(2001) 11 P&H CK 0142

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 5959 of 2001

Anil Gupta and Others		APPELLANT
	Vs	
J.K. Gupta and Others		RESPONDENT

Date of Decision: Nov. 29, 2001

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 1, Order 7 Rule 10, Order 7 Rule 11, 151, 9
- Companies Act, 1956 - Section 10F, 2(24), 289, 397, 398
- Constitution of India, 1950 - Article 112(B), 19(A), 226, 5

Citation: (2002) 110 CompCas 610 : (2002) 2 ILR (P&H) 77 : (2002) 1 RCR(Civil) 615

Hon'ble Judges: V.K. Jhanji, J

Bench: Single Bench

Advocate: H.L. Sibal and R.C. Setia, Vinod Sharma, Plyush Jain and B.S. Sangha, for the Appellant; R.K. Chhibbar, Senior Advocate and Anand Chhibbar, for the Respondent

Final Decision: Allowed

Judgement

V.K. Jhanji, J.

This civil revision has been filed against order dated 3.11.2001 passed by Civil Judge (Sr. Division), Jallandhar whereby application of the petitioners under Order VII Rules 1 and 11 read with Section 151 of the CPC for rejection of plaint was dismissed.

2. Succintly slating, facts of the case are that M/s. Standard Electricals Limited was originaly incorporated on 10.1.1958 as "Indo Asian Traders Private Limited" under the Indian Companies Act, 1956. Firstly, its name was changed to M/s. A.I. Switchgears Ltd. and again to the present name, M/s. Standard Electricals Limited. The Company is presently engaged in business of manufacture and marketing of electrical switchgears. The authorised share capital of the Company is stated to be Rs. 6 Crores and its one share is worth Rs. 10/-. It was being run by Mr. J.K. Gupta and Mr. J.M. Goyal till 1994 when the Company transferred its share to the extent of

60 per cent to M/s. Havell India Limited (for short H.I.L.) and 40 per cent of shares remained with it. Memorandum of Association and Articles of Association according to the aforesaid shares were prepared and got registered with the Registrar of Companies, Panjab, H.P. & Chandigarh on 26.9.1994. Article No. 91 of Memorandum of Association provides that the Board of Directors M/s. Standard Electrical Limited shall consist of 5 Directors, out of which the H.I.L. and its nominees shall be entitled to three nominee''s Directors and the remaining two Directors shall be the nominees of Mr. J.K. Gupta and his nominees. It further provides that both H.I.L. and Mr. J.K. Gupta, nominees would be engaged in the management of the Company. The quorum of the meeting of the Board of Directors was provided under article 5 and according to it, quorum in any meeting of the Board of Directors shall be minimum 1 nominee Director of H.I.L. and its nominees and one nominee Director of Mr. J.K, Gupta and his nominees and it was also agreed that all matters shall be decided by majority vote. Mr. Anil Gupta became the Managing Director of the Company and Mr. J.K. Gupta, its Chairman and other Directors were Mr. J.M. Goyal, Mr. Rajesh Gupta and Mr. Ameet Gupta. The Company was run smoothly till 2000 but in 2001, it appears from the record that some differences arose between the share-holders of the Company.

3. A Company Petition No. 62 of 2001 came to be filed by H.I.L. against the present respondents u/s 397 and 398 of the Companies Act before the Company Law Board, Principal Bench, New Delhi wherein petitioners herein alleged that respondents who are in minority have deliberately and wilfully committed acts of oppression against the petitioners who are in majority and thus prayed for redressal of acts of oppression and mismanagement. Mr. J.K. Gupta and Mr. J.M. Goyal also filed a civil suit against Mr. Rajesh Gupla and others in the Court of Civil Judge (Senior Division), Jalandhar wherein they sought declaration to the effect that the alleged resolutions said to have been passed by circulation dated 4.10.2001 are illegal, void ab initio being opposed to the articles of association of defendant No. 5 and the provisions of Indian Companies Act and as such the same are not binding upon them as well as defendant No.6 with consequential relief of permanent injunction staying operation of the alleged resolutions and for restraining defendants No. 1 to 3 from passing such resolutions even in future. It was alleged in the paint that the defendants while sitting at Delhi started entertaining mala fide intentions to grab the Company and to oust the plaintiffs from its management and with that idea in mind and resolutions dated 3.10.2001 came to be passed wherein one of the decisions taken was that the bank account shall be jointly operated by any one person from category A consisting of Mr. J.K. Gupta, Chairman and Mr. J.M. Goyal, Director along with the persons mentioned in category B consisting of Mr. Anil Gupta, Managing Director and category C consisting of Mr. Satish Kumar Singal, Assistant General Manager, Finance and Company Secretary. Another resolution was passed on 4.10.2001 in regard to appointment of Senior President and Assistant General Manager, Finance and Company Secretary whereby Mr. Bhim Raj Tayal was appointed as Senior

President of the Company on deputation and Mr. Satish Kumar Singal as Assistant General Manager, Finance & Company Secretary of the Company. Both these resolutions have been allegedly passed as a measure of oppression by the majority shareholders over the minority shareholders and without any authority and also against the provisions of Memorandum of Association.

