

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-01-2015

CORAM

THE HONOURABLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

ORIGINAL SIDE APPEAL Nos.170 and 172 of 2014

Amarnath Shroff .. Appellant in
OSA 170/2014/Respondent in CA.248/12

Chowringhee Residency Private
Limited
Formerly known as Diamond Empire
Rep. By its Director
Amit Bajoria
No.42B, Chowringhee Road
Calcutta 700 025 .. Appellant in
OSA 172/2014/R1 in Court CA.337/12

vs

The Official Liquidator of
Origin Agro Star Ltd.,
"Corporate Bhavan", 2nd Floor
No.29, Rajaji Salai
Chennai 600 001 .. Respondent in
OSA 170/2014 and
1st Respondent in
OSA 172/2014/Applicant in C.A.No.248, 337/12

Tarini Retail Private Limited
6, Wood Street
Kolkata 700 016 .. 2nd Respondent in
OSA 172/2014/R2 in C.A.337/12

Original side appeals preferred under Order XXXVI Rule 9 of
O.S. Rules read with Clause 15 of Letters Patent against the order of
the Court dated 28.2.2014 made in C.A.Nos.248 and 337/2012 in
C.P.No.43/2005.

Company Applications 248, 337/12 filed in C.P.No.43/2005 are filed
under Sections 446 (2)(b) 460(4) 537(a) and (b) of Companies Act 1956
rent with rules 9 and 11(b) of Companies(Court) Rules 1959.

Prayer C.A.248 /12:-

Company Application 248/2 filed prying this court

(a) to direct the respondent, his agents, servants, assigns, and of any person, acting of purporting to act through or under him to restrained by an order of Interim injunction of this Court from selling, alienating, encumbering, transferring, and in any manner creating any third party rights, title of interest in respect of the property situates at No.42B, Chowringhee Road, Calcutta admeasuring 93.5 cottahs as stated in the report.

b)to direct the respondent to handover all the shares certificates relating to the companies mentioned in para 6 of the report.

c)to direct the respondent to make statement on oath as to whether any benefit was derived during the period when he held to shares,

d)to pass an order to the effect that the ad-interim injunction be made absolute after hearing the respondent,

e)to direct that the cost of this application do came out of the funds of the Company in liquidation.

C.A.337/12:The company Application praying this Court:-

(a) to direct the respondent his agents, Servants, assigns and of any person acting or purporting to act through or under him be restrained by an order interim injunction of this Court from selling, alienating, encumbering, transferring, and of in any manner creating any third party rights, title, or interest and carrying out any construction activity. Whatsoever it may be on to above property situated at No.42B, Chowringhee Road, Calcutta admeasuring 93.5 cottahs as stated supra.

b)to direct the respondent to produce to all the statutory records from the year 1997 to till date in respect of five companies viz., SPA Electrical Private limited, SPA Tea Private Ltd., SPA Lease and Finance Private Ltd., STB leasing and Finance Private Ltd., and Sowmaya Vanijya Private Ltd., which has come in its possession Consequent upon its merger for examination of this court for ascertaining the truth about the manner in which the shares had been dealt with,

c)To lift the corporate veil of the respondent company of finding out the actual beneficiary of the company.

d)to direct making good the loss suffered by the application company in liquidation,

e)to direct that the cost of this application do come out the funds of the company in liquidation.

Office at New No.183 old No.79, TTK Road, Alwarpet, Chennai -18,
under the provisions of the Companies Act 1956.

For Appellants : Mr.P.H.Aravind Pandian
Senior Counsel
for Mr.Harishankar Mani
in OSA 170/2014

Mr.Aravind B.Datar
Senior Counsel
for Mr.S.V.Pravin Rathinam

For Respondents : Mr.T.K.Seshadri
Senior Counsel
for Mr.B.Dhanaraj
Official Liquidator

COMMON JUDGMENT

(Judgment of the Court was delivered by
THE HON'BLE CHIEF JUSTICE)

The present appeals arise out of the endeavour of the Official Liquidator (O.L.) appointed in respect of the company in liquidation viz. M/s.Origin Agro Star Limited, to claim the rights as the shareholder in M/s.Chowringhee Residency Private Limited, Calcutta, viz. appellant in OSA No.170/2014, (hereinafter referred to as appellant company), on the basis of it's alleged shareholding of 23.73% each in five private limited companies, which were subsequently merged in the appellant company.

2.The impugned order is quite elaborate; but, we are setting out only the facts relevant for determination of the appeals as the appellants have given a consent, which reduces the scope of controversy for decision in the appeals.

