**(2013) 12 AP CK 0033**

**Andhra Pradesh High Court**

**Case No:** Company Appeal No. 15 of 2013

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| Triumphant Institute of Management Education Private Limited | APPELLANT |
| Vs | |
| Inspire Educational Services Private Limited, ARKS Srinivas and P. Rahul Reddy | RESPONDENT |

**Date of Decision:** Dec. 31, 2013

**Citation:** (2014) 121 CLA 38 : (2014) 183 CompCas 462

**Hon'ble Judges:** Vilas V. Afzulpurkar, J

**Bench:** Single Bench

**Advocate:** S. Ravi for Sri. Ch. Pushyam Kiran, for the Appellant; Nalina Mayegowda for Mahfooz Nazki, for the Respondent

**Judgement**

Vilas V. Afzulpurkar, J.

Petitioners in C.P. No. 78 of 2012 before the Company Law Board, Chennai, have filed this appeal u/s 10(F) of the Companies Act, 1956, against the impugned order of the Company Law Board dated 05.06.2013 dismissing C.P. No. 78 of 2012 and allowing C.A. No. 1 of 2013 filed by the respondents. Stated briefly, while the aforesaid company petition was filed by the appellant under Sections 397, 398, 402 and 406 of the Companies Act, 1956 (for short "the Act''), the respondents herein filed C.A. No. 1 of 2013 praying the Company Law Board (for short ''CLB'') to refer the patties u/s 8 of the Arbitration and Conciliation Act, 1996 (for short ''Arbitration Act'') for determination of dispute under the Arbitration Act. The CLB, having allowed the said C.A. No. 1 of 2013, as a consequence dismissed C.P. No. 78 of 2012 summarily. Petitioners in C.P. No. 78 of 2012, therefore, challenge the impugned order on the principal contention that statutory remedy against oppression and mismanagement can be adjudicated only by CLB in terms of the Act and not by an Arbitrator.

2. Brief facts are as under:

(a) The first appellant is engaged in the business of providing commercial training and coaching for various competitive examination especially Common Admission Test (CAT) under the brand name "T.I.M.E." to students desirous of seeking admission into management institutions. The first appellant, thus, used a franchisee model in various cities to run business by appointing franchisees for a particular city or area providing with specifications regarding the course curriculum, study material, teachers qualifications etc. In return, such franchisee pays "fee royalty" and "material royalty" to the first appellant.

(b) Respondents 2 and 3 evinced interested in being franchisees of the first appellant for the city of Kolkata, whereupon, an agreement was entered into between the first appellant and respondents 2 and 3 and the first respondent was incorporated as Joint Venture wherein the first appellant had 33.28% shares and respondents 2 and 3 are holding 32.33% each of the shares in the first respondent. The said joint venture entered into in the year 2003 was initially for a period of three years and by renewals from time to time, the last renewal was with effect from 01.04.2011 for a period of three years. The shareholding pattern between the first appellant and respondents 2 and 3 was governed by shareholders agreement dated 14.08.2002 apart from the Franchisee Agreement and all the agreements contained non-compete clauses.

(c) It is alleged that the performance of the first respondent in some of the courses was not to the satisfaction of the first appellant whereupon the first appellant terminated the rights of the first respondent under the franchisee agreement in board meeting of the first respondent dated 20.04.2012.

(d) Respondents 2 and 3, however, perceived the said termination as illegal and incorporated a new company with the similar objects as that of the first respondent and were making efforts to divert the business of the first appellant to the said new company of respondents 2 and 3. It appears that the funds of the first respondent to the tune of about Rs. 2.6 crores were lying in various bank accounts of the first respondent. The first appellant, therefore, filed C.P. No. 78 of 2012 before the CLB and also sought interim relief directing respondents 2 and 3 not to utilize the funds of the first respondent. The CLB while entertaining the said petition, passed an interim order dated 13.09.2012 directing respondents 2 and 3 to deposit Rs. 2 crores as fixed deposit apart from Rs. 60 lakhs already lying in long term fixed deposit.

