Hanuman Prasad Bagri & Ors vs Bagress Cereals Pvt. Ltd. & Ors on 27 March, 2001

Equivalent citations: AIR 2001 SUPREME COURT 1416, 2001 AIR SCW 1359, 2001 CLC 385 (SC), 2001 (2) UJ (SC) 1134, (2001) 4 JT 424 (SC), 2001 (2) COM LJ 392 SC, 2001 (2) LRI 1470, 2001 (3) SCALE 86, 2001 (4) SCC 420, 2001 (4) SRJ 490, 2001 UJ(SC) 2 1134, (2001) 105 COMCAS 493, (2001) 3 MAD LW 478, (2001) 2 SCJ 644, (2001) 41 CORLA 258, (2001) 3 SUPREME 80, (2001) 3 SCALE 86, (2001) 2 BANKCLR 17

Bench: S. Rajendra Babu, K.G. Balakrishnan

CASE NO.:
Special Leave Petition (civil) 17137 of 2000

PETITIONER:
HANUMAN PRASAD BAGRI & ORS.

Vs.

RESPONDENT:
BAGRESS CEREALS PVT. LTD. & ORS.

DATE OF JUDGMENT: 27/03/2001

BENCH:
S. Rajendra Babu & K.G. Balakrishnan

JUDGMENT:

RAJENDRA BABU, J. :

L...I...T.....T.....T.....T.....T.....T.....T..J A petition under Sections 397 & 398 of the Companies Act, 1956 [hereinafter referred to as the Act] was filed before the Calcutta High Court on grounds of oppression and mismanagement. The learned Company Judge held that the Petitioners grievance in regard to ouster from the management of the company is legitimate and justified; that respondent No.3 had manoeuvred the matters in such a manner to result in the ouster of the Petitioner No.1 from the management of the Company. The learned Company Judge further directed the Petitioner No.1 and his group members to sell their shares to respondents at a value to be determined by a Valuer as on 16.5.1988, that is, the date

of the petition and also held that the Petitioner No.1 had been illegally removed as an Executive Director of the Company. Appeal was preferred on behalf of the Company by respondent No.2 and also on his own behalf. The Petitioners also claimed in that appeal that the learned Company Judge should have given guidelines for valuation of the shares on the market value and should have also provided for payment of interest on the amount receivable by them both on account of share value and remuneration. The Division Bench of the Calcutta High Court allowed the appeal by the order made on 25.8.2000 holding that one of the conditions precedent for granting relief under Section 397 of the Act is that the Petitioners should prove that winding up of the company would unfairly prejudice the Petitioners who are claiming of oppression, that otherwise the facts will justify the making of a winding up on just and equitable grounds. Contesting the correctness of this view, this special leave petition is filed.

Relying upon the decision in Needle Industries (India) Pvt. Ltd. v. Needle Industries New (India) Holding Ltd., AIR 1981 SC 1298, it is claimed that even if a case of oppression is not made out by the Petitioners, the Court is not powerless under Section 397 of the Act to do substantial justice between the parties and, therefore, on the facts available in the case the order made by the learned Company Judge should have been maintained. It is pleaded that it is not possible for the Petitioners and respondents to carry on business of the company together and the only solution is that one group shareholders should purchase the shares of the other group and that the Petitioners have no objection in selling shares of their group at a proper value.

Section 397(2) of the Act provides that an order could be made on an application made under sub-section (1) if the court is of the opinion (1) that the companys affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members; and (2) that the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, and (3) that the winding up order would unfairly prejudice the applicants. No case appears to have been made out that the companys affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive of any member or members. Therefore, we have to pay our attention only to the aspect that the winding up of the company would unfairly prejudice the members of the company who have the grievance and are the applicants before the court and that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. In order to be successful on this ground, the Petitioners have to make out a case for winding up of the company on just and equitable grounds. If the facts fall short of the case set out for winding up on just and equitable grounds no relief can be granted to the Petitioners. On the other hand the party resisting the winding up can demonstrate that there are neither just nor equitable grounds for winding up and an order for winding up would be unjust and unfair to them.

On these tests, the Division Bench examined the matter before it. It was noticed that the shareholding of the Petitioners is well under 20% while that of those opposing the winding up is more than 80%. Therefore, the adversary group has sufficient majority shareholding even to pass a special resolution.

The grievances made by the Petitioners before the Division Bench of the High Court are as follows:@@ JJJJJJJJJJJJJJJJJJJJ

1. That the registered office of the company was shifted from the congested Posta area to the multi-storeyed building called Chatterjee Polk on Jawaharlal Nehru Road, and then again shifted back from there.

2. That a certain amount of wheat quota for which above Rs.17 lakhs was deposited by the company was allowed, contrary to control orders to be lifted by a sister concern.

3. That a certain loan payable to the Petitioner No.1 a little under Rs.6 lakhs was sought to be paid back by the company by seeking to make a book adjustment, trying to show a payment to another company Sumati in extinguishment of the liability of the Petitioner No.1 to Sumati on the oral instruction of Petitioner No.1 that the debt to him be paid instead to Sumati.

4. That certain roller boxes, about 14 in number were sold off at an aggregate price of Rs.96,000/-, although those had been acquired in 1980 at a cost of Rs.75,000/-. The complaint was that the boxes were still usable and unnecessarily sold.