3.The five companies, in which the O.L. claims that the company in liquidation held shares, along with eight other companies, were merged into the appellant company vide order of Calcutta High Court dated 18.3.2009. If the shareholding of the company in liquidation existed, then correspondingly shares would have been issued in the appellant company. However, the very basis of the same would be the continued shareholding of the company in liquidation in those five companies, which is sought to be denied.

4.The plea of the appellant company is that the subsequent balance sheets after the year 1996-97 did not show any such shareholding; but, those shareholdings were sold and proceeds credited as would be evident from subsequent balance sheets. The winding up order in respect of the company in liquidation was passed only on 16.3.2007, whereas the applications had been filed in the year 2012 and thus, the order would relate back to that date.

5. On the other hand, the stand of the O.L. is that all is not well in respect of the records, specially as there were common link of persons, who were in management of those companies, in as much as a power of attorney was issued in favour of one Amarnath Shroff, who has filed the former appeal being O.S.A.No.170 of 2014, entitling dealing with properties and shares. The persons in control of these five companies have not filed the statement of affairs and proceedings have been initiated against them including for their presence before the learned Company Judge by even taking out Non Bailable Warrants. It is the say of the Official Liquidator that the said Amarnath Shroff must be aware of the transactions in question and might have dealt with the shares on behalf of the companies.

6. Mr. P.H. Arvind Pandian, learned Senior Counsel appearing for the appellant Mr. Amarnath Shroff, however, denies the said person having dealt with the shares and pleads that the power of attorney was issued not only by those five companies, but also by a number of other entities for purposes of a particular litigation dealing with immovable properties, in Bombay High Court, in which a consent decree has been passed. That consent decree was sought to be reopened; but, the applicant has since withdrawn the application and it is not necessary for us to go into the details of that issue, which has been dealt with in the impugned order.

7. It may be noticed that the merging entities owned land and the purpose for merger is stated to have been pooling of the land for a development project, which is now being undertaken, and in the conspectus of these facts, the learned Company Judge issued the following directions:

"(i) The prayer for interim injunction is rejected. However, any alienation made by the respondent in Comp.A.No.337 of 2012 will be subject to the final outcome of the proceedings before the Company Court, to the extent of the share that the company in liquidation could have had in the property, if a sale transaction in full and entirety had not taken place before the filing of the winding up petition; and

(ii) A direction is issued to Mr. Amarnath Shroff to file full and complete details along with necessary records, to show the nature of the transaction entered into by him with the company in liquidation, the 14 companies on whose behalf he acted as Power Agent and the records relating to passing on of consideration. Mr. Amarnath Shroff is directed to file the records with details within a period of four weeks. If the records are not available, it will be open to the Official Liquidator to come up with a prayer for appropriate reliefs. If records are available, the Official Liquidator may examine the same and file a report into Court."

8. Insofar as the second direction is concerned, learned Senior Counsel Mr. P. H. Aravind Pandian, on instructions, states that whatever facts are known to Mr. Amarnath Shroff or materials available with him in respect of the subject controversy, would be filed before the Official Liquidator with a proper affidavit in terms of the said direction. The only apprehension expressed by the learned Senior Counsel, was that it should not be presumed that the information is available with Mr. Amarnath Shroff as there is nothing on record to show so and an affirmation would also be in those terms. Suffice for us to say that in the conspectus of the discussion, that direction being direction (ii), is not liable to be varied and the same be complied with within a period of four weeks from today as prayed for.

9. That leaves us with the first direction. On the conspectus of the material, the interim injunction was rejected as prayed for by the Official Liquidator; but, a limited interim order was passed that if any alienation is made by the appellant company, it will be subject to the final outcome of the proceedings before the Company Court to the extent of the share that the company in liquidation could have had in the property, if the sale transaction in full and its entirety had not taken place before the filing of the winding up petition.

10. On the aforesaid aspect, the plea sought to be advanced by Mr. Arvind Datar, Senior Advocate, appearing for the appellant company, was that at best, even if that shareholding is held entitled to the company in liquidation, the right as the shareholder alone could be exercised i.e., to receive dividend. In this behalf, a reference has been made to the judgment of the Hon'ble Supreme Court in *BACHA F. GUZDAR VS. COMMISSIONER OF INCOME TAX* (1955 SCR (1) 876). The relevant observations read as under:-

"There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up, but not in the assets as a whole as Lord Anderson puts it."

