

## COMPANY LAW BOARD

v.

UPPER DOAB SUGAR MILLS LTD. ETC.

December 17, 1976

[H. R. KHANNA, A. C. GUPTA AND JASWANT SINGH, JJ.]

*Companies Act, 1956—Ss. 198, 269, 309 and 637A—Scope of—Company Law Board—If could fix overall maximum remuneration to managing directors while giving approval under s. 269.*

Section 198(1) of the Companies Act, 1956 provides that the total managerial remuneration payable by a public company to its directors in respect of a financial year shall not exceed eleven per cent of the net profits of that company for that financial year. Sub-section (3) prescribes that within the limits of the maximum remuneration specified in sub-s. (1) a company may pay a remuneration to its managing or whole-time director in accordance with the provisions of s. 309. Section 309(3) provides that a director who is either in the whole time employment of the company or a managing director may be paid remuneration either by way of monthly payment or at a specified percentage of the net profits of the company or partly by one way or partly by the other. The proviso provides that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director and if there is more than one such director ten per cent for all of them together. Section 637A provides that where the Central Government is required or authorised by any provision of the Act to accord approval in relation to any matter the Central Government may accord such approval subject to such conditions, limitations, restrictions as it may think fit to impose.

In 1966 the respondent company appointed two managing directors and sought the approval of the Central Government under s. 269 of the Companies Act, 1956 for their appointment. Granting its approval the Company Law Board fixed a ceiling on the total remuneration payable to each managing director by way of commission and salary. The Company's representation to the Board to raise the ceiling of remuneration was rejected.

In a petition under art. 226 of the Constitution the High Court held that the action of the Board in reducing the remuneration was arbitrary and void and that any condition regarding the remuneration which is contrary to the provisions of ss. 198 and 309 would not be germane to s. 269 and that section does not include in its scope any element regarding the fixation of remuneration.

Allowing the appeals of the Board.

**HELD :** The High Court was in error in quashing the order of the Board. In view of the provisions of ss. 269 and 637A there is no infirmity in the condition imposed by the Board. [510C; 509H]

Section 309 does not deal with the appointment of managing directors but pertains to the remuneration of managing or whole time directors who had already been appointed. The effect of the proviso to s. 309(3) is that if the tenure of a managing director already appointed continued after the coming into force of the Act, the remuneration to be paid to such managing director shall not, after the coming into force of the Act, exceed 5% of the net profits to be paid for one such director and if there be more than one such director 10% for all of them together. [509D]

In the instant case since the managing director had been appointed for the first time after the coming into force of the Act their appointment had to be approved in terms of s. 269. The Board, while granting permission, inserted a condition regarding the total remuneration of each managing director. In so doing the Board acted well within the power. [509F-G]

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1840-1842/72.

Appeals from the Judgment and Orders dated the 15th April, 1971 of the Delhi High Court in Civil Writ Petitions Nos. 54, 1183 and 1184/69.

B *Mrs. Shyamla Pappu, R. N. Sachthey and Girish Chandra* for the appellant in C.A. 1840/71.

*R. N. Sachthey and Girish Chandra* for the Appellants in CAs. 1841-42/71.

*H. K. Puri* for the Respondents.

The Judgment of the Court was delivered by

C KHANNA, J.—This Judgment would dispose of civil appeals Nos. 1840, 1841 and 1842 of 1971 which have been filed on certificate by the Company Law Board against the common judgment of Delhi High Court in three writ petitions by the respondent-company and its two managing directors to challenge order dated September 27, 1967.

D The respondent company, Upper Doab Sugar Mills Ltd., is a public limited company governed by the provisions of the Companies Act, 1956 (hereinafter referred to as the Act). The company has its registered office at Shamli, district Muzaffarnagar (Uttar Pradesh). Its main business is manufacture of sugar from sugar cane. It also manufactures spirits, industrial alcohols and rum from molasses. From 1951 onwards the respondent company was managed by a firm of managing agents. Two of the partners of that firm were Shri Rajinder Lal and Shri Narinder Lal. The managing agency agreement of that firm was to expire on January 14, 1967. On October 4, 1966 the Board of Directors of the company resolved not to continue the managing agency of the said firm and decided to appoint two managing directors to conduct and manage the affairs of the company. Accordingly, on October 8, 1966 in exercise of the powers under article 117 of the articles of association of the company the Board of Directors resolved to appoint Shri Rajinder Lal and Shri Narinder Lal as the two managing directors of the company. The salary of each of the managing directors was fixed at Rs. 5,000 per month. In addition to that, each managing director was to get commission at the rate of 3½ per cent of the net profits of the company during a financial year computed in the manner laid down in section 309(5) of the Act. Besides that, other service benefits such as gratuity, provident fund, free medical treatment, transportation and free furnished residential accommodation were to be provided to each of the managing directors. The resolution of the Board of Directors was placed before the shareholders of the company in a general meeting. The shareholders approved the said resolution to appoint Shri Rajinder Lal and Shri Narinder Lal as managing directors on the terms set out in that resolution. An application was thereafter made under section 269 of the Act to Company Law Board, appellant, for obtaining approval to the appointment of Shri Rajinder Lal and Shri Narinder Lal as managing directors. The powers of the Central Government, it may be stated, have been delegated to the appellant Board for exercising, *inter alia*, powers under section 269 of

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the Act. The appellant Board after obtaining some additional information and after some further correspondence granted as per letter dated September 28, 1967 approval to the appointment of Shri Rajinder Lal and Shri