

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2008

CORAM :

THE HON'BLE MR. JUSTICE S.TAMILVANAN

C.M.A. No.258 of 2008
and
M.P.Nos.1 and 2 of 2008

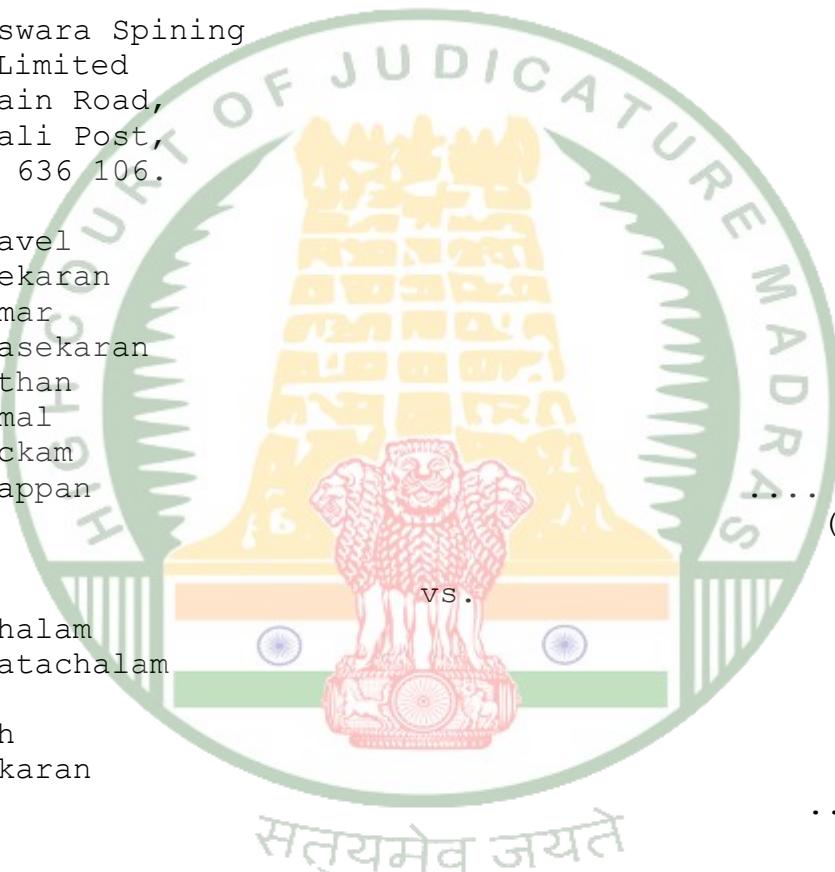
1. Sugavaneswara Spining
Mills Limited
Belur Main Road,
Minnampali Post
Salem - 636 106.

2. T.Sundaravel
3. T.Dhanasekaran
4. T.Sivakumar
5. V.Chandrasekaran
6. A.Loganathan
7. M.S.Perumal
8. M.A.Manickam
9. A.Pachaiappan

.... Appellants
(Respondents)

1. S.Arunachalam
2. V.M.Venkatachalam
3. R.Kanaga
4. R.Prakash
5. V.Rajasekaran
6. A.Gowri

.... Respondents
(Applicants)



Appeal filed against the Order, dated 28.11.2007 made in C.A.No.82 of 2007 in C.P.No.9 of 2005 on the file of the Company Law Board, Additional Principal Bench at Chennai.

For Appellants : Mr.H.Karthik Seshadri

For Respondents: Mr.S.Parthasarathy, Senior Counsel
for Mr.K.Rajasekaran

JUDGMENT

Aggrieved by the order of the Company Law Board, Additional Principal Bench at Chennai, in C.A.No.82 of 2007 in C.P.No.9 of

2005, this Civil Miscellaneous Appeal has been preferred.

2. It is not in dispute that the respondents herein had originally approached the Company Law Board in C.P.No.9 of 2005 with allegations of "oppression and mismanagement" by the appellants under Sections 397 and 398 of the Companies Act, 1956. As per Sections 397 and 398 of the Companies Act, the shareholders are entitled to approach the Company Law Board, complaining of acts of oppression and mismanagement by the majority shareholders.

3. According to the respondents herein, their rights as shareholders of the company are being affected by the actions of the appellants group. The Company Law Board, with a view to protecting status quo, pending the company petition, passed an interlocutory order on 18.08.2005, whereby directed the company not to give effect to any resolution, which might be passed at the Annual General Body Meeting of the company to be held on 28.08.2005, pertaining to the directorship of the first respondent, until further orders in the company petition.

