

Ashutosh Sharma Vs. Torque Cables Pvt. Ltd.

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Court : Delhi

Decided On : Aug-19-2013

Judge : R.V. Easwar

Appellant : Ashutosh Sharma

Respondent : Torque Cables Pvt. Ltd.

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

14. h August, 2013 Date of decision:

19. h August, 2013 + CO.PET. 413/2013 WITH CO. APPL. 1379/2013
ASHUTOSH SHARMA Petitioner Mr. Ashish Middha, Advocate Through : vs
TORQUE CABLES PVT. LTD. Through: None CORAM: HONBLE MR. JUSTICE
R.V.EASWAR Respondent JUDGMENT R. V. EASWAR, J.:

1. This is a petition filed by Mr. Ashutosh Sharma under section 433(f) read with Section 439(c) of the Companies Act, 1956, seeking winding up of M/s. Torque Cables Pvt. Ltd.

2. The petitioner and one Mr. Satish Kumar were the promoters of the respondent-company and signatories to the memorandum and articles of association. The company was incorporated on 27.08.2010 for the manufacture of cables. The authorised capital of the company was `1 crore divided into 10 lakh equity shares

of `10 each. The paidup capital was `10 lakhs. The petitioner initially appears to have taken 75000 shares, with Satish Kumar taking 25,000 shares; later, the petitioner sold 30,000 shares to one Mohit Kathuria. The shares were transferred to Mohit Kathuria on 25.11.2011. The petitioner and Satish Kumar were appointed the first directors. Mohit Kathuria and Arvind Kumar Sharma were later appointed as directors.

3. The work of the company was divided between the three directors: the petitioner was to look after the sales, Mohit Kathuria and Satish Kumar, the manufacturing operations. Arvind Kumar Sharma was only a sleeping director. Initially the company did well, but later on started facing financial problems for various reasons. Soon the manufacturing operations stopped and the factory became dysfunctional; the factory land had been mortgaged to the bank for loan purposes and interest burden started increasing every day. Losses started mounting.

4. According to the petitioner, he was requesting the other two directors to maintain proper statutory records, to hold board meetings, annual general meetings etc. but to no avail. Disputes arose between the petitioner on the one hand and the other two directors, Satish Kumar and Mohit Kathuria, on the other hand. The petitioner was denied access to the companys records, factory etc. and was made non-functional. He submitted his resignation, but the other two directors, according to the petitioner, did not file the same with the Registrar of Companies in the prescribed form. On 23.05.2013 the petitioner wanted to visit the factory but was refused entry by the security guards.

5. In the above situation, the petitioner sent a legal notice to the respondent-company and the other two directors Satish Kumar and Mohit Kathuria; another resignation was also submitted in the legal notice. According to the petitioner, the other two directors also shifted the books and records from the registered office without any intimation to the ROC. The profit and loss account, balance sheet etc. were not given to the petitioner. Generally, the petitioner was kept out of the affairs of the company.

6. It is in the above circumstances that the present petition for winding up has been filed.

7. The learned counsel for the petitioner submits that in the above circumstances it is just and equitable that the company is wound up. He also contends that the company has been continuously incurring losses and the capital has been eroded. He urges that since the other two directors Satish Kumar and Mohit Kathuria have made it impossible for the petitioner to take part in the company's affairs, the company should be wound up.

8. Clause (f) of section 433 uses the expression just and equitable. This expression is not to be construed ejusdem generis with the other clauses of the section, as held by the Supreme Court in *Rajamundry Electric Supply Corporation Ltd. v. A. Nageswara Rao*, (1955) 2 SCR 1066, reiterated in *Hind Overseas Private Limited v. Raghunath Prasad Jhunjhunwalla and Others*, (AIR 197 SC 565). The facts alleged in the petition and elaborated before me prima facie show that this is a case to which the provisions of Sections 397-398 may be attracted; I am not expressing any final opinion on the point, but it is only a prima facie view. It is well-settled that winding-up proceedings have to be used as a last resort. In a case such as the present one, there are preventive provisions in the Act safeguarding against oppression and mismanagement. If some other remedy is available to the petitioner, that should be exhausted first: (see observations of the Supreme Court in *Hind Overseas Private Ltd.*, supra). These principles have been applied by a Division Bench of this Court (Ranganathan, J.

and S.B. Wad, J.) in *Bhaskar Stoneware Pipe (P) Ltd. v. Rajinder Nath Bhaskar*, (1988) 63 Com.Cases 184. The judgment of a learned single judge of this court (Indermeet Kaur, J.), in *Laguna Holdings Pvt. Ltd. & ors. v. Eden Park Hotels Pvt. Ltd. & Ors.*, (2013) 176 Com. Cas. 118 (Del.) is also to the same effect. This petition is thus premature.

9. Learned counsel for the petitioner draws my attention to the accounts to show that for three continuous years the company has been incurring losses which exceed the paid-up capital. In my opinion, this by itself is not decisive of the question whether it is just and equitable to wind up the company. Once the differences between the directors are sorted out for which no attempt appears to have been made so far the possibility of the company reviving its operations and

making profits cannot be ruled out.

10. For the aforesaid reasons, I am of the view that the winding- up petition is premature and is not maintainable. It is dismissed at the admission stage itself along with the connected application. (R.V. EASWAR) JUDGE AUGUST 19 2013
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