

Reliance Textile Industries Ltd.

Reliance Textile Industries Ltd.

SooperKanoon Citation : sooperkanoon.com/732817

Court : Gujarat

Decided On : Jul-19-1985

Reported in : [1987]61CompCas756(Guj)

Judge : B.K. Mehta, J.

Acts : [Companies Act, 1956](#) - Sections 441, 536 and 536(2)

Appeal No. : Company Application No. 133 of 1982 in Company Petition No. 72 of 1979

Appellant : Reliance Textile Industries Ltd.

Advocate for Def. : K.G. Vakharia, Adv.

Advocate for Pet/Ap. : A.C. Gandhi, Adv.

Judgement :

B.K. Mehta, J.

1. The applicant company has taken out this summons for direction as to whether the applicant company should recognise the transfer of various shares of Siddhpur Mills Co. Ltd. as particularly described in the schedule annexed as annexure 'B' to the affidavit in support of the judge's summons, and for other consequential reliefs. It should be recalled that directions have been sought by the applicant company in respect of about 1,421 transfer applications by different parties seeking to transfer

in all 7,396 shares of Siddhpur Mills Co. Ltd.

2. By the order of this court of July 30, 1982, the official liquidator was directed to submit his report stating his recommendations with reasons in support thereof in respect of each such impugned transaction after inquiring as specified in the directions issued by the aforesaid order. Accordingly, the official liquidator has submitted his report on May 16, 1983. The official liquidator has, in this report, raised objection only in respect of four transfer applications each of which is dated March 22, 1982, in favour of four investment companies viz., (1) Harit Investment Co. P. Ltd., (2) Haren Investment Co. (P.) Ltd., (3) Krishna Kumar Investment Co. Pvt. Ltd., and (4) Gokulesh Investment Co. (P.) Ltd., for 1,000 shares each. As regards the other transfer applications, the official liquidator has not raised any objection and has not sought to impugn the said transactions. In this state of affairs, by the order of this court of September 21, 1984, the applicant company was permitted to register the transfers according to the transfer applications other than the aforesaid four impugned transfers as prescribed in annexure 'B' to the affidavit in support of the summons.

3. In respect of the impugned four transactions, affidavit of Shri Haren K. Mehta dated August 29, 1984, has been filed on behalf of the four investment companies. In the course of the hearing of the objections raised by the official liquidator against these four transactions, it was suggested by the court to learned counsel appearing for the transferee companies that an additional affidavit may be filed of the person conversant with the facts of the case as to what were the ruling prices in the relevant period of the equity shares of Bharat Vijay Mills and New Gujarat Cotton Mills Ltd., which had also moved their scheme in respect of taking over of the Siddhpur Mills Co. Ltd., and which applications were pending before and under consideration of this court. It should be recalled that Bharat Vijay Mills and New Gujarat Cotton Mills had moved their application somewhere in the month of May 1979, while the Reliance Textile Industries had moved its application somewhere in August, 1979. Accordingly, the additional affidavit of Shri Haren K. Mehta, dated January 25, 1985, has been filed showing as to what was the market price of the shares in the relevant period, that is, March, 1979, to December, 1979. It should also be recalled that this court has by its order of May 14, 1981, sanctioned the

scheme moved by the Reliance Textile Industries by Company Petition No. 81 of 1979 and the scheme was made operative under the said order from July 1, 1981.

4. Shortly stated, the objections which have been raised by the official liquidator are as under :

Firstly, it has been contended that the impugned transfers were not effected before the specified date, that is, July 1, 1981, on which date the scheme came into operation. Secondly, the share certificate were not surrendered at all the relevant times. In other words, the share certificate were not surrendered before the aforesaid date. Thirdly, the transfers were effected with the ulterior motive to save the transferor company from the liability to capital gains tax and also with a view to save the stamp fees which the transferor company would ordinarily be required to pay on the transfers effected otherwise than in pursuance of the scheme of amalgamation. Fourthly, the transferee companies had made necessary applications as required under section 536 of the companies Act, 1956.

