

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.02.2018

DATED : 15.03.2018

CORAM

THE HONOURABLE MR. JUSTICE M.M.SUNDRESH

Company Appeal No.11 of 2016
& CMP No.15986 of 2016

Vedanta Ltd.,
(Formerly M/s Sterlite Industries (India) Ltd.,
SIPCOT Industrial Complex,
Madurai Bypass Road,
Post T.V.Puram,
Tuticorin-628 002. ...Appellant/Respondent

Vs.

1.Ms.Roopa G. Pai
No.15-7-366/1,
"Bharath Bagh"
Kadri Road,
Mangalore-575 003. ... Respondent-1/Petitioner

2.Karvy Computer Share Pvt. Ltd.,
"Karvy House"
No.46, Avenue 4, Street No.1,
Banjara Hills, Hyderabad-500 034. ... Respondent-2/Respondent No.2

Company Appeal filed under Section 10(f) of the Companies Act, 1956, to set aside the order dated 23.03.2015 passed by the Company Law Board and dismiss the Company petition No.1051 of 2010.

For Appellant : Mr.Rahul Balaji
For Respondents : Mr.R.Shankaranarayanan, Sr.C.,
for Mr.K.Gowtham Kumar for R1

JUDGMENT

This Company Appeal has been preferred by the appellant, who was arrayed as the first respondent therein, against the order made in C.P.No.1051 of 2010 on 23.03.2015 by the Company Law Board in allowing the prayer seeking re-instatement of shares in the name of the first respondent by directing the appellant to rectify the register of members by re-instating

the name of the first respondent to an extent of 2911 equity shares and issue fresh share certificates and declare the entitlement of the first respondent to the bonus shares and dividends.

2. The first respondent purchased equity shares and fully convertible debentures in the appellant company. These fully convertible debentures were subsequently converted as equity shares.

3. On 02.08.2000, as there was a mis-merge between the asset and equity capital, a Scheme was sought for. The merger was between Sterlite Industries (India) Limited viz., the appellant as it was known earlier and the resultant company Sterlite Optical Technologies Limited. This was done in pursuant to the order dated 02.08.2000 by the High Court of Judicature at Bombay in Company Petition No.595 of 2000 connected with Company Application No.257 of 2000. A subsequent order was passed by the said Court on 19.04.2002 in Company Petition No.203 of 2002 connected with Company application No.18 of 2002, which includes the Scheme of Arrangement between the first respondent and the equity shareholders. The following are the relevant paragraphs.

"4.PURCHASE OF SHARES:-

4.1.The Company shall on a date fixed by the Board following the Record Date, purchase not more than 2,79,96,278 Equity Shares (representing approximately 50%(fifty percent) of its issued, subscribed and paid-up equity share capital) from the Shareholders excluding the Equity Shares of those Shareholders from whom the Company receives a written intimation (in the relevant form provided for the purpose) within the stipulated period of their intention to continue holding the Equity Shares.

4.2. On or after the Record Date, the Company shall send to every Shareholder an Option Form to enable him/her/it to select whether he/she/it desires to continue as Shareholder of the Company and accordingly, does not desire to offer his/her/its Equity Shares to the Company for purchase. The Option Form shall also be available to the Shareholders at such designated location, time and in such manner as may be notified by the Company. The Shareholders shall be entitled to exercise their option to continue to hold their Equity Shares by sending the Option Form to the Company within the period stipulated in the Option Form."

4. An appeal was filed before the Division Bench, wherein a contention was raised that a silence cannot be construed as an offer. While repelling the said contentions and after noting down the fair statement made by the learned counsel for the first respondent, the following order was passed.

"Regarding question (iii)

