

Shaw wallace and Co. Ltd. Vs Union of India (UOI)

Court: Calcutta High Court

Date of Decision: May 15, 1998

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Order 14 Rule 2, Order 6 Rule 2

Companies Act, 1956 â€” Section 10D, 10D(1), 10F, 111, 155

Company Law Board Regulations, 1991 â€” Regulation 2

Consumer Protection Act, 1986 â€” Section 14

Income Tax Act, 1922 â€” Section 66(1)

Life Insurance Corporation Act, 1956 â€” Section 6, 6A

Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 â€” Section 9A

Citation: 2 CWN 11 : (1999) 2 ILR (Cal) 429

Hon'ble Judges: Shyamal Kumar Sen, J; Altamas Kabir, J

Bench: Division Bench

Advocate: Anil V. Dewan, S.B. Mukherjee and P.C. Sen, for the Appellant; Anindya Mitra, A.S.G. and B. Samaddar, for the Respondent

Judgement

Altamas Kabir, J.

Shaw Wallace and Company Ltd., hereinafter referred as the "Appellant Company", has preferred this appeal u/s 10F

of the Companies Act, 1956, against an order passed by the Company Law Board on January 21, 1998, on an application filed by the Central

Government in a pending proceeding u/s 408 of the aforesaid Act, being C.P. No. 46 of 1996. The said proceedings had earlier been filed by the

Central Government seeking directions from the Company Law Board for appointment of Additional Directors on the Board of the Appellant

Company.

2. It appears that in July, 1996, an application was filed by the all India Shaw Wallace Employees Federation before the Company Law Board u/s

397 and 398 of the aforesaid Act, seeking removal of all the Directors of the Appellant Company. In its order dated September 27, 1996, the said

Board recorded the undertaking given by the Appellant Company that pending the disposal of the interim applications and without prejudice to its

rights and contentions, it would not make any investment or disinvestment and/or borrow and/or give loans as advances, otherwise than in the

ordinary course of business of the Appellant Company and its subsidiaries of an amount or value exceeding Rs. 50 lakhs at a time, unless

approved by its Board of Directors in a meeting to be attended by a Director representing the financial institutions.

3. While recording such undertaking, the Company Law Board directed the Appellant Company to ascertain from the financial institutions the

name of their nominee and such person would always be invited to meetings of the Board of Directors and he would also, without fail, attend the

Board meetings. The financial institutions were directed to ensure his attendance at the Board meetings. The Appellant Company was also

restrained from inducting any Directors into the Board of Directors without the specific approval of the Company Law Board.

4. The All India Shaw Wallace Employees Federation preferred an appeal to this Court against the aforesaid order of the Company Law Board

and this Court by an order dated October 7, 1996, restrained the Appellant Company and its subsidiaries from making any investment or

disinvestment,, borrowing or lending monies to any of its subsidiaries or to any other concern of an amount exceeding Rs. 50 lakhs the prior leave

court.

5. The Appellant Company filed a SLP in the Hon"ble Supreme Court against the aforesaid order of this Court and by its order of November 1,

1996, the Hon"ble Supreme Court modified the order of this Court by directing that the Appellant Company would not do any of the things

indicated in the said order without the prior leave of the Company Law Board.

6. After the SLP was disposed of by the Hon"ble Supre Court, the Appellant Company filled Company Application No. 238 of 1996 before the

Company Law Board seeking permission to dispose of its Consumer Products Division. The said application was disposed of on November 26,

1996, with a direction that any proposal made by the Company regarding any transaction involving Rs. 50 lakhs and above should be subjected to

independent assessment and for the said purpose nominated two Directors on the Board of Directors of the Company. It was also stipulated that

in future permission for any transaction amounting to Rs. 50 lakhs and above would require the approval of at least one of the said two Directors.

7. At this juncture, it may be mentioned that on August 4, 1989, at a meeting of the Board of Directors of the Appellant Company, one Shri P.K.

Pandit, whose name was recommened by the Life Insurance Corporation of India, was appointed as a Director liable to retire by rotation. After

retiring by rotation, Shri Pandit was re-elected to the Board on several occasions, but ultimately on December 30, 1997, he was not re-elected.