4. It is also not in dispute that after several hearings and finally on account of the efforts of the Company Law Board and the counsel for the parties, there was understanding between the parties to settle the disputes between them and an order was passed, recording such a compromise entered into between the parties on 08.09.2006.

5. According to the appellants, the order, dated 08.09.2006 was the final order in the company petition and all prior orders passed by the Company Law Board, that were interlocutory in nature came to be merged with the final order.

6. Mr.H.Karthik Seshadri, learned counsel appearing for the appellants submitted that once the final order is a compromise order, as envisaged between the parties, the said order cannot be modified or altered by the Company Law Board, except with the consent of all the parties to the said compromise. According to him, the order dated 08.09.2006 passed by the Company Law Board had made the Board "functus officio" and hence, the Board ought not to have entertained C.A.No.82 of 2007 filed by the respondents.

7. Mr.S.Parthasarathy, learned counsel appearing for the respondents relied upon the decision of this Court reported in 90 Company Cases 1, in support of his contention submitted that the Company Law Board has not lost sesin over the matter and therefore, was entitled to pass further orders in C.A.No.82 of 2005.

8. Learned counsel appearing for the appellants placed his

reliance on the decision reported in AIR 2006 SCC 1690. According to him, the decision of this Court reported in 90 Company Cases 1 is not applicable to the facts of this case. In this regard, he submitted the following reasons :

"a) The Company Law Board in that case was dealing with the situation where one group after having suffered an order viz., to conduct a meeting for election of directors of the company had obstructed the process and did not permit the proper conduct of the meeting. The chairman of the meeting acted in a biased manner and did not allow the conduct of the meeting acted in a fair and proper manner. Under the circumstances, the parties had to once again approach the Company Law Board and seek directions to implement its orders. In the instant case, that is not the case. The parties had consciously entered into a compromise and permitted the final disposal of the petition based on the compromise. It is not the case of the respondents here that they had approached the Company Law Board again on the ground that the appellants were not implementing the order. On the contrary, the respondents had admittedly come with a request that was not covered by the terms of the compromise order and therefore, sought modification of the said order.

b) The Judgment in 90 Company Cases 1 was dealing with a situation wherein an order of the Company Law Board was sought to be obstructed by one party and hence, the provisions of Regulation 44 viz, to prevent the abuse of process of the Court could be invoked. In the instant case, that is not the case. Here parties had with open eyes entered into a compromise. There can be no case where the Court would interfere with a compromise order, unless it is alleged that the order was obtained by fraud, misrepresentation or by coercion. No such allegation of that kind has been made. There cannot be an afterthought and modification. Reliance is made on AIR 2001 SC 1084. Merely because, it pertains to the power of the family court it does not in any way dilute the principles of Section 152 CPC, which principle is equally embodied in Regulations 45 of the Company Law Board Regulations. "

9. According to the learned counsel appearing for the appellants, under Section 10E(5) of the Companies Act, 1956, the

Company Law Board shall in the exercise of its power and discharge of its functions under the Act or any other law be guided by the principles of natural justice, shall act in its discretion and as such, the powers of the Company Law Board are limited.

10. According to Mr.S.Parthasarathy, learned Senior Counsel, under Regulation 44 of the Company Law Board Regulations, 1991, and in the light of the decisions of the Hon'ble Apex Court and this Court, the Company Law Board, in order to meet the ends of justice and prevent the abuse of process of law, can exercise jurisdiction and therefore, there is no error or illegality in the impugned order, dated 28.11.2007, passed by the Company Law Board.

11. In this Civil Miscellaneous Appeal, the following Questions of Law arises for consideration :

1. Whether the consent order, dated 08.09.2006 has rendered the Company Law Board 'functus officio' ?

2. Whether the Company Law Board has exceeded its powers under Regulation 44 of the Company Law Board Regulations, 1991, by issuing the order, dated 28.11.2007 ?

3. Whether the Civil Miscellaneous Appeal has to be allowed, on the aforesaid grounds raised by the appellants herein ?

12. The Company Law Board has passed the following consent order on 08.09.2006 :

"Heard the learned counsel representing the petitioners and the respondents. Taking into consideration the facts that (a) the Company is a closely held private limited company; and (b) the long standing business relationship between the parties, this Bench suggested to them for any amicable settlement of the disputes. Towards this end, it has been agreed by both the parties as under :

1. The Company will allot shares afresh to the extent of shares held in the name of the petitioner nos.1 and 6 and forfeited by the Company, viz, 9562 equity shares.