5. That a large amount of commission, of the order of Rs.20 lakhs or so, although receivable by respondent No.3 and/or his son, was got paid by Mitsubishi to the company so as to avoid tax incidence to respondent No.3 himself, who utilised the losses of the company for setting off of the profit, treating the company as the respondent No.3s own company.

6. That the continuing directorship of Petitioner No.1 was sought to be terminated without giving him appropriate notices of the Board meetings; the terminations were alleged to be of no effect and the stoppage of remuneration and of directorial benefits, improper and illegal.

The Division Bench was neither impressed with the merits of the case nor with the legal position and reached a conclusion that the company petition is liable to be rejected on the ground that there is no finding by the learned Company Judge that the winding up will unjustly prejudice the company, therefore, the order of the nature appealed had been passed and also concluded that the it is impossible for them to arrive at a finding in favour of the Petitioners. So far as shifting of the registered office from Posta area to Chatterjee Polk and back to Posta, the Division Bench was of the view that shifting of the registered office by itself may not be a reason or a ground to be raised in a petition under Section 397 or 398 of the Act as long as the company did not suffer much loss on account of the shifting and shifting back and no case was made out to show that such exercise was undertaken to put an oppressive pressure and pain upon the Petitioners. It is not clear that such a course was adopted by way of a wasteful expenditure so as to amount to mismanagement and on that rejected the first contention.

As regards the second contention that a certain amount of wheat quota for which above Rs.17 lakhs was deposited by the company was allowed, contrary to control orders to be lifted by a sister concern, it was found as a fact that there is neither disclosure of oppression or mismanagement. The

company in question during the relevant time was under

> lock out and, therefore, wheat quota worth Rs.17 lakhs was allowed to be lifted by a sister concern. It is alleged that such an act amounted to violation of control order and that as the wheat quota was lifted by the sister concern, the company in question was shown to be having an asset by way of debt as against that sister concern and it is not clear how the company suffered a loss by taking a debt and giving the wheat quota to sister concern. On this basis the second contention was also rejected.
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> On the third point about certain loan payable in extinguishment of the liability of the Petitioner No.1 the case put forth was that the company owed money to Sumati and upon instruction of Petitioner No.1, money was paid by the company to Sumati so that Petitioner No.1 does not have to pay to Sumati and the company does not have to pay Petitioner No.1. During the course of the proceedings in this matter, Petitioner No.1 filed separate company petition for winding up against another sister concern, Bagri Synthetics Ltd. However, a suit was ordered to be filed and a sum of Rs.5,74,662/- was directed to be deposited. Thereafter, the suit was decreed by a judgment which was upheld by the appellate court and, therefore, it was held that if a debt remained owing to Petitioner No.1 from the company it would be unreasonable for the Petitioner No.1 to ask for a just and equitable winding up of the company on the other hand filing a suit would be proper as it had done in the other case and, therefore, did not enter into further details of the facts of the case in that part of matter.
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> The fourth contention is in regard to certain roller boxes about 14 in number were sold off at an aggregate price of Rs.96,000/-, although those had been acquired in 1980 at a cost of Rs.75,000/-. The complaint was that the boxes were still usable and unnecessarily sold. On this point also the Division Bench did not find any ground of oppression or mismanagement as provided under Section 397 or 398 of the Act.

The Division Bench found that Mitsubishi commision of Rs.23 lakhs could hardly be a matter of mismanagement of the company to bring into its till money which is not even its due. No loss is shown to accrue to the company because of the bringing in of this commission and, therefore, it was found that the mismanagement was not established.

The last and the most important point urged is in regard to continuation of directorship of the first petitioner. The first Petitioner joined the company in or about 1971 and he is a director. It was noticed that the last Board meeting which he appears to have attended was held on 19.8.1985 but apparently he did not thereafter attend the meeting of 16.11.1985. Thereafter there was no material to show that he went to the corporate office or attended any board meeting. The petitioner No.1 pleaded that the respondents could not have treated him as ceased to be a Director in terms of Section 283(1)(g) of the Act. Form 32 had been filed by the company with the Registrar of Companies on 15.1.1988 showing that the Petitioner No.1 had ceased to be a Director with effect from 21.12.1987 and since then it is maintained throughout that Petitioner No.1 ceased to be in the

office of the Director of the Company. The Division Bench noticed that the position that Petitioner No.1 ceased to be a Director is seriously disputed and the Division Bench ultimately concluded that the termination of directorship would not entitle such person to ask for winding up on just and equitable grounds inasmuch as there is an appropriate remedy by way of company suit which can give him full relief if such action had been taken by the company on inadequate ground. The Division Bench found that if a Director even if illegally terminated cannot bring his grievance as to termination to winding up the company for that single and isolated act, even if it was doing good business and even if the Director could obtain each and every adequate relief in a suit in a court.

In this background, the appeal having been dismissed, we do not find any good reason to interfere with such an order. However, Sri Dipankar Gupta, learned Senior Advocate for the Petitioners, sought to urge the legal question as to the interpretation placed by the Division Bench that if the facts fall short of a case upon which the company court feels that the company should be wound up on just and equitable grounds in that event no relief can be granted to the Petitioners in regard to Section 397 of the Act. We find adequate support to the view taken by the Division Bench and we cannot read the provisions of Section 397 of the Act in any other manner than what has been done by the Division Bench. Therefore we find no merit in this petition. The same shall stand dismissed. No costs.