

**(2014) 03 CAL CK 0009**

**Calcutta High Court**

**Case No:** C.S. No. 208 of 1996

Hindustan Ferro and Industries  
Ltd.

APPELLANT

Vs

Suresh Kumar Jain

RESPONDENT

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**Date of Decision:** March 18, 2014

**Acts Referred:**

- Companies Act, 1956 - Section 397, 398

**Citation:** (2014) 3 CHN 671

**Hon'ble Judges:** Debangsu Basak, J

**Bench:** Single Bench

**Advocate:** Arif Ali and Ajay Kumar Agarwal, Advocate for the Appellant; S.N. Pandey, Advocate for the Respondent

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### **Judgement**

Debangsu Basak, J.

The suit was for specific delivery of assets belonging to the plaintiff, in the alternative a decree for a sum of Rs. 350 lakhs, a decree for specific delivery of books, papers, accounts, documents and other properties and assets belonging to the plaintiff and in the alternative a decree for Rs. 10,00,000/- as well as for perpetual injunction. The plaintiff a limited liability company incorporation under the provisions of the Companies Act, 1956 was managed by its Board of Directors. The defendant was one of the Directors of the plaintiff.

2. The plaintiff was a manufacturing company. In 1995 the company was manufacturing ferro alloys. It wanted to diversify to the business of manufacture and export of tea bags from Kolkata. The defendant assured the plaintiff that he would look after such business of the plaintiff to be set up in Kolkata.

3. The plaintiff, thereafter, adopted a Board Resolution on May 18, 1994. Such Board Resolution authorized the defendant to look after the tea bags manufacturing unit of the company at Kolkata.

4. For the purpose of setting up the tea bags manufacturing unit at Kolkata, the plaintiff purchased two machines from Germany. The plaintiff paid for such machines. The defendant, on behalf of the plaintiff, took delivery of the machines which were imported. The defendant represented to the plaintiff that such machines were installed at No. 19, Brooklyn Depot (1st floor), Opposite T.N. Shed No. 20, South Port Police Station, Kolkata-24. The defendant debited the account of the company with the sum of Rs. 9,000/- per month ostensibly towards payment of rent for such premises where the defendant claimed the two machines were installed. The plaintiff, thereafter learnt that, the defendant transferred and removed such machines to a godown belonging to the plaintiff located at No. 19, Brooklyn Depot (1st floor), Opposite T.N. Shed No. 20, South Port Police Station, Kolkata-24. Such property was of Kolkata Port Trust and was taken on lease by M/s. East India Warehousing Corporation.

5. The defendant as a director of the plaintiff was obliged to act in accordance with the directions and instructions of the Board of Directors of the plaintiff. The defendant was never allowed to remove property belonging to the plaintiff. The defendant was also not authorized to debit any sum towards rent. The defendant when called upon by the plaintiff failed and neglected to give any reason for removal of such machines. The plaintiff called upon the defendant to return the machines. The defendants failed to do so. The Board of Directors of the plaintiff reviewed the working of the tea bags Division of the plaintiff and found that it did not commence regular production and that the defendant as the person in charge did not forward accounts of the tea bags Division since it functioning. At a subsequent meeting of the Board of Directors of the plaintiff held on December 18, 1995, the defendant failed to present the accounts of the tea bag units and explain his conduct. On June 27, 1996 a Director of the company duly authorized by the plaintiff when visited the godown where the machines were kept was forcibly prevented from entering the unit and was threatened with physical assault. The plaintiff, therefore, claimed specific delivery of the machines and compensation. The plaintiff held a Board meeting on May 20, 1996 and on review found that, the loss of the tea bags Division was approximately Rs. 18.23 lakhs in the year 1995-96 and that the tea bags Unit was operating of 3% of capacity utilization since inception. The defendant was present in such Board meeting and recorded a note of dissent therein. Although the defendant was present in the Board meeting held on May 20, 1996 the defendant failed and neglected to hand over charge of the papers and documents and other properties, including the machines of the plaintiff to the Directors of the plaintiff. The plaintiff, thereafter, appointed auditors to look into the accounts for the year 1995-96. Such auditors visited the branch office of the plaintiff in Kolkata on 19th June, 1996 and requested the defendant to produce the books of accounts for the purpose of audit but the defendant refused to give the books, papers to the auditors. The defendant claimed that due to a short circuit at the office the documents were lost. Such incident was not reported by the defendant to

the plaintiff contemporaneously. In terms of the Board Resolution dated May 20, 1996, the Directors entrusted called upon the plaintiff for documents which the defendant refused. The plaintiff, therefore, claimed that it was entitled to all books, accounts, papers and in the alternative a decree of Rs. 10,00,000/-.

6. The defendant filed written statement. In the written statement the defendant took a stand that, the instant suit was an outcome of a dispute inter se between the share holders of the company. The defendant was a share holder of the company. The defendant instituted a suit being Suit No. 269 of 1996. A proceeding under sections 397 and 398 of the Companies Act, 1956 was also filed in respect of the company. C.S. No. 269 of 1996 was withdrawn subsequent to the filing of the proceedings under sections 397 and 398 of the Companies Act, 1956. It was claimed that, the machines were cleared from Kolkata Airport by paying a sum of Rs. 7,88,155/- by LMJ International Ltd. a company under the control of the defendant. The plaintiff did not provide working capital for the installation and running of the machine. The defendant obtained loan from bank. The machines were leased out to Ratan Jatan Trading Pvt. Ltd. Such transfer was made under an agreement dated April 15, 1996 which was known to the plaintiff and approved in the Board Meeting held on May 20, 1996. The defendant also claimed that the minutes of the Board Meeting of the plaintiff held on May 20, 1996 was fabricated and brought into existence.

