

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CO.A.(SB) 1/2012

Date of Decision: 16th August, 2012

Sunair Hotels Ltd. Appellant

Versus

B.C.Gupta & ors. Respondents

^

APPEARANCES:

Mr.Jayant Bhushan, Sr. Advocate with Mr. Abhishek Kumar Rao & Ms. Tushita Ghosh , Advs. for the appellant

Mr. Nidesh Gupta, Sr. Avocate with Mr. Rajnish Sinha & Mr. Harshit Aggarwal, advs. for R-1 to R-20

Mr. Atul Sharma & Mr. Nitesh Jain , Advocates for R-21 to R-32.

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

JUDGMENT

P.K.BHASIN, J:

This appeal has been filed by the appellant Company against the order dated 29.11.2011 passed by the Company Law Board, New Delhi('CLB' in short) in the Company Petition No.35 of 2010 under Sections 397, 398, 399 read with Sections 111-A, 401, 402 and 403 of the Companies Act,1956('the Act of 1956' in short) which was filed by

respondents no.1 to 20 herein alleging mismanagement of the affairs of the appellant Company and acts of oppression of the minority group of its share-holders (B.C. Gupta Group) by the other Group (S.P. Gupta Group) which had fraudulently become the majority Group. By order dated 29.11.2011 the CLB had allowed an application filed by the respondents no. 1 to 20 herein under Order VI Rule 17 of the Code of Civil Procedure,1906 for amendment of their petition.

2. The relevant facts which were pleaded by respondents no.1-20 in their petition before the CLB may first be noticed. It was alleged by the petitioners that they were the share-holders of the appellant Company whose authorized share capital at the time of its incorporation in the year 1977 was Rs.1,00,00,000/-(Rupees one crore only), divided into 10 lakhs equity shares of Rs.10/- each and which was subsequently increased to Rs.7,00,00,000/-(Rupees seven crores) and further to Rs.30,00,00,000/-(Rupees thirty crores). It was the case of respondents no.1 to 20 before the CLB that before the increase of the share capital of the appellant Company to Rs.30,00,00,000/-, which appears to

have been increased sometime in the year 1995, they all were having shares of the appellant Company.

3. Respondent no.1 Shri B.C.Gupta claims himself to be the promoter Director of the appellant Company which was floated by him and his brother-in-law late Shri S.P.Aggarwal for constructing a five star hotel in New Delhi and with his efforts a piece of land in a prime area near Gole Market was allotted by NDMC in the year 1982 for the construction of a five star hotel which now stands constructed and by the name of 'Metropolitan' is stated to be doing very well though it has also triggered off a fierce battle between respondent no.1 Mr.B.C.Gupta and his younger brother Mr.S.P.Gupta (respondent no.21 herein) who was brought into the Board of Directors of the appellant Company sometime in the year 1980. Mr.B.C.Gupta's grievance was that even though he had made his brother Mr. S.P.Gupta a Director of the appellant Company but in a dubious manner he alongwith his sons and other family members had totally taken over the management of the appellant Company after allotting huge amount of shares of the appellant Company to himself and his family members and the Companies. As a consequence thereof, Mr. B.C.Gupta claimed, his Group comprising of his

family members became a minority Group. It was the case of Mr. B.C.Gupta that when the hotel project was yet to take off his brother Mr. S.P.Gupta had entered into a Memorandum of Understanding(MoU) in March,1995 with a Finance Company by the name of VLS Finance Ltd.(to be referred now as 'VLS) for making the hotel project a joint venture and as per that MoU the promoters of the appellant Company were to bring into the equity of the Company a sum of Rs.21 crores and a sum of Rs.7 crores was to be contributed by VLS.

4. It was the further case of Mr. B.C.Gupta that since a sum of Rs.21 crores was to be raised by the promoters of the appellant Company as per the MoU between the appellant Company and VLS that much money was paid to the appellant Company by one partnership firm by the name of Janki Exports International in which four brothers including himself and Mr. S.P.Gupta, Mr. S.K. Gupta, who was the petitioner no.4 in the Company Petition before CLB, and late Shri K.C.Gupta and their family members were partners and all were having their shares in the said partnership firm as per the supplementary partnership deed dated 26.02.1992. It also appears to be the case of Mr. B.C.Gupta that as a

