

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.A.NO.796/2014

In

C.P.No.101/2014

CORAM:

Shri V.P. Singh
Hon'ble Member (J)
S. Vijayaraghavan
Hon'ble Member (T)

In the Matter of

Sections 58,59,210 of the Companies Act, 2013 and the Sections 235, 397, 398, 399, 402, 406, 407 of
the Companies Act, 1956.

In the matter of : Krishna Gopal Jana & Anr.

Versus

KTKP Sarabarahkari and Babasayi Samitee
Himghar Ltd. & Ors.

Parties on Record:

Mr. Jishnu Choudhury, Advocate
Ms. Swapna Choubey, Advocate
Mr. Sidhartha Sharma, Advocate
Ms. Appabrita Saha, Advocate

For Petitioner

Mr. Anjan Kumar Roy, PrCS

For Respondents

ORDER

The instant C.A. No.796/2014 is filed by the Applicants/Respondents for the following:

- (a) That the petitioners in C.P.No.101/2014 be declared to be in-eligible to file and maintain
a petition under Sections 397 and 398 of the Companies Act, 1956, as read with the

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provisions of Section 399 of the Companies Act 1956, as read with the provisions of Section 399 of the said Act and the CP No.101/2014 be dismissed on the preliminary ground of lack of eligibility by the petitioners to file the said CP No.101/2014.

(b) That interim injunction as granted to the petitioners in CP 101/2014 on 08/-07/2014 and as continued vide the order dated 31.07.2014 be vacated/discontinued forthwith;

(c) That a direction be issued to the petitioners in CP 101/2014 to stop writing malicious letters to different government departments and others without having any stake in the company.

(d) That a strong reprimand be issued against the petitioners in CP 101/2014 and an exemplary cost of Rs.200,000/- be imposed on the said petitioners in CP No.101/2014 for instituting a false and fabricated petition, before the honourable Kolkata Bench of the Company Law Board.

It is stated in the application that the petitioners in CP 101/2014, have taken a sum of Rs.72 lakhs as loan against the pledge of their entire shareholding but the petitioners failed to repay the said loan and the interest. The Petitioner No.1 requested the Board of Directors to relieve him from management of the Company by accepting his resignation as the Managing Director of the Company and also by disposing of his shares in the Company along with his wife's shares in the Company, which were pledged as surety against the aforesaid loan. The management of the Company repeatedly requested Mr. Krishna Gopal Jana, the petitioner No.1 to attend the Board Meetings of the Company and to review his resignation, but the Petitioner No.1 made it clear that he had no intention to either repay the loan or the interest or to be in the management of the Company. The Board of Directors of the Company accepted his resignation as the Managing director of the

S. N. Jagtap

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Company and his cessation as Managing Director has been accepted. Mr. Krishna Gopal Jana was present in the meeting of the Board of Directors of the Company held on 02.10.2013 in which he confirmed that he was not in stable position physically, mentally or financially and wanted to be relieved from the affairs of the Company. He also submitted to the meeting on 01.09.2013 and 02.10.2013 that as per the contract his shares, shares of his wife which were already pledged with Company and sale deed whereof has already been executed, may be sold and that the proceeds thereof be appropriated against the said outstanding amount of loan due from him. Thus, the petitioners have no eligibility/right under Section 399 of the Companies Act 1956 to file and maintain the said CP No.101/2014 since the aforesaid repayment of loan together with interest is due on the shares of the petitioners. The applicants here in above crave to refer to Allahabad High Court decision in the matter of "Kedar Nath Khetan And Ors. Vs. Lakshmi Devi Sugar Mills (P) Ltd.", where the Hon'ble court has, inter alia, mentioned that in case any other sum is due to be paid on the relevant shares, the holders of the relevant shares do not have any right under Section 399 of the Companies Act 1956 to file a petition under Section 397 and 398 of the Companies Act 1956.