8. Soon thereafter on January 12, 1998, the Central Government filled an application before the Company Law Board in the pending proceeding

u/s 408 of the Companiss Act (CP. No. 46 of 1996), inter alia, for the following orders:

(i) Initiate appropriate contempt proceedings against the promoters/Directors/Contemnors whoever are found to be involved and guilty of

deliberate violation and flouting of order dated September 27, 1996, of this Company Law Board;

(ii) Restore status quo ante regarding the Directorship/Nomineeship of the financial institutions represented by L.I.C. and thereby order that Shri

P.K. Pandit shall continue to enjoy the same state on the Board of Directors of Shaw Wallace & Company as on 30th December, 1997.

9. Although the said application has been described as an application for interim orders and further appropriate directions/orders, from the reliefs

prayed for it will be evident that the same was primarily an application for invoking the contempt jurisdiction of the Company Law Board and for

orders consequent upon alleged violation by the Appellant Company of the order passed by the said Board on September 27, 1996.

10. The said application was disposed of by the Company Law Board on January 21, 1998, and without entering into the controversy as to

whether its order of September 27, 1996, had been violated, the said Board observed that since the financial institutions were holding over 25

percent shares in the Appellant Company and have always had a nominee on the Board of the Company for a long time they should continue to

have such nominee on the Board. The financial institutions were, accordingly, directed to nominate their nominee within ten days for being

appointed on the Board of the Company and to ensure his attendance at all Board meeting without fail.

11. Pursuant to the said directions, the Life Insurance Corporation of India by its letter dated January 27, 1998, informed the Appellant Company

of the decision of the financial institutions to nominate Shri P.K. Pandit as their representative on the Board of the Company and requested the

company to take necessary steps for Shri Pandit's induction as Director on the Board of Directors of the Company in compliance with the orders

of the Company Law Board dated January 21, 1998.

12. As indicated hereinbefore, it is the said order of the Company Law Board which is the subject matter of challenge in this appeal and a

preliminary objection has also been taken on behalf of the Central Government that the appeal is not maintainable.

13. Appearing in support of the appeal, Mr. Anil Dewan submitted that the application filed by the Central Government in the pending proceeding

u/s 408 of the Companies Act, 1956, was misconceived and was not maintainable and the impugned order passed thereon was, therefore, wholly

without jurisdiction and in excess of the powers vested in the Company Law Board u/s 408 of the said Act.

14. Mr. Dewan urged that Section 408 of the said Act does not provide for passing of interim orders by the Company Law Board and in passing

such order, the said Board had exceeded its jurisdiction.

15. In this regard reference was made to the decision of the Hon"ble Supreme Court in the case of Morgan Stanley Mutual Fund Vs. Kartick Das,

wherein while considering the provisions of the Consumer Protection Act, 1986, the Hon"ble Supreme Court held that u/s 14 of the said Act, the

District Consumer Disputes Redressal Forum had no power and jurisdiction to grant interim relief and could only grant final relief and the interim

order of stay granted by the Forum staying the public issue floated by the Appellant Company, was not sustainable.

16. Mr. Dewan urged that apart from the fact that Section 408 of the Companies Act, 1956, does not empower the Company Law Board to

make any interim orders pending final adjudication, the contempt application was also without any factual basis, inasmuch as, the order passed by

the Company Law Board on September 27, 1996, had merged with the orders subsequently passed by this Court and the Hon"ble Supreme

Court and the said contention had been duly accepted by the Company Law Board and is reflected in its order dated January.21, 1998. Mr.

Dewan urged that the Company Law Board had, therefore, chosen not to go into the allegation of violation of its order of September 27, 1996,

but instead of dismissing the said application, the Board quite erroneously gave directions of an interim nature to the financial institutions to name

their nominee who was to be appointed to the Board of Directors of the Appellant Company, although, there was no basis for such directions.

17. In support of this contention, Mr. Dewan referred to the decision of the Hon"ble Supreme. Court in the case of Goppulal Vs. Thakurji Shriji

Shriji Dwarakadheeshji and Another, wherein while considering, inter alia, the provisions of Order 6 and Rule 2 and Order 14 Rule 2 of the Code

of Civil Procedure, the Hon"ble Supreme Court observed that in the absence of pleadings on a particular point, the Courts below erred in coming

to a finding on such point.

