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IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
[2021] EWHC 3260 (Ch)

No. CH-2021-000005

Rolls Building
Fetter Lane
London, EC4A 1NL

Tuesday, 16 November 2021

Before:

MR JUSTICE ADAM JOHNSON

B E T W E E N :

SURINDER GREWAL

Appellant

- and -

SARJIT CHAKRABORTY

Respondent

THE APPELLANT appeared in Person.

THE RESPONDENT appeared in Person.

J U D G M E N T

MR JUSTICE ADAM JOHNSON:

- 1 The Appellant is Mr Surinder Grewal; he was the successful petitioner in unfair prejudice proceedings brought against the Respondent, Sarjit Chakraborty. The proceedings concerned allegations of unfair prejudice arising out of the management of Astha Limited, a company involved in the provision of care services.
- 2 The trial Judge, HHJ Johns QC, proceeded on the basis that Ms Chakraborty was the majority 51 per cent shareholder in Astha Limited and Mr Grewal was the minority 49 per cent shareholder. HHJ Johns QC determined that the allegations of unfair prejudice were made out and in consequence he ordered that Ms Chakraborty should be required to buy Mr Grewal's minority shareholding. It is that aspect of the decision which Mr Grewal now seeks to appeal, permission on that point having been given by order dated 8 June 2021. This is the hearing of Mr Grewal's appeal.
- 3 The Judge's reasoning on the question of remedy is set out at paragraphs 45 and 46 of his judgment. There he said as follows,

“45. I turn to the question of remedy. The discretion as to remedy is a broad one. The court, says s.996 of the 2006 Act, may make such order as it thinks fit for giving relief. It was not suggested that if unfairly prejudicial conduct was established, there should be no remedy. Indeed, Mr Hyams highlighted how unsatisfactory it would be to leave these shareholders in a relationship but there was no agreement as to what the remedy should be beyond an acknowledgement that one side should be ordered to buy out the other. Overall, there are three matters for me to address: (1) whether the buyout should be by Mr Grewal or Ms Chakraborty; (2) what the valuation date should be; (3) what adjustments to the valuation and further payments there should be. I shall deal with each of those in turn.

46. As to the first, I have decided that the order should be for Ms Chakraborty to buy the shares of Mr Grewal. She is the majority shareholder and it is an unusual case where the majority shareholder will be ordered to sell to the petitioner. This is not one of those unusual cases in my judgment. On the contrary, there are other factors in favour of an order that Ms Chakraborty buy Mr Grewal's shares. While the business is not currently financially successful, it does seem to be providing proper care. There was evidence that a recent CQC report gave the company a good rating which Mr Grewal fairly accepted was a good sign. I should bear in mind the welfare of service users and it is right to observe that Mr Grewal is not a care professional. Further while he suggested that he could be a registered manager temporarily, I did not consider that realistic given his continuing health problems. I am also concerned that if Mr Grewal gains control of the company, he will be distracted from providing care to users by bringing further claims against Ms Chakraborty and others, such as Mr Fergusson, using the company. He referred in his written closing submissions to investigating fraud and a full audit. While I do not ignore Mr Grewal's role in

establishing the business and Ms Chakraborty's wrongdoing, the right order is that she buy his shares."

4 I need say nothing further for the purposes of this judgment about the second and third topics addressed by the judge, namely the valuation date and adjustments. I should add by way of explanation that Mr Hyams was Ms Chakraborty's counsel in the trial, and Mr Fergusson, also referenced, is another individual involved in running the business with Ms Chakraborty.

5 Against that background Mr Grewal's complaint is as follows. He says that the learned Judge failed to take proper allowance of the fact that Ms Chakraborty had not made an agreed payment in respect of her shareholding. Mr Grewal says that the Judge overlooked this important point and that if he had had proper regard to it, it would have made a difference to the question of remedy.

6 The shareholding history is recited in the earlier sections of the judgment between paragraphs 3 and 5. After saying at paragraph 3 that initially Mr Grewal was the sole shareholder in Astha Limited holding the one issued share, the Judge then went on at paragraphs 4 and 5 to describe how the relationship between Mr Grewal and Ms Chakraborty developed. The Judge said as follows,

"4. Mr Grewal later became a minority shareholder. That was the effect of the issue of an additional 999 shares on top of the original share on 28 April 2006, 510 being allotted to Ms Chakraborty and Mr Grewal taking a further 489 shares in addition to his original one. Ms Chakraborty was also appointed a director on that day, 28 April 2006.