(e) While so, respondents 2 and 3 filed C.A. No. 1 of 2013 before the CLB praying that CLB may direct the parties to arbitration in terms of the arbitration clause in the franchisee agreement and shareholders agreement. The said application filed u/s 8 of the Arbitration Act has since been allowed by the CLB and consequently, C.P. No. 78 of 2012 was dismissed under the impugned order. The present appeal is, thus, directed against the said order.

3. By order dated 31.07.2013, while issuing notice to the respondents in this appeal, this Court continued the interim order passed by the CLB dated 13.09.2012, referred to above, for a period of eight weeks and the said order is being extended from time to time pending this appeal.

4. At the request of the learned counsel for the parties, the main appeal itself has been heard at the admission stage on 29.11.2013 and 06.12.2013 and reserved.

5. Heard Mr. S. Ravi, learned senior counsel for the first appellant and Mrs. Nalina Mayegowda, learned counsel for the respondents.

6. The primary contention raised by Mr. S. Ravi, is with reference to the jurisdiction of the CLB in dismissing C.P. No. 78 of 2012 filed by the petitioners under Sections 397, 398 and 402 of the Act summarily. Learned senior counsel, therefore, submits that irrespective of existence of any arbitration clause or otherwise, the statutory remedy under Sections 397, 398 read with 402 of the Act cannot be relegated to an Arbitrator and under the impugned order, the CLB, while purporting to exercise power u/s 8 of the Arbitration Act and while referring the parties to Arbitrator, has dismissed the company petition, thereby, the petitioners statutory remedy is frustrated.

7. Elaborating on the said submissions, the learned senior counsel submits that incorporation of a new company by respondents 2 and 3 in contravention of non-compete agreement between the parties and various other related actions of respondents 2 and 3 gave rise to an act of oppression, as against the first appellant in the first respondent company and thereby, the first appellant was justified in approaching the CLB complaining of oppression and mismanagement and for seeking appropriate relief under Sections 397, 398 and 402 of the Act. The application filed by respondents 1 to 3 u/s 8 of the Arbitration Act was made by citing an arbitration clause as provided under the Articles of Association of the first respondent as well and the provisions therefor under the franchisee agreement and the ''Shareholders agreement. It was alleged that in terms the of arbitration clauses contained in the aforesaid agreements, the respondents 1 to 3 approached the CLB by filing C.A. No. 1 of 2013 contending that the dispute between the parties being arbitrable, prayed before the CLB to refer the parties to arbitration in terms of the said agreements. The said application of respondents 1 to 3 was resisted by the first appellant, primarily, contending that the issue as to oppression and mismanagement is outside the purview of arbitrability and that statutory remedy under Sections 397 and 398 of the Act cannot be curtailed or affected by any such agreement inter se between the parties.

8. Learned senior counsel, therefore, submits that notwithstanding the said reply by the first appellant, the CLB proceeded to hold that the allegations of parties with regard to violation of non-compete clause clearly falls within an arbitrable dispute under the arbitration clause contained in all the three documents, referred to above.

It was also held that the articles, being the internal regulations of the company, are binding on the company and its shareholders and therefore, the shareholders were obliged to avail the said remedy especially, as relief claimed in the company petition is relating to violation of the franchisee agreement and consequently, therefore, the CLB allowed C.A. No. 1 of 2013.

9. Learned senior counsel submits that various allegations made in the company petition alleging oppression and mismanagement were not addressed by the CLB and only relying upon the violation of non-compete clause, the CLB came to the conclusion as if the said dispute entirely falls within the realm of arbitrable dispute. Further, the remedy seeking an order for winding up of the company or for that matter, a relief against oppression and mismanagement, being entirely within the jurisdiction of the company Court or CLB in terms of the Act, Section 8 of the Arbitration Act is wrongly applied by the CLB.