18. Other decisions were also cited in this regard to which reference will be made, if necessary.

19. Mr. Dewan urged that question as to whether the Company Law Board was empowered to pass interim orders in a proceeding u/s 408 of the

Companies Act, 1956, is a question of Law of considerable importance arising out of the order impugned in the instant appeal which was,

therefore, maintainable u/s 10F of the said Act.

20. In addition to the above, it was also urged that this Court was also required to consider whether in a proceeding u/s 408 of the Companies

Act, 1956, the company Law Board could give a direction to the concerned Company to appoint a Director to be nominated by the financial

institutions which held a little over 25 per cent of the Company"s shares.

21. In other words, in this appeal the Court will have to consider the scope of Section 408 of the Companies act in relation to the impugned order

of the Company Law Board.

22. In support of his contention that the appeal was maintainable Mr. Dewan referred to the decision of the Hon"ble Supreme Court in Meenakshi

Mills, Madurai Vs. The Commissioner of Income Tax, Madras, wherein while considering the provisions of Section 66(1) of the Income Tax Act,

1922, relating to reference to Court of questions of law, the Hon"ble Supreme Court, inter alia, held that a pure question of law and in certain

cases mixed questions of law and fact were open to reference u/s 66(1) of the above Act. The Hon"ble Supreme Court also considered the

question of perversity and observed that a finding of fact unsupported by any evidence is also open to attack under the aforesaid provisions.

23. In this connection, reference was also made to the decision of the Privy Council in the case of AIR 1930 57 (Privy Council) where it was held

that when a claim had never been made, no amount of evidence can be looked into upon a plea which was never put forward. Reference was also

made to certain other decisions to which reference will be made, if necessary.

24. Mr. S.B. Mukherjee, who appeared with Mr. Dewan for the Appellant Company, supplemented Mr. Dewan's submission by pointing out that

the order of the Company Law Board dated September 27, 1996, in respect of which the Central Government had filled the interim application in

the pending proceeding u/s 408 of the Companies Act, had been passed in the proceeding u/s 397 and 398 of the above Act which had been

initiated on the application filed by the All India Shaw Wallace Employees Federation and Others. Mr. Mukherjee urged that the said application

of the Central Government and the order passed thereon were not maintainal on such score as well.

25. Mr. Mukherjee submitted that, in any event, Section 408 of the Companies Act contemplates an enquiry to be made by the Company Law

Board and on being satisfied that in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any

members of the company or in a manner which is prejudicial to the interests of the company or to public interest it was necessary to make

appointments, specify the number of persons to be appointed by the Central Government to hold office as Directors of the Company for such

period not exceeding three years on any one occasion. Mr. Mukherjee urged that without conducting such inquiry, the Company Law Board could

not give any direction to the Central Government to appoint Directors to the Board of a Company much less itself direct the Company to make

such appointment. Mr. Mukherjee submitted that in a proceeding u/s 408, the Company Law Board is only entitled to decide whether, in order to

safeguard the interest of the Company, its shareholders and the public, any additional Directors are required to be inducted to the Board. The

actual appointment of additional Directors is, however, required to be made by the Central Government and the Company Law Board cannot pass

orders directing a third party to nominate a Director on the Board. Mr. Mukherjee submitted that the effect of the impugned order of the Board

was to amend the constitution of the Company by giving a right of representation on the Board to the financial institution even though they only 25

per cent of the share capital.

26. Mr. Mukherjee also urged that since Mr. Pandit had retired from the Board by rotation and had not been re-elected, the Central Government

could not pray for an order that notwithstanding the above, Shri Pandit should be allowed to continue on the Board. More over, since Section 6

and 6A of the Life Insurance Corporation Act are not applicable to the facts of this case and since no loans had been advanced by the financial

institutions to the Company, such financial institutions have no right under the Articles of Association of the Appellant Company to nominate a

Director.

27. Mr. Mukherjee contended that in view of the above, the Company Law Board had no jurisdiction to give such a direction to the financial

institutions to nominate a Director even while disposing of the Central Government's application u/s 408 of the Companies Act and no such

direction could, therefore, have been given on an interim application since the interim relief could only be in aid of the final relief.