5. Mr Grewal came to leave the business in 2007, though in the end his absence was a brief one. There was a written agreement dated 9 March 2007. It provided for the resignation of Mr Grewal as a director, which happened on 30 April 2007, and the sale of his shares to Ms Chakraborty. She agreed to pay, under the agreement, £20,000 to Mr Grewal in monthly £1,000 instalments, being £12,500 as to the unpaid price of her shares and £7,500 for Mr Grewal's shares.

Some instalments were paid but by around July 2007, Mr Grewal had returned to the company at the request of Ms Chakraborty. The agreement of 9 March 2007 was treated as at an end. The payments which had been made were re-characterised as wages and dividends of Mr Grewal. Mr Grewal was not, however, reappointed as a director. His roles in the company were those of finance manager and IT manager. A further role was added in 2014, that of registered manager for Leeds, but he was not in frequent attendance on site at Leeds. Owing to a kidney condition, Mr Grewal had been working principally from home from around 2010."

7 Mr Grewal's point comes down to this, namely that the Judge accepted that the £12,500 due as the unpaid price of Ms Chakraborty's shares was not paid in full, and on that basis he was wrong when he came to determine remedy to treat Ms Chakraborty in such an unqualified manner as the majority shareholder in Astha Limited.

8 In making his submission, Mr Grewal has relied in particular on the 9 March 2007 agreement. As the Judge notes, this was an agreement between Mr Grewal and Ms Chakraborty. It is sufficient for present purposes to quote the first recital and then clause 1. The first recital is as follows,

“NC [Ms Chakraborty] is presently indebted to SG [Mr Grewal] in the following sums:

- (i) £12,500 for the price of her existing 51 per cent shareholding in Astha Limited, company number 04914301 (‘the Company’); and*
- (ii) £10,000 in respect of an outstanding personal loan”.*

9 Then operative clause 1 of the agreement is as follows,

“NC is to pay SG the following sums:

- (i) £12,500 for her existing 51 per cent shareholding in the Company; plus*
- (ii) £7500 for the price of SG’s remaining 49 per cent in the Company free of all encumbrances, charges, loans, options or equities whatsoever.”*

10 Again, as the Judge noted, this agreement was executed in anticipation of Mr Grewal leaving the business of Astha Limited, but in the event he did not do so and he retained his 49 per cent shareholding. In that sense, the March 2007 agreement was not followed through but Mr Grewal says that does not matter. What is important about it is its recognition that there was an early agreement that Ms Chakraborty would pay some £12,500 as the price for her shareholding and she did not do so. Mr Grewal says the judge was wrong to ignore or disregard that fact.

11 It is clear from the judgment of HHJ Johns QC that he was aware that Ms Chakraborty had very likely not paid the full amount due under the March 2007 agreement. He said as much in terms at paragraph 5 of his judgment which I have already referred to. Was he nonetheless correct to treat Ms Chakraborty in such an unqualified manner as a 51 per cent majority shareholder in the business and to fashion his remedy accordingly? It seems to me that that gives rise to a question of law which I will now address.

12 The issue of who is a member or shareholder in a company is addressed in s.112 of the Companies Act 2006. So far as relevant, this provides as follows,

“(1) The subscribers of a company’s memorandum are deemed to have agreed to become members of the company, and on its registration become members and must be entered as such in its register of members.

(2) Every other person who agrees to become a member of a company, and whose name is entered in its register of members, is a member of the company.”

