M.S.D.C. Radharamanan Vs M.S.D. Chandrasekara Raja and Another

C.M.A. No. 174 of 2004 and C.M.P. No. 1249 of 2004

Court: Madras High Court

Date of Decision: Oct. 11, 2006

Acts Referred:
Companies Act, 1956 â€" Section 10F, 397, 398, 402, 43A

Citation: (2007) 138 CompCas 897 : (2007) 80 SCL 254

Hon'ble Judges: P.K. Misra, J; G. Rajasuria, J

Bench: Division Bench

Advocate: R. Venkataraman, for A. Sivaji, for the Appellant; Murari, for P.T.S. Narendravasan, for the Respondent

Judgement

G. Rajasuria, J.
Heard learned Counsel appearing for the appellant and the respondents.

2. This C.M.A. is directed as against the order dated August 16, 2004, passed by the Company Law Board in C.P. No. 2 of 2004 See M.S.D.

Chandrasekara Raja v. Shree Bhaarathi Cotton Mills P. Ltd. [2007] 138 Comp Cas 81 (CLD), which was filed by the first respondent herein -

M.S.D. Chandrasekara Raja as against M/s. Shree Bhaarathi Cotton Mills P. Ltd., Rajapalayam - the second respondent herein and M.S.D.C.

Radharamanan, the appellant herein, under Sections 397 and 398 of the Companies Act, 1956, seeking the following directions:

(a) to appoint one or more suitable persons to act as directors of the company;

(b) to amend Article 5 of the articles of association of the company to the effect that until otherwise decided by the general meeting, the company

shall have not less than three and not more than nine directors;

(c) to direct the company to redeem the preference shares in accordance with Article 3(c) of the articles of association;

(d) to direct the company to issue duplicate share certificates in respect of 2,84,000 equity shares issued and allotted to the petitioner;

(e) to amend Article 4(a) of the articles of association of the company in the following manner:

(i) Any share may be transferred by a member to any other member or the spouse or major child of such member. Provided that the board of

directors shall be bound to recognise and record such transfers;

(ii) Any share may also be transferred to any person other than members of the company provided no member is willing to purchase the same.

3. The Company Law Board by its order dated July 20, 2004, issued the following directions:

I am therefore of the considered view that the petitioner has, prima facie, established that the shares held by him are in his individual name and not

in the capacity of karta of the Hindu undivided family. In these circumstances, the second respondent will purchase 2,84,000 shares held in the

name of the petitioner at a value which may be determined by a valuer, towards which the parties will appear on October 20, 2004, at 2.30 p.m.

to suggest a mutually acceptable valuer.

4. Being aggrieved by the order of the Company Law Board, the appellant herein - M.S.D.C. Radharamanan has filed this appeal on the following

grounds, among others:

(i) The order of the Company Law Board is erroneous and against law. Despite accepting the contention of the appellant on merits, the Company

Law Board had finally given a direction quite contrary to the interest of the appellant herein.

(ii) The Company Law Board had no materials on record to give a finding that there was oppression on the part of the appellant herein relating to

the running of the company, there is no material on record to show that Section 397 or 398 of the Companies Act are attracted to the facts and

circumstances of the case. The Company Law Board has not adhered to the decision of the hon''ble apex court in Shanti Prasad Jain v. Kalinga

Tubes Ltd. [1965] 35 Comp Cas 351 : [1965] 1 Comp LJ 193. The Company Law Board had erroneously relied on the decision rendered in

Yashovardhan Saboo v. Groz-Beckert Saboo Ltd. [1995] 83 Comp Cas 371 (CLB).

(iii) The Company Law Board erroneously held that there was a deadlock in the running of the company. The Company Law Board overlooked

the documentary evidence showing the ownership of the shares which actually belong to the Hindu undivided family, of which the first respondent

herein is the karta.

(iv) The Company Law Board failed to look into the fact that under the Companies Act, 1956, and the rules, there is no provision for showing the

shares as the one belonging to the Hindu undivided family. The Company Law Board also overlooked the wealth-tax assessment order relating to

the shares held by the first respondent herein in the second respondent-company as the shares of the Hindu undivided family. The Company Law

Board erroneously held that the first respondent herein was holding the shares in his individual capacity and such a finding resulted in miscarriage of justice. The Company Law Board, based on such erroneous finding relating to the ownership of the shares, passed such a direction, ultimately,

relating to 2,84,000 shares. Accordingly, the appellant herein prays for setting aside the order of the Company Law Board, Additional Principal

Bench, Chennai, in C.P. No. 2 of 2004 dated August 16, 2004.

5. The appellant has also filed C.M.P. No. 1249 of 2004 so as to obtain stay of the operation of the order passed by the Company Law Board,

setting out almost the same grounds as found in the grounds of appeal.

6. Per contra, the first respondent herein filed the counter affidavit, inter alia, with the averments which run thus:

The C.M.A. itself is not maintainable. The Company Law Board did not hold that the contentions of the first respondent herein were not tenable.