28. On behalf of the Central Government, Mr. Anindya Mitra, Additional Solicitor General, reiterated his preliminary objection that the appeal was

not maintainable.

29. Mr. Mitra submitted that the appeal did not raise any question of law arising out of the impugned order of the Company Law Board. Mr. Mitra

urged that the objection now being sought to be raised with regard to the jurisdiction of the Board to pass interim orders in a proceeding u/s 408 of

the Companies Act had not been raised before the Board and since the Board did not have the opportunity to consider such objection, the same

could not be raised in the instant appeal.

30. In support of his contention, Mr. Mitra referred to the decision of the Hon"ble Supreme Court in Commissioner of Income Tax, Bombay Vs.

Scindia Steam Navigation Co. Ltd., involving interpretation of the provisions of Section 66(1) of the Income Tax Act, 1922, and the expression

"Any question of law arising out of such order" used therein. While interpreting the said expression in a situation where the Tribunal decides an

appeal on a question of law not raised before it, the Hon"ble Supreme Court observed as follows:

1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.

2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is

therefore one arising out of its order.

3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.

4) When a question of law is neither raised before the Tribunal nor considered by it, will not be a question arising out of its order notwithstanding

that it may arise on the findings given by it. Stating the position compendiously, it is only a question that has been raised before or decided by the

Tribunal that could be held to arise out of its order.

31. Mr. Mitra urged that since the objection relating to the jurisdiction of the Company Law Board to pass interim orders in a proceeding u/s 408

of the Companies Act, had not been raised before the Board and since the Board had not considered such a question, the case fell within the

fourth category of circumstances indicated by the Hon"ble Supreme Court in the above case and such object could not, therefore, be said to be a

question arising out of the order of the Company Law Board.

32. Mr. Mitra then submitted that the interim direction given by the Company Law Board to the financial institutions to nominate a person to be

appointed to the Board of Directors of the Appellant Company, was in exercise of its inherent powers. Mr. Mitra urged that Rule 44 of the

Company Law Board Regulations, 1991, vests the Company Law Board with inherent powers and the interim directions were given by the said

Board in exercise of such powers for the ends of justice.

33. Mr. Mitra also urged that the Company Law Board was a "Court" and was, therefore, vested with inherent powers to pass interim order.

34. In support of his said contention, Mr. Mitra firstly relied on the decision of the Hon"ble Supreme Court in Canara Bank v. Nuclear Power

Corporation of India Ltd. 84 Comp. Case 70 (S.C.) In the said case the Hon"ble Supreme Court was considering the question of transfer of

proceedings pending in any Court to the Special Court in the context of Section 9A of the Special Court (Trial of offences Relating to Transactions

in Securities) Act, 1992. The Hon"ble Supreme Court observed that the context in which the word "Court" has been used in Section 9A of the

above Act, is intended to encompass all curial or judicial bodies which have jurisdiction to decide matters on claims, inter alia, arising out of

transactions in securities entered into between the stated dates, in which a person notified is involved. In the said context the Hon"ble Supreme

Court went on to observe that under the amended provisions of Section 111 of the Companies Act, 1956, the Company Law Board performs

functions which hitherto were being performed by Courts of Civil judicature u/s 155. It is empowered to do various things u/s 111 of the above

Act, and may make interim orders, and in exercising such powers it acts judicially. Accordingly, the Company Law Board cannot be said to be

anything other than a "Court", particularly for the purpose of Section 9A of the Special Court Act.

35. Mr. Mitra urged that acting as a "Court", the Company Law Board was vested with inherent powers to make interim orders in order to

preserve the status quo and to protect the interest of the parties pending final adjudication of the Central Government's application u/s 408 of the

Companies Act, 1956.

36. Referring to the decision of the Hon"ble Supreme Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hiralal, wherein it had been

held that if the circumstances were not covered by Order 39 of the Code of Civil Procedure, the Court can issue injunction in its inherent

jurisdiction, Mr. Mitra submitted that even if Section 408 of the above Act did not provide for the making of interim orders, in the exercise of its

inherent powers the Board had the jurisdiction and was justified in giving directions to the financial institutions to name their nominee for

appointment to the Board of the Appellant Company pending a final decision in the said application.