10. In support of his submissions, the learned senior counsel placed strong reliance upon the following decisions:

Sumitomo Corporation Vs. CDC Financial Services (Mauritius) Ltd. and Others, ; Manavendra Chitnis and another Vs. Leela Chitnis Studios P. Ltd. and others, Sudarshan Chopra and Others Vs. Company Law Board and Others, O.P. Gupta Vs. Sfflv General Finance (P) Ltd. and Others, (Del); Sporting Pastime India Limited and K.K. Shivakumar Vs. Kasthuri and Sons Limited, ); Das Lagerway Wind Turbines Ltd. Vs. Cynosure Investments Private Ltd.,

11. Learned senior counsel contends on the basis of the aforesaid decisions that statutory remedy under Sections 397, 398 read with 402 of the Act cannot be granted by an Arbitrator and as such, the CLB has erroneously dismissed the company petition without adjudication on merits and hence, requested the order to be set aside by relegating the parties to CLB for adjudication of the said company petition on merits.

12. Smt. Nalina Mayegowda, learned counsel appearing on behalf of the respondents, on the contrary, raised a preliminary objection on the maintainability of the appeal u/s 10(F) of the Act. Learned counsel submits that the impugned order was passed by the CLB u/s 8 of the Arbitration Act and except for such orders, which are held to be appealable under the Arbitration Act, as provided u/s 37 of the Arbitration Act, the order of CLB u/s 8 of the Arbitration Act is not appealable. Learned counsel, therefore, primarily contends that the present appeal u/s 10(F) of the Act is not maintainable in terms of the scheme of the Arbitration Act and particularly, Section 37 thereof. Learned counsel also submits that under the mandate of Section 8 of the Arbitration Act, the CLB acts as a judicial authority and when it has exercised powers u/s 8 of the Arbitration Act, no appeal can lie against the same.

13. Learned counsel has placed reliance upon a decision of the Punjab and Haryana High Court in Smt. Sudarshan Chopra and Others Vs. Vijay Kumar Chopra and Others, and also a decision of the of Bombay High Court in Masusmi SA Investments LLC v. Keystone Realtors Pvt. Ltd. [CA(L).No. 47 of 2012 and batch dated 06.11.2012], Reliance is also placed upon a decision of the Delhi High Court in Vijay Sekhri and Anr Vs. Tinna Oils and Chemicals and Tinna Agro Industries Ltd. and Others, . Learned counsel also raised further contention that no question of law falls for consideration in this appeal. Hence, even assuming that an appeal u/s 10(F) of the Act is maintainable, no question of law was decided by the CLB with reference to oppression and mismanagement and hence, no appeal could lie against the impugned order u/s 10(F) of the Act. In support of the aforesaid contention, the learned counsel relied upon a decision of the Supreme Court in Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others, 3; Palanisamy and Another Vs. Milka Nutrients P. Ltd. and Others, and Sunshine Buildhome P. Ltd. and Others Vs. Madhusudan Garg and Others,

14. On facts, the learned counsel submits that all the three documents executed by and between the parties viz. Articles of Association, Franchisee Agreement as well as the Shareholders Agreement, undisputedly contain arbitration clause and primary dispute being with regard to violation of non-compete clause, as alleged, the dispute was clearly arbitrable and as such, rightly referred by the CLB u/s 8 of the Arbitration Act. Learned counsel, therefore, submits that the appeal does not merit acceptance on any ground.

15. Since the appeal is being contested at the stage of admission itself, the appeal was heard finally and the questions of law 1 to 3, which require adjudication, are as follows:

1. Whether on the facts and in the circumstances of the case, the Company Law Board was correct in allowing C.A. No. 1 of 2013 in C.P. No. 78 of 2012 and, consequently, dismissing C.P. No. 78 of 2012 without appreciating the fact that Sections 397, 398 and 402 of the Companies Act, 1956 are statutory remedies provided to the shareholders of a company which cannot be fettered by Section 8 of the Arbitration and Conciliation Act, 1996?

