

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2488 OF 2014

DARIUS RUTTON KAVASMANECK

APPELLANT(S)

VERSUS

GHARDA CHEMICALS LTD. & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO. 2489 OF 2014

WITH

CIVIL APPEAL NO. 17304 OF 2017

WITH

PETITION FOR SPECIAL LEAVE TO APPEAL (C) NO. 9500 OF 2018

O R D E R

- 1) This is the second round of litigation before this Court *inter se* Darius Rutton Kavasmaneck, on one side, and Keki Hormusji Gharda, Aban Keki Gharda, Almira H Patel, D.T. Desai and others, in respect of Gharda Chemicals Ltd.
- 2) The first round of litigation arose out of Company Petition No. 132 of 2009 and was confined to the question of the effect of Section 43-A of the Companies Act, 1956¹. This Court, *vide* judgment dated 28.10.2014, in *Darius Rutton Kavasmaneck v. Gharda Chemicals Limited and Ors.*² held that notwithstanding

¹For short, "Act of 1956".

² (2015) 14 SCC 277.

Section 43-A, the Articles of Association including the restrictions, in terms of Article 57 thereof, would apply. The contention that Gharda Chemicals Limited, though a Private Limited Company, would be a hybrid company and, therefore, restriction on transfer of shares would not be applicable, was rejected. That ratio has attained finality. The aforesaid case was, however, remanded to the High Court on the question of whether the number of shareholders had exceeded 50 and, thereby, whether Gharda Chemicals Limited had ceased to be a private company. This aspect was dealt with in Paragraphs 76 and 77 of the aforesaid judgment of this Court.

- 3) The High Court, vide order dated 04.08.2017 passed in Company Appeal No. 24 of 2010, held that the number of shareholders did not exceed 50 in number. The aforesaid order has been challenged by Gharda Chemicals Ltd. in SLP (C) No. 9500 of 2018. However, during the course of hearing, learned senior counsel appearing for Gharda Chemicals Ltd, in the aforesaid Special Leave Petition, on instructions and without prejudice to the rights and contentions, sought permission to withdraw the said special leave petition. The Special Leave Petition is dismissed as withdrawn.
- 4) We shall subsequently be dealing with Civil Appeal No. 17304 of 2017 preferred by Darius Rutton Kavasmaneck, which had impugned the order dated 04.08.2017 to the limited extent that the said order continued the injunction against sale of shares only for a period of twelve weeks.

5) The second round of litigation arises from Company Petition No. 87 of 2010. The said Company Petition challenged the notice dated 16.10.2010 by which an Extraordinary General Meeting³ of the shareholders/Members of Gharda Chemicals Limited was called to delete Article 57 in the Articles of Association. The said Article deals with restrictions on transfer of shares. Article 57, at the time of incorporation, read as under:

“Save as aforesaid the following provisions shall apply to the transfer of shares:

(a) A member of the Company may transfer a share to his lineal descendent, but save as aforesaid no share shall be transferred to a person who is not a member of the Company so long as any member is willing to purchase the same at the fair value as hereinafter provided;

(b) The member proposing to transfer any shares (hereinafter called the proposing transferor) shall give notice in writing (hereinafter called a transfer notice) to the Company that he desires to transfer the same;

(c) Within the period of seven days from the receipt of a transfer notice as aforesaid the Company shall offer to each of the existing members of the Company respectively such number of the shares included in the transfer notice as a pro rata or as nearly as may be to the holding of each member respectively on the footing that if he desires to purchase any or all of such numbers of the said shares at the fair value he shall within fifteen days of the offer be entitled to apply for the purchase and transfer of the same and the Company shall be bound upon payment to the transferor of the fair value of such shares, to transfer the shares of member applying;

³ For short, “EGM”.

(d) In case any member or members shall not have applied for the purchase and transfer of any or all of the shares to which he is entitled, the Company shall within seven days of the date at which the offer closed, offer the untaken shares to such of the members as have applied for the purchase and transfer of all of the shares to which they were entitled by the terms of the original offer in proportion as the holding of each such members bears to the total number of shares held by them and they shall be entitled within fifteen days of the offer to apply for the purchase and transfer of a pro rata number of the said untaken shares and the Company shall be bound, upon payment to the transfer of the fair value of such shares to transfer the shares to the member applying;

(e) The proposing transferor shall be bound to execute a transfer in respect of any shares so sold and in default thereof be deemed to have executed such a transfer. The Company shall thereupon cause the names of the members who have purchased the shares to be entered in the Register as the holders of such shares and thereafter the validity of the proceedings shall not be questioned by any person.