- 13 Ms Chakraborty has pointed out that the shareholding she acquired was not purchased from Mr Grewal as such but came about as the result of an allotment of new shares by Astha Limited in 2006. This again is as the Judge found in paragraph 4 of his judgment. The factual position is confirmed by a return on allotment of shares document dated 28 April 2006, as lodged at Companies House and signed by Mr Grewal. This shows an allotment on that date of some 999 new ordinary shares having a nominal value of £1 each.
- 14 The document further shows the shares as being fully paid up, i.e. it indicates expressly that 100 per cent of each share was to be treated as paid up and, moreover, states that the shares were allotted for cash. The return further shows Ms Chakraborty as a having been allotted 510 shares and Mr Grewal having been allotted 489 shares.
- 15 The company then filed an annual return dated 29 September 2006. This referred to Astha Limited having 1,000 issued shares at that date with an aggregate nominal value of £1,000. It records Mr Grewal as the holder of 490 shares and Ms Chakraborty as the holder of 510 shares.
- 16 What to make of this in light of the finding the Judge made that at the same time Ms Chakraborty had not paid the instalments due under the March 2007 agreement? In my judgment, the position in law must be as follows.
- 17 First, it must be correct to say that the March 2007 agreement was superseded or overtaken by events, at least in part. That must be correct because it provided for Mr Grewal to sell his shareholding in Astha Limited to Ms Chakraborty. That was intended to happen upon his exiting the business, but he did not exit the business and remained a shareholder. The March 2007 agreement was plainly superseded to that extent. As to this, Mr Grewal has criticised the Judge for saying that the March 2007 agreement was treated as at an end. That is not, I think, a justified criticism because it was largely treated as at an end for the reason that I have given.
- 18 Second, however, I do not think it follows that Ms Chakraborty had no continuing liability in respect of the £12,500 she had agreed to pay. It is clear from the terms of the March 2007 agreement that her commitment to pay £12,500 arose at an earlier stage. That is recorded in the first recital to the agreement which refers expressly to Ms Chakraborty being “*presently indebted*” in the sum of £12,500. Such liability as existed thus predated the March 2007 agreement, and in my judgment was not extinguished by the fact that that agreement was not carried through to completion. In other words, Ms Chakraborty continued to owe £12,500 or such part of it as had not by then been paid by her.
- 19 Third, however, it does not follow that the Judge was wrong to treat Ms Chakraborty as the 51 per cent majority shareholder in the business. It seems to me that in law there is a difference between performance of the private contract that she and Mr Grewal had entered into and her status and position as a shareholder. I think the correct legal analysis must be as follows.
- 20 In 2006 Astha Limited had shareholders’ funds of roughly £25,000, all contributed by Mr Grewal as he pointed out in the hearing before me today. Ms Chakraborty agreed to buy into the business by paying Mr Grewal half of that sum. That was a personal contract between them. Mr Grewal’s side of the bargain was that, as the sole director of and shareholder in the business at the time, he would procure the allotment and issue of new shares in the agreed proportions both to himself and to Ms Chakraborty. That he did. In other words, he kept up his side of the bargain and in consequence the requisite number of

shares was issued to Ms Chakraborty and she became a 51 per cent shareholder. Even if she did not pay the £12,500 she agreed to pay, that does not, it seems to me, affect her shareholder status, which was confirmed in the relevant filings made at Companies House and in the company's books and records (see Companies Act 2006, s.112 which I have referred to). Instead, what it meant was that Mr Grewal personally had a claim in debt against Ms Chakraborty for the sums she had agreed to pay but had not fully paid.

- 21 It seems that, in fact, Mr Grewal and his advisers took the same view of things. I say that because in his skeleton argument dated 20 July 2021, Mr Grewal referred to an email from his solicitor Mr Kew dated 21 April 2017 in which Mr Kew said, with reference to the March 2007 agreement,

“The Contract also provided that your client was to purchase our client’s remaining 49 %shareholding for £7500. In July 2007, our clients mutually agreed to vary the Contract so as to ensure that our client kept his 49 % shareholding so that he could return to assist the Company.

By that date no money had been paid by yours under the Contract so that this variation meant that she remained bound to pay the £12,500 consideration and the £10,000 loan. She was contractually bound to do so by making payments of £1000 by standing order. Interest of 8 % is payable on all late payment instalments.”

- 22 One can see here the relevant claim being expressed as a personal debt claim. That is not surprising, because that is how it is referred to in the March 2007 agreement: the obligation referenced there is an obligation by “NC” to pay “SG.” I think Mr Kew’s analysis on this point was entirely correct but, implicit within it, is affirmation of Ms Chakraborty status as 51 per cent shareholder. Mr Grewal said more or less the same thing before me this morning, i.e. that he made no complaint about Ms Chakraborty’s shareholding as such, but instead his complaint was that she never paid to him personally the sums she agreed to pay.
- 23 It follows from all this that in my judgment that the learned Judge was correct in his approach to remedies. As the Judge noted, the statute gave him a very wide discretion that can only be interfered with if he failed to take into account a material factor that he should have taken account of. In my judgment there was no deficiency in his failing to take specific account of non-payment by Ms Chakraborty of the sum of £12,500. That is because it was a personal debt owed by her to Mr Grewal which did not affect her status or position as majority shareholder and therefore had no real bearing on the Judge’s assessment of the appropriate remedy to award to Mr Grewal, having regard to his status as a minority shareholder who had been subject to unfairly prejudicial conduct in that capacity.
- 24 The appeal will therefore be dismissed.

CERTIFICATE

Opus 2 International Limited hereby certifies that the above is an accurate and complete record of the Judgment or part thereof.

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This transcript has been approved by the Judge.