Laurel Energetics Pvt. Ltd. vs Securities Exchange Board Of India on 13 July, 2017

Equivalent citations: AIRONLINE 2017 SC 712

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Bench: Sanjay Kishan Kaul, Rohinton Fali Nariman

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5675 OF 2017

LAUREL ENERGETICS PVT. LTD. AP

VERSUS

SECURITIES AND EXCHANGE BOARD
OF INDIA RE

WITH

CIVIL APPEAL NO.5694 OF 2017

J U D G M E N T

R.F.NARIMAN, J.

The present appeals relate to an interesting question regarding the interpretation of Regulation 10 of the SEBI Takeover Regulations of 2011.

The factual backdrop in which the present controversy arises is that Indiabulls Real Estate Ltd. (hereinafter referred to as "IBREL") was incorporated as a Public Limited Company on 4th April, 2006, which carried on the business of real estate. It was later listed on the National Stock Exchange as well as the Bombay Stock Exchange in 2007. We are further informed that the Reason: aforesaid company entered into the business of generating power thereafter, in the year 2009. The appellant herein was incorporated as a private Ltd. Company, being a wholly owned subsidiary of Nettle Construction Pvt. Ltd., some time in 2010. This Company in turn, was wholly owned by Mr. Rajiv Rattan. Both the Appellant and Rajiv Rattan were listed as promoters of the said company in IBREL

in the Annual Report for the Financial Year 2009-2010.

For the purpose of disposing of the present appeals, the "Target Company" is Rattan India Infrastructure Ltd. It was originally incorporated as a wholly owned subsidiary of IBREL on 9th November, 2010 with a different name which is not material for the purpose of these appeals.

In 2011, the Board of Directors of IBREL framed a demerger scheme by which the power business of the company would be demerged and would vest in the Target Company. The High Court of Delhi sanctioned the aforesaid demerger by its judgment and order dated 17th October, 2011. What is important for the purpose of this appeal is that on 19 th July, 2012, an information Memorandum in terms of the listing agreement was filed by the Target Company, pursuant to which it was actually listed on the Bombay Stock Exchange and the National Stock Exchange on 20 th July, 2012. The appellant acquired 18% of the equity share holding of the target company at a price of Rs.6.30 per share some time in July, 2014. It made certain other purchases with which we are not concerned, because the price paid for those acquisitions was less than Rs.6.30 per share.

On 20th October, 2015 Laurel and Arbutus Consultancy LLP along with various other entities, who were persons acting in concert, made a public announcement under Regulation 15(1) of the SEBI Substantial Acquisition of Shares and Takeover Regulations, 2011 when an open offer was made for acquisition of 35,93,90,094 equity shares of the Target Company from the equity shareholders of the Target Company at the price of Rs.3.20 per share. Necessary formalities were observed thereafter, but by a letter dated 4th December, 2015, SEBI observed that the exemption provisions contained in Regulation 10 would not apply to the 2014 acquisition, as a result of which the price of Rs.3.20 per share was not accepted and the higher price of Rs.6.30 was stated to be an amount that would have to be paid to the equity shareholders of the Target Company. By a letter dated 5th May, 2016, containing SEBI's Order, SEBI stated:

> "It has been observed that the acquisitions made through inter se

transfers amongst promoters on July 9, July 10, 2014 September 5, 2014, and October 20, 2014, were not exempted from open offer obligations. You are advised to revise the Offer Price accordingly. Further, along with the consideration amount, you are advised to pay a simple interest of 10% per annum from the scheduled date of payment of consideration based on these triggering dates to the actual date of payment of consideration to the shareholders who were holding shares in the Target Company on the date of violation and whose shares are accepted in the Open Offer, after adjustment of dividend paid, if any. You are also advised to enhance the financial arrangements and the amount maintained in the escrow account in terms of the revised Offer Price and the revised Offer Size, if any." From the aforesaid order, the Appellate Tribunal dismissed an appeal on 5th April, 2017, holding that Regulation 10 did not exempt the acquisitions of 2014, as a result of which the price payable per share necessarily became Rs.6.30 instead of Rs.3.20 per share. The correctness of the aforesaid order is now before us.