The Company Law Board, while considering the facts and circumstances of the case, held that there was deadlock in carrying out the affairs of the

company and that the only alternative for the smooth functioning of the company was to pass such a direction. The Company Law Board passed

orders based on the evidence placed before it. The appeal filed u/s 10F of the Companies Act, 1956, is confined only to the question of law

arising out of the order of the Company Law Board. The finding of the Company Law Board that there was deadlock is based on appreciation of

facts and that cannot be challenged in this appeal. The Company Law Board, held that the first respondent herein was holding 2,84,000 shares in

his individual capacity and not in the capacity as karta of the Hindu undivided family and such a conclusion was the outcome of the documents

placed before the Company Law Board.

7. The Company Law Board has clearly held that the first respondent herein had subscribed to the memorandum of association in his individual

capacity and not as karta of the Hindu undivided family and that the board of directors have also allotted shares to him in his individual name and

not in his capacity as karta of the Hindu undivided family and that this aspect got reflected in the register of members of the company and the

annual report of the company. The Company Law Board u/s 402 of the Companies Act passed suitable direction which cannot be challenged by

the appellant in this appeal. The findings are based on facts. Relying on the wealth-tax assessment order relating to the year 1990-91, wherein the

Hindu undivided family was referred to, is untenable. Long before such assessment order there was a partition between the appellant and the first

respondent herein. After the partition deed, the shares have been acquired by the first respondent herein. As per the order of the Company Law

Board, the valuer has to be appointed for valuation of the shares and thereafter further processes have to be undertaken. Any further delay will be

prejudicial to the first respondent. Accordingly, the first respondent herein prayed for the dismissal of the C.M.P.

8. The pleadings of both parties and the arguments advanced by the learned advocates would lead to the formulation of the following points for

determination:

1. Whether the Company Law Board had objectively analysed the whole kit and caboodle of evidence before it in arriving at its conclusion?

2. Whether the ingredients of Section 397 of the Companies Act, the board are not attracted in the facts and circumstances of the case negating

any remedy u/s 402 of the Companies Act?

3. Whether the shares apparently standing in the name of the first respondent herein, in reality belong to him or to the Hindu undivided family?

4. To what relief?

5. The parties are referred to herein according to their litigative status before the Company Law Board?

Point No. 1:

9 A resume of facts absolutely necessary for the disposal of this appeal would run thus:

(i) Quintessentially and tersely, the case of the petitioner as stood exposited from the averments and the arguments advanced on his side would run

thus:

(ii) The petitioner/M.S.D. Chandrasekar Raja is the father of Radha Ramanan the second respondent in C.P. No. 2 of 2004 and they are the

directors of the first respondent-company.

10. The first respondent-company which was originally a private company, subsequently was deemed to be a public company by virtue of turnover

in terms of Section 43A of the Companies Act with effect from January 1, 1993, and yet thereafter as per the option exercised, it once again got

reverted as private company with effect from January 16, 2002.

11. The petitioner has been the managing director of the company right from its inception. Both the managing director and the director are eligible

for remuneration. However, the second respondent with an intention to disrupt the smooth functioning of the company, by taking undue advantage

of his status as equal shareholder and director of the company created a deadlock in the management of the company. He refused to participate in

the meetings or take decisions except on certain occasions which were found suitable for him. He abused the petitioner at the board meetings. He

refused to sign the attendance register despite having attended some meetings. He held out threats to the office staff of the company especially

those whom he perceived as the ones close to the petitioner. The morale of the staff is at an all time low and ultimately it affected the smooth

functioning of the company. He also openly declared that he would usurp control of the company and oust the petitioner from management.

12. In view of the oppression and mismanagement by the second respondent the petitioner was driven to the extent of filing the C.P.

13. The following are the grounds which according to the petitioner are constituting oppression and mismanagement.

14. The petitioner with an intention to resolve the deadlock did choose to induct A. Jayakumar who is the relative of the both the petitioner and the

second respondent, as additional director of the company. The board meeting was held on April 9, 2003. But the second respondent with the intention to perpetuate the deadlock objected to such co-option. The petitioner himself misplaced his share certificate and hence addressed the company for issuance of duplicate share certificates. A board meeting was convened on April 25, 2003, to consider the letter requesting for such issuance of duplicate certificates. Even though, the second respondent attended the board meeting, yet he refused to sign the attendance register or participate in the proceedings and consequently no business could be transacted and the meeting was adjourned to May 2, 2003, for want of quorum. Despite attending such meeting on May 2, 2003, he refused to co-operate.

15. The second respondent addressed a letter to the petitioner on May 2, 2003, making allegation that proper minutes book and attendance register were not produced. Gainsaying the allegations the petitioner gave his reply on June 5, 2003. The second respondent gave a reply on June 10, 2003, reiterating his untenable allegations.

16. On June 9, 2003, another board meeting was convened. The second respondent came to the meeting but refused to sign the attendance register and refused to participate in the proceedings. However, he abused the petitioner in vituperative language. The meeting was adjourned to February 16, 2003, and in that meeting the clearance of stock was discussed. The second respondent would allege that he was present at the meeting on February 9, 2003, but the minutes book was not produced.

17. The second respondent attended the meeting on September 6, 2003. The board meeting was convened for adoption of annual account and for convening the annual general meeting of the company. During such meeting he signed the attendance register. However, he alleged that it was not properly maintained. He also demanded for the minutes book.

