Makhan Lal Jain And Anr. vs The Amrit Banaspati Co. Ltd. And Ors. on 19 November, 1952

Equivalent citations: AIR1953ALL326, [1953]23COMPCAS100(ALL), AIR 1953 ALLAHABAD 326

ORDER

Brij Mohan Lall, J.

1. This is an application under Sections 153C and 153D recently inserted in the Companies Act (7 of 1913) by the amending Act (52 of 1951). The petitioners are two share-holders in the Amrit Banaspati Company Limited, Ghaziabad, here-after described, for brevity's sake, as the company. They have made various allegations of mismanagement and foul play against the company, its Directors and Managing Agents. But it is unnecessary to go into those allegations at this stage because a preliminary objection has been taken by the learned counsel for the opposite parties and the petition fails, in my opinion, on that preliminary ground alone.

2. It is contended on behalf of the opposite parties that the requirements of Sub-section (3) of Section 153C have not been complied with. The relevant portion of this sub-section reads as follows :

> "(3) No application under Sub-section (1) shall be made by any member, unless--
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> (a) in the case of a company having a share capital, the member complaining--
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> (i) has obtained the consent in writing of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members, whichever is less, or
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> (ii) holds not less than one-tenth of the issued share capital of the company upon which all calls and other sums due have been paid; and
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> (b) ....."

3. It is conceded by the petitioners that they do not hold one-tenth of the issued share capital of the company and, therefore, they do not fall under Clause (ii). They maintain that their case falls under the first part of Clause (i) inasmuch as they allege to have obtained the consent in writing of more than hundred share-holders. They do not rely on the second part of Clause (i).

4. What the petitioners did was to attach with the petition several sheets of papers which bear the signatures (together with addresses) of as many as 117 share-holders. It is to be remembered that

these persons are not signatories to the petition and they are not supposed to have joined the petition as petitioners. It is the petitioners' case that they have given their consent only.

5. Sometime afterwards the petitioners produced the consent in writing of 30 other shareholders. On the date of hearing, consent of 22 other share-holders was produced. In the cases of second and third sets of share-holders an endorsement was made at the top of each sheet to the effect that the share-holders were expressing their approval of the application filed by the petitioners in this Court. But no such endorsement is to be found in the case of 117 share-holders whose signatures were filed along with the petition. They do not write anything at the top of the sheet on which their signatures are to be found. Looking at the sheets themselves, one cannot ascertain why the signatures were affixed. The petitioners felt that there was this lacuna and to fill it up they filed an affidavit of one Jagannath who is himself a share-holder and who describes himself as the Mukhtar-i-Khas of Gobardhan Das Poddar, one of the petitioners. He has sworn in this affidavit that he, in company with one Lala Banwari Lal and "other persons" (whose names have not been disclosed), went round to various shareholders and obtained their consent to move an application in this Court. The question that arises is whether, supplemented by this affidavit, the sheets containing the signatures of 117 shareholders, contain the "consent in writing" of the said share-holders.

6. The expression "consent in writing" obviously implies that the writing itself should indicate that the persons who have affixed their signatures have applied their minds to the question before them and have given their consent to certain action being taken. If a petitioner obtains another share-holder's signature on a blank piece of paper and wishes to supplement it by an affidavit or an oral sworn statement of himself or his agent, the signature on the blank paper does not become consent in writing. By way of analogy, reference may be made to Section 92, Civil P. C., which requires the consent in writing of the Advocate. General for a suit instituted under that section. If certain persons institute a suit under Section 92 and produce a blank piece of paper bearing the Advocate-General's signature, supplemented by their own affidavit to the effect that the Advocato-General had affixed his signature in token of his consent, they cannot be said to have complied with the requirements of Section 92. At the most, one may presume that consent was given. But the signature cannot amount to "consent in writing", because the document on which the signature is to be found does not, by itself, indicate why the signature was affixed.

7. In this connection, reference may also be made to Section 91, Evidence Act. The relevant portion of that section may be quoted as follows:

> ". . . . in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof ... of each matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained."

8. In the present case, the law requires that the consent should be in writing, i. e., in the form of a document. Therefore, the document itself should prove that the consent has been given. No evidence, either by way of affidavit or of oral sworn statement in Court, can be given to prove that such, consent was given. I am consequently of the opinion that in obtaining the signatures of 117

share-holders on blank sheets the petitioners did not secure the consent in writing of the said share-holders.

9. If the signatures of these 117 share-holders are to be excluded from consideration, the con-sent of the remaining two sots of share-holders, totalling 52 in all, will not be of help to the petitioners. Even if their consent be presumed to ho valid, the number falls short of hundred. But it may be pointed out that their consent also does not comply with the requirements of the said Sub-section (3). The contents of that sub-section have been quoted above, but a portion thereof will bear repetition. The material words are:

> "No application under Sub-section (1) shall be made by any member, unless . . . the member complaining has obtained the consent in writing. ..."

10. The obtaining of the consent is a condition precedent to the making of the petition. In other words, consent must have been obtained prior to the presentation of the application. The two sets of share-holders, who subsequently gave their consent, have clearly indicated in the document embodying their consent that the petition had already been filed and that they were expressing their approval thereof. Their subsequent con-sent is not a valid consent under Sub-section (3).

11. I am, therefore, of the opinion that the requirements of law regarding the obtaining of consent in writing have not been complied with and consequently this petition is not maintainable. It should fail on the preliminary ground.

12. The opposite parties are entitled to their costs. Opposite parties 1 and 2 shall receive a sum of Rs. 500 each as costs and such of the remaining opposite parties as have engaged separate counsel shall get a sum of RS. 200 each as costs.