report declared the value of the shares as Rs.2,530/- per share and at that rate the respondent herein was agreeable to sell his three hundred shares. The company however offered to buy the shares at Rs.500/- per share. The Court found such variation in

the stand of the company without any reason and hence it directed the company to purchase the shares as per Valuation Report. The Court also directed the appellant to bear 50% of the cost paid to the valuer by reimbursing the respondent herein for a sum of Rs.12,900/-. As noted earlier the above order was modified partly on 29.3.2004 by adding a default clause in case the company failed to make the required payment and further by order dated 20.4.2004 the time for payment was fixed as - on or before 1.6.2004. The Division Bench noted the aforesaid relevant facts and came to the view, and in our opinion rightly, that the case of the parties rested on the issue whether the parties had agreed on 7.5.2003 that the purchase of the shares by the present management will be made as per the valuation to be determined. The only submission advanced before the Division Bench was that the company or its management was not bound to offer for purchase of the shares at the rate determined by the Valuation Report. The Division Bench found such submission to be unacceptable in the light of the gist/substance of the order dated 7.5.2003. The Division Bench inferred that the learned Single Judge could not have forced the parties to reach to an agreement and nearly Rs.26,000/- spent for finding out valuation of the shares could not have been just for fun. The Division Bench dismissed the appeal with costs. On hearing the parties we find that the same contention which was raised by the appellant before the Division Bench has been reiterated. We also find no merit in the contentions. There is no infirmity factual or legal in the order of the Division Bench to warrant interference. The appeal is dismissed with cost of Rs.25,000/-.