18. Thereafter, the second respondent addressed a letter to the petitioner on October 30, 2003, that the minutes were not recorded relating to the board meetings. He also additionally alleged that minutes book was withheld from his inspection. The second respondent purposely and deliberately chose to raise untenable allegations with an intention to stall the smooth functioning of the company.

19. The petitioner and the second respondent attended the board meeting held on November 14, 2003. But the second respondent with an intention to disrupt the smooth functioning of the company unreasonably objected for surrendering 100 KVA of electricity out of 1,250 KVA sanctioned by the Tamil Nadu Electricity Board for running the textile mill of the company. The company initiated legal proceedings against M/s. Sri Krishna for recovery of dues, for which there was no co-operation from the second respondent. The second respondent did not co-operate for carrying out beneficial measures. The company issued 50 preference shares, of which the second respondent holds 25 shares; preference dividend

will have to be paid at the first instance, after which alone dividend can be paid on the equity shares.

20. Owing to the non-co-operative act of the second respondent, preference dividend could not be declared nor was the company able to redeem

the preference shares as per the terms of the articles of association of the company. The second respondent has been irregular in attending office

even though he was entrusted with the task of sales, purchase, etc., for the company. The second respondent''s attitude, ensued in the stocks

worth about 6.7 crores getting accumulated in the company''s godown which affected the growth and prosperity of the company. The petitioner

therefore took personal interest to sell away the stock.

21. The second respondent''s henchmen threatened the staff members who did not sail with him in his non-co-operative movement towards the

company. The second respondent addressed a letter on January 14, 2004, to the petitioner''s decision to increase the wages of the office staff,

namely, Narayanan of cotton section, and Mr. Desikan, accountant, but the second respondent objected to it.

22. The second respondent has also raised allegation as though the petitioner withdrew a sum of Rs. 8,15,000 on July 9, 2003, for which the

second respondent intended to enquire the petitioner. In fact, the second respondent consented for wage increase to be given to the staff members

except to the said Narayan and Desikan pending alleged enquiry, even though, there was no enquiry as against the said staff members. The second

respondent alleged that the original documents relating to the guest house of the company in Madras and the keys for the flat and rooms were not

given to him, even though, the petitioner is entitled to retain with him the original documents and the key. The second respondent has been

oppressive and causing inconvenience to the smooth functioning of the company. Based on those grounds set out supra, the petitioner filed the

C.P.

23. Per contra gainsaying and challenging the allegation in the averments in the petition, the second respondent filed the reply with the averments,

which run thus:

The company petition was not maintainable.

24. The shareholding pattern of the company as on this date is as follows:

Equity shares of Rs. 10 Redeemable non-cumulative

Name of the shareholder each preference shares of Rs. 10 each

Sri M.S.D. Chandrasekara 2,84,000 0

Raja (petitioner)

Sri M.S.D.C. Radharama- 2,83,999 25

nan (second respondent)

M/s. Viswa Bharathi Textiles 1 0

P. Ltd.

Other shareholders (25 share- 0 25

holders)

5,68,000 50

25. The equity shares held by the petitioner are all in his capacity of the karta of the Hindu undivided family. In the wealth-tax statement also it was

referred to as such. There is no partition of the Hindu undivided family under the Hindu Succession Act. The daughters of the petitioner got married

before the Tamil Nadu Hindu Succession (Amendment) Act of 1989 has come into vogue. As such, the petitioner and the second respondent are

the only two coparceners. The shares are the family wealth of such Hindu undivided family. The preference shares were allotted on March 30,

1985. But no dividends have been declared so far and no shares have been redeemed.

26. The second respondent has not been disrupting the smooth functioning of the company. He is a director from January 6, 1984, i.e., from the

very inception of the company. He has been attending meetings regularly and taking active part in the managerial function of the company and also

in the business. The second respondent objected to certain resolutions, which were against the interest of the company and which were brought

about for benefiting the petitioner. On some occasions new note books were produced before the second respondent for obtaining his signatures

and in such events alone the second respondent refused to sign.

27. The minutes of the board meeting held after March, 2003, were not placed before the court. Minutes were prepared in piece of papers. No

regular minutes books were maintained. The second respondent attended the board meetings on April 9, 2003, April 25, 2003, and May 2, 2003,

and on those days also no proper minutes and attendance registers were produced. The second respondent did not abuse the petitioner in the

board meetings. The allegation relating the second respondent having intimidated the staff and that he proved himself a scourge to the welfare of the

staff in getting increments are all false. The petitioner is a septuagenarian, aged 78 years; whereas, the second respondent is 48 years old. The

second respondent is possessed of proper knowledge in management. Under the Companies Act, relating to public company, the managing

director should not be above 70 years old and only with the prior permission of the Central Government septuagenarian could be appointed as

managing director. It is better for the first petitioner to retire from the post of managing director and allow the second respondent to occupy it.

28. The petitioner wanted to induct the said Jayakumar as a director and the induction of Jayakumar would really result in deadlock. The company

for its expansion of the spinning mill had availed of term loan assistance from M/s. IDBI, Chennai and if there is any change in the board of directors, prior approval of IDBI is required and those factors were highlighted by the second respondent for nothing but to be rejected by the first

petitioner.