Shri K.V. Vishwanathan, learned senior counsel appearing on behalf of the appellant, has taken us through the Appellate Tribunal judgment as well as various other documents. It is his submission

that Regulation 10 must be construed taking into account its object, and when this is done, it is clear that the promoters for IBREL, being the same right from the date of its incorporation, and by continuing as such even after the demerger into the present Target Company, the Regulation should be read in accordance with the object sought to be achieved, which is that where there is stability in the Company and the promoters in that Company do not change for a period of three years or more, inter se transfers between them at prices agreed to between them should be exempt from the aforesaid 2011 Regulations. For this purpose, he referred us to the earlier Regulations which are in pari materia with the 2011 Regulations and also took us through the Achuthan Committee Report dated 19th July, 2010. He also placed great emphasis on the Bhagwati Committee Report which shows that the object of Regulation 10 is not to penalise persons who had remained in control of a particular business entity, notwithstanding that it may ultimately change form. His argument was that had no demerger taken place, it would be clear that the promoters of IBREL, having been promoters for over three years, would be exempt from the Takeover Regulations, in which case the 2014 purchases could not be taken into account for the purpose of the present open offer. He has also taken us through the various judgments of this Court dealing with analogous situations in which a mere change in form from a partnership firm into a limited company would not necessarily lead to the conclusion that, under various State Rent Acts, a sub-tenancy had taken place. According to him, these judgments would apply on the facts of the present case inasmuch as, at no point of time, have the promoters of the power business of IBREL and now of Rajiv Rattan ever changed.

As against the said arguments, Shri Arvind P. Datar, learned senior counsel appearing on behalf of the respondent SEBI, has argued before us that there is no necessity to interfere with the well reasoned Appellate Tribunal judgment, which according to him ought not to be interfered with unless found to be perverse under 15-Z of the SEBI Act. Also, according to him, it is not possible to go to the object of a provision when the language of the said provision admits of no doubt. Therefore, according to him, the Tribunal judgment ought not to be interfered with.

Having heard learned counsel for both parties, it is necessary to first set out the relevant Regulation of the 1997 predecessor Regulations. Regulation 3 states:

> "3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:
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> (e) inter se transfer of shares amongst-
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> [(i) group coming within the definition of

group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company;]

(ii) relatives within the meaning of section 6 of the Companies Act, 1956(1 of 1956);

(iii) (a) [Qualifying Indian promoters] and foreign collaborators who are shareholders;

(b) [qualifying promoters]:

Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.] [Explanation- For the purpose of the exemption under sub-clause (iii) the term ["qualifying promoter"] means-

(i) any person who is directly or indirectly in control of the company; or

(ii) any person named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later;" The present Regulation with which we are directly concerned is Regulation 10, the relevant part of which is set out hereunder:

> GENERAL EXEMPTIONS
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> 10.(1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor,-
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> (a) acquisition pursuant to inter se transfer of shares amongst qualifying persons being,-
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> (i) immediate relatives;
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> (ii) persons named as promoters in the shareholding pattern filed by the target company in terms of the listing agreement or these regulations for not less than three years prior to the proposed acquisition;" It is important to first read the general exemption provision by itself. What has been stressed by Shri K.V. Vishwanathan, learned senior counsel for the appellant, is that the acquisition must be pursuant to inter se transfer of shares amongst qualifying persons who, for our purposes, are persons who are promoters of a particular entity. On a plain reading of the provision, it is clear that persons must be named as promoters in the shareholding pattern filed by the "Target Company". The Target Company is separately defined by the 2011 Regulations in paragraph 2(z) thereof as follows:
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> 2(z) "target company" means a company and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, whose shares are listed on a stock exchange;" In so far as the facts of the present case are concerned, the definition that we are concerned with is that of a company, and not any other corporate entity. For the purpose of the present case, the Target Company, therefore, means a company whose shares are listed on a Stock Exchange. This would mean, on the facts of the present case, the Rattan Company, whose shares are listed on the two Stock Exchanges as mentioned above. Coming back to Regulation 10, it is thus clear that persons named

as promoters in the shareholding pattern filed by the Rattan Company in terms of the listing agreement between the two Stock Exchanges is what is to be looked at. And for this purpose persons must be promoters of the Rattan Company for not less than three years prior to the proposed acquisition in order that the exemption under paragraph 10 would apply. On the facts of this case, therefore, the information memorandum having been filed on 19th July, 2012 pursuant to which listing took place one day later, is the relevant date from which this period is computed. This being the case, three years had not elapsed on 9/10th July, 2014, which was the date on which the earlier purchase of shares had taken place.