11. We are also of the view, as fortified by the aforesaid observations, that the company in liquidation could only have the right to receive dividend; but, the order impugned dealt with the share in the property in question. In fact, the submission of the

learned Senior Counsel for the O.L. is that if the shares were available, the corpus from it's sale could have been utilised to settle the creditors. However, we are of the view that such a situation has not arisen on account of the fact that it is yet to be established by the O.L. that the company in liquidation held shareholding in the five merging entities on account of the factual controversies sketched out in the impugned order and also placed before us. This is largely due to the lack of material documents with the O.L. and only if the O.L. is able to obtain the requisite material, would he be in a position to come to a final conclusion.

12.Learned Senior Counsels appearing for the two appellants, however, are willing to concede that in order to put an end to the present litigation, they are willing to undertake that the dividend, which would enure on the proportionate shareholding in the appellant company of the company in liquidation, in the eventuality of it proving that it held the shareholding in the five merging companies, would be kept aside for the benefit of the company in liquidation till such time the matter was resolved. This undertaking is placed on record.

13.We are, however, of the view that in case the company in liquidation succeeds in it's endeavour, the rights would not only be qua the shareholding and dividend, but also qua the rights and bonus shares and all corporate benefits. Of course, in respect of the issue of rights shares, it would be subject to making payments for the value of the rights shares. This right will also thus stand preserved.

14.We, thus, substitute the direction contained in sub-para (i) of para 84 of the impugned order as aforesaid and vacate the impugned order with the undertaking and directions as recorded aforesaid.

15.The original side appeals are allowed to the aforesaid extent leaving the parties to bear their costs.

16.Needless to say that the observations in the impugned order are only for determination of the interim application for protection and would not have an impact on the final view to be taken.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsv

To:

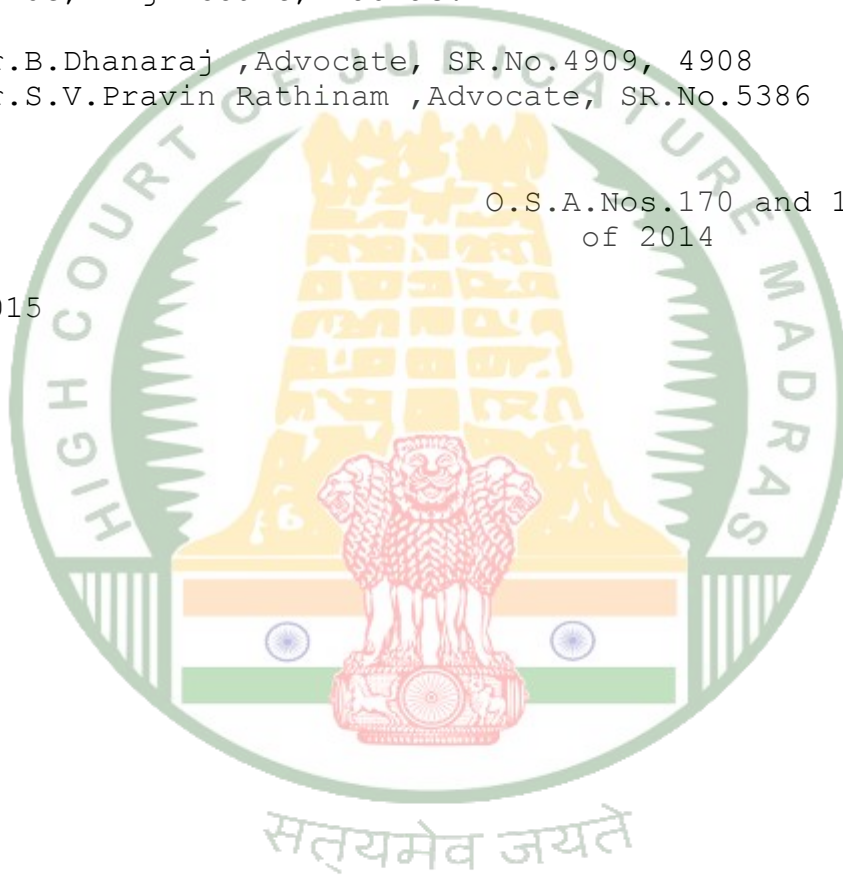
The Official Liquidator of
Origin Agro Star Ltd.,
"Corporate Bhavan", 2nd Floor
No.29, Rajaji Salai
Chennai 600 001.

Copy to: The Sub Assistant Registrar,
Original Side, High Court, Madras.

2 cc to Mr.B.Dhanaraj ,Advocate, SR.No.4909, 4908
1 cc to Mr.S.V.Pravin Rathinam ,Advocate, SR.No.5386

O.S.A.Nos.170 and 172
of 2014

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