37. Mr. Mitra also referred to and relied upon a Bench decision of the Madhya Pradesh High Court in the case of Ram Sahai Pandey v. State-

Industrial Court, M.P. 1973 L.L.J. 553, where the jurisdiction of the Industrial Court to pass interim orders fell for consideration and it was held

following the decision of the Hon"ble Supreme Court in I.T. Officers. Mohd. Kunhi AIR 1969 S.C. 430 that in express grant of statutory power

carries with it by necessary implication the authority to use all reasonable means to make such grant effective.

38. Mr. Mitra also referred to the decision of the Hon"ble Supreme Court in the case of Arjun Singh Vs. Mohindra Kumar and Others, and a

Bench decision of this Court in Sri Sri Radha Krishnaji Thakur Vs. Sankar Lal Khetry, in support of his submission that even where no express

provision has been made in a statute. for passing interim orders and no prayer for interim orders has been made, the Court in appropriate cases

has jurisdiction to pass interlocutory orders to preserve the rights of the parties and to prevent irreparable injury being done to the parties pending

the final disposal of the suit.

39. Mr. Mitra urged that in view of the established principles relating to grant of interim orders pending final disposal of the main proceeding, the

Company Law Board could not be faulted in giving interim directions in the pending application of the Central Government u/s 408 of the

Companies Act, 1956.

40. Replying to Mr. Mitra's submission, Mr. Mukherjee denied Mr. Mitra's contention that the appeal was not maintainable as no objection

relating to the jurisdiction of the Company Law Board to make interim orders had been raised before the said Board and such question had not

also been considered by it. Mr. Mukherjee submitted that the decision of the Hon"ble Supreme Court in the Scindia Steam Navigation Co. Ltd.

case (Supra) relied upon by Mr. Mitra, had subsequently been considered by a Division Bench of this Court in the case of Metal Press Works

Ltd. v. Ram Pratap Kayan, in the context of Section 10 D read with Section 111 of the Companies Act, 1956, Mr. Mukherjee submitted that the

provisions of Section 10D prior to its omission by the Companies Tribunal (Abolition) Act, 1967, were similar to Section 10F which was inserted

by the Companies (Amendment) Act, 1983. The only difference was that in Section 10D it had, inter alia, been stipulated that an appeal would be

lie to this Court out of any decision, finding or order of the Tribunal, where as in Section 10F it has been stipulated that any person aggrieved by

any decision or order of the Company Law Board may file an appeal to this Court on any question of law arising out of such order.

41. Mr. Mukherjee submitted that as was pointed out in the case of Metal Press Works Ltd. 72 C.W.N. 594, the Hon"ble Supreme Court in the

Scindia Steam Navigation Company Ltd. (Supra) case, was considering the provision of Section 66(1) of the Income Tax Act, 1922, involving the

advisory jurisdiction of this Court, while the appeal referred to in Section 10D (1) (b) of the Companies Act, 1956, related to its appellate

jurisdiction. In the said background, the Division Bench of this Court observed that the tests laid down in the Scindia Steam Navigation Company

Ltd.(Supra) case were applicable to a reference u/s 66(1) of the Income Tax Act, 1922, but were not exhaustive in their application to an appeal

u/s 10D(1) (b) of the Companies Act, 1956, since a proceeding under the said provisions was an appeal and not a reference. The jurisdiction was

appellate and not advisory.

42. Upon the said finding, the Division Bench, held that a question of law arising out of the findings in the judgment of the Companies Tribunal may

raised for the first time in an appeal u/s 10D (1) (b) of the Companies Act, 1956, although, the question of law may neither have been raised

before or dealt with by the Tribunal in its judgment or order.

43. Mr. Mukherjee submitted that in view of the aforesaid decision, this appeal must be held to be maintainable.

44. Mr. Mukherjee also submitted that the order dated September 27, 1996, had been passed in the proceedings under Sections 397 and 398 of

the Companies Act and not in the proceeding u/s 408 thereof, the application for contempt filed on behalf of the Central Government in the

proceeding u/s 408 was not maintainable and should have been summarily dismissed by the Company Law Board.