However, Mr. Vishwanathan has argued that Regulation 10 should be read in the light of its object and has made three distinct submissions in this behalf. He argued, based on the Reports of two committees and further on the basis of Regulation 10 itself, that it would be permissible for us to get to the real state of affairs, which is that the promoters, having been the same since the inception of IBREL, we should read this provision so as to confer a benefit that was sought to be conferred by the framers of the Regulation.

First, the two Reports:

When we turn to the Bhagwati Committee Report of 2002, so far as inter se transfers were concerned, commenting on Regulation 3 of the 1997 Regulations, it was noted as under :

"The Committee noted that the Regulation 3 exempt acquisitions through inter se transfers among group companies, relatives and promoters. There may not be any cause for concern in respect of inter se transfers amongst group and relatives as in such cases, the control continues to remain with the group. However the issue assumes significance when it involves interse transfers amongst promoter groups such as between a foreign collaborator and an Indian promoter or between two groups of Indian promoters. In such cases, there is bound to be perceptible change in control. The Committee noted that the arguments raised in such cases are that while the shareholder with substantial holding gets an exit, sometimes at very high prices, the other shareholders are denied such benefit. It is also possible that in such cases, the investment was made by the shareholder on the strength of the existing shareholder with substantial holding. There was a strong feeling that in such cases of transfers, there should be a requirement of compulsory open offer." Finally, the Committee recommended that as regards inter se transfers amongst promoters, the existing provisions may continue. Indeed, therefore, there is no difference in the Regulations of 1997, and the Regulations of 2011 so far as transfers among promoters is concerned, especially after the explanation that was added to Regulation 3 in 2005. It is significant to notice that the Committee did not positively state that Regulation 3 should be construed in any particular manner, except to state that there is no cause for concern in respect of inter se transfer within the group if control continues to

remain within the group.

Coming to the Achuthan Committee Report of 2010, this Committee noted :

> "In respect of inter-se transfers amongst certain "qualifying parties" as listed and defined under the Takeover Regulations, the Committee recommends that, in order to curb the abuse of introduction of new entities as qualifying parties, in most cases a requirement of pre-existing relationship of at least three years has been prescribed. In particular, the current exemption on Group Companies which does not have this three year requirement has been restricted to transfers between co-subsidiaries and their parents where there is no change in control" In a significant sentence, however it stated that :
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> "However, if the schemes do not really involve or deal with the target company per se, and an acquisition of shares or voting rights in, or control over the target company were to take place beyond the thresholds specified for the open offer obligations, as a consequence of the main scheme, the treatment should be different." Although, it is true that this Committee's recommendations do disclose that the object of the regulation is to curb the abuse of introduction of new entities as qualifying parties, this again is tempered with a later sentence which states that if schemes do not really involve or deal with a target company per se, then only would the treatment of such open offer obligations be different.
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> When we come to Regulation 10 itself, and we see some of the other clauses contained in the regulation, with which we are not directly concerned, the corporate veil is lifted in certain specified circumstances. Sub regulation (iii) is set out hereinunder :
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> "(iii) a company, its subsidiaries, its holding company, other subsidiaries of such holding company, persons holding not less that fifty per cent of the equity shares of such company, other companies in which such persons hold not less than fifty per cent of the equity shares, and their subsidiaries subject to control over such qualifying persons being exclusively held by the same persons;" A reading of this sub regulation would show that holding companies and their subsidiaries are treated as one group subject to control over such companies being exclusively held by the same persons. This shows that it has been statutorily recognized in sub regulation (iii) that in a given situation viz holding subsidiary relationship, the corporate veil would be lifted.
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> When we come to sub regulations (iv) and (v), it is clear that these two sub regulations follow the pattern contained in sub regulation (ii) in as much as when it comes to persons acting in concert, the period should be not less than three years prior to the proposed acquisition, and disclosed as such pursuant to filings under the listing agreement. Also, when it comes to shareholders of a target company who have

> been persons acting in concert for a period of not less than three years prior to the proposed acquisition and are disclosed as such pursuant to filings under the listing agreement, the corporate veil is not lifted. The difference between sub regulations
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> (ii), (iv) and (v) on the one hand, and sub regulation (iii) on the other, again shows us that it is impermissible for the court to lift the corporate veil, either partially or otherwise, in a manner that would distort the plain language of the regulation. Where the corporate veil is to be lifted, the regulation itself specifically so states. For this reason also, it is a little difficult to accept Mr. Vishwanathan's argument that a reading of the other sub regulations contained within regulation 10 (1) (a) would further his argument in this case.