consideration of payment of 21 crores of rupees to the appellant Company by Janki Exports International to enable the appellant Company to fulfil its part of the obligation of investing Rs.21 crores under the MoU of March,1995 with VLS, 2.1 crore shares of the appellant Company were to be allotted in four equal shares in the names of four brothers and their respective family members and family members of each of the four brothers were individually to get shares as per their share in Janki Exports International and since the said partnership firm could not legally acquire shares of the appellant Company the individual partners were to hold those shares on behalf of the said Firm as trustees. However, Mr. S.P.Gupta in collusion with his sons and other family members and shareholders in his Group though allotted additional shares of the appellant Company to Mr. B.C.Gupta and his family members but, fraudulently, not as per their shares in Janki Exports International and the allotment was of much less number of shares and further Mr. S.P.Gupta allotted more shares to himself and his family members with the result that the shareholding of Mr. B.C.Gupta Group in the appellant Company got reduced to 20.04% which in fact should have been 52.10 % and the

share-holding of Mr. S.P.Gupta Group stood increased to 55.765% though it should have been 23.71% only.

5. Mr. B.C.Gupta who now heads the minority group, claimed before the CLB that he had come to know about aforesaid irregularities committed by his brother Mr. S.P.Gupta, who heads the majority group, after VLS started litigation with the appellant Company and S.P.Gupta Group in the year 1998 by filing a similar petition under Sections 397/398 of the Act of 1956 and in that petition members of B.C.Gupta Group were also impleaded. It was further pleaded in the Company Petition that in the year 2000 it also came to be discovered that Mr. S.P.Gupta in collusion with his sons had illegally removed from the Board of Directors of the appellant Company Mr.B.C.Gupta(respondent no.1 herein) w.e.f. 01.05.1986, his younger brother Mr.Sudhir Gupta(respondent no.4 herein) w.e.f 01.03.1993, and one son of their deceased brother Mr.K.C.Gupta (respondents no. 9 herein) w.e.f 15.06.1996, and another son of late Mr. K.C.Gupta(respondent no.10 herein) w.e.f. 25.08.94 and further that Mr. S.P.Gupta had made his own sons, respondents no.23 and 25 herein, as the Directors.

6. The prayers made by B.C. Gupta Group before the CLB in their Company Petition are as under:-

- a. *Direct the respondents to ensure for equal distribution of 2.1 crores shares allotted to partners families of the four brothers of Janki Export International in proportion of 25% each according to the partnership deed of Janki Exports International and in the proportion of their respective shares as set-out in para 2 (para 2.1 to 2.12) and direct the rectification of register of members accordingly.*
- b. *Direct for rectification of the register of member of the respondent no. 1 company to the effect of 18 lacs shares in favour of petitioner no. 1, 12.75 lacs in favour of petitioner no. 2 and 3 each; 18.22 lacs shares in favour of petitioner no. 4, 8.25 lacs shares in favour of petitioner no. 5, 6 and 7 each; 4.8 lacs in favour of petitioner no. 8, 5.05 lacs shares in favour of petitioner no. 9 and 11 each; 4.8 lacs in favour of petitioner no. 10 and 12 each; 4.8 lacs in favour of Ms. Veni Gupta; 6.9 lacs in favour of the legal heirs of late K.C. Gupta and 4.8 lacs in favour of the legal heirs of late Prabhat Gupta.*
- c. *Direct the illegal allotment of 49.5 lacs shares to respondent no. 2 and 51.41 lacs shares in HUF capacity, 4.5 lacs shares in favour of respondent no. 3; 17.5 lacs shares in favour of respondent no. 4 and 4 lacs shares in favour of respondent no. 4, HUF; 2 lacs shares in favour of respondent no. 5; 17.6 lacs shares in favour of respondent no. 6; 12.5 lac shares in favour of respondent no. 7 and 4.5 lacs shares in favour of Mr. Ananya Gupta and respondent no. 4, be set aside and correspondingly transferred in the name of the petitioner as mentioned in clause (b) hereinabove.*
- d. *Direct to debar the respondent no. 2, 3, 4, and 6 to act as directors in the Respondent no.1 Company and declare form No. 32 filed in respect thereto as illegal and null and void.*

- e. Direct the appointment of petitioners no. 4 and 9 as directors and petitioner no. 1 as Chairman of the respondent no. 1 company, and declare form No. 32 filed for their removal as illegal and null and void.*
- f. Direct that the petitioner no. 1, 4 and 9 or any of their representative to be authorized on behalf of the respondent no. 1 company to be one of the signatories from the petitioners group for any withdrawal of money and issuance of cheques etc. from all the accounts of the company.*
- g. Grant injunction against respondents herein and each of them from interfering in the day-to-day affairs of Respondent no. 1 company or from claiming any right over the said Company as a shareholder or director or otherwise in any manner whatsoever.”*