5. Mr. Vakharia, learned counsel appearing for the transferee companies, submitted that the first two objections raised by the official liquidator have no substance in them since the official liquidator has not cared to consider the unimpeachable documentary evidence in the nature of advice notes brokers, contract notes in respect of the impugned transfers, extracts from the bank account of the transferee companies, the counterfoils from the cheque book of these companies and the original transfer applications executed between the parties and attested by the concerned directors of the transferee companies to show and satisfy that the impugned transfers were effected in April and May, 1979, at the prevalent market price as on April 23, 1979. Mr. Vakharia has taken me through this documentary as well as oral evidence which was produced before the official liquidator, and which has now been produced on the record of this application. On perusal of the advice notes of the brokers, the contract notes of the impugned transactions, the statement from the bank accounts of the concerned respective transferee companies, and the counterfoils from the cheque books of these companies and the original transfer applications as executed between the transferor company and the transferee companies, and attested by the brokers

through whom these transactions were entered into, the following facts emerge :

1. M/s. Harit Investment Co. (P.) Ltd. purchased in two lots on April 23, 1979, 500 shares each through brokers, M/s. Bhailal Danyabhai Chokshi and Kantilal P. Broker, at Rs. 95.25 per share and paid the consideration by two demand drafts of Rs. 47,625 each drawn on Bank of India, Manek Chowk Branch, Ahmedabad, by drawing the amounts from their account in Bank of India, Bombay Branch, by two cheques dated June 12, 1979, and July 18, 1979, bearing Nos. 0349073 and 0349075, respectively.

2. M/s. Haren Investment Co. (P.) Ltd. similarly purchased two lots of 500 shares each on April 23, 1979, through brokers, M/s. Purshotam Das Premchand and Champaklal Bhailal Chokshi, at Rs. 95.25 per share and paid the amount of consideration by drawing drafts of the same amount as aforesaid on Bank of India, Manek Chowk Branch, Ahmedabad, by drawing the amounts from their accounts in Bank of India, Bombay, by cheques dated May 25, 1979, and June 3, 1979, bearing Nos. 349129 and 349131, respectively.

3. M/s. Krishna Kumar Investment Co. (P.) Ltd., similarly purchased two lots of 500 shares each on April 23, 1979, through brokers, M/s. Harshadrai Manilal Amratlal and Chandrakant Keshvirsinh, at Rs. 95.25 per share and paid the amount in the same way by drawing drafts on Bank of India, Manek Chowk Branch, Ahmedabad, by drawing the necessary amounts from their Bombay Branch of Bank of India by cheques dated June 22, 1979, bearing Nos. 0349171 and 0349174 respectively.

4. M/s. Gokulesh Investment Co. Pvt. Ltd. also purchased by two lots of 500 shares each on April 23, 1979, through brokers, M/s. Chimanlal Lalbhai and Premchand Hathisingh, at Rs. 95.25 per share and paid the consideration by drawing drafts on Manek Chowk Branch of Bank of India and paid the amount for the drafts by drawing from their Bombay Branch of Bank of India by cheques dated July 3, 1979, and July 27, 1979, bearing Nos. 0349029 and 0349030 respectively.

6. The documentary evidence is so unequivocal and unimpeachable that it is difficult to agree with the official liquidator that the transfers were not effected before July 1, 1981. The original transfer applications, as executed between the

parties, and attested by the brokers, which have been placed on the record also clearly clinch the issue that not only the shares were purchased, the contracts were executed and the payments were made but also the transfer applications were executed at the relevant dates. In the circumstances, the first objection is clearly unwarranted.

7. It is no doubt true that so far as the second objection is concerned, neither the share certificates nor these transfer applications were lodged immediately after they were effected with the Reliance Textiles Industries on March 29, 1982. The explanation given on behalf of the transferee companies in the affidavit of Shri Haren Mehta is that since Siddhpur Mills Co. Ltd. ceased functioning from February 12, 1979, the transferee companies could not lodge these transfer applications together with the necessary share certificates with the registered office of the company which was also not functioning from that date, and it was only when they received a letter from the Reliance Textile Industries on March 8, 1982, that they lodged the transfer applications together with the necessary share certificate. It is an admitted position that Siddhpur Mills Co. Ltd. had closed down and ceased functioning with effect from February 12, 1979. It does not require, therefore much of imagination or evidence to agree with this explanation advanced on behalf of the transferee companies that in the state of affairs which was prevalent at the relevant time in 1979, when the Siddhpur Mills Co. Ltd. closed down its operations and ceased functioning with the effect from February 12, 1979, no wise and prudent person would lodge the transfer applications with the registered office of the company even if it may be functioning in a skeleton manner because there was always a risk of these valuable documents being misplaced. If, therefore, the transferee companies did not lodge the necessary transfer applications together with the share certificate, it could not be said that the transactions were not genuine and were not entered into a bona fide manner. The first two objections, therefore, have no substance.