The principal attack against the scheme sanctioned by the Company Judge is that the scheme treats the silence of shareholders as an offer. It is contended that this is contrary to the well established principles of transfer of shares. It is also contended that this violates various provisions of various laws such as Companies Act, Depositories Act, and SEBI and NSDL Regulations. On behalf of the company, it was vehemently contended that the Central Government should not be allowed to raise this contention for the first time in appeal, when the scheme has been substantially implemented and no objection was raised to the scheme before the learned Company Judge. It is submitted that when the shareholders have accepted the terms of offer and of the acceptance by passing the required resolution, it does not fall within the province of the company court to sit in judgment over that commercial wisdom and to interfere with that decision. An order of a court requiring transfer or cancellation has never been subject to the procedural requirement of even the Companies Act, let alone Bye-laws made by the NSDL. In fact, the NSDL Bye-laws themselves provide a transaction or to take any other action in order to give effect to the order or judgment of a court. A number of decisions have been cited by both sides in support of their respective contentions. We feel that it would be highly unjust to allow the Central Government to raise an objection of this nature at the appellate stage. The draft order of the learned company Judge records that the Central Government has submitted to the order of the court. The learned Judge specifically recorded in the minutes of order that the Central Government has no objection to the scheme. As indicated earlier a vast majority of shareholders have exercised their option in accordance with the scheme. The value of the cheques deposited and realised by the shareholders in response to the option is more

than Rs 158 crores. In these circumstances, in our opinion it would be wholly inequitable to entertain this objection at such belated stage. Although we are not inclined to accept the submission that a deemed or negative consent should not be permitted, we wish to make it clear that our order should not be understood to mean that we have approved such a provision. We have been told that several such schemes containing provisions of deemed or negative consent have been filed before the Company Judge. It will be open for the Central Government to raise objection to such schemes and if such objection is raised we are sure that the learned Company Judge will deal with the same in accordance with law.

It appears that 2,584 option forms out of 1,44,252 have been received undelivered. Mr. Chagla has made a statement that in respect of these undelivered option forms, shareholders would be allowed to retain their shares. Mr. Chagla further stated that the company has received around 143 complaints alleging that the shareholders have encashed the cheques through inadvertence or error and even those shareholders will be allowed to retain their shares provided they return the money within two months. Further, in respect of shares held by the shareholders who have neither returned the option forms nor encashed the cheques forwarded by the company, Mr. Chagla made the following offer

"In respect of shares held by the shareholders who have returned the option form and not encashed the cheques forwarded to them by the respondent no. 1 the shares shall be purchased by the respondent and cancelled as per the order of the Company Judge dated 10th April 2002. The respondent company shall keep in trust for such shareholders a sum of Rs. 100 per share plus five debentures of Rs.10 each to be dealt within the following manner.

a) If the share holder is desirous of obtaining the shares, the sum of money and debentures so retained shall be paid over as price of the shares to a seller identified by the respondent who shall

transfer to such shareholder an equivalent number of shares as the number held by him on the record date. The option shall be available for a period of four months from June 21, 2002.

b) If the shareholder elects to receive the consideration and in any case after the expiry of three months from June 21, 2002. If the shareholder has not elected to receive the shares till that period, the sum of money and debentures will together with the net income if any accrued thereon be handed over to the shareholder as and when required by him.

The respondent shall within four weeks publish public advertisement of the aforesaid offer in Indian Express in English and Maharashtra Times in Marathi in Bombay and Lokmat Times in English and Lokmat in Marathi at Aurangabad "

In view of the fact that the scheme has been substantially implemented and the fact that the Union of India/ Regional Director has not raised any objection before the ld Company Judge, we are inclined to accept the statement made by Mr Chagla as indicated above.

5. There appears to be some fraud committed, resulting in falsification of records without the knowledge of the actual investors. One such case involves the first respondent, whose address was changed without her knowledge, though she did not give any change of address. Thus, she did not receive any dividend on the shares nor any notice either from her Agent or from the appellant.

6. The first respondent sought issuance of share certificates from the Sterlite Optical Technologies Limited and also sought to know the procedure on the issuance of duplicate certificate to Sterlite Industries (India) Limited. The holding of the first respondent was accordingly confirmed by the second respondent.

7. The order dated 19.04.2002 passed by the High Court of Bombay speaks about reduction of capital shares from Rs. 10 to Rs.5 as stated above. The scheme also contemplated buyback of shares from those who are willing. The first respondent did not make any endeavour to express her willingness. It is to be noted that no offer of buyback was given. The first respondent sought an advice on buyback. Thereafter, the first respondent

wrote to the appellant regarding Folio Number-R-03228 alone. The first respondent was informed that the request made was under consideration.

8. On 14.06.2002, the first respondent has informed Share Proservices that she has not received any dividend and her address has been wrongly recorded. She has further informed that she has not received any buyback offer. A specific request has been made to pay the dividend from the year 1996 onwards.