7. S.P.Gupta Group after entering appearance before the CLB to contest the petition of respondents no.1 to 20 herein had raised a preliminary objection to the very maintainability of that petition by filing an application, being C.A. No. 400/2010, under Regulation no. 44 of the Company Law Board Regulations, 1991 as also in their reply to the main Company Petition. The maintainability of the Company Petition was challenged inter alia on the ground that since the main grievance of the petitioners, (respondents no.1 to 20 herein) was that shares of the appellant Company had not been allotted to the partners of Janki Exports International as per their share in the partnership and thus the dispute which

they were seeking to get resolved with the intervention of the CLB was really one between the partners of the said joint family firm and there was no dispute concerning the affairs of the appellant Company which had in fact made allotment of its shares as had been applied for by each one of the partners of Janki Exports International. Therefore, the CLB had no jurisdiction to entertain such like disputes in exercise of its powers under Sections 397 and 398 of the Act of 1956. On merits also the petition was resisted by S.P.Gupta Group. It was claimed in the reply that the petition was mala fide since the Directors from B.C.Gupta Group had actually resigned themselves many years ago since they were not sure as to whether the hotel project, which involved huge investment, would become a reality or not and it was unbelievable that if they had been removed many years back they would not have come to know about that and would have allowed S.P.Gupta Group to run the affairs of the appellant Company for years. It was only when the hotel actually was constructed and that B.C.Gupta Group had woken up to interfere in the smooth management of the affairs of the appellant Company and the hotel by S.P. Gupta Group. It was also pleaded that petitioner no.13 in the Company Petition, M/s International Commenter Limited, which was at one time having 42,800 shares of the

appellant Company had transferred 42,57,500 shares in favour of a group of four Companies from which it had taken some loans and those four Companies subsequently merged into one Company by the name of M/s Star Light Credit (India) Ltd. and so 42,57,500 shares were finally transferred in its name. Regarding petitioner no.14 M/s Intravest(India) Limited's claim that it was having 61000 shares of the appellant Company it was pleaded that this Company had also transferred 44800 shares in favour of Mr. S.P.Gupta. The reliefs being claimed in the company petition were alleged to be time barred also.

8. However, before the CLB could take any final decision on the maintainability of the Company Petition of respondents no.1 to 20 herein they filed one application, being C.A. No. 747/2010, under Order VI Rule 17 of the Code of Civil Procedure read with Regulation 44 of the Company Law Board Regulations, 1991 for amending their petition by incorporating therein a development which had come to their knowledge after reading the reply of S.P.Gupta Group to their petition. It was claimed that in their reply S.P.Gupta and other respondents had claimed that 42,57,500 shares out 42,80,000 shares of the appellant Company held

by petitioner no.13(respondent no.13 herein) had been transferred to one Company by the name of M/s Star Light Credit(India) Limited and further that 44,800 shares out of 61,000 shares of the appellant Company held by petitioner no.14(respondent no.14 herein) had been transferred in favour of Mr. S.P.Gupta(who was arrayed as respondent no.2 in the Company Petition). According to the respondents no.1 to 20(B.C.Gupta Group) the shares of respondents no. 13 and 14 herein had been transferred illegally in favour of M/s Star Light Credit(India) Limited and Mr. S.P.Gupta and so they wanted to challenge those illegal transfers of shares also in the same petition.

9. The paras proposed to be added in the Company Petition by way of amendment were as follows:-

“2.13.1 That however, 42,57,500 equity shares of Rs. 10 each of the Respondent no.1 Company held by Petitioner no.13 have been illegally and malafidely shown to have been transferred to Star Light Credit India Limited, a company registered under the precincts of the Registrar of Companies, West Bengal, and the same is being challenged hereinafter in the petition.

2.14.1 That however, 44800 equity shares of Rs. 10 each of the Respondent no.1 Company held by Petitioner no. 14 have been illegally and malafidely shown to have been transferred to respondent no.2 and the same is being challenged hereinafter in the petition.