2. Whether on the facts and in the circumstance of the case, the Company Law Board was correct in referring the matter to arbitration u/s 8 of the Arbitration and Conciliation Act, 1996 by referring to the arbitration clauses in the Articles of Association of the 1st Respondent, the Franchisee Agreement and the Shareholders Agreement when some of the parties to C.P. No. 78 of 2012 are not even parties to the above agreements?

3. Whether on the facts and in the circumstance of the case, the Company Law Board was correct in assuming that the averments and the reliefs sought for by the Appellants in C.P. No. 78 of 2012 pertain to the violation of the Articles of

Association, Shareholders Agreement and the Franchisee Agreement without appreciating the fact that the averments and reliefs are not just restricted to the above and without appreciating the powers of the Company Law Board u/s 402 of the Companies Act, 1956?

16. Since the provisions of Section 8 of the Arbitration Act are pressed into service by the respondents before the CLB and the said provision along with Section 37 of the Arbitration Act is pressed before this Court, it is appropriate to notice the said two provisions at this stage, as under:

8 - Power to refer parties to arbitration where there is an arbitration agreement -

(1) A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.

(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

37 - Appealable orders -

(1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--

(a) granting or refusing to grant any measure u/s 9:

(b) setting aside or refusing to set aside an arbitral award u/s 34.

(2) An appeal shall also lie to a court from an order of the arbitral tribunal-

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure u/s 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or taken away any right to appeal to the Supreme Court.

17. In addition, the powers of CLB under Sections 397, 398 and 402 of the Act were invoked while filing C.P. No. 78 of 2012 and it is appropriate to notice those provisions also at this stage:

Application to [Tribunal] for relief in cases of oppression. -

397. (1) Any member of a company who complain that the affairs of the company [are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the [Tribunal] 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 court is of opinion -

(a) that the company''s affairs [are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members; and

(b) 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 [Tribunal] may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

Application to [Tribunal] for relief in cases of mismanagement. -

398. (1) Any members of a company who complain -

(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 interests 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, if 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 [Tribunal] 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 [Tribunal] 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 [Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

Powers of [Tribunal] on application u/s 397 or 398.

402. Without prejudice to the generality of the powers of the [Tribunal] 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, [he consequent reduction of its share capital;

(d) the termination, selling 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) and

(iv) [***]

(v) the manager,

upon such terms and conditions as may, in the opinion of the [Tribunal], 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 me 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 insolvency to be a fraudulent preference;

(g) any other matter for which in the opinion of the [Tribunal] it is just and equitable that provision should be made.

18. The power of CLB in dealing with petition under Sections 397, 398 and 402 of the Act, it would be noticed, is statutory and on the face of it, such power, which includes passing of order for winding up, cannot be exercised by an Arbitrator. As to when judicial proceedings can be referred by a judicial authority u/s 8 of the Arbitration Act for resolution through the process of arbitration as well as the matters, which can be referred to arbitration, is now settled by two decisions of the Supreme Court, which are required to be kept in mind in the forefront while considering the rival contentions.

19. Firstly, the decision of the Supreme Court in P. Anand Gajapathi Raju and Others Vs. P.V.G. Raju (Died) and Others, wherein at para 5, the Supreme Court had laid down the conditions, which are required to be satisfied before making reference u/s 8 of the Arbitration Act. It would be appropriate to extract para 5 hereunder:

5. The conditions which are required to be satisfied under Sub-sections (1) and (2) of Section 8 before the Court can exercise its powers are:

(1) there is an arbitration agreement;

(2) a party to the agreement brings an action in the Court against the other party;

(3) subject matter of the action is the same as the subject matter of the arbitration agreement;

(4) the other party moves the Court for referring the parties to arbitration before it submits his first statement on the substance of the dispute.