We now come to the two judgments of this Court which were cited before us in the context of Rent Acts. Chronologically, the first of these judgments is “Madras Bangalore Transport Co. (West) Vs. Inder Singh And Others” reported in (1986) 3 SCC 62. In this case, the paragraph relied upon by Mr. Vishwanathan is paragraph 8, which is as under:

“As mentioned by us earlier, the Madras-Bangalore Transport Company (West) continued to be in occupation of the premises even after the Caravan Goods Carrier Private Limited came in. They never effaced themselves. The firm allowed Caravan Goods Carrier Private Limited Company, to function from the same premises but Caravan Goods Carrier Private Limited though a separate legal entity, was in fact a creature of the partners of Madras-Banglore Transport Company (West) and was the very image of the firm. The limited company and the partnership firm were two only in name but one for practical purposes. There was substantial identity between the limited company and the partnership firm. We do not think that there was any sub-letting, assignment or parting with possession of the premises by Madras-Banglore Transport Company (West) to Caravan Goods Carrier Private Limited so as to attract Section 14(1) (b) of the Delhi Rent Control Act. In the result the appeal is allowed with costs.” It can be seen that a partnership firm became a limited company but, on facts it was found that since there was substantial identity between the limited company and the partnership firm, there was no subletting, assignment or parting with possession of the premises so as to contradict Section 14(1)(b) of the Delhi Rent Control Act. This case is wholly distinguishable from the present case as in the facts of the present case, the target company is clearly defined and “means” only Rattan Limited. To go behind Rattan Limited would not only be contrary to the clear language of Regulation 10(1)(a) but would also introduce a concept viz lifting the corporate veil by the Court contrary to the Regulation itself, which, as has been pointed out above, also contains sub regulation (iii) which, in the circumstances specified, lifts the corporate veil.

The second judgment cited before us “Sait Nagjee Purushotam & Co. Ltd. Vs. Vimalabai Prabhulal and Others” reported in (2005) 8 SCC 252 also does not take us further for the same reasons.

In fact, even if we were to accept Mr. Vishwanathan's argument that the object of the regulation being that promoters should not keep changing, and if on facts it is found that the same set of promoters continue, we should exempt such cases, this would not be possible for another good reason. In the case of “M/s. Utkal Contractors and Joinery (P) Ltd. And others vs. State of Orissa”

reported in 1987 (Supp) SCC 751, a similar argument was turned down in the following terms :

> "11.Secondly, the validity of the statutory notification cannot be judged merely on the basis of Statement of Objects and Reasons accompanying the Bill. Nor it could be tested by the government policy taken from time to time. The executive policy of the government, or the Statement of Objects and Reasons of the Act or Ordinance cannot control the actual words used in the legislation. In Central Bank of India v. Workmen, S.K. Das, J. said :
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> "...The Statement of Objects and Reasons is not admissible, however, for construing the section; far less can it control the actual words used."
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> 12. In State of West Bengal v. Union of India, Sinha, C.J. observed :
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> "...It is however, well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, cannot be used to determine the true meaning and effect of substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation. But we cannot use this statement as an aid to the construction of the enactment or to show that the legislature did not intend to acquire the proprietary rights vested in the State or in any way to affect the State Governments' rights as owner of minerals. A statute, as passed by Parliament, is the expression of the collective intention of the legislature as a whole, and any statement made by an individual, albeit a Minister, of the intention and objects of the Act cannot be used to cut down the generality of the words used in the statute." In the factual scenario before us, having regard to the aforesaid judgment, it is not possible to construe the regulation in the light of its object, when the words used are clear. This statement of the law is of course with the well known caveat that the object of a provision can certainly be used as an extrinsic aid to the interpretation of statutes and subordinate legislation where there is ambiguity in the words used.
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> As has already been stated by us, we find the literal language of the regulation clear and beyond any doubt. The language of sub regulation (ii) becomes even clearer when it is contrasted with the language of sub regulation (iii), as has been held by us above.
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> Having gone through the appellate tribunal's judgment, we find that, for the reasons stated by us, we cannot fault its conclusion and accordingly the appeals stand dismissed.
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> .....J. [ROHINTON FALI NARIMAN] .....J. [SANJAY KISHAN KAUL] New Delhi July 13, 2017