(f) In case no member shall apply for any of the shares included in the transfer notice or in case any are untaken after compliance with the foregoing provisions of this Article the intending transferor shall have the right (which right shall endure for the period of one year from the date of transfer notice) to sell and dispose of his shares to any person and at any price and to apply for registration of the transfer of the same and the company shall be bound to give effect to the transfer of such shares accordingly.

(g) For the purpose of this clause the fair value of the share shall be such sum, if any, as the auditors for the time being of the Company shall certify as the fair value thereof provided that it expressly declared that the fair value shall be

(1) the amount of capital paid up thereon plus, (2) a sum bearing the same proportion to the value as appearing in the Company's last balance sheet of any reserve fund or other fund of the Company as the capital paid up on all the shares of the Company for the time being issued plus or minus as the case, may be, (3) a sum bearing the same proportion to the value as appearing in the Company's last balance sheet of any balance in the profit and loss account consisting of or representing undivided profit and loss account consisting of or representing undivided profits or losses as the capital paid up on such share bears to the total capital paid up on all the shares of the Company for the time being issued."

- 6) The amendments were made and inserted pursuant to the Special Resolution dated 15.02.1990, by addition of clauses (h) to (k) and a proviso, which read:

"Nothing contained in clauses 57(a) to 57(g) hereof shall apply to any transfer of shares which falls under any one or more of the following circumstances:

57(h) transfer by a person to another person who is a "relative" within the meaning ascribed thereto in the Companies Act, 1956.

57(i) transfer to a body corporate in which a majority of directors (or other persons who in law are to be regarded as Directors) or shareholders holding not less than 51% of the voting rights are persons who are the members of the company.

57(j) transfer by way of gift whether on account of love and affection between persons who are relatives of each other or by way of philanthropy.

57(k) transfer by a person to another person who is an existing member of the company.

PROVIDED THAT in each case the question as to

whether the case falls under any of the foregoing circumstance shall be subject to a decision by the Board of Directors who shall be entitled to call for such information and particulars as may be reasonably required to examine as to whether the case does infact bona fide fall under any of the foregoing circumstances."

- 7) The notice dated 16.10.2010 calling for the EGM was however withdrawn on 09.12.2010. Darius Rutton Kavasmaneck subsequently filed Company Application No.73 of 2012 challenging the subsequent notice dated 25.04.2012 for convening the EGM on 22.05.2012 to remove Article 57 from the Articles of Association.
- 8) The Company Law Board, vide order dated 21.05.2012, permitted conduct and holding of the EGM but directed that the Resolution passed would be kept in abeyance till further orders. The EGM was held on 22.05.2012 and a Resolution was passed deleting Article 57 from the Articles of Association.
- 9) Darius Rutton Kavasmaneck, thereupon, filed Company Application No. 91 of 2012 for amendment of Company Petition No. 87 of 2010, challenging both the conduct of the EGM and the passing of the Resolution itself as subsequent oppressive acts, which were intended to take away the vested right of preemption by the majority. It was contended as a part of a continuous course of oppression.
- 10) Gharda Chemicals Ltd. had filed Company Application No. 85 of 2012 before the Company Law Board stating that it should be allowed to implement the Resolution deleting Article 57 passed

in the EGM. This application was required to be filed in view of the interim order passed by the Company Law Board, noted above, dated 21.05.2012.

- 11) *Vide* order dated 13.08.2012, the Company Law Board allowed the Amendment Application, i.e., Company Application No. 73 of 2012 permitting Darius Rutton Kavasmaneck to challenge the convening of the EGM on 22.05.2012. However, the application for amendment, i.e., Company Application No. 91 of 2012, seeking amendment of Company Petition No. 87 of 2010 to challenge the Resolution deleting Article 57 passed in the EGM, was kept pending. At the same time, Company Application No. 85 of 2012 filed by Gharda Chemicals Ltd. was allowed. This application was allowed for the reason that the Bombay High Court, *vide* its judgment dated 14.06.2011, in a proceeding arising out of Company Petition No.132/2009, had held that the restriction on transfer of shares in terms of Article 57 of Gharda Chemicals Ltd. would not be applicable in view of Section 43-A of the Act of 1956.
- 12) We have earlier referred to the judgment of this Court dated 28.10.2014 in which this ratio and finding recorded by the Bombay High Court have been set aside by this Court.
- 13) Thereupon, Darius Rutton Kavasmaneck preferred Company Appeal No.41/2012 before the Bombay High Court. This appeal was directed against the order dated 13.08.2012 passed by the Company Law Board allowing Company Application No.85/2012

filed by Gharda Chemicals Ltd, permitting implementation of the Resolution deleting Article 57 from the Articles of Association. We shall subsequently refer to the decision of the Bombay High Court dated 20.12.2012 in Company Appeal No. 41/2012, which has been challenged before us in Civil Appeal No.2488/2014.