4. Defendant No. 4 filed an application in the Court of Civil Judge (Senior Division), Jalandhar where the suit is pending under Order 7 Rules 10 and 11 read with Section 151 of the CPC for rejection of plaint inter-alia contending that the jurisdiction of Civil Court is expressly and impliedly barred under the law of Indian Companies Act 1956 especially when Company Petition filed by the applicants is pending before the Company Law Board. Upon contest by the plaintiffs, trial Court held that no section of the Companies Act was quoted by counsel for the applicants under the Companies Act whereby jurisdiction of Civil Court is expressly barred to try the Civil suit and thus dismissed the application. Hence, this civil revision.

5. Mr. H.L. Sibal, Senior Advocate appearing on behalf of petitioners contended that in the plaint, respondents have tried to make out a case of oppression by majority over minority on the basis of allegations levelled in para 9 onwards of the plaint. It is contended that whole tenor of the plaint is showing that the plaintiffs are aggrieved by the acts of certain resolutions which according to them is an act of oppression and mismanagement on the part of the defendants-petitioners whereas defendants-petitioners have already filed a Company Petition before the Company Law Board wherein it is alleged that it is oppression by minority over majority and that the minority wants to run the affairs of the Company without the control of Board of Directors and wants to continue to act against the articles of association. The main argument raised by Mr. Sibal was that jurisdiction of Civil Court stands implied excluded from entertaining the suit because of there being a complete code in terms of Companies Act which provides complete machinery for redressal of grievance. In this respect, he made a reference to Sections 397, 398, 400, 402, 403, 404, 289, 10-F, 10-F and Sub section (24) of Section 2 of the Companies Act. He contended that Company Law Board has been constituted by the Central Government and it is provided in Section 10-F of the Companies Act that any person aggrieved by any decision or order of the Company Law Board, may file an appeal to . the High Court within 60 days from the date of communication of decision or order of the Company Law Board to him on any question of Law arising out of such order. He further contended that the Companies Act relates to management and administration of Companies affairs and the fact that the suit has been brought by the plaintiffs earlier to the Company Petition moved by the petitioners makes no difference because if the plaintiffs can now bring a case, after the order of the Company Law Board, they could also bring a case before the order of Company Law Board. The relief sought in the suit is available completely under the Companies Act and the powers of Company Law Board are there to give such a relief and this being the legal position, the suit could not He and thus the order of trial Court dismissing

the application under Rules 10 and 11 of Order VII, CPC for rejection of plaint, is liable to be set aside. In this regard, he has placed reliance on Punjab State Electricity Board and Another Vs. Ashwani Kumar, , M/S. Ammonia Supplies Corporation (P) Ltd. Vs. M/S. Modern Plastic Containers Pvt. Ltd. and Others, , State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., , Allahabad Bank Vs. Canara Bank and Another, , S. Vanathan Muthuraja Vs. Ramalingam alias Krishnamurthy Gurukkal and Others, , Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others, , State of Kerala Vs. Ramaswami Iyer and Sons, and The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, to contend that time and again, Hon''ble Apex Court has held that where complete code is provided for redressal of grievance, jurisdiction of Civil Court is barred because when there is a Special Act, then Special Act governs against the General Act.

6. On the other hand, Mr. R.K. Chhibbar, Senior Advocate appearing on behalf of the respondents contended that Sections 397, 398 and 408 do not confer exclusive jurisdiction on the Company to grant relief against oppression because the scope of these Sections is to provide convenient remedy against acts amounting to oppression. In this regard, he has placed reliance upon Wood v. Odessa Water Works Company (1889) 42 C D 636, Panipal Woollen & General Mills Co. and Anr. v. R.L Kaushik and Anr., ILR (1968) P & H 609, Nova Samaj Limited v. Civil Judge 1966 M.P. 286. Muni Lal Peshwalla and Ors. v. Balwant Rai Kumar and Ors., 1965 P&H 24, Wolver Hampton New Water Works Company v. Hawkes-ford (1859) 65 BNS 356. Pardeep Kumar Sarkar and Ors. v. Lakshmi Tea Company Limited (1990) Comp Cas 4971Calcutta), Marikar (Motors) Limited and Anr. v. M.I Pavi Kumar and Ors., 1581 T L R 2529 (Kerala High Court), and R.S. Mathur v. H.S. Mathur, 1970 (1) C L J 35. He further contended that the instant suit out of which present civil revision has come up before this Court was filed for protecting individual rights granted to the plaintiff by Article 19(A) and 112(B) of the Articles of Association of the Company and civil suit can be brought for setting at naught acts which are against the Memorandum of Association. In this regard, he cited State of Bihar and Another Vs. J.A.C. Saldanha and Others, . He also stated that the judgment of Apex Court in Punjab State Electricity Board and Another Vs. Ashwani Kumar, is not applicable to the facts of the present case because under the Electricity Act, there are statutory rules to dispose of the dispute.