29. On April 25, 2003, at the board meeting, the respondent raised the following questions:

(i) Has there ever been an issue of share certificates by the company in its entire history? If so, the serial numbers of certificates and the concerned

stubs and registers may please be produced before the board.

(ii) Neither does the second respondent possess any such certificates and hence the managing director may please be requested to issue share

certificate to the second respondent also.

(iii) Has the proper procedure for re-issue of lost certificates, such as advertisement in the newspapers regarding the loss, furnishing of indemnity

bonds, etc., been carried out properly by the managing director?

30. The very fact that the petitioner could not keep the share certificates properly proves his inability. During the board meeting, held on April 25,

2003, request was made by the second respondent on the following two grounds:

(i) The non-disposal undertaking submitted to IDBI specified that the substantial shareholders, who have also signed their personal guarantees for

the loans to the company shall not dispose the shareholdings.

(ii) The shares held by the petitioner are in his capacity as the karta of the Hindu undivided family and hence he had to be prevented from

unauthorisedly attempting to dilute the assets of the Hindu undivided family to the detriment of the other claimant of the Hindu undivided family

property.

31. The second respondent gave his consent for initiating proceedings as against the said Sri Krishna Co. The second respondent advised that the

stocks should not be sold below their costs and it should be sold for better prices. Subsequently, the second respondent''s stand got vindicated, as

better yarn prices are prevailing and it proves the business prudence of the second respondent. The sum of Rs. 8,15,000 was not handled properly

and the explanation given by the petitioner is false relating to such amount. The petitioner acted with an intention to show a sum of Rs. 8,15,000

illegally.

32. The staff members Desikan and Narayanan were involved in assisting the petitioner to remove the cash of the company and also in falsifying

the records. The petitioner is guilty of the following acts:

(a) For breach of trust with the bank and financial institutions and for trying to misappropriate Rs. 8,15,000.

(b) For having alienated the property which had already been offered as collateral security to the bank.

(c) For trying to reconstitute the board of directors without prior permission of the financial institutions.

33. Accordingly, the second respondent prayed for the dismissal of the C.P. There was rejoinder filed by the petitioner reiterating the stand in the

petition. The records would reveal that several times, settlement were tried but it ended in fiasco.

34. The analyses and discussions could be done under the following three points:

(i) Whether the Company Law Board based on proper materials arrived at the conclusion relating to the smooth running of the company?

(ii) Whether there was partition between the petitioner and the second respondent?

(iii) Whether there is any infirmity in the direction given by the Company Law Board?

35. The Company Law Board discussed the matter under seven sub-heads and therefore it is just and necessary to find out as to whether there is

any question of law has arisen out of such order, and answer it.

Non-co-opting of a third director on the board:

36. The Company Law Board, while considering the materials on records, arrived at the conclusion that the impasse arose for appointment of A.

Jayakumar as co-operative director could have been overcome by appointing some other personnel as co-operative director and that the second

respondent alone cannot be blamed in that regard. The Company Law Board by using words ""second respondent alone cannot be blamed in this

regard"" would speak volumes that the second respondent was also an obstacle for the appointment of A. Jayakumar. The contention of the second

respondent as set out supra would show that according to the second respondent, he was not in good terms with Jayakumar as they could not see

eye to eye. There is nothing on record to show that the second respondent suggested for appointment of some other person as director. Even

though, the second respondent pleads that he has been putting his heart and soul for the welfare of the company and that he has been ready and

willing to become the managing director, in view of the fact that his father, the septuagenarian, is no more fit to be the managing director, yet he

failed in his duty to suggest a third person of his own choice to be a director so as to resolve the impasse and deadlock.

37. The contention of the second respondent is that the consent of IDBI - the creditor of the company was required for inducting a new director, is

nothing but a mere stooge to camouflage and conceal the real intention to deseat the petitioner. It is therefore, crystal clear that from the available

materials placed before the Company Law Board, it ought to have held that the second respondent was active in trying to deseat the petitioner and

that the second respondent wanted to come to power as managing director. The Company Law Board quite very well could have held from the

available evidence that the second respondent was actively causing obstacle for inducting the third director. In this view of the matter there has

been very much a law point which has arisen from the order of the Company Law Board. Even though, the petitioner himself has not filed any

appeal, yet in the appeal filed by the second respondent, this Court could rightly hold that the Company Law Board instead of holding that the

second respondent alone cannot be blamed, could have very well held that the second respondent was actively responsible for non-induction of a third director. It is therefore clear that the conduct of the second respondent is oppressive of the smooth running of the company. Obtaining

consent from the IDBL is a formal one, for which, even the second respondent could have taken steps, if he was really, as claimed by him,

interested in the smooth running of the company.

Non-clearance of accumulated stocks:

38. The Company Law Board very much relied on the version given by the second respondent in his counter and extracted a portion of it. The

Company Law Board had taken the version of the second respondent for gospel truth and simply held such versions were not controverted by the

petitioner in his rejoinder. The fact remains that there was accumulation of stocks and for which the second respondent admits that he was also

responsible. But he hastened to add that he visualised that postponing of sale would be beneficial to the company. However, the second

respondent has not produced any clinching evidence for the same. In such a case, the reasoning that the petitioner had not challenged the second

respondent''s version, in his rejoinder, is neither here nor there. Hence this point also, the Company Law Board could have decided based on the

available facts, as against the second respondent.