- 14) The Company Law Board, *vide* order dated 21.01.2013, in view of the judgment of the Bombay High Court dated 20.12.2012, rejected Darius Rutton Kavasmaneck's application, i.e., CA No.91/2012, by which he had sought amendment to challenge the Resolution deleting Article 57 of the Articles of Association. Darius Rutton Kavasmaneck has challenged this order dated 21.01.2013 before the Bombay High Court in Company Appeal No.31/2013. This Company appeal is still pending before the High Court. In other words, Darius Rutton Kavasmaneck till date, has not been permitted to question and challenge the validity and effect of the Resolution deleting Article 57 from the Articles of Association in Company Petition No.87/2010.
- 15) The Bombay High Court, by the impugned judgment dated 20.12.2012, has discussed Company Appeal No.41/2012 and thereby permitted implementation of the Resolution passed in the EGM, deleting Article 57 from the Articles of Association. This judgment, which runs into 195 pages, deals with several aspects, including the question whether the Resolution passed in the EGM deleting Article 57 from the Articles of

Association amounts to oppression.

- 16) As noticed above, the Company Law Board had dismissed the application for amendment made by Darius Rutton Kavasmaneck seeking amendment, by which C.P. No. 87/2010 was to be amended, so as to challenge the Resolution deleting Article 57.
- 17) Thus, as the challenge to the Resolution deleting Article 57 was not admitted in the company petition, it is obvious the High Court could not have gone into the question whether or not the Resolution deleting Article 57 would amount to oppression of the minority shareholders. To this extent, we do not think that the order passed by the High Court, recording findings to the said effect, is sustainable in law. We say so, not on the ground of merits, but on the ground that this aspect could not have been made the subject matter *per se*, when the effect of the Resolution itself was not under challenge in the main Company Petition No.87/2010.
- 18) Having said so, we also have to examine the second issue as to whether a temporary injunction could be granted against the enforcement of the EGM Resolution passed on 22.05.2012 on the ground that the holding of the EGM itself was under challenge. As Company Application No. 73 of 2012 has been allowed, this question would now figure for consideration in Company Petition No. 87 of 2010.
- 19) This Court, in *LIC v. Escorts Ltd.*,⁴ held that a temporary

⁴ AIR 1986 SC 1370.

injunction should not be granted against holding of a general body meeting except in exceptional cases. The cardinal reasoning behind such caveat against injunctions is the corporate democracy of shareholders, which would be rendered nugatory if shareholders are restrained from exercising their statutory rights. No doubt, *LIC* (supra) relates to public companies, however, unless a very good reason exists, the same principle can equally be extended to a private company.

20) In the present facts, the EGM was permitted on 22.05.2012, *vide* an interim order. The EGM was, in fact, held on 22.05.2012 and the Resolution was passed. Therefore, we are of the opinion that the question as to whether the EGM should be held is superfluous. Further, when the EGM Resolution deleting Article 57 is not the subject matter in C.P. No. 87/2010, the claim of the EGM perpetrating oppression of the minority shareholders cannot be granted. To this extent, therefore, the appeal preferred by Darius Rutton Kavasmaneck has to be dismissed.

21) We may also notice that Civil Appeal No.2481/2014 which arose out of Company Petition No.132/2009 and Company Appeal No.24/2010 of the Bombay High Court, and Civil Appeal No.2488/2014, which arose out of Company Petition No.87/2010 before the Company Law Board which led to Company Appeal No.41/2012 before the Bombay High Court and the subject matter of C.A. No.2488/2014 before this Court, came up for hearing

before the same Bench on 28.08.2014 and arguments were partly addressed. *Vide* record of proceedings dated 03.09.2014, arguments were concluded in Civil Appeal No.2481/2014 and the judgment was reserved. However, Civil Appeal No.2488/2014 was directed to be listed after pronouncement of the judgment in Civil Appeal No.2481/2014. As recorded above, judgment in Civil Appeal No.2481/2014 was pronounced on 28.10.2014. Consequent to the decision in the said appeal, Civil Appeal No.2488/2014 was listed before a Bench of this Court on 28.10.2014 but was directed to be taken up for hearing on 30.10.2014. Thereafter, the matter was shown for hearing only on 11.08.2022.