45. Mr. Mukherjee urged that since on behalf of the Appellant Company the very jurisdiction of the Company Law Board to give directions to the

financial institutions to nominate a person to be appointed to the Board of Directors of the Company in a proceeding u/s 408 of the Companies

Act, was under challenge, the same was a question of law arising out of the order of the Company Law Board and an appeal therefrom was

maintainable u/s 10F of the said Act.

46. Regarding Regulation 44 of the Company Law Board Regulations, 1991, Mr. Mukherjee submitted that the same had to be read with the

relevant provisions of the Companies Act, 1956. Mr. Mukherjee urged that in some of the section of the said Act, such as Sections 403 and 409,

the -Board had been specifically vested with, the authority to pass interim orders and reg. 44 would have to be read in such light.

47. Mr. Mukherjee submitted that Mr. Mitra's contention that the Company Law Board was a "Court" and was, therefore, entitled to make

interim orders, was not tenable in view of the decision of the Hon"ble Supreme Court in the Morgan Stanley Mutual Fund(Supra) case wherein it

had been held that a statutory Tribunal had no jurisdiction to grant interim relief. Mr. Mukherjee submitted that the decision of the Hon"ble

Supreme Court in the Canara Bank case (Supra) was with reference to Section 9A of the Special Court (Trial of Offences Relating to

Transactions in Securities) Act, 1992, wherein the usage of the expression "Court" was explained by the Hon"ble Supreme Court to encompass all

curial and judicial Bodies.

48. Mr. Mukherjee urged that there could be no quarrel with the propositions of law explained in the various decisions cited by Mr. Mitra, but that

the same had no application to the issues involved in the instant appeal.

49. Since the very maintainability of the appeal has been questioned on behalf of the Central Government, it is necessary that such objection be

decided first, as such decision may have a bearing on the fate of the appeal.

50. It has been argued by Mr. Mitra that since the jurisdiction of the Company Law Board to pass the order under appeal had not been

questioned before the said Board and the Board did not have occasion to consider such an objection, such question now being sought to be raised

in appeal in that regard cannot be said to be a question of law arising out of the order of the Board as contemplated u/s 10F of the Companies

Act. in support of his contention, Mr. Mitra has relied upon the decision of the Hon"ble Supreme Court in the Scindia Steam Navigation Co. Ltd.

case(Supra).

51. In the facts of this case, the objection taken on behalf of the Central Government does not appear to have any substance. The decision of the

Hon"ble Supreme Court in the Scindia Steam Navigation Co. Ltd.,(Supra) case was distinguished on facts by this Court in the case of Metal Press

Works Ltd.(Supra) and we are in agreement with the views expressed therein. While the Hon"ble Supreme Court was considering a matter

involving the advisory jurisdiction of the High Court u/s 66(1) of the Income Tax Act, 1922, in the instant case we are concerned with the appellate

jurisdiction of this Court. In this case, no reference on any question of law was required to be made to this Court and we have only to see whether

there exists a question of law arising out of the order of the Company Law Board impugned in the appeal. It was not possible for the Appellant

Company to foresee and/or to anticipate the order that was passed by the said Board since no relief had been sought for by the Central

Government in conformity with the said order. In its application, the Central Government had alleged that by not re-electing Mr. Pandit to the

Board of Directors of the Appellant Company, the direction given by the Company Law Board on September 27, 1996, in the proceedings u/s

397 and 398 of the Companies Act had been violated and hence contempt proceedings should be drawn up against the persons responsible for

such violation and status quo ante should be restored by allowing Mr. Pandit to continue on the Board of Directors of the Appellant Company. We

are of the view that such a composite application for different reliefs could not have been filed by the Central Government, since contempt of court

relates to its special jurisdiction and a separate application for contempt should have been filed in respect of the order which was allegedly violated.

52. The order ultimately passed by the Company Law Board on January 21, 1998, has no bearing with the reliefs prayed for by the Central

Government in the application regarding alleged contempt of the Board's order of September 27, 1996. There was, therefore, no scope for any

submission to be made before the said Board in relation to its jurisdiction to pass such an order, which, in our view, is a question of law of some

importance arising out of the said order.

53. We are, therefore, of the view that the instant appeal is maintainable and we, accordingly, proceed to dispose of the same on merits.