ILLEGAL AND FRAUDULENT TRANSFER OF 42,57,500 EQUITY SHARES OF RESPONDENT NO. 1 COMPANY HELD BY INTERNATIONAL COMMENTER LIMITED i.e. PETITIONER NO. 13 AND ILLEGAL AND FRAUDULENT TRANSFER OF 44800 EQUITY SHARES OF RESPONDENT NO. 1 COMPANY HELD BY INTRAVEST (INDIA) LIMITED i.e. PETITIONER NO. 14

6.27.1 That the correct shareholding of the Petitioner no.13 and the petitioner no. 14 in the Respondent no.1 Company is 42,80,000 equity shares and 61000 shares respectively as is also evidenced by the Annual Return of the Respondent no. 1 Company for the year ending 31st March, 2009 filed by the respondents themselves. A copy of the annual return is annexed herewith and marked as Annexure P26. It is pertinent to mention that the said Annual Return bears the signatures of Respondent no. 2 and 6 themselves.

However, the petitioners were shocked to learn that 42,57,500 shares of the Respondent no. 1 Company held by Petitioner no. 13 have been transferred and the Petitioner no.13 now shown holds only 22,500 shares while the petitioner no. 14 has been shown to hold only 16200 equity shares.

Further, the Petitioner no. 13 and 14 is under the control of the Petitioner group. Petitioner no. 1, 2 were appointed as directors of the Petitioner no. 13 w.e.f 18.11.2008 along with Mrs. Manisha Gupta and Gudiya Gupta while Petitioner no. 3 has been the Director of the Petitioner no. 13 since 17.04.1993 and Petitioner nos. 7 and 10 were appointed as Directors of the Petitioner no. 13 w.e.f 12.11.2009. It is imperative to point out that the Petitioner group is not aware about the transfer of any shares of the Respondent no. 1 Company held by petitioner no. 13 and petitioner no. 14 to any other person/entity and neither has any such transfer been discussed in any board meeting, nor there is any authorization by the petitioner no. 13 and petitioner no. 14 for sale and transfer of the shares in question.

It is further pertinent to mention that the said transfer in respect to petitioner no. 13 has been shown to have been affected through a transfer of beneficial interest in the said shares while no transfer documents have been annexed in reference to transfer of shares from the petitioner no. 14 to respondent no.2. However, the said transfer of the shares of petitioner no. 13 could not have been affected as the same is time barred. The relevant provisions and rules applicable to such a transfer mandate a return to be filed by the company which has received a declaration for transfer of beneficial interest within 30 days of the receipt of such a declaration. While the declaration forms annexed to Form 22B are dated 01.01.2009, the return i.e. Form 22B has admittedly been filed as late as 20.11.2009. It is further also pertinent to mention that the respondents have tried to ascribe the reason for the present transfer of shares to certain loans taken by petitioner no. 13 from four companies namely, KMP Consultancy (P) Ltd. and Sultania Commercial (P) Ltd in the late nineties which have been merged into Star Light Credit (India) Limited vide an order of the Hon'ble High Court of Calcutta dated 15.07.1999. However, it is pertinent to point out that even though the order was passed in 1999, the declaration to the company were made only on 2009 i.e. after the lapse of ten years. It is pertinent to mention that the said 42,80,000 shares are still not lien free and are held as collateral security with Tourism Finance Corporation of India (IFCI). The said declarations and return filed by the company appear to be nothing more than a mere after thought to the perpetuating circumstances in view of the feuds among the members of the family acquiring enormous proportions. Therefore, the Petitioners verily believe that the Respondents have fraudulently transferred 42,57,500 shares of the Respondent no. 1 Company held by International Commenter Limited i.e. Petitioner no. 13 without any duly signed and stamped transfer deed being presented to it and therefore, in blatant violation of the provisions of the Companies Act, 1956. The entire transaction of transfer of shares is fraudulent.

And the additional prayers sought to be made in the Company Petition were as follows:-

“ Direct the rectification of the register of members of the respondent no.1 company to restore the shareholding of the Petitioner no. 13 as 42,80,000 equity shares, by deleting the names of the transferees from the register of member and set aside the illegal transfer of 42,57,500 equity shares to Star Light Credit India Ltd.

Direct the rectification of the register of members of the respondent no.1 company to restore the shareholding of the Petitioner no. 14 as 61000 equity shares, by deleting the names of the transferees from the register of members and set aside the illegal transfer of 44,800 equity shares to Respondent No. 2.”