9. Thereafter, on 13.07.2002 Share Proservices informed the first respondent that the request made by her was under

consideration. This is with respect to the letter dated 14.06.2002 sent by the first respondent. Thereafter, on 09.11.2002, the said services issued certificates of shares in Sterlite Optical Technologies Limited in favour of the first respondent.

10. Replying to the letter dated 09.11.2002, the first respondent demanded certificates of Sterlite Industries (India) Limited in and by the letter dated 20.10.2003. She sent series of communications to Share Pro-services stating that she did not accept the buyback offer and she should be given the unpaid dividends. The said Services also sought certain documents from the first respondent.

11. In the meanwhile on 29.12.2003, the first respondent gave a complaint to the Assistant General Manager, Investors Service Cell, Mumbai. It was followed by another complaint dated 29.04.2005. The complaint was forwarded to the appellant on 17.05.2006. On 10.02.2006, the appellant came with a rights issue entitling the first respondent to 5822 equity shares held by her on 1:2 ratio. Once again, the complaint was sent on 17.03.2006, which was followed by reminder from the Bombay Stock Exchange, Mumbai to the appellant on 17.05.2006. Finding no relief, the first respondent addressed a letter once again to the Director of the appellant on 04.05.2007. Few days later, on 23.5.2007, a complaint was acknowledged by Securities and Exchange Board of India (hereinafter called as "the SEBI"). The appellant sent a reply to the Bombay Stock Exchange on 02.06.2007. A communication was sent by the second respondent stating that it was not responsible for the fiasco. The Bombay Stock Exchange wrote a letter to the appellant on 31.07.2007 stating that the first respondent never agreed to sell her shares and the letter was wrongly interpreted. The second respondent sent two letters one to the first respondent and other to the Bombay Stock Exchange.

12. Despite having no relief, the first respondent pursued the matter once again before the SEBI through a complaint dated 05.03.2009. The SEBI wrote a letter on the complaint to the Registrar of Companies on 18.09.2009. Thereafter, the first

respondent issued legal notice and sought remedy by invoking Section 111A read with 111(4) of the Companies Act, 1956 with the following prayers.

- "1. Direct the respondent No.1 to reinstate 87,330 equity shares in the name of the petitioner or in the alternative Direct to assess and pay the value of the impugned 87,330 equity shares after valuing the shares based on the highest price quoted in the Stock Exchange during the period of the alleged lodgement of the application/Consent for buyback by the Petitioner and the date of effecting the registration of the buyback.
2. Direct the Respondent No.1 to pay the dues for an amount of Rs.12,36,795.50 (rupees Twelve Lakhs Thirty Six Thousand Seven Hundred ninety Five and Fifty Paisa only) to the petitioner being dividends declared by Respondent No.1 from 1996 till date.
3. and grant such other and further reliefs as the honourable Court deems fit and proper under the circumstances of the case."

13. The Tribunal, after noting all the facts, was pleased to pass the following order.

"In view of the aforesaid reasons, the petitioner has made out a prima facie case for grant of relief. Accordingly, I hereby direct the respondents,

(a) to rectify the register of members by reinstating the name of the petitioner to an extent of 2911 equity shares and also the bonus shares which was issued from time to time.

(b) to issue fresh share certificates to the petitioner within a period of 45 days from the date of receipt of copy of this order to the extent the petitioner is entitled to.

(c) the petitioner is entitled to bonus shares issued by the company from time to time.

(d) further the petitioner is entitled to dividends on the shares which she is entitled from time to time.

With the above directions the CP is disposed

of. No orders to to costs.”
Challenging the same, the present Company Appeal has been filed.

14. Heard the learned counsel appearing for the appellant and the learned Senior Counsel appearing for the first respondent and perused the written submissions.