8. The third objection that the transfer had been effected with an ulterior motive to save capital gains tax and stamp fees is stated merely for rejecting it. There is no evidence worth its name which can suggest about this ulterior motive attributed to the parties. This particular objection would lose its significance once it is found that

the impugned transactions were effected in April and May, 1979. It should be recalled that proceedings had been initiated in this court for framing the appropriate scheme of reconstruction and/or amalgamation in respect of the Siddhpur Mills Co. Ltd. somewhere in March, 1979. It should also be recalled that winding up proceedings were initiated at the instance of the creditors of Siddhpur Mills Co. Ltd. in March, 1979, and this court had appointed a provisional liquidator, vide its order of April 10, 1979. The company was directed to be wound up by the order of this court of October 10, 1979. Between May 7, 1979, and July 10, 1979, four applications were moved proposing three schemes sponsored by Bharat Vijay Mills, Reliance Textiles Industries and New Gujarat Cotton Mills. In this case of Bharat Vijay Mills, two applications were moved—one by the company itself and another by one Falgunkumar and Co., who had initiated the liquidation proceedings by their Company Application No. 9 of 1979, in which the orders for appointment of a provisional liquidator and winding up of Siddhpur Mills Co. Ltd. were made. Ultimately, by order of this court of May 14, 1981, the scheme of amalgamation proposed by the Reliance Textile Industries was sanctioned. If, therefore, the transferee companies, which were investment companies, thought it fit to purchase the shares of Siddhpur Mills Co. Ltd., no serious action can be taken that this was not a bona fide transaction or that it was unfair, unjust or unreasonable. There is another aspect of the matter which should also be borne in mind. The additional affidavit of Shri Haren K. Mehta Disclosed that the Market price of Bharat Vijay Mills at all relevant times between March 31, 1979, and December 31, 1979, was ranging between Rs. 685 to Rs. 475 per share, while that of New Gujarat Cotton Mills, was ranging between September, 1979, to December, 1979, between Rs. 840 to Rs. 485. If, therefore, these investment companies thought it fit to purchase the shares in anticipation that some scheme of amalgamation would be moved and on such scheme being sanctioned, the shares of that company taking over the sick unit would be offered to the shareholders of the sick unit, they could not be accused of chasing a wild goose. It should be remembered that the transferee companies before me have purchased these shares of the face value of Rs. 100 each at Rs. 92.25 each. The investors in the stock market ordinarily would know about which companies were likely to move such schemes and accordingly the investment companies before me must

have on some inside information, known about the possible movers of a scheme for taking over the Siddhpur Mills Ltd. The transferee companies were not put to loss in case of the sanction of any of the schemes moved by the three companies, because the shares of the companies taking over were much higher than the shares of the Siddhpur Mills Co. Ltd. The third objection has also, therefore, no substance in it.

9. The fourth objection deserves rejection. When the Reliance Textile Industries made an application under section 536 of the Companies Act, I do not think that it was necessary for the transferee companies before me to make a similar application since that would be merely adding to the multiplicity of proceedings.

10. The only question which, therefore, remains is what is the ambit and scope of the power of the court under section 536(2) of the Companies Act. Section 536(2) reads as under :

'536. Avoidance of transfers, etc., after commencement of winding up. - (2) In the case of a winding up by or subject to the supervision of the court, any disposition of the property (including actionable claims) of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding-up shall, unless the court otherwise, be void.'

11. It is a trite position in law that the commencement of winding-up proceedings relates back to the presentation of the petition (see section 441 of the [Companies Act, 1956](#)). It should be recalled that the winding-up petition in which the order was made was Company Petition No. 9 of 1979, which was presented on February 22, 1979. The winding-up order was made by this court on October 18, 1979. In the circumstances, therefore, any transfer of shares of Siddhpur Mills Co. Ltd. made after the presentation of the winding-up would be void unless otherwise directed by the court. The court has an absolute discretion for validating the transaction after the presentation of the winding-up petition. The discretion is to be exercised on recognised principles which guide exercise of judicial discretion generally with particular attention to the interest of the company. The court can validate such impugned transactions in those bona fide cases which demand protection of

equitable consideration. (see S. P. Khanna v. S. N. Ghosh [1976] Tax LR 1740 (Bom)).

12. For the reasons aforesaid, I am of the opinion that the impugned transactions were bona fide and they are fair, just and reasonable. In that view of matter, therefore, I am of the opinion that the applicant company should be and is permitted to recognise and register the transfers according to the transfer applications in question. It is further directed that the applicant company shall register the transfers as applied for by the transferor company and the transferee companies before me. The applicant company is, therefore, directed to register M/s. Harit Investment Co. (P.) Ltd., M/s. Haren Investment Co. (P.) Ltd., M/s. Krishna Kumar Investment Co. Pvt. Ltd. M/s. Gokulesh Investment Co. (P.) Ltd. as transferee-holders of 1,000 shares each of Siddhpur Mills Co. Ltd., according to their transfer applications executed between them and their transferor company, namely, M/s. M. P. Spinning and Weaving Mills Pvt. Ltd. Company Application No. 133 of 1982 is, therefore, disposed of accordingly with no order as to costs.