Surrender of 100 KVA electricity:

39. This point is relating to proposal to surrender 100 KVA electricity as it was considered surplus by the petitioner, who is the managing director.

The Company Law Board should have categorically held that such surrender was beneficial to the company and the second respondent

unjustifiably objected to it. Admittedly, the second respondent was not in favour of such surrender on the ground that it was required for future

expansion of the factory activities. Such a plea of the second respondent is based on mere conjectures and surmises and not borne out by any

proposed project for future expansion. As such the Company Law Board very well could have held that the second respondent was oppressive.

Non-issue of duplicate share certificates:

40. This is with regard to non-issuance of duplicate share certificates. There is nothing to show that such duplicate share certificates should not be

issued. It is the contention of the petitioner that the second respondent could have very well agreed for such proposal to issue duplicate share

certificates. The Company Law Board referred to the board meeting held on March 23, 2004, during the pendency of the matter before the

Company Law Board. However, on May 2, 2003, the second respondent could have very well agreed for such issuance. The Company Law

Board relied on the following words of the second respondent.

Was not in a position to take a decision.

41. The second respondent was not justified in simply filing a counter stating that he was not in a position to take a decision on that issue. When

that matter was not serious in nature, the counter filed by the second respondent would only expose his non-co-operation. Regarding this, the

Company Law Board could have very well held that the second respondent was not justified in causing obstruction to the issuance of such share

certificates.

Non-redemption of preference shares:

42. Relating to this point, the finding of the Company Law Board cannot be found fault with. The directors'' report, balance-sheet, profit and loss

account for the years ending by March 31, 1997, and March 31, 1998, revealed that the directors recommended a dividend at 50 per cent, on the

equity shares and 12 per cent, on the redeemable cumulative preference shares, and the balance-sheet also would reveal the said facts. The

Company Law Board correctly highlighted that there was not even an agenda for declaration of dividend or redemption of preference shares in

accordance with the articles of association of the company. Hence, in such a case, the Company Law Board was right in holding that the second

respondent was not responsible for such non-redemption.

Non-sanctioning of increment to the staff members:

43. Apparently there were no disciplinary proceedings as against the said employees Desikan and Narayanan. The second respondent got

prejudiced towards the staff members as though they were assisting the petitioner to siphon off the funds of the company. There is no basis for

such apprehension. Hence the second respondent was not justified in obstructing the proposal to give increments to the two staff. The Company

Law Board therefore, could have given a finding as against the second respondent.

Deadlock in the affairs of the company:

44. The Company Law Board referred to the principles of corporate democracy of board of directors, based on which it gave a finding that it

cannot find fault with the second respondent for his independence. However, our discussion supra would expose that the second respondent was

not exercising his corporate democracy but he was interested in deseating his septuagenarian father. The second respondent''s counter is extracted

hereunder for ready reference:

The petitioner-managing director has become quite old. In fact under the Companies Act, in the case of public companies there exist sufficient safe

guards to restrict appointment of managing directors over the age of 70 without prior permission of the Central Government. Such provisions have

been thoughtfully provided considering the inherent weaknesses that will emerge out of old age. In order to continue the smooth functioning of the

enterprise, it would be very much conductive if the managing director gracefully retires from the post and lets a much younger and still experienced

person to take over the mantle of the company. And furthermore, considering that the younger person is the only son of the present managing director, it is quite natural that the takeover of the mantle that should be mooted.

5.8. Further, there seems to be no reason as to why the second respondent should not aspire to become the managing director of the company.

5.9. The petitioner has been the managing director of the company from its inception, i.e., from January 6, 1984. He is aged about 78 years. The

second respondent is the only son of the petitioner and he is about 48 years. He is the only other director in the company. He has also been the

whole-time director since its inception. He possesses the requisite experience and knowledge gained out of more than two decades in management

of the business especially in matters relating to purchases, sales, administration, etc.

45. The above excerpts are periphrasis of the second respondent''s real intention to deseat his father from the post of managing director and

accordingly there was apparent non-co-operative attitude on his part and such conduct cannot be termed as corporate democracy.

46. Relating to the second respondent''s demand for original documents of the guest house keys, it could be held that the managing director was

competent to have in his possession those original documents and guest house keys and the second respondent cannot raise his accusative finger as

against the petitioner. However, the Company Law Board has correctly arrived at the conclusion, based on the materials placed before it, that

there is animosity between the petitioner and the second respondent resulting in a deadlock situation.

47. Learned Counsel for the appellant would raise the question as to how the Company Law Board after giving various findings in favour of the

second respondent could arrive at a conclusion that there was deadlock situation. This court, being a court of appeal relating to this matter which is

bound to appreciate the question of law that arises from the order of the Company Law Board, could very well look into the justifiability of the

reasoning given by the Company Law Board and accordingly our discussions supra would show that the Company Law Board was right in

arriving at the conclusion that there is a deadlock situation because of the ill-will, detest, dislike, antipathy, aversion, abomination, abhorrence,

odium, hostility, rancour, prevailing between them. The Company Law Board also was right in holding that the very pleadings and exchanges of

correspondences between the parties would highlight that the parties were emitting venom against each other. In such a situation it would be a well

nigh impossibility for both of them to pull on together as there is incompatibility and commensurability between them.