15. The learned counsel appearing for the appellant would submit that the company petition in C.P.No.1052 of 2010 filed before the Company Law Board ought to have dismissed on the ground of delay and laches. The order passed by the Company Law Board suffers from non-application of mind. The Scheme as approved by the High Court of Bombay is binding on the first respondent. The Company Law Board has not taken into consideration all the subsequent developments, including the restructuring that took place. The impugned order passed would involve performance of an act, which is impossible. The jurisdiction of the Company Law Board under Section 111A read with 111(4) of the Companies Act, 1956, is very limited. Thus, it cannot adjudicate upon the disputed questions of fact. The learned counsel seeks to support the aforesaid submissions through the following decisions:

1. AMMONIA SUPPLIES CORPORATION PVT. LTD., V. MODERN PLASTIC CONTAINERS PVT. LTD., AND OTHERS ((1998) 7 Supreme Court Cases 105); and
- (2) T.V.SOMASUNDARAM PILLAI V. OFFICIAL LIQUIDATOR, HIGH COURT, MADRAS (O.P.NO.374 of 1953 & Company application Nos.289 of 1965 & 178 of 1966 dated 03.03.1967)

16. The learned Senior Counsel appearing for the first respondent would submit that originally there were two Schemes contemplated. One is with respect to buying share in the resultant company and the other is selling the shares in the erstwhile appellant company. Admittedly, the first respondent was not put on notice. Therefore, there is no invitation to offer and then acceptance as required under Section 7 of the Indian Contract Act, 1872. There is absolutely no material to hold that the first respondent was put on notice, received the intimation and accepted or refused the offer expressed. As the primary facts are not in dispute, the Company Law Board has rightly decided that the negligence and the fraud committed would make the appellant liable. As the issues have been considered at length, no interference is required.

17. After hearing the arguments, this Court wanted to explore the possibility of making payment to the first respondent by the appellant in lieu of the shares. Though both the counsels do not have any serious objection with respect to

the alternative prayer being considered, there appears to be difference in terms of quantification of value of the shares with reference to the reckoning date of such valuation.

18. In the light of the above narration, the primary facts are not in dispute. The first respondent had been knocking on the doors of the appellant right from the year 2001 onwards. There is absolutely no material to hold that the first respondent was put on notice, received the option form as per approved scheme and the cheque sent.

19. On the contrary, a fraud was committed against the first respondent though not by the appellant, but by some one acted

on its behalf, resulting in registration of case in Crime No.57 of 1999 under Sections 406, 420 and 120 of IPC. It is also an admitted fact that the members of the first respondent was fraudulently changed. Hence, as rightly found by the Company Law Board, such a negligence on the part of the appellant cannot enure to its benefit as against the first respondent. The change of address of the first respondent was expressly unauthorised and illegal. The first respondent has taken a consistent stand throughout. It is not, as if, she has made the claim only after seeking escalation of the price of the shares. As rightly submitted by the learned Senior Counsel appearing for the first respondent, the Scheme, as approved by the Court cannot have an application to the person, who was not being issued with even the option form as a fraud has been committed against her. Thus, the abovesaid decision approving the scheme cannot have an application to the case of the first respondent. The concession given by the learned counsel and accepted by the Court has been made applicable to those shareholders, who expressed their desire to obtain shares. Thus, the aforesaid proceedings, as

rightly held by the Company Law Board, cannot bind the first respondent.

20. This Court does not find any complicated questions of fact involved. As discussed earlier, there is no dispute on primary facts. Though the proceedings before the Company Law Board is summary in nature, as no complicated questions of fact involved warranting a detailed trial on examination of parties, this Court is unable to accept the submissions made by the learned counsel appearing for the appellant in this regard. We are not dealing with an issue qua a civil right or title as against a simple case of lack of invitation followed by offer and acceptance. In fact, the following passage of the judgment of the Apex Court in AMMONIA SUPPLIES CORPORATION PVT. LTD., V. MODERN PLASTIC CONTAINERS PVT. LTD., AND OTHERS ((1998) 7 Supreme Court Cases 105) actually helps the case of the first

respondent.

"So we conclude the principle of law as decided by the High Court that jurisdiction of Court under Section 155 is summary in nature cannot be faulted. reverting to the second

limb of submission by learned counsel for the appellant that court should not have directed for seeking permission to file suit only because a party for dispute sake states that the dispute raised is complicated question of facts including fraud to be adjudicated. The court should have examined itself to see whether even prime facie what is said is complicated question or not. Even dispute of fraud, if by bare perusal of the document or what is apparent on the face of it on comparison of any disputed signature with that of the admitted signature the Court is able to conclude no fraud, then it should proceed to decide the matter and not reject it only because fraud is stated. Further on the other hand learned counsel for the respondent totally denies any share having been purchased by the appellant-company or any amount paid to it. No transfer of any such share was ever approved by the Board of Director. It is urged the money even if advanced to Sri V.K.Bhargava by the appellant-company, if at all was a private transaction between the two to which respondent-company has no concern. So we find there is total denial by the respondent."

