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

+ **CO.A(SB) 13/2010**

NIRMAL JAIN & ORS

..... Appellant

Through Mr.T.K.Ganju, Sr.Adv. with
Mr.Manik Ahluwalia, Adv

versus

JAYNA TIMES INDUSTRIES LTD. & ORS..... Respondent

Through Mr.C.S.Gupta and Ms.Kritika, Adv.
for R-4 & R-8

Mr.(name not given), Adv. for Mr.Vinod Jain
Ms.Isha Khanna, Adv. for the OL

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **11.07.2018**

1. This appeal has been filed by 33.33% of the shareholders in respondent No.1 company who had earlier filed a petition under section 397 and 398 of the Companies Act, 1956 before the Company Law Board on account of alleged act of mismanagement and oppression. On 23.12.1999 an order was passed whereby it was agreed by consent of the parties that the 1/3rd of the shareholders in the respondent company had agreed to go out of the company by selling their shares to the respondent on a fair value of the shares to be determined by an independent valuer.

2. Learned senior counsel appearing for the petitioner has pointed out that in Company Petition No.182/1999 this Court has on 4.12.2017 admitted the petition against respondent No.1 and appointed the OL as the Provisional Liquidator in the case of respondent No.1 company. It is pleaded that in view of the fact that the company is now under the winding up process the

order dated 23.12.1999 is infructuous. Similarly, it is pleaded that the company petition filed before CLB being CP No.90/1999 is also infructuous, learned senior counsel states on instructions that these two petitions may be dismissed as withdrawn.

3. The withdrawal has been opposed by learned counsel appearing for Shri Vinod Jain Group who has 12% shares in respondent No.1 company. Learned counsel appearing for Mr.Vinod Jain submits that his client has a vested right in view of the order of the CLB dated 23.12.1999 and the said rights which have devolved upon him cannot be allowed to disappear. Learned counsel also submits that pursuant to a family settlement between the parties the other respondents are obliged to support Mr.Vinod Jain.

4. Learned counsel appearing for the other respondents submits that there is a material change in the situation since the order that was passed on 23.12.1999. He submits that the petition was filed before CLB by 1/3rd of the shareholders and 1/3rd shareholders were to move out and sell their shares to the other respondents. He submits that 88% of the shareholders support the petitioner to the extent that the present petition may be withdrawn. Today, all the other respondents except Mr.Vinod Jain do not want to pursue the order dated 23.12.1999. The said respondents have also disputed the family settlement and have said that there was no family settlement in 2008.

5. A perusal of the order dated 23.12.1999 would show that the shares were to be sold by the petitioners to the respondents at a fair value to be determined by an independent valuer. M/s.Batliboi & Company, Chartered Accountants, New Delhi had been appointed to determine the fair value of the shares. This transaction has never fructified. Now after 19 years and

after the respondent No.1 company has been ordered to be wound up to adhere to the said orders is clearly not feasible. It is clear that the proceedings which were filed before CLB have become infructuous.

6. Accordingly, present petition is dismissed as withdrawn. Consequently, proceedings before the CLB also stand dismissed as withdrawn. Any rights that may have accrued to Mr.Vinod Jain Group pursuant to the family settlement are left open to be adjudicated, if necessary, in case any surplus is found distributable to the contributories.

7. Appeal is dismissed as withdrawn. All pending applications, if any, also stand dismissed as withdrawn accordingly.

CA 3370/2016

This application is filed by the appellants to direct respondents No.2,3,5 to 7 and 9 to 12 to bring back the realized amount in the accounts of the respondent company.

The appellants are given liberty to file the complete application and replies filed by the respondents in Company Petition No.182/1999. This application shall be dealt with in that case. Copies be also supplied to learned counsel for the OL.

JAYANT NATH, J

JULY 11, 2018

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