10. The respondents no. 1 to 20 herein had also moved an application being C.A.748/2010 for impleadment of M/s Star Light Credit(India) Limited in whose favour 42,57,500 of M/s International Commenter Ltd. were shown to have been transferred. The CLB had allowed the amendment application as well as the impleadment application vide its common order dated 29.11.2011.

11. The appellant Company felt aggrieved by the impugned order of the CLB allowing amendment of the Company Petition and so it filed the present appeal on 13.12.2011.

12. After receipt of notice of this appeal the respondents entered appearance in the matter on 05.01.2012 and on that date itself learned counsel for all the parties had agreed that this appeal could be taken up for final hearing as a short point only was involved in the appeal. Accordingly the appeal was fixed for final hearing and then arguments were advanced from both sides.

13. Before proceeding to deal with the submissions made by Shri Jayant Bhushan, learned senior counsel for the appellant Company and Shri Nidesh Gupta, learned senior counsel for respondents no. 1 to 20, who are the petitioners before the CLB, the relevant portions from the impugned order of CLB may be noticed. This is what was observed by the CLB:-

“4. I am of the considered view that both the applications CA no. 747/2010 and CA No. 748/2010 deserve to be allowed for the following reasons:

(c) Unlawful transfer of the shareholding of P-13 and P-14 in R-1 to Star Light amounts to dilution of their shareholding in R-1 Company. Company Petition CP No. 35(ND)/2010 is a composite petition u/s. 397, 398, 399 r/w. Section 111A, 402 and 403. The relief for rectification of Register of Members of R-1 Company to restore the shareholding of P-13 and P-14 has also been sought by CA No. 747/2010. It would, therefore, be unjust to direct

the Petitioner P-13 and P-14 to file a separate petition for the reliefs sought by CA No. 747/2010.....

(d) Since 42,80,000 shares held by R-13 are prima facie held as collateral security with TFCI and it is sought to be averred that physical transfer of 42,57,500 shares has not taken place in favour of Star light a serious question of law would arise whether the said transfer is bad in law being in violation of section 108 of the Companies Act.

(e) It cannot be said that the Petitioners have filed CA No. 747/2010 & CA No. 748/2010 merely to defeat the question of maintainability of the petition raised in CP No. 400/2010..... Even prima facie it appears that despite due diligence the petitioners could not be said to be in knowledge of the transfer of shares held by P-13 & P-14 in R-1 Company to Star Light and R-2, on 03/03/2010, i.e., the date of filing of the petition. The Petitioners have averred that they learnt about the said transfer only on 04/11/2010 at the AGM of R-1. Even the Respondents had, before this date neither filed any document nor averred in the response the factum of transfer of shares held by P-13 & P-14 in R-1. If on the date of filing of the petition P-13 and P-14 had knowledge about the transfer of 42,57,500 equity shares held by P-13 to Star light and 44800 equity shares held by P-14 in R-1 to R-2 there is no reason why the Petitioners would not have averred it in the petition and claimed appropriate relief.

(f) The amendment sought by CA No. 747/2010 is imperative for proper and effective adjudication of the C.P.

(g) It cannot be said that the application for amendment as also the application for impleadment of Star Light suffers from mala fide.

(h) The proposed amendment does not change the nature and character of the Company Petition.

(j) Refusal of amendment sought would lead to multiplicity of litigation.”

14. Mr. Jayant Bhushan, learned senior counsel for the appellant Company had contended that the CLB had wrongly allowed the amendment of the Company petition without clarifying as to how and in what manner proposed amendments in the Company petition were being considered to be necessary for the effective adjudication of the disputes already raised by B.C. Gupta Group against S.P. Gupta Group and further that it had also been wrongly observed in the impugned order that it would not be appropriate to require the petitioner nos. 13 and 14 before it to file a separate petition against the appellant Company for correction of the Register of Members by showing their correct shareholding therein after cancelling the transfers in favour of Star Light Credit (India) Limited and S.P.Gupta since that controversy had nothing to do with the controversies already raised by B.C. Gupta Group in their petition. It was also argued that the only course open for the petitioners no. 13 and 14, who claimed themselves to be aggrieved by the transfer of their shares in favour of Star Light Credit (India) Ltd. and Mr. S.P. Gupta, was to initiate independent proceedings challenging the transfer of their shares.