7. The suit appeared in the pre-emptory cause list from time to time. On March 3, 2014 learned Advocate for the defendant appeared. The said learned Advocate was without any vakalatnama. The suit was, thereafter, called upon several times when none appeared on behalf of the defendant. On March 12, 2014 the suit was taken up for hearing. Initially none appeared for the plaintiff. The plaintiff, thereafter, proceeded to call its witness. In the midst of examination-in-chief an Advocate for the defendant appeared and again prayed for adjournment the learned Advocate was without any vakalatnama. I refused such prayer for adjournment as I was of the view that the prayers for adjournments were sought to delay the disposal of the suit which was pending since 1996. I disallowed the prayer for adjournment and proceeded to hear the suit.

8. The Director of the plaintiff was examined as the witness of the plaintiff. Minutes of the Board Meeting of May 18, 1994 was marked as Exhibit "A". The Board minutes of May 18, 1994 disclosed that the company decided to set up a tea packaging unit in Kolkata. The company in such Board Meeting authorized the defendant to look after the tea bags unit and that the tea bag unit under his overall supervision. The defendant was authorized to look after the day-to-day affairs of the tea bag unit. The plaintiff placed a purchase order dated September 27, 1994 on a foreign supplier for tea bag making machine. The purchase order dated September 27, 1994 was marked as Exhibit "B". The plaintiff relied upon the copy of the invoice dated February 23, 1995 which was marked as Exhibit "C". The value of the tea packaging

machine was DM 5,60,000/-.

9. The plaintiff next relied on minutes of a Board Meeting dated May 20, 1996. This was marked as Exhibit "D". In such Board Meeting the working of the tea bag unit of the company along with the other units was discussed. The defendant was present in such Board Meeting. The Chairman called upon the defendant to present before the meeting the working of the tea bag unit. The Board Meeting minutes recorded that the defendant sought to explain that production at the tea bag unit could not be continued due to the problems enumerated in the minutes. The company in such Board Meeting resolved that the management and day-to-day affairs of the tea bag plant would be looked after by Mr. P.C. Jain and Mr. A.K. Dalmia, Directors of the company. Such Directors were authorized to take charge from the defendant with immediate effect. The defendant was instructed to make over charge of the tea bags unit to the named Directors along with all papers, documents, accounts, books of the company relating thereto immediately. The working of the tea bags Division was decided to be reviewed after six months of handing over of charge to the named Directors. The company's Current Account in Bank of Baroda was directed to be closed.

10. The plaintiff relied upon the report dated November 18, 1998 of Additional District Magistrate North 24-Parganas, Barasat. The report established that no stamp paper was issued under Serial No. 4953 in February 1996. The finding of the Additional District Magistrate was that there was difference between the stamp paper on which the agreement was executed and stamp paper of similar denomination issued in Barrackpore Treasury.

11. Two Orders dated November 27, 1998 and February 26, 1999 of the Division Bench of this Hon'ble Court in the present suit were relied upon by the plaintiff. By such order a Receiver was appointed to take physical possession of the machines and to secure without on such a way until further orders. By the Order dated February 26, 1999 the plaintiff was allowed to operate the two machines under the overall control and supervision of the Receiver. Various directions were given on the Receiver by such order. The witness of the plaintiff claimed that, the statements made in the written statement by the defendant were incorrect. No evidence was adduced on behalf of the defendant.

12. I have considered the evidence and the material on record. The plaintiff purchased the two machines and paid for the same as would appear from the documents exhibited. The machines belonged to the plaintiff. The machines were used for the purpose of setting up of tea bag unit of the plaintiff in Kolkata. The tea bag unit was under the supervision and control of the defendant. The defendant was authorized by the Board Resolution dated May, 18, 1994 to be in charge of the day-to-day administration of the tea bag unit of the plaintiff at Kolkata. The defendant was not authorized to lease out the tea bag manufacturing machines to Ratan Jatan Pvt. Ltd.

13. In any event the two machines were under the custody of the Receiver appointed by this Hon"ble Court by the Order dated November 27, 1998. The plaintiff was utilizing the machineries in terms of the Order dated 26, 1999. The defendant did not adduce any evidence. The veracity of the allegation made in the written statement could not be assessed. In absence of the defendant's assistance I proceeded on the basis of the evidence on record. The plaintiff did not produce the result of the proceedings under sections 397 and 398 of the Companies Act, 1956. The plaintiff being the owner of the machines were entitled to a decree for specific delivery of such machines. The Receiver appointed by the Order dated November 28, 1998 and continued by the Order dated February 26, 1999 would make over the machines to the plaintiff forthwith upon communication of the certified copy of the decree. Upon the Receiver make over possession thereof the Receiver would stand discharged without any accounts. The two tea bag packaging machines were forming part of Annexure "D" to the plaint. They were repeated in Annexure "E" to the plaint. The Receiver will make over all such items as are under his possession in respect of the two tea bag packaging machines and any other items that may be in his custody described in Annexure "E" to the plaint, to the plaintiff.

14. Since, the plaintiff was granted possession of the machines the alternative prayer for a decree sum of Rs. 350 Lakhs was need not be considered.

15. The plaintiff was entitled to the custody of all books, papers and other properties, assets belonging to it. The plaintiff, therefore, will be entitled a decree in terms of the prayer (c) of the plaint.

16. Since prayer (c) was allowed the alternative prayer of money decree in lieu of prayer (c) of the plaint was not considered.

17. The plaintiff was the owner of the two machines as also all papers, books, records, documents and assets belonging to it. The plaintiff was, therefore, entitled to a perpetual injunction in terms of prayer (c) of the plaint. C.S. No. 208 of 1996 is decreed accordingly. There will be no order as to costs. The department is directed to draw up the decree expeditiously.