48. The second respondent intended to file a criminal complaint as against his father (the petitioner) relating to the alleged misappropriation of a

sum of Rs. 8,15,000. Even though, the second respondent would state that Desikan, the cashier, was hand in glove with the petitioner in helping

the petitioner to misappropriate the sum of Rs. 8,15,000 yet there is no clinching evidence. It is very easy to make allegations, but difficult to prove

it. As such allegations were made by the second respondent but not made out. The petitioner would explain that the said sum of Rs. 8,15,000 was withdrawn from the company''s account for making advance payment to cotton suppliers in concinnity with the prevailing practice and it was

entrusted to him by the accountant. However, the said cash was remitted into company''s bank account on the very next day itself, which is evident

from the company challan and bank statement extracted from the account maintained by the company vide pages 75 to 80 of the company

petitions. The respondent could not in any way discredit such explanation by any other clinching evidence or probabilities. Hence, in these

circumstances, it is crystal clear that the Company Law Board was right in considering all these allegations made by the second respondent in

arriving at the conclusion that the allegations are very serious and that the second respondent lost all his faith in the petitioner.

49. The unassailable facts are that the petitioner and the second respondent being father and son are the only directors who vowed war to the

knife, to cut the ground under the feet of each other and there is no love lasting between them. All these facts lead to the irresistible conclusion that

there is a deadlock situation.

50. Learned Counsel for the second respondent would argue by highlighting that the factory owned by the company is earning profits. Such a fact

alone cannot be the criterion for holding that there was no deadlock situation. It is common knowledge that nowadays the employees and the

managerial staff are having awareness. The closure of the factory, due to the fight between two directors, would affect the life of the employees and

in such a case, the employees may be sincere in running the factory. In this factual matrix there cannot be any real difficulty in invoking Section 402

of the Companies Act. Accordingly, point No. 1 is decided as against the appellant.

Point No. 2:

51. The applicability of Section 397 and Section 402 of the Companies Act with reference to precedents could be discussed thus.

52. In this connection, learned Counsel for the petitioner in C. P. cited the following decisions:

(1) Eastern Linkers P. Ltd. v. Dina Nath Sodhi [1984] 55 Comp Cas 462, wherein the Delhi High Court held in the following manner (page 482):

Mr. Talwar''s argument that there were no outstanding liabilities against the company and that there were good prospects of the company carrying

on profitably is equally of no avail because in a case like the present, where the company is in substance a partnership, it is accepted that''...in a

case like the present we are bound to say that circumstances which would justify the winding up of a partnership...by action are circumstances

which should induce the court to exercise its jurisdiction under the ''just and equitable'' clause and to wind up the company''. vide Yenidje Tobacco

Co. Ltd. In re [1916] 2 Ch D 426 : [1916-17] All ER 1050 (Ch D).

53. Further, learned Counsel relies upon another judgment of the apex court rendered in Kilpest P. Ltd. v. Shekhar Mehra [1996] 87 Comp Cas

615.

54. The aforesaid decisions would highlight the fact that simply because there is no loss to the company, the court cannot jump to the conclusion

that Sections 397 and 402 of the Companies Act are not attracted.

5. The hon''ble High Court in the decision in Sishu Ranjan Dutta v. Bhola Nath Paper House Ltd. [1983] 53 Comp Cas 883 (Cal), held that in a

family concern like the one here, even though nomenclatured as company, it should be treated for the purpose of Section 397 as a partnership

concern, by applying the principle of piercing the veil so as to put an end to all the problems.

56. Learned Counsel for the respondent also cited the following precedents:

(1) Kilpest Pvt. Ltd. and Others Vs. Shekhar Mehra, .

(2) Eastern Linkers Pvt. Ltd. Vs. Dina Nath Sodhi, .

(3) Krishan Lal Ahuja v. Suresh Kumar Ahuja [1983] 53 Comp Cas 60 (Del).

57. In the decisions cited supra, it was held thus:

Whenever there is inter se factional disputes between the groups in a company, it could be ordered that the shares of one group to be ordered to

be purchased by the other and in case of default by both the parties, the company would be liable to be wound up.

58. Considering the fact that here there are only two directors, namely, father and son and that there are irreconcilable disagreement between the

two, the Company Law Board has chosen to give such direction relating to the purchase of shares by the son from the father.

59. The decision of the Madras High Court in V.M. Rao v. Rajeseswari Ramakrishnan [1987] 61 Comp Cas 20, would be to the effect that the

majority shareholders are not bound to accept the views of the minority shareholders and that the oppressive complaint should be in the capacity of

the shareholders and not in any other capacity. This decision has been cited out of context. It is quite obvious from the above analysis and

discussion that the second respondent qua equal shareholder, caused inconvenience even in taking formal decisions at the board meetings.

60. Learned Counsel for the respondent relied on the decision rendered by the hon''ble Supreme Court in Needle Industries (India) Ltd. v. Needle

Industries Newey (India) Holding Ltd. [1981] 51 Comp Cas 743 : AIR 1981 SC 747. It was on a different set of facts, as the Reserve Bank of

India mandated the company to reduce the non-residents'' shareholding to 40 per cent, instead of 60 per cent, that thereupon the directors

resolved to issue fresh shares and allot them to Indian shareholders giving incidental benefits to the directors and in such a situation it was held that

there was no ""oppression"" of non-residents.