2. The parity in shareholding of the petitioner nos.1 and 6 will be restored back as prevailed prior to 07.04.2005 by allotment of proportional additional shares, viz, 944 equity shares in their favour @ Rs.260/- per share.

3. The Company will allot shares in terms of clauses 1 and 2 on receipt of the consideration for the shares from the petitioner nos. 1 and 6 within three weeks from the date of receipt of

consideration.

4. The petitioner nos.1 and 6 will repay the Company a sum of Rs.52 lakhs towards the dues in full and final settlement within 9 months from this date and interest will be charged after 6 months @ 12% simple on the outstanding balance.

5. The civil suits filed by the 6th petitioner and the Company will be withdrawn unconditionally.

6. The allotment of shares on account of forfeiture of shares and the additional shares will be allotted on receipt of consideration from the petitioner nos. 1 and 6.

7. The petitioners are entitled to exercise their rights as shareholders of the Company.

Liberty to apply. "

13. In C.A.No.82 of 2007 in C.P.No.9 of 2005, the Company Law Board has passed the impugned order. The operative portion of the impugned order reads as follows :

"In view of my foregoing conclusions and in exercise of the powers under Regulation 44, it is hereby ordered as under :

(a) The removal of the first applicant from the office of director of the Company, at the annual general meeting held on 24.08.2005 is declared as invalid and the Company shall file appropriate form in this behalf with the Registrar of Companies, Tamil Nadu, Chennai;

(b) The respondents shall pay all the dividend declared, if any, and deliver gold coins to the applicants 2 to 5 in terms of this order, in the event of any default on their part;

(c) The respondents shall pay the dividend as declared, if any, to the applicants 1 and 6 for the period between the year 2003 and March 2005;

(d) The Company will re-issue proper receipts in the name of the firms / controlled by the applicants 1 and 6 for having discharged the liabilities due to the Company, in cancellation of the receipts already issued in favour of the applicants 1 and 6; and

(e) All other contentious issues raised by the applicants are rejected for want of any merits. "

14. As per the impugned order, the Company Law Board has considered whether the respondents herein are entitled to the reliefs claimed by them, in the light of the consent order, dated 08.09.2006.

According to the learned counsel for the appellants herein, no consent order could be modified or recalled or reviewed, save on the ground of fraud, mutual mistake or similar other grounds.

15. It is not disputed by both the learned counsel that after elaborate discussion between the parties and their counsel, the parties had voluntarily agreed to end the dispute, which resulted in the consent order, dated 08.09.2006, being passed, which reads thus :

1. The Company will allot shares afresh to the extent of shares held in the name of the petitioner nos.1 and 6 and forfeited by the Company, viz, 9562 equity shares.

2. The parity in shareholding of the petitioner nos.1 and 6 will be restored back as prevailed prior to 07.04.2005 by allotment of proportional additional shares, viz, 944 equity shares in their favour @ Rs.260/- per share.

3. The Company will allot shares in terms of clauses 1 and 2 on receipt of the consideration for the shares from the petitioner nos. 1 and 6 within three weeks from the date of receipt of consideration.

4. The petitioner nos.1 and 6 will repay the Company a sum of Rs.52 lakhs towards the dues in full and final settlement within 9 months from this date and interest will be charged after 6 months @ 12% simple on the outstanding balance.

5. The civil suits filed by the 6th petitioner and the Company will be withdrawn unconditionally.

6. The allotment of shares on account of forfeiture of shares and the additional shares will be allotted on receipt of consideration from the petitioner nos. 1 and 6.

7. The petitioners are entitled to exercise their rights as shareholders of the Company.

Liberty to apply. "

16. Mr.S.Parthasarathy, learned Senior Counsel appearing for the respondents drew the attention of this Court to Regulation 44 of the Company Law Board Regulations, 1991, and submitted that the impugned order, dated 28.11.2007 passed by the Company Law Board is legally sustainable, since the Board is vested with the inherent power to make such order as may be necessary for the ends of justice and to prevent the abuse of process of the Bench.

17. Regulation 44 of the Company Law Board Regulations, 1991 reads as follows :

"44. Saving of inherent power of the Bench - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench. "

It is not in dispute that Regulation 44 of the Company Law Board Regulations, 1991 is more or less similar to that of the inherent powers available to any civil Court, under Section 151 CPC.

18. Learned counsel appearing for the appellants contended that once the final order is a compromise order between the parties, the said order cannot be modified or altered by the court, regarding the compromise, except with the consent of all the parties to the said compromise. In support of his contention, he placed reliance on the decision, *Manish Mohan Sharma vs. Ram Bahadur Thakur Ltd.*, reported in AIR 2006 SC 1690.

