

A VINOD KRISHAN KHANNA & ORS.

v.

AMRITSAR SWADESHI WOOLLEN MILLS PRIVATE LIMITED
(Civil Appeal No. 5087 of 2019)

B FEBRUARY 23, 2021

[R.F. NARIMAN AND B.R. GAVAI, JJ.]

- Companies Act, 1956 – ss.397 and 398 – Company Petition filed by Appellants in 2007 against Respondent-company and its’*
- C *eight directors before Company Law Board (CLB) – Appellants, who had 14.62% of the paid-up share capital of Respondent-company, agreed to sell their shares and go out of Respondent-company – Independent valuer, appointed by CLB, determined fair price of the shares to be Rs. 10.35 each – National Company Law Tribunal (NCLT), in 2018, directed Respondents to hand over purchase*
- D *consideration to Appellants @ Rs.10.35 per share alongwith simple interest @9% per annum – Appeal before National Company Law Appellate Tribunal (NCLAT) by Respondent company, limited to grant of interest at the rate of 9% per annum – NCLAT reduced interest to 6% per annum – Justification – Held: Not justified – NCLAT reduced interest without giving any reasons – Argument of respondent-company that if at all something is to be awarded to Appellants above the consideration for shares, it should be a pro-rata percentage of share-holding of Appellants in company’s share of profits from 2007 till 2018, not tenable – The company’s earnings have no direct relation with the valuation of shares which fluctuate*
- E *in the share market depending on several factors – Challenge of respondent-company to the date from which interest was granted, also not tenable – NCLT directed that interest was payable from 01.04.2007, i.e. shortly after the date when the Company Petition was filed by the Appellants (14.03.2007) – This was for the reason*
- F *that, as of the date of the NCLT’s directions, more than a decade had elapsed from the filing of the petition, during which time Respondent-company had effectively utilized the funds of Appellants in relation to its business – NCLT also noted that all parties had agreed upon the date of filing the petition as the valuation date for the shares in order to enable the Appellants to walk out of the*
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company – Nothing perverse in this reasoning of NCLT – Given the fact that this is a 2007 Company Petition, Respondent-company and its directors to pay to Appellants the requisite consideration for the shares, together with simple interest at 9% per annum from 01.04.2007 till the date of payment. A

Disposing of the appeals, the Court B

HELD: 1. The NCLT had awarded interest at the rate of 9% per annum. The NCLAT, however, reduced this figure to 6% per annum, without giving any reasons. [Para 8][714-B-C]

2. At this stage, it is important to point out yet another argument of respondent-company that if at all something should have been awarded to the Appellants above the consideration for the shares, what should be awarded is a pro-rata percentage of the share-holding of the Appellants in the company's share of profits from 2007 till 2018. This argument has no legs on which to stand. What if the company ended up making losses instead of profits, would it then be equitable to award nothing to the appellants? Secondly, the company's earnings have no direct relation with the valuation of shares which fluctuate in the share market depending on several factors. Thus, the order of the NCLAT on reducing the award of interest from 9% to 6% is set aside. [Para 9][714-C-E] C

3. The challenge of respondent-company to the date from which interest was granted is not acceptable. The NCLT directed that interest was payable from 01.04.2007, i.e. shortly after the date when the Company Petition was filed by the Appellants (14.03.2007). This was for the reason that, as of the date of the NCLT's directions, more than a decade had elapsed from the filing of the petition, during which time the Respondent company had effectively utilized the funds of the Appellants in relation to its business. Pertinently, the NCLT also noted that all parties had agreed upon the date of filing the petition as the valuation date for the shares in order to enable the Appellants to walk out of the company. There is nothing perverse in this reasoning of the NCLT. [Para 10][714-E-G] D

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A **4. Given the fact that this is a 2007 Company Petition, the Respondent Nos.1-9 before the NCLT will pay to the Appellants the requisite consideration for the shares, together with simple interest at 9% per annum from 01.04.2007 till the date of payment, within a period of four months. [Para 13][715-B]**

B **CIVIL APPELLATE JURISDICTION : Civil Appeal No.5087 of 2019.**

From the Judgment and Order dated 01.04.2019 of the National Company Law Appellate Tribunal in Company Appeal (AT) No.256 of C 2018.

With

Civil Appeal Nos.9617, 8907 And 8912 of 2019.

D Nidhesh Gupta, Ritin Rai, Sr. Advs., Venkita Subramoniam T. R., Rahat Bansal, Likhi Chand Bonsale, Jayant K. Mehta, Sharath Sampath, Pratyaksh Sharma, Adity Krishna, Ms. Anu Shrivastava, Ms. Nidhi Mohan Parashar, Ms. Charu Ambwani, Tushar Singh, Advs. for the appearing parties.