61. However, in this case as has been discussed, the second respondent''s conduct lead to oppression regarding smooth running of the company.

In the same decision cited supra the hon''ble apex court held that there was no oppression in the facts and circumstances of that case, nevertheless,

considering the lack of highest degrees of ties of partnership between the groups, the hon''ble apex court held that Section 397 of the Companies

Act, 1956, was attracted. Certain excerpts are extracted hereunder from it see [1981] 51 Comp Cas 743, 845:

We must mention that we have rejected the charge of oppression after applying to the conduct of Devagnanam and his group the standard of

probity and fairplay which is expected in partners in a business venture. And this we have done without being influenced by the consideration

pressed upon us by Shri Nariman that Coats and Newey, who were two of the three main partners, were not of one mind and that Newey never

complained of oppression. They may or they may not. That is beside the point. Such technicalities cannot be permitted to defeat the exercise of the

equitable jurisdiction conferred by Section 397 of the Companies Act. Shri Seervai drew our attention to the decision in Blisset v. Daniel [1853]

68 ER 1022; 10 Hare 493, the facts of which, as they appear at pages 1036-37, bear, according to him, great resemblance to the facts before us.

The following observations in that case are of striking relevance (at page 1040 of 68 ER; 536 of 10 Hare):

As has been well observed during the course of the argument, the view taken by this Court with regard to morality of conduct amongst all parties -

most especially amongst those who are bound by the ties of partnership - is one of the highest degree. The standard by which parties are tries here,

either as trustees or as co-partners, or in various other relations which may be suggested, is a standard, I am thankful to say so, far higher than the

standard of the world; and, tried by that standard, I hold it to be impossible to sanction the removal of this gentleman under these circumstances....

Even though, the company petition fails and the appeals succeed on the finding that the holding company has failed to make out a case of

oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in

which they would have been, if the meeting of May 2, were held in accordance with law....

We must make it clear that we are not asking the Indian shareholders to pay the premium as a price of oppression. We have rejected the plea of

oppression and the course which we are not adopting is intended primarily to set right the course of justice, in so far as we may.

62. The law as laid down by the hon''ble apex court could be summarised to the effect that even in a case where technically speaking, there may

be no oppression within the meaning of Section 397 of the Indian Companies Act, yet the court for the purpose of setting right things, could pass

necessary order u/s 402 of the Indian Companies Act.

63. Adhering to the above decision, if the matter is viewed, it is crystal clear that the father and son who are the only directors of this company

could no more pull on together and take any decision in unison for the smooth running of the company. Visualising this sort of circumstances only,

in various decisions cited supra, it was held that when only the family members are the board of directors as well as shareholders, virtually, such

company should be viewed only as a partnership concern and accordingly mutatis mutandis, the principles relating to partnership have to be applied.

64. In this view of the matter, the ultimate decision arrived at by the Company Law Board cannot be faulted with.

65. On the side of the second respondent in this petition, various other decisions which have also been cited, are considered thus:

In Shanti Prasad Jain v. Kalinga Tubes Ltd. [1965] 35 Comp Cas 351 : [1965] 1 Comp LJ 193 (SC), the facts involved are totally different as the

factual matrix in that case was to the effect that non-member became holder of equal shares by virtue of agreement between the shareholders and

non-members. But the facts are entirely different here and it is quite obvious.

66. In (1995) 83 CompCas 371 , the facts involved are that there were two rival groups having unequal shares and that there were excessive use

of casting vote and in such a case the hon''ble Delhi High Court held that there was no proof of oppression. However, the court ordered granting

of relief, directing the majority to purchase the shares of minority. This decision is also in reiteration of the proposition that despite in a case where

there is no oppression stricto sensu, yet the court could grant relief by directing the majority to purchase the shares of minority.

67. We therefore, have no hesitation in reiterating the legal proposition that even in a case, where there is no proof of oppression, yet by applying

the principles which are applicable to the partnership, in respect of companies where there are only two shareholders, namely, father and son or

only those family members who could not see eye to eye relating to the smooth running of the company, orders could be passed u/s 402 of the

Indian Companies Act. Accordingly, the point is decided.

Point No. 3:

68 The bone of contention in the argument advanced by learned Counsel for the petitioner in the C.P. would be to the effect that there was already

partition between the father and son as envisaged in the partnership deed, there was severance of status between the two; it is also evident that in

the articles of association, the petitioner was cited as an individual and not karta of the Hindu undivided family; and that the shares acquired by the

petitioner were all from out of his own source of income.

69. Per contra, learned Counsel for the second respondent in the C.P. petition would argue that such a contention raised on the side of the

petitioner, remains only his ipse dixit, and was made unmindful of the specification found in the wealth tax assessment.

70. The question as to whether the shares, standing in the name of the petitioner were purchased from out of his own independent source of

income or joint income of the Hindu undivided family is a serious question of fact.