This last provision creates a right in the person bringing the action to have the dispute adjudicated by Court, once the other party has submitted his first statement of defence. But if the party, who wants the matter to be referred to arbitration applies to the Court after submission of his statement and the party who has brought the action does not object, as is the case before us, there is no bar on the Court referring the parties to arbitration.

20. It would be noticed from the above that condition No. 3, referred to above, requires that the subject matter of action and the subject matter of arbitration agreement must be the same. In the case on hand, while the subject matter of action before the CLB is the allegation of oppression and mismanagement and for seeking relief against the same under Sections 397 and 398 of the Act, the CLB is empowered to pass any of the orders, as contemplated u/s 402 of the Act, which includes winding up of the company, whereas the arbitrable dispute in terms of respondents'' application u/s 8 of the Arbitration is a dispute relating to non-compete clause and the inter se rights of the parties in terms of the said agreement. The arbitration clause does not, obviously and could not cover the statutory remedy envisaged under Sections 397, 398 and 402 of the Act.

21. Secondly, we may also notice herein a decision of the Supreme Court in Haryana Telecom Ltd. Vs. Sterlite Industries (India) Ltd., wherein pending winding up petition, a similar application u/s 8 of the Arbitration Act was filed by the respondents, the Supreme Court held at para 5 as under:

5. The claim in a petition for winding up is not for money. The petition filed under the Companies Act would be to the effect, in a matter like this, that the company has become commercially insolvent and, therefore, should be wound up. The power to order winding up of a company is contained under the Companies Act and is conferred on the court. An arbitrator, notwithstanding any agreement between the

parties would have no jurisdiction to order winding up of a company. The matter which is pending before the High Court in which the application was filed by the petitioner herein was relating to winding up of the company. That could obviously not be referred to arbitration and, therefore, the High Court, in our opinion was right in rejecting the application.

Thus, in the light of the above decision, the statutory remedy clearly could not be and was not affected by arbitration clause u/s 8 of the Arbitration Act.

22. I shall, therefore, examine the rival contentions keeping in mind the ratio of the two decisions of the Supreme Court, referred to above.

23. In Sumitomo Corporation''s case (supra) it was held in para 29 as follows:

29. Now let us look into Section 10(1)(a) and Section 10-F of the Companies Act. An appeal against any order of the CLB including an order passed refusing reference to arbitration shall lie to the High Court within the jurisdiction of which the Registered Office of the company is situated. That is the reason Section 50 of the Arbitration Act purposively uses the expression "authorized by law to hear the appeal". As rightly pointed out, it cannot be that an order passed by the CLB becomes appealable to a civil court or a court exercising civil jurisdiction when Parliament has chosen to provide for a specific appellate forum which should hear the appeal from the orders of the CLB.

In the aforesaid decision reference was also made to the decision of the Supreme Court in Stridewell Leathers (P) Ltd. and Ors. v. Bhankerpur Simbhaoli Beverages (P) Ltd. [ (1991) 1 SCC 34] wherein it is held that an appeal u/s 10(F) of the Act lies to the jurisdictional High Court where the company is situated.

24. Learned counsel for the respondents, however, rightly points out that the decision in Sumitomo Corporation''s case (supra) was concerned with Section 50 of the Arbitration Act, which specifically provides an appeal against the order referring the parties to arbitration u/s 45 of the Arbitration Act whereas we are concerned with Sections 8 and 37 of the Arbitration Act and hence, the said decision is distinguishable so far as the facts of the present case are concerned.

25. In Manavendra Chitnis''s case (supra) it was held that "...merely because there is an arbitration clause or an arbitration proceeding, or for that matter an award, the court''s jurisdiction u/s 397 and 398 cannot stand fettered... courts have gone to the length to hold that the matter which can form subject matter of a petition under Sections 397 and 398 cannot be subject matter of an arbitration, for an arbitrator can have no powers such as are conferred on the court, such as Section 402 of the Companies Act...".