- 22) In view of the aforesaid factual background, we are inclined to dispose of the present appeal directing that the prayer for interim injunction for holding of the EGM, which was to be held on 22.05.2012, cannot be accepted. In fact, the meeting was held and the Resolution deleting Article 57 was passed. At the same time, this Court would not like to delve into the question of the Resolution deleting Article 57 from the Articles of Association in the EGM held on 22.05.2010, as till today, Darius Rutton Kavasmaneck has not been permitted to challenge and question the same as being oppressive. His application for amendment of CP No.87/2010, as noticed above, has been dismissed and his Company Appeal, challenging the said dismissal, is pending before the Bombay High Court.
- 23) During the course of hearing before us, on being persuaded,

all the respondents, including Gharda Chemicals Ltd., have stated that Company Appeal No. 31 of 2013, pending before the Bombay High Court, can be allowed without prejudice to their rights and contentions. Company Appeal No. 31 of 2013 pending before the Bombay High Court is accordingly allowed. In other words, Darius Rutton Kavasmaneck is permitted to amend the Company Petition No. 87 of 2010 to the extent he seeks to challenge the effect and impact of the Resolution passed in the EGM, deleting Article 57. By permitting the amendment on the basis of the said statement, the respondents, as well as this Court, are not expressing any opinion on the question whether or not the deletion of Article 57 would amount to oppression. This is a disputed issue. Consequent to the amendment, pleadings have to be completed.

- 24) At the same time, as noticed above, at this stage, the effect and implementation of the Resolution deleting Article 57 is not a subject matter which can be gone into by this Court. We do not pass any restraint order against enforcement or implementation of the said Resolution. In case, Darius Rutton Kavasmaneck seeks any temporary injunction and restraint order against implementation of the Resolution deleting Article 57, he is at liberty to move appropriate proceedings in accordance with law. We do not express any view either way on this aspect.

25) In view of and in terms of the order passed, all appeals, pending applications etc., stand disposed of.

.....J.
[SANJIV KHANNA]

.....J.
[SANJAY KUMAR]

.....J.
[R. MAHADEVAN]

NEW DELHI;
SEPTEMBER 19, 2024

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 2488/2014

DARIUS RUTTON KAVASMANECK

Appellant(s)

VERSUS

GHARDA CHEMICALS LTD. . & ORS.

Respondent(s)

[TOP OF THE BOARD]

WITH

C.A. No. 2489/2014 (III)

C.A. No. 17304/2017 (III)

(FOR impleading party ON IA 68466/2019,
FOR CLARIFICATION/DIRECTION ON IA 68522/2019,
FOR CONDONATION OF DELAY IN FILING THE SPARE COPIES ON IA
187779/2019, IA No. 122400/2023 - APPLICATION FOR VACATION OF
INTERIM ORDER)

SLP(C) No. 9500/2018 (IX)

(IA No.29790/2018-CONDONATION OF DELAY IN FILING and IA
No.29795/2018-DELETING THE NAME OF RESPONDENT)

Date : 19-09-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJAY KUMAR
HON'BLE MR. JUSTICE R. MAHADEVAN

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Mr. Sameer Parekh, Adv.

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Ms. Manya Hasija, Adv.
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Mr. Pawan Upadhyay, Adv.
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Mr. Nihar Dharmadhikari, Adv.
Mr. Rahul Narang, Adv.
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Mr. Lzafeer Ahmad B F, Adv.

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Mr. Harish N.salve, Sr. Adv.
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Ms. Ana Upadhyay, Adv.
Ms. Manya Hasija, Adv.
Mr. Tejasvi Gupta, Adv.
Mr. Pawan Upadhyay, Adv.
Mr. T.illayarasu, Adv.
Mr. Nihar Dharmadhikari, Adv.
Mr. Rahul Narang, Adv.
Mr. Nirnimesh Dube, AOR

UPON hearing the counsel the Court made the following
O R D E R

All appeals stand disposed of and SLP(C) No.9500/2018
stands dismissed as withdrawn in terms of signed order.

Pending application(s) shall also stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(Signed order is placed on the file)