19. As per the ruling of the Hon'ble Apex Court in *Manish Mohan Sharma vs. Ram Bahadur Thakur Ltd.*, reported in AIR 2006 SC 1690, the Company Law Board, when it deals with an application under section 634(A), sits as an executing court, it is subject to all the limitations to which a court executing a decree. It is well settled that a executing court cannot go beyond the decree, unless the decree is sought to be executed is a nullity for lack of inherent jurisdiction. However, as per Regulation 44 of the Company Law Board Regulations, 1991, the Board is having inherent power to make such orders, as may be necessary for the ends of justice. Therefore, only on the facts and circumstances of the case, the Company Law Board can be 'functus officio' and while passing orders, to meet the ends of justice or to prevent abuse of process of the Bench, it is vested with the power under Regulation 44 of the Company Law Board Regulations, 1991.

20. It is not in dispute that as per order, dated 08.09.2006, the respondents herein as petitioners 1 and 6 had to repay the company a sum of Rs.52 lakhs towards the due in full and final settlement within nine months with 12% interest and the same was complied with. It has not been disputed that the sixth petitioner herein withdrew the civil suits filed by the sixth petitioner therein, pursuant to the compromise order, dated 08.09.2006. It is not in dispute that the respondents herein who were petitioners to the consent order were entitled to exercise their rights as shareholders of the company, as per the said consent order.

21. In the impugned order passed in C.A.No.82 of 2007 in C.P.No.9 of 2005, it has been made clear that the right of a shareholder would include the right to participate in the management.

The first applicant claims to be a Director for the past 24 years and according to him, which remain un-contravened by the respondents, who are the appellants herein. As per the impugned order, the Company had convened on 24.08.2005, its Annual General Body Meeting, during the pendency of the Company Petition. The applicants expressed their concern on the possible removal of the Directors, belonging to the petitioners group (respondents herein) and therefore, the Bench, by an order, dated 18.08.2005, while permitting the company to go ahead with the Annual General Body Meeting on 24.08.2005, directed that "... the directors belonging to the petitioner group will continue to be the directors, irrespective of the decision that may be taken at the said meeting until further orders."

22. As per the impugned order, dated 28.11.2007, it has been brought to light that the consent order, dated 08.09.2006 had been passed, subject to the earlier order of the Board, dated 18.08.2005, however, it was ignored by the appellants by giving scope to modify the consent order. For passing the impugned order, the Company Law Board has also relied on the decisions, Smt. Neelu Kohli and others vs. Nikhil Rubbers P.Ltd and others, reported in 2007 Vol.137 CC 374, and ITC Limited vs. George Joseph Fernandes and another, reported in 1989 AIR SC 839. The Company Law Board has relied on the decisions to pass the impugned order in favour of the applicants, who are the respondents herein, in order to protect the rights of the share holders.

23. The reasons stated in the impugned order, dated 28.11.2007 by the Board is that the appellants herein, taking advantage of the consent order, dated 08.09.2006, ignoring the earlier order of the Board, dated 18.08.2005 successfully have excluded the first applicant (first respondent herein) from the office of the Director of the Company, which is unjustified, as per the impugned order. It has further opined that by applying the same yardstick, the appellants herein can exclude the remaining Directors belonging to the applicants group (respondents herein) from the post of Directors, under the guise of the consent order, dated 08.09.2006. The exclusion of the first applicant (first respondent herein) from the office of the Director, ignoring the order, dated 18.08.2005 is contrary to the consent order. As per the impugned order, the first respondent herein cannot be deprived of his Directorship in the company. Criminal complaints lodged by the first respondent against the appellants herein will not in any way dis-entitle him to be in the Board of the Company and the respective parties are to workout their remedies before the competent authorities. The Company Law Board has also found that it cannot conclusively be asserted that the first respondent herein had acted against the interest of the company by merely filing of the complaints against the appellants, more so, when there is no material to show that the shareholders removed the first

respondent from the office of the Director for having acted against the interest of the company, by filing any false complaint.