E The Judgment of the Court was delivered by

R. F. NARIMAN, J.

1. The point that has been raised in these appeals lies in a very narrow compass. The Appellants in Civil Appeal No.5087 of 2019 filed F a Company Petition No. 25 of 2007 against the Respondent company and eight directors of the company (arrayed as Respondents 2-9 in the petition) before the Company Law Board (“CLB”), in which prayers were made on grounds taken under sections 397 and 398 of the Companies Act, 1956. Various orders were passed in this petition by the G CLB, Principal Bench at New Delhi. By an order of the CLB dated 01.04.2011, it was finally accepted that the Appellants, who have 14.62% of the paid-up share capital of the Respondent company, would agree to sell their shares and go out of the Respondent company. Consequently, a valuer was appointed on 01.04.2011 (who was the substituted with a different valuer on 11.08.2011) to determine as to what would be the fair H

price of the shares as on 14.03.2007, i.e. the date of filing of the Company Petition. A

2. The proceedings culminated in an order dated 08.06.2018 by the National Company Law Tribunal (“NCLT”), in which it took on record the Valuation Report dated 20.07.2012 (which was filed before the NCLT on 23.07.2012), which valued the share price at INR 10.35 each. After finding that this valuation was in order, the NCLT finally directed as follows: B

“(I) The Petitioners are directed to sell their entire shareholding held by them in Respondent No. 1 Company as on share the date of filing the Petition to the Respondents either jointly or severally at the fair price of Rs. 10.35 per share as arrived at by the Independent valuer upon consent appointed by CLB. C

(II) The Petitioners shall hand over their share certificate(s) along with duly executed share transfer forms to the Respondents and the Respondents shall simultaneously hand over crossed demand draft/pay order favouring the petitioners for the amounts payable as purchase consideration as computed in accordance with the fair value of share of Rs.10.35 per share along with interest calculated @9% per annum (simple interest) from 1.4.2007 till the actual date of payment within a period of 2 months from the date of this order. D E

(III) The compliances, as above, shall be made before the Bench Officer of this Tribunal.” F

3. An appeal was filed before the National Company Law Appellate Tribunal (“NCLAT”) against this order by the Respondent company alone, limited to the grant of interest at the rate of 9% per annum, and the date from which the said interest was granted. It is important to note that Respondent Nos. 2 to 9 to the Company Petition, who were also governed by the NCLT order, did not file any appeal against the aforesaid order. G

- A 4. By the impugned judgment dated 01.04.2019, the NCLAT held that the order of the CLB dated 01.04.2011 was not an order in the sense of being an executable order, but merely an order appointing a valuer of the Appellant's shares. However, despite the fact that no challenge had been made on the ground that the Respondent company cannot be made to buy-back its shares, the NCLAT *suo moto* decided to raise such a ground and answer it, stating that the Respondent company could not be made to buy-back its own shares, as a result of which, the purchase would now only be made by Respondent Nos. 2 to 9 (i.e. the directors of the company) and not by the company itself. Also, the interest that was awarded to the Appellants at the rate of 9% per annum simple was reduced to 6%.

- B 5. We have before us four appeals. Shri Nidhesh Gupta, learned senior counsel appearing for the Appellants in Civil Appeal No. 5087/2019 [Item No.5], has put one simple point before us, namely, that as Respondent Nos. 2 to 9 had not appealed against the order of the NCLT to the NCLAT, the NCLAT could not reduce interest from 9% to 6%, which would benefit parties who did not appeal against the NCLT order, but had instead accepted it.

- C 6. Shri Jayant Mehta, learned counsel appearing on behalf of the company in Civil Appeal No. 9617/2019 [Item No. 5.1], has argued that interest in this matter could only be claimed in equity, and cited several judgments to buttress his arguments. He went on to add that no grounds have been made out for interest in equity by the clients of Sh. Nidhesh Gupta, learned senior counsel, as a result of which they should not have been awarded interest at all. In any case, the reduction from 9% to 6% would clearly be in order on the facts of the case as otherwise, Shri Gupta's clients shall be unjustly enriched, on which proposition also, he has cited several judgments.

- D 7. Both counsel then went into each other's conduct in taking adjournments before the CLB. Shri Ritin Rai, learned senior counsel, who appeared in Civil Appeal No. 8907/2019 [Item No. 5.2], raised only a limited point, i.e. that the share-holders whom he represents are a third group who are not Respondent Nos. 2 to 9, but who have been affected by the NCLAT's direction to remove the Respondent company *suo moto* from being a person who was to buy-back its own shares.