54. The impugned order of the Company Law Board has been made on the interlocutory application filed by the Central Government in the

pending proceeding u/s 408 of the Companies Act (C.P. No. 46 of 1996) for invoking the contempt jurisdiction of the Board in respect of an

order passed by the Board on September 27, 1996, in another proceeding under Sections 397 and 398 of the Companies Act commenced on an

application filed by the All India Shaw Wallace Employees Federation.

55. That in itself would have been sufficient to dispose of the appeal, but we are required to decide a more fundamental question of law arising out

of the impugned order of the Company Law Board.

56. Although, Section 408 of the Companies Act does not provide for the making of interim orders, the Company Law Board has not only made

an interim order, but such interim order is beyond even the scope of the final order contemplated u/s 408.

57. Sub-section (1) of Section 408, with which we are mainly concerned, provides as follows:

408 (1). Notwithstanding anything contained in this Act the Central Government may appoint such number of person as the Company Law Board

may " by order in writing specify as being necessary of effectively safeguard the interests of the company, or its shareholder or the public interest to

hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the Company Law Board on a

reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of

the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is

necessary to make the appointment in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any

members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

Provided that in lieu of passing an

order as aforesaid, the Company Law Board may, if the Company has not availed itself of the option give to it u/s 265, direct the company to

amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended,

within such time as may be specified in that behalf by the Company Law Board.

58. As indicated hereinbefore, the Central Government filed an application before the Company Law Board seeking direction to appoint additional

Directors on the Board of the Appellant Company as contemplated u/s 408 of the Companies Act. In making the order impugned in this appeal,

the said Board acted outside the provisions of Section 408 and an attempt has been made by Mr. Mitra to establish that such order was passed by

the Board in exercise of its inherent powers as an interim measure on the inter locutory application filed by the Central Government in the said

proceedings.

59. Since Section 408 vests the Central Government and not the Company Law Board with power to appoint additional Directors to the Board of

the Company on the order of the Company Law Board to that effect, we are unable to accept Mr. Mitra's submissions that the Company Law

Board was entitled to pass the impugned order in exercise of inherent powers. Even if, having regard to reg. 44 of the Company Law Board

Regulations, 1991, the Company Law Board is vested with inherent powers to make such orders as may be required for the ends of justice or to

prevent abuse of the process of the Board, such power cannot be exercised in excess of the powers flowing from the statute itself. Such power has

to be exercised by the Board in aid of and not de hors the provisions of the Statute and, in any event, such exercise of power conferred by reg. 44

cannot override the provisions of the Statute. Although, it has been urged by Mr. Mitra that the Company Law Board has been held to be a

"Court" in the Canara Bank case (Supra), such finding seems to be in the limited perspective of Section 9A of the Special Court (Trial of Offences

Relating to Transactions in Securities) Act, 1992, for the purpose of transfer of proceedings pending before any Court to the Special Court

established under the said Act.

60. Regulation 47 of the above-mentioned Regulations clarifies the position somewhat since it provides that the Bench constitute by the Company

Law Board within the meaning of Regulation 2(e) shall be deemed to be a Court for limited purposes, namely, for the purpose of prosecution or

punishment of a person who wilfully disobeys any direction or order of the Bench and not for all purposes.

61. Certain specific provisions of the Companies Act, 1956, as amended by the various Amending Acts, vests the Company Law Board with

power to make interim orders in specific circumstances and not in general terms. Following the observations made by the Hon'ble Supreme Court

in the Stanley Morgan Fund case (Supra) we are of the view that Company Law Board had no jurisdiction to pass the impugned order and the

same is liable to be set aside.

62. We, therefore, allow the appeal and set aside the order passed by the Company Law Board on January 21, 1998, on the application filed by

the Central Government in the pending proceeding u/s 408 of the Companies Act, being C.P. No. 46 of 1996.

63. It may be recorder that a submission has been made before us to the effect that the hearing in respect of the proceedings, both under Sections

397 and 398 of the Companies Act, 1956, and u/s 408, has been completed and judgment has been reserved.

64. Considering the nature of the issues involved, the parties will bear their own costs in the appeal.

65. All parties to act on a signed copy of the operative portion of this judgment of the usual undertakings.

Shyamal Kumar Sen, J.

66. I agree.