VPH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 670 OF 2015
IN
COMPANY PETITION No. 116 OF 2015

Ms. Shilpa Mehta and Ors. ... Appellants
Vs.
SI-Group India Limited ... Respondent

***

Mr. Vishwajit Sawant a/w Prabhakar Jadhav i/b Shilpa Mehta, for the Appellants.

Mr. Virag Tulzapurkar, Sr. Counsel a/w Hemant Sethi i/b Hemant Sethi & Co., for Respondent.

***

CORAM : V. M. KANADE, ACTING C. J. &
REVATI MOHITE-DERE, J.

DATE : DECEMBER 2, 2015

PC.

1. The Appellants, minority shareholders, have challenged the order passed by the learned Single Judge, who was pleased to allow application filed under Section 100 to 103 of the Companies Act, 1956, permitting the Respondent-Company to reduce the share capital.

2. We have heard the learned counsel appearing on behalf of the Appellants and the learned senior counsel appearing on behalf of

the Respondent-Company. The principal contention of the learned counsel appearing on behalf of the Appellants is that the valuation report which was submitted by the Company on the basis of which the reliefs claimed by the Company were granted, did not take take into consideration, firstly, the valuation of land owned by the Company at New Mumbai. He submitted that the valuation report is showing valuation at Rs 16 Crores, whereas under the Ready-Reckoner, the valuation of the land is shown at Rs. 2,000 Crores. He further submitted that valuation report itself does not take into consideration several other factors, which ought to have been taken into consideration for the purpose of determination of the market value of the shares. He has invited our attention to the validity report and has taken us through the entire report. It is submitted that, therefore, the scheme sanctioned by the learned Single Judge be set aside and a direction may be given to the valuer to submit the report in respect of the shares of the Respondent-Company. He then submitted that even a special meeting was not convened to decide this issue, and though objection was raised by the minority shareholder on various points, no explanation was given to the objection raised by the minority shareholder. He invited our attention to the minutes of the meeting, and more particularly, the objections which are raised by the said minority shareholder. He further submitted that separate meeting of the minority shareholder ought to have been called by the Company, so that adequate opportunity could be given to them to make their submissions and to raise their objection to the reduction of the share-capital. He submitted that even though the Appellants do not wish to challenge the reduction of the share-capital, their principal objection was in respect of value of the shares, which was arrived at by the valuers. He submitted that valuation report itself mentions that the report which was tendered by the valuer was not to be referred or cited and that they are not responsible for the opinion which was given by them in the said report. He has invited our attention to the judgment of the Apex Court – ***Miheer M. Mafatlal, Appellant Vs. Mafatlal Industries Ltd., Respondent [(1997) 1 SCC 579]***, and more particularly, paragraph 29 of the said judgment.

3. He submitted that the Company Court, therefore, ought to have independently considered whether the valuation fixed by the valuer was fair and adequate. He submitted that there was a good

ground for refusing to sanction the scheme and refusing to grant the relief for reduction of the share-capital. He also relied on the judgment of the Apex Court in the case of - ***Sandvik Asia Ltd. Vs. Bharat Kumar Padamsi [(2009) 92 SLC 272 (BOM.)]***. It is submitted that the Respondent-Company was de-listed from the National Stock Exchange (NSE) and the Bombay Stock Exchange (BSE) in September, 2009. He has submitted that the position of the Company had improved and the Company started earning profit and it declared dividend @ 30 per cent. He submitted that the valuation report of M/s. N. M. Raiji & Co. does not take into consideration this fact. It is further submitted on the basis of valuation that has been done by the valuer that the value of the assets arrived at, which according to the Appellants, was grossly incorrect. It is further submitted that valuer had fixed the price of the equity shares @ Rs.103.82 per share. However, it was done by ignoring various factors which were relevant for the purpose of determining fair value of the shares. It was submitted that the Apex Court in the case of ***Miheer M. Mafatlal (supra.)*** has held that if the class of share holders was divided into different groups having varied interest, then such a group should be treated as separate class for the purpose of the scheme. He further submitted that the valuer in the report, by virtue of the disclaimer clause, has diluted credibility of his report. He submitted that the valuer has compared the Respondent-Company with other companies, such as HOCL, Vinati Organics Ltd., Tata Chemicals Ltd., etc. He submitted that no comparison of the Respondent-Company should be made with other companies.

4. On the other hand, Mr. Virag Tulzapurkar, learned senior counsel appearing on behalf of the Respondent submitted that the procedure laid down under the Companies Act has been scrupulously followed by the Company. He submitted that the valuation report was made available to the Appellants. However, before the meeting no inspection of the report was taken by the Appellants. He further submitted that advertisement was issued by the Company informing the shareholders about hearing of the company petition before the learned Single Judge. However, neither the Appellants nor any other minority shareholders filed their objection to the scheme before the learned Single Judge. He submitted that it is not now open for the Appellants to challenge the valuation report in the appeal. He

submitted that Company Court was not expected to sit in appeal over the decision of seeking permission, taken by the Respondent-Company. He submitted that the valuation report was not expected to be mathematically accurate. He submitted that, however, valuer being an expert in the field, has taken into consideration various factors before arriving at the figure, which was fair and just. He submitted that contention of the Appellants that valuation of the land was not taken into consideration was without any substance. He submitted that ready-reckoner shows the price of the land, which was to be transferred to third party. However, the Company as of today had not shown any intention to sell the assets, and therefore, the price as reflected by the ready-reckoner was not relevant for the purpose of deciding the market value of the share-capital. He submitted that admitted position was that at the relevant time, value of the share was 70-80 rupees. The valuer had fixed the price @ Rs. 103/- per share.

5. After having heard the learned counsel appearing for the parties, we are of the view that it is not open for the Appellants to challenge the scheme after the scheme is fully implemented and value of the shares is deposited in the account of the Appellants. We have

perused the valuation report, which is submitted by the expert in the field. Neither efforts have been made to get the correct valuation, nor averments have been mentioned about correct market value of the property. The contention that the valuer ought to have taken into consideration the market value of the land as per the ready-reckoner, is without any substance. We are of the view that the Appellants could have appeared before the learned Single Judge and filed their objection to the reduction of the share-capital. However, they have chosen not to appear before the learned Single Judge and only after the scheme was sanctioned and given effect, they have approached this Court. We do not accept submissions of the learned counsel appearing on behalf of the Appellants. There is no substance in the submissions made on behalf of the Appellants. The procedure to be followed for holding extraordinary meeting has been scrupulously followed.

6. One another factor which has to be taken into consideration is that total minority shareholders were 6,600, who owned 11 lakhs shares. The percentage of the equity share holdings of minority shareholders was 2.66%. Out of these, the Appellants owned 30,000 shares, and therefore, their percentage is 0.03%. It is

submitted that majority shareholders had accepted the valuation and not raised any objection.

7. In our view, it is not in dispute that minority shareholders can raise objection to the scheme. In the present case, when the scheme came up before the learned Single Judge, the arguments advanced before us were not advanced before the learned Single Judge in that context. Therefore, the fact is that all other minority shareholders have accepted valuation. It is relevant to note that the Appellants are raising objections after the scheme has been finalised and implemented. We are, therefore, not inclined to interfere with the impugned order, granting approval to the scheme. Hence, appeal is dismissed.

Sd/-
[REVATI MOHITE-DERE, J.]

Sd/-
[ACTING CHIEF JUSTICE]

Vinayak Halemath