21. Delay and laches is a concept based upon practice and prudence as against law. Thus, a Court has to see as to whether there is actual delay or laches and if so, the party, who caused it and the consequence thereon. The facts narrated above would reveal that the first respondent was constantly pursuing her case. The appellant was also aware of the issue raised by the first respondent. Hence, the decision of this Court relied upon by the learned counsel appearing for the appellant in T.V.SOMASUNDARAM PILLAI V. OFFICIAL LIQUIDATOR, HIGH COURT, MADRAS (O.P.NO.374 of 1953 & Company application Nos.289 of 1965 & 178 of 1966 dated 03.03.1967) is not applicable to the case on hand.

22. It is submitted by the learned counsel for the appellant that it is impossible to give effect to the order of the

Company Law Board. The learned Senior Counsel appearing for the first respondent would submit that what is required is necessary entries. As there is a dispute with respect to the date to be reckoned for fixing the value of the shares, this Court is not willing to go into the same. After all, it is for the appellant to satisfy the order passed in accordance with law. Accordingly, the company appeal stands dismissed. Consequently, connected miscellaneous petition is also dismissed. No costs.

Sd/-

Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

raa

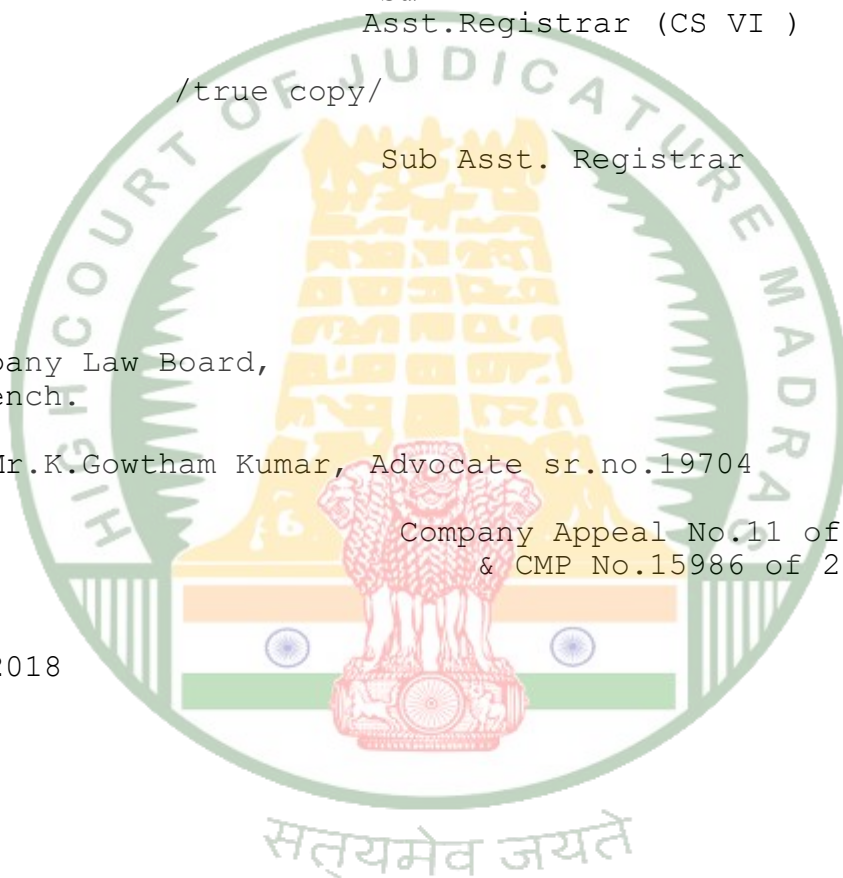
TO:

1.The Company Law Board,
Chennai Bench.

+3cc to Mr.K.Gowtham Kumar, Advocate sr.no.19704

Company Appeal No.11 of 2016
& CMP No.15986 of 2016

pvs(co)
nr 06/04/2018



WEB COPY