26. In Sudarshan Chopra''s case (supra) it was held that Sections 397, 398 and 402 of the Act have power to constitute a code by itself for granting relief to oppressed minority shareholders and that no arbitration in cases such as dealing with

oppressed minority is permissible and that statutory jurisdiction of the CLB and the right of appeal against it cannot be ousted even by consent of the parties.

27. The decision relied upon by the learned counsel for the respondents in Smt. sudershan chopra''s case (supra) is clearly misplaced and in fact, supports the appellant. The decision in Masusmi Sa Investments LLC''s case [CA (L) No. 47 of 2012 and batch dated 06.11.2012], however, clearly supports the contention of the learned counsel for the respondents but it is significant to note that the said decision did not elaborate and consider the specific contention raised therein by the learned counsel for the appellants, as noted in para 6 of the decision. The decision in Vijay Sekhri''s case (supra) is also distinguishable as it related to application of Sections 45 and 50 of the Arbitration Act and not with reference to Sections 8 and 37 of the Arbitration Act, as arising in the present case and the said decision appears to be contra to the decision of the Supreme court in Sumitomo Corporation''s case (supra).

28. The contention of the learned counsel for the respondents, further, that the present appeal cannot be entertained u/s 10(F) of the Act also is not sustainable inasmuch as the impugned order dismissed the company petition of the first appellant under Sections 397, 398 and 402 of the Act. The dismissal of the company petition summarily has, undoubtedly, prejudiced the first appellant as no enquiry has been held in the said petition. The adjudication of the issues arising out of the said petition before the CLB were statutorily available for the first appellant and the orders passed by the CLB under the aforesaid provisions are, undoubtedly, appealable u/s 10(F) of the Act before the jurisdictional High Court. Thus, the powers exercised by the CLB under the aforesaid provisions of the Act and any decision or order of CLB, being made, is appealable u/s 10(F) of the Act before the jurisdictional High Court and entertainable by the High Court on any question of law arising out of such order. The present appeal, on the questions, as framed above, which arise, is clearly maintainable. The contention of the learned counsel for the respondents merely looks at the impugned order from the point of view of allowing application u/s 8 of the Arbitration Act filed by the respondents but not with reference to the dismissal of the company petition. Since the order impugned is a composite order allowing the respondents'' appeal u/s 8 of the Arbitration Act and consequently, dismissing the appellant''s company petition under Sections 397, 398 and 402 of the Act, in my view, this appeal is clearly maintainable on the questions of law, as above, u/s 10(F) of the Act. I, therefore, do not find any impediment in allowing the appeal for the reasons aforesaid by answering the questions of law in favour of the appellant. The decision relied upon by the learned counsel for the respondents in V.S. Krishnan''s case (supra) does not assist the respondents. Para 16 of the said decision, which is relied upon holds that the decision of the CLB, on the question of facts, is not open to appeal but all such decisions, which involve question of law, are subject to decision of the appellate Court u/s 10(F) of the Act. Similarly, the decision in Palaniswamy''s case (supra) also reiterates the said view that the appeal u/s 10(F)

of the Act lies on question of law before the jurisdictional High Court and not on facts. Further decision in Sunshine Buildhome P. Ltd.''s case (supra) also reiterates the same view. In the present case, as already discussed and held above, the questions of law, as framed above, arise for consideration and hence, the appeal is clearly entertainable on the aforesaid questions.

The company appeal is accordingly allowed and the impugned order is set aside. C.P. No. 78 of 2012 shall stand restored to the file of the Company Law Board for adjudication thereof, on merits, in accordance with law preferably by the end of June, 2014. Since the appeal is allowed, the interim order subsisting pending this appeal shall continue to remain in force and parties are at liberty to approach the company law board, for any verification, modification, or vacation as is required. As a sequel, the miscellaneous applications, if any, shall stand disposed of as infructuous. However, there shall be no order as to costs.