24. The Division Bench of this Court in Shoe Specialties P.Ltd and others vs. Standard Distilleries and Breweries P.Ltd., and another reported in Company Cases Volume 90-1997, 1, has held that when a case of oppression is made out under Section 397 of the Companies Act, 1956, it is only within the power of the Company Law Board to end the matter complained of and to make such orders as it thinks fit. The Board is empowered to remove the board of directors so that the affairs of the company can be set right. It is only under the authority of the Company Law Board and also under its supervision, that the board of directors are being removed. The scope of Section 284 of the Companies Act is entirely different. For cases coming under that section, there must be some charge against the individual director and it is the company that seeks the removal of that director in such circumstances. Only in such cases, notice contemplated under Section 284 of the Companies Act, 1956, is called for. When the petition under Section 397 itself is for removal of directors, no special notice is required as contemplated under Section 284 of the Companies Act.

25. In M.S.D.C.Radharamanan vs. M.S.D.Chandrasekara Raja, reported in 2008 (3) Scale 650, the Hon'ble Apex Court has held that the Company Law Board, in exercise of his jurisdiction under Sections 397 and 398 r/w 402 of the Companies Act, as per the requisite jurisdiction, direct shareholder to sell his share to the other, although no case for winding up of the company has been made out or no actual oppression on the part of the Director has been proved. It has been further ruled by the Hon'ble Apex Court that in case where a case of oppression has been made out a ground for the purpose of invoking the jurisdiction of the Board in terms of Sections 397 and 398 of the Act, a finding of fact to that effect would be necessary to be arrived at. But, the jurisdiction of the Company Law Board to pass any other or further order in the interest of the company, if it is of the opinion that the same would protect the interest of the company, the Board would not be powerless. The jurisdiction of the Company Law Board in that regard must be held to be existing, having regard to the aforementioned provisions. Similarly, the Company Law Board may not shut its doors on sheer technicality, even if it is found as of fact that unless the jurisdiction under Section 402 of the Act is exercised, there will be a complete mismanagement in regard to the affairs of the company. Sections 397 and 398 of the Act empower the Company Law Board, to remove oppression and mismanagement. If the consequences or refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, the Company Law Board would not be powerless to pass appropriate orders. The interest of the shareholders of the company, as a whole is more vital and important.

26. In the instant case, the learned counsel appearing for the appellants contended that after passing the consent final order, dated 08.09.2006, the Company Law Board became 'functus officio'. The plain reading of the impugned order, dated 28.11.2007 would show that there was earlier order between the parties on 18.08.2005, whereby the company was permitted to go head with the Annual General Body Meeting on 24.08.2005. However, there was a specific direction that the Directors belonging to the respondents group would continue to be the Directors, irrespective of the decision that may be taken at the said meeting until further orders. This condition was not complied with during the Annual General Body Meeting on 24.08.2005.

27. As per the impugned order, the consent order, dated 08.09.2006 is subjected to the aforesaid earlier order, dated 18.08.2005, however, the appellants herein taking advantage of the order, dated 08.09.2006, excluded the first respondent herein from the office of the Director of the Company in an unjustifiable manner and by using similar yardstick, there is a possibility for removing other directors belonging to the respondents group from the post of Directors under the guise of the consent order, dated 08.09.2006. The impugned order is clear that the Company Law Board has passed the order with the intention only to prevent the abuse of the process of the Bench and to meet the ends of justice. I am of the considered view that the Company Law Board is empowered with the inherent power under Regulation 44 of the Company Law Board Regulations, 1991 to make such order as may be necessary for the ends of justice ought to prevent abuse of process of the Bench.

28. On the above facts and circumstances, it is clear that the consent order, dated 08.09.2006 has direct nexus with the earlier order, dated 18.08.2005, whereby the Directors belonging to the respondents group were given proper protection. However, under the guise of the order, dated 08.09.2006, cleverly bypassing the direction given by the Board on 18.08.2005, the Annual General Body Meeting has been conducted on 24.08.2005. From the impugned order, it is clear that the intention of the Company Law Board is only to prevent the said abuse of process of the Bench and to meet the ends of justice and therefore, considering the facts and circumstances, I answer all the Substantial Questions of Law raised by the learned counsel for the appellants against the appellants, holding that there is no error or infirmity in the impugned order passed by the Company Law Board, so as to exercise its power under Regulation 44 of the Company Law Board Regulations, 1991.

29. In the result, confirming the order passed by the Company Law Board, Additional Principal Bench, Chennai in C.A.No.82 of 2007 in C.P.No.9 of 2005, dated 28.11.2007, this Civil Miscellaneous Appeal is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsvn

To

1. The Company Law Board,
Additional Principal Bench at Chennai.

2. The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.K.Rajasekaran, Advocate SR 26322

+1cc to Mr.H.Karthick Seshadri, Advocate Sr 25868

RL (CO)
km/13.5.

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C.M.A.No.258 of 2008

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