It is further stated in the application that petitioners have expressly ceded all their rights on their entire shareholding in the Company, on the basis of which, they have claimed eligibility under section 399 of the Companies Act 1956 to file and maintain the said CP and the petitioners have surrendered all their proprietary rights on the aforesaid 27.72% shares which were pledged with the Company as a security for the repayment of the aforesaid loan. The petitioners never held any share in the Company, other than the aforesaid shares, which were pledged with the Company. The Articles of Association of the company expressly deny any right to vote or right to be considered for quorum on the shares on which there is a lien. In the instant matter the Company enjoyed lien on the shares of the petitioners. The petitioners have not only pledged their shareholding in the Company but also have expressly confirmed that they have executed the sale of those shares and that the management of the Company can dispose of/adjust the said pledged shares towards the

S. N. Singh



aforesaid outstanding loan. Since the petitioner No.1 has pledged all his shares together with his wife's shares in the Company and has executed share transfer deeds and thereafter has confirmed in writing on 1.9.13 and again on 2.10.13 that the Company can sell/dispose of the said pledged shares towards adjustment of the aforesaid outstanding loan, he has completely relinquished all his right and the right of his wife as a shareholder of the Company. The petitioners have expressly in writing, with repeated confirmation, ceded all their proprietary right as a shareholder of the Company and since the petitioners did not have any right as a shareholder, over and above the aforesaid provisions of the Companies Act 1956, the aforesaid case precedent and the aforesaid provision in the Articles of Association of the Company. It is further stated that the petitioners have also obtained an ad-interim injunction on the share capital of the Company by material misrepresentation and the Petitioner have no locus standi with respect to the share capital of the Company and as such, the petitioners have no right to seek any injunction on the increase of authorized share capital of the Company. The petitioners have falsely submitted to the Hon'ble Bench that the said petitioners went with cheques worth Rs.20 lakhs to the Company, towards repayment of loan but they were refused. The petitioners were not entitled to participate in the meetings of the Company by virtue of a specific provision in the Articles of Association of the Company. The petitioner has expressly ceded all their right in the shares pledged with Company, which included shares of his wife, as well, as recorded in the minutes. The petitioners have made gross material misrepresentation in the said CP 101/2014 and as such, the said CP is liable to be dismissed at the preliminary stage with exemplary costs. The applicants have strong reasons to believe that the petitioners are acting malafide against the Company and are trying to damage the Company.

In reply the petitioners have contended that the petitioner No.1 has taken a sum of Rs.70 lakhs by way of loan from the Company upon pledging his shares but it is not a fact that the time to





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repay the loan was over. He has further contended that taking advantage of the illness of petitioner No.1 the respondents have ousted the petitioner No.1 from the Board in a clandestine manner when the period agreed to ,i.e,five years is yet to be completed. Moreover, the applicant has manipulated the Minutes Book for their personal unlawful gain. It is further contended that the applicants are acting with malafide motive against the Company with a view to damage the reputation of the Petitioner. It is further contended that the applicants being insiders have access to the records of the Company when the petitioner No.1 was ousted either by issuing false notice or without notice and as such the application deserves to be dismissed.

In rejoinder, the applicants/respondents have denied the disputed contention made by the petitioners and specifically stated that the petitioner no.1 has resigned as a Director on 02.10.2013 and that the petitioners have not specifically disputed the signature of Mrs. Krishna Gopal Jana on the minutes of the meeting dated 01.10.2013 and 02.10.2013.

In the instant C.A. it has been admitted by both the parties that an amount of Rs.70 lakhs was borrowed from the petitioners out of which only Rs.10 lakhs has been repaid by the respondent. The applicants have denied that the petitioner had misrepresented the facts when he stated that he went with cheques amounting to Rs.20 lakhs towards partial repayment of the loan but this was refused by the Company. The applicants have stated that since the petitioners do not hold any share in the instant Company, they are not eligible to be considered as a shareholder for the purpose of Section 397 and 398 read with Section 399 of the Companies Act, 2013. The loan was extended to the petitioner during January 2012 and the shares were pledged for a period of five years or till the redemption of the loan. In this case the period of five years is not yet over and the petitioners have still got the right to be considered as shareholders of the Company. The right to transfer the shares of the petitioner will accrue to the applicants only after the period of five years and when the loan

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amount is not paid. Hence the Tribunal is of the considered opinion that the petitioner in C.P.N o.101 of 2014 is to be considered as a shareholder and will continue as such in respect of the shares pledged. This principle has been clearly enunciated by the Hon'ble Supreme Court in Balkrishan Gupta and Others Vs. Swadeshi Ploytex Ltd.,

The C.P. is maintainable and The Ad Interim Order already in force will continue till final orders.



(VIJAI PRATAP SINGH)
MEMBER (J)



(S. VIJAYARAGHAVAN)
MEMBER (T)

Dated, the 29th August, 2016.