71. The contention of the second respondent in the C.P. that in the wealth-tax statement, the shares were specified as the ones of a Hindu

undivided family also deserves consideration. The Company Law Board very much relied only on the memorandum of association to the effect that

the shares of the first petitioner were not specified as the ones belonging to the Hindu undivided family. Such a fact alone would not be the sole criterion to decide the actual ownership of the shares standing in the name of the petitioner.

72. The real ownership of the shares could rightly be considered by the competent civil court. However, for the purpose of giving immediate

remedy under the Companies Act, the finding of the Company Law Board by placing reliance on the memorandum of association for holding that

the shares prima facie standing in the name of the first petitioner belong to him, could be countenanced for the limited purpose of granting relief for

the smooth functioning of the company.

73. The partition deed dated is a good example of an ill-drafted partition deed which does not envisage any clause that there was severance of

status as co-sharers except blood relationship between them. The views of both sides would be in union to the effect that as per the partition deed,

there were yet properties to be divided even as on the date of the said partition.

74. However, learned Counsel for the petitioner in the C.P. would hasten to add that even though there were properties more to be divided as on

the date of partition, there was severance of status between the two as co-sharers of the Hindu undivided family/Hindu joint family.

75. The Company Law Board is not a civil court and this Court is not sitting as an appellate court over the order of the Company Law Board and

in such case, it would be unwarranted to give any final decision on that issue which is required to be decided by a competent civil court.

Admittedly, a civil suit is pending between the two and in that certainly the status of the petitioner and the respondent relating to their property

rights could be decided. Learned Counsel for the respondent in the C.P. would state that because of the pendency of this C.M.A., in the civil suit,

the shares have not been cited. It is open for the parties concerned to petition the civil court in this regard and contest the respective rights of

parties over the shares held by them in the company. It is a trite proposition of law that the civil court has got jurisdiction to decide the matters of

this nature and the actual ownership over the shares. However, for the purpose of the disposal of the C.P. and to meet the point raised by the

second respondent in the C.P., the Company Law Board correctly held that the petitioner in the C.P. has prima facie established that the shares

held by him are in his individual capacity and not as the karta of the Hindu undivided family. The Company Law Board but for adding the words

prima facie established"" could have fallen into error in giving the finding.

76. We make it clear that untrammelled by such finding, the civil court shall have jurisdiction to decide relating to the status of the shares standing in

the name of the petitioner and for that matter, the shares in general standing in the name of the petitioner and the second respondent in the C.P. for

the purpose of resolving the deadlock. Accordingly, this point is decided.

Point No. 4:

77. The Company Law Board has correctly ordered that the second respondent in the C.P. should purchase the shares of the petitioner at a value

which may be determined by the valuer. There is no glaring or jarring disproportionateness in holding shares.

78. Learned Counsel for the petitioner in the C.P. would categorically submit that in the event of the second respondent in the C.P. failing to

purchase the shares of the petitioner, the petitioner would purchase it. It also transpired during arguments that as per the order of the Company

Law Board two sets of valuations emerged. One for higher value and another for lower value.

79. Learned Counsel for the petitioner would categorically submit that the petitioner is ready and willing to deposit 50 per cent, of the sale

proceedings in a fixed deposit in the High Court and that in the event of the second respondent in the C.P. succeeding in the civil suit establishing

his rights for half share in those shares as a co-sharer he would be entitled to take the deposited amount.

80. Learned Counsel for the petitioner has also additionally submitted that in the event of default of the second respondent in the C.P., the

petitioner would purchase the shares of the second respondent in the C.P., for the lower rate and the petitioner also over and above that would

pay a sum of Rs. 25,00,000 (twenty-five lakhs).

81. The submissions made by learned Counsel for the petitioner in the C.P. is oral and not borne by any records placed before this Court and in

such a case, this Court could only record the submissions made by him. However, if there is any dispute regarding the method of valuation of the

shares and the ultimate valuation arrived at by the valuer, it is open for either parties to approach the Company Law Board for getting the valuation

finalised. Thereupon, at the first instance, the second respondent shall purchase the shares of the petitioners, within six months from the date of

finalisation of such valuation and on his failure to do so, the petitioner in C.P., shall purchase the shares of the second respondent, within six months

thereafter. In the event of both the alternatives failing, the purchase of shares of either the petitioner or the second respondent could be transferred

to third parties depending upon the exigency. The Company Law Board is at liberty to pass such further orders u/s 402 of the Companies Act, in

commensurate with the views expressed by this court, for the smooth running of the company.

82. In view of the reasons given for deciding the aforesaid point this civil miscellaneous appeal is partly allowed by modifying the order passed by

the Company Law Board. The submission made by learned Counsel for the petitioner is recorded as aforesaid.

83. Learned Counsel for the appellant herein would cite the following two decisions:

Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others, .

Naini Oxyzen and Acetylene Gas Ltd. Vs. Bisheshwar Nath and Others, .

84. The aforesaid decisions relates to, the shares being purchased by the company itself. In the event of the company purchasing the shares of the

either parties, there will be a consequent reduction of share capital. Those decisions also would contemplate that creditors are not entitled to any

notice on that score.

85. We are of the opinion that the aforesaid relief granted in this appeal would be sufficient and yet one other additional alternative, viz., enabling

the company to purchase the shares, at this stage, does not arise. Accordingly, the appeal is partly allowed. No costs. Consequently, connected

C.M.P. is closed.