7. After hearing the learned counsel for the parties and on going through the record, I find that the only substantial question of law involved in this case is whether Civil Court has the jurisdiction to entertain suits when redressal of grievances is provided under the Companies Act which in itself is a complete code.

8. Board of Company Law Administration is constituted u/s 10-E of the Act. The Company Law Board exercises and discharges such powers and functions as may be conferred on it by or under this Act or any other law, and also exercises and

discharges such other powers and functions of the Central Government under the Act or any other law as may be conferred on it by the Central Government by notification is the official gazette under the provisions of the Act or that other law.

Section 397 deals with the powers of Company Law Board and provides that

(1) Any member of the Company who complains that the affairs of the Company are being conducted in a manner prejudicial to public interest or members including any one or more of themselves may apply to the Company Law Board for an order provided such members have a right so to apply in virtue of Section 399.

(2) If, on any application under Sub-section (1), the Company Law Board is of the opinion-

(a) that the Company affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and

(p) that to wind up the Company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the Company should be wound up;

the Company Law Board, may with a view to bring to an end the matters complained of, make such order as it thinks fit.

9. Section 398 of the Act provides applications to Company Law Board for relief in cases of mismanagement. Sub-section (1) provides that any member of the Company who complains -

(a) that the affairs of the Company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; or

(b) that a material change (not being a change brought about by, or in the interest of, any creditors including debenture-holders or any class of shareholders, of the company has taken place in the management or control of the company whether by an alteration in its Board of Directors, or manager or in the ownership of the company''s shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company,

may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of Section 399.

(2) If, on any application under Sub-section (1), the Company Law Board is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the

Company Law Board may, with a view to bringing to an end of preventing the matters complained of or apprehended, make such order as it thinks.

10. Section 399 confers right to apply u/s 397 and 398(1) the following members of the Company shall have the right to apply u/s 397 or 398:-

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of Sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of Sub-section (I), anyone or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Company Law Board u/s 397 or 398, notwithstanding that the requirements of Clause (a) or Clause (b), as the case may be , of Sub-section (1) are not fulfilled.

(5) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the Company Law Board dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

11. Section 400 of the Act provides that on applications filed under Sections 397 and 398, notice shall be given to the Central Government for taking into consideration the representations, if any, made to it by that Government before passing a final order under that Section whereas Section 402 deals with powers of Company Law Board on applications filed u/s 397 or 398

Without prejudice to the generality of the powers of the Company Law Board u/s 397 or 398, any order under either section may provide for-

(a) the regulation of the conduct of the company''s affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company:

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand and any of the following persons, on the other, namely:

(i) the managing director,

(ii) any other director

(iii) the manager;

upon such terms and conditions as may, in the opinion of the Company Law Board, be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in Clause (d), provided that no such agreement shall be terminated set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application u/s 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvensy to be fraudulent preference;

(g) any other matter for which in the opinion of the Company Law Board it is just and equitable that provision should be made.

12. Section 403 deals with interim orders to be passed by Company Law Board. It provides-

"Pending the making by it of a final order u/s 397 or 398, as the case may be, the Company Law Board may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company''s affairs, upon such terms and conditions as appear to it to be just and equitable."

13. Section 404 deals with the effect of alteration of Memorandum of Articles of Company by order passed u/s 397 or 398 whereas Section 405 entitles the managing Director or any other Director or Manager of a Company or any other person who has not been impleaded as a respondent to any application u/s 397 or 398 applies to be added as a respondent thereto, the Company Law Board shall, if it is satisfied, that there is sufficient cause for doing so, direct that he may be added as a respondent. Section 406 makes applicable Sections 539 to 544 to proceedings u/s 397 and 398.

14. Any order passed u/s 397 or 398 is appealable to the High Court u/s 10-F of the Act which reads thus-

"Any person aggrieved by any decision or order of the Company Law Board, may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order;

Provided that High, Court may, if it is satisfied that appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days."