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8. Having heard all the learned counsel appearing for the parties, the limited point before us is whether the interest at the rate of 9% could have been granted by the NCLT. The NCLT awarded interest at the rate of 9% per annum on the following basis: A

“..... However, it is to be seen that both parties have agreed to a valuer to be appointed and have also consciously agreed to a valuation date in order to enable the Petitioners to walk out of the Company. Thus, Company has effectively utilized the funds of the Petitioners in relation to its business fully knowing that the funds are required to be refunded back. In the circumstances, being a Court of Equity in relation to matters touching upon oppression and mismanagement Petition and exercising equitable jurisdiction, this is unable to accept the stand of the Respondents that they are not inclined to pay any interest. In this connection, this Tribunal would once again wish to refer to the decision of Hon’ble Supreme Court passed in the matter of Dr. Renuka Datla Vs. Solvay Pharmaceuticals B.V. cited earlier and be guided by it particularly paragraph 19 which is extracted hereunder: B

19. In the result, IA Nos. 2 to 4 of 2002 are liable to be rejected. However, there is one direction concerning interest which we consider appropriate to give in the given facts and circumstances of the case. Though the grant of interest, as prayed for by the petitioners, from 31.5.2002 – the stipulated date of submission of valuation report - is not called for, we feel that that the ends of justice would be adequately met if the respondents concerned are directed to pay the interest at the rate of 9 per cent an Rs. 8.24 crores, which is the value of shares fixed by the valuer, for a period of twelve months. True, the petitioners contested the valuation and thereby delayed the implementation of settlement. However, having regard to the bona fide nature of the dispute and the fact that the respondents have retained the money otherwise payable to the petitioners during this period of twelve months and could have profitably utilized the same, we have given this direction taking an overall view. E

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- A *19. Going by the above decision of Hon'ble Supreme Court since the monies which were otherwise payable to the Petitioners having been retained all along by the Respondents and having utilized the same, we feel that the ends of justice could be adequately met if the Respondents in the main C.P. are directed to pay interest @9% per annum on simple Interest basis."*
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The NCLAT, however, reduced this figure to 6% per annum, without giving any reasons.

- C 9. At this stage, it is important to point out yet another argument of Sh. Jayant Mehta, that if at all something should have been awarded to the Appellants above the consideration for the shares, what should be awarded is a pro-rata percentage of the share-holding of the Appellants in the company's share of profits from 2007 till 2018, which according to him would amount to a figure of approximately INR 48.98 lakhs. This
- D argument has no legs on which to stand. What if the company ended up making losses instead of profits, would it then be equitable to award nothing to the appellants? Secondly, the company's earnings have no direct relation with the valuation of shares which fluctuate in the share market depending on several factors. Thus, we set aside the order of the NCLAT on reducing the award of interest from 9% to 6%.
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- F 10. We have also heard Shri Jayant Mehta's challenge to the date from which interest was granted. We are not inclined to accept the same. The NCLT directed that interest was payable from 01.04.2007, i.e. shortly after the date when the Company Petition was filed by the Appellants (14.03.2007). This was for the reason that, as of the date of the NCLT's directions, more than a decade had elapsed from the filing of the petition, during which time the Respondent company had effectively utilized the funds of the Appellants in relation to its business. Pertinently, the NCLT also noted that all parties had agreed upon the date of filing the petition as the valuation date for the shares in order to enable the
- G Appellants to walk out of the company. We do not find anything perverse in this reasoning of the NCLT.

- H 11. We also allow Civil Appeal No. 8907/2019 [Item No. 5.2] and Civil Appeal No. 8912/2019 [Item No. 5.3], as the NCLAT should not have *suo moto* raised a point by itself and answered it without hearing Shri Ritin Rai's clients.

12. In the result, Civil Appeal No. 5087/2019 [Item No. 5], Civil Appeal No. 8907/2019 [Item No. 5.2] and Civil Appeal No. 8912/2019 [Item No. 5.3] are allowed to the extent indicated by this judgment. The company's appeal i.e. Civil Appeal No. 9617/2019 [Item No. 5.1] is dismissed. A

13. It is also made clear that given the fact that this is a 2007 Company Petition, the Respondent Nos.1-9 before the NCLT will be made to pay to the Appellants the requisite consideration for the shares, together with simple interest at 9% per annum from 01.04.2007 till the date of payment, within a period of four months from today. B

Bibhuti Bhushan Bose

Appeals disposed of.