15. On the other hand Mr. Nidesh Gupta, learned senior counsel for respondents no. 1 to 20 strongly argued that M/s Star Light Credit (India) had challenged the impugned order before this Court by filing Co.A. (SB) No. 98/2011 on 21/12/2011 but that appeal was rejected by the Company Bench on 23.12.2011 and so the impugned order of the CLB had already attained finality when the present appeal came up for hearing and, therefore, its correctness could not be re-agitated in this appeal all over again. It was also submitted that the CLB had not committed any illegality in allowing the amendment of the Company Petition instead of requiring petitioners no. 13 and 14 before it to file a fresh petition for the redressal of their grievances regarding transfer of their shares illegally by S.P. Gupta Group. It was contended that since already there was a prayer in the Company Petition for rectification of the Members' Register of the appellant Company the relief being claimed by petitioners no. 13 and 14, which was also for rectification of the Members' Register by reflecting their correct shareholding, could very well be added to the list of reliefs already being claimed in Company Petition and rejection of the amendment application would have simply resulted in multiplicity of litigation between the parties even though they could have filed separate petition

also. Some judgments of the Supreme Court were also cited in support of the submission that if multiplication of litigation can be avoided by allowing the amendment of the existing pleadings in already pending litigation between the same parties then the amendment of pleadings should be allowed.

16. After having considered the rival submissions I have come to the conclusion that the impugned order of the CLB allowing amendment application of respondents no. 1 to 20 herein cannot be sustained.

17. As far as the submission of learned senior counsel for respondents no. 1 to 20 that the impugned order of the CLB has attained finality with the dismissal of the appeal filed against that order by M/s. Star light Credit (India) Ltd. vide judgment dated 23.12.2011 is concerned, I find no merit in that submission. I have gone through the order dated 23.12.2011 passed in that appeal of M/s. Star Light Credit (India) Ltd. and I find that that appeal had been dismissed at the admission stage itself without issuance of any notice to the respondents in that appeal including the appellant herein. It had been observed in the order itself that that no notice of the appeal had been issued to the respondents though some of them had appeared on their own and some submissions had

been made on behalf of the respondents no. 1 to 20 herein in support of the order of the CLB. A perusal of that order further shows that the main controversy in that appeal raised by the appellant there was whether it(M/s. Star Light Credit (India) Ltd.) could be impleaded as a party in the Company Petition of the respondents 1 to 20 herein without issuing prior notice to it of CA No. 748 of 2010 filed for its impleadment. Rejecting that ground of challenge against the impugned order of CLB it had been observed by the Court that there was no requirement of law for issuing prior notice to a party who is sought to be impleaded in a pending litigation and that that party can always raise an objection after its impleadment that it was not a necessary party and, therefore, it should be dropped from the array of parties. It was also observed in that order that impleadment of M/s. Star Light Credit (India) Ltd. was, in fact, the consequence of amendment application of respondents no. 1 to 20 herein having been allowed since with the amendment in the Company Petition challenge to the allotment of shares to M/s. Star Light Credit (India) Ltd. stood raised and, therefore, it became a necessary party. M/s Star Light Credit (India) Ltd. had really no grievance against the CLB's order allowing amendment application since when the same was

filed it was not a party in the Company Petition. Though some observations were made regarding the CLB's order allowing amendment application also in the order dated 23.12.2011 but those observations could not debar the appellant Company from challenging the impugned order independently since no notice of that appeal was given to anyone. Therefore, this appeal cannot be dismissed on this ground.

18. From the case of B.C. Gupta Group as pleaded in their petition their real grievance does appear to be the disproportionate allotment of shares to the partners of Janki Exports International, which undisputedly is a joint family partnership firm comprising of the members of B.C. Gupta Group as well as S.P. Gupta Group. It is the grievance of the B.C. Gupta Group that due to the disproportionate allotment of 2.1 crores shares of the appellant Company it had been reduced to minority while S.P. Gupta Group had become the majority group. So, the amendments sought would have been of no utility for the determination of the said grievance of B.C. Gupta Group.

19. There is no doubt that B.C. Gupta Group had also challenged the removal of some of their members from the

Board of Directors of the appellant Company but considering the fact that the removal of some of their members as Directors of the appellant Company had taken place many years before the filing of the present Company petition by them, that dispute prima facie appears to have been raised incidentally. In any case, the proposed amendments were not necessary for adjudication of that controversy also.

20. This appeal is, therefore, allowed and the impugned order dated 29.11.2011 passed by the CLB allowing amendment application of respondents no. 1 to 20 is set aside.

P.K. BHASIN,J

August 16, 2012