15. A conjoint reading of above quoted Sections clearly shows that Companies Act provides in itself a complete code for redressal of any grievance in regard to oppression or mismanagement of any Company. It is not in dispute that under the Companies Act, it is no where specifically provided that jurisdiction of Civil Court is barred from entertaining any cause of action arising out of dispute under the Companies Act. Time and again, over-riding effect of a Special Law over the General Law where there is no specific bar under the Special Law for invoking General Law, has come up before the Apex Court for consideration and the Hon''ble Apex Court always held that where a complete code is provided under a Special Law, Jurisdiction of General Law stands excluded by implication.

16. In J.K. Cotton Spinning of Weaving Mills Co. Limited (supra), a conflict between specific provisions and General provisions came up for consideration wherein it was held as under:-

" Applying this rule of construction that in case of conflict between a specific provision and a general provision, the specific provision prevails over the general provision and the general provision applies only to such cases which are not covered by the special provision, xxx xx"

17. In case M/s. N. Ramaswami Iyer & Sons (supra) which was a case relating to sales tax, a dispute arose whether Civil Court is competent to entertain a suit in regard to recovery quashing the recovery of sales tax. A Full Bench of the Hon''ble Supreme Court held that the jurisdiction of Civil Court may be excluded expressly or by clear implication arising from the scheme of the Act. Where the legislature sets up a special Tribunal to determine questions relating to rights or liabilities which are the creation of a statute, the jurisdiction of Civil Court would be deemed excluded by implication.

18. In Sri Ram Das Motor Transport Limited & Others (supra), the question before Hon''ble Supreme Court was whether a writ petition is competent during the pendency of petition already filed u/s 397 and 398 before the Company Law Board, it was held by the Hon''ble Supreme Court that when a shareholder has very effective remedies under the Companies Act for prevention of oppression and

mismanagement, the High Court should not readily entertain petition under Article 226 of the Constitution of India. Hon''ble Supreme Court further held that the fact that the Company Law Board has as yet not passed any orders on petitions filed earlier under Sections 397 and 398 cannot be an excuse for a shareholder to bypass the express provisions of the Companies Act and not the High Court under Article 226.

19. Similarly, in M/s Ammonia Supplies Corporation (P) Ltd (supra), a dispute under the Companies Act in regard to rectification of Register of Members maintained by a Company u/s 155 came up for consideration wherein the sole question was "whether in the proceedings u/s 155 of the Companies Act, the Court has exclusive jurisdiction in respect of all the matters therein or have only summary jurisdiction? "Apex Court answered the question in the affirmative in favour of the Court under the Companies Act and held that the jurisdiction of Civil Court is impliedly barred.

20. Jurisdiction of Civil Court vis-a-vis Tribunals/Boards and other statutory authorities created for redressal of grievances under the Special Acts came up for consideration in S. Vamhanmuthuraja ''s case (supra), Allahabad Bank''s case (supra), and Ashwani Kumar''s case (supra) before the Hon''ble Apex Court wherein it was held that where a relief can be redressed under the provisions of Special Act, jurisdiction of Civil Court is impliedly barred though not specifically provided under the Act.

21. If the issue raised in the present civil revisions is examined in light of law laid down by the Apex Court in the above referred to cases, the only conclusion which could be drawn is that Companies Act provides a complete code for redressal of the grievance. The only distinction arises when Section 399 is ''taken into consideration which provides that in the case of a Company having a share capital, not less than one hundred members of the Company or not less than one tenth number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the Company, provided that the applicant or applicants have paid all calls and other sums due on their shares and (b) in the case of Company not having a share capital, not less than one-fifth of the total number of its members, shall have the right to invoice the jurisdiction of Company Law Board under Sections 397 and 398 under the Act. It, therefore, follows that the persons or members having qualifications to apply for the redressal of grievance in the mattes falling under Sections 397 and 398 cannot approach the Civil Court and it is only the Company Law Board which has the jurisdiction to deal with it.

22. In the present case, it is not in dispute that the plaintiffs have 40 per cent of the share capital and their simpliciter case against the defendants in the suit is with regard to oppression and mismanagement. This issue, under the Companies Act can be raised before the Company Law Board under Sections 397 and 398 and not before the Civil Court whose jurisdiction in the case of plaintiffs is impliedly barred because Companies Act itself provides a complete machinery for redressal or their

grievance. Case laws cited by the counsel for the respondents do not carry any substance in favour of the plaintiffs-respondents because of aforesaid catena of judgments rendered by the Hon''ble Supreme Court while dealing with the cases under the various Special Acts where jurisdiction of Civil Court is not specifically barred.

23. In view of the above discussion, this civil revision is allowed, application moved by the petitioners under Order 7 Rules 10 and 11 of the CPC is allowed and trial Court is directed to return the plaint to the plaintiffs for being presented before the Company Law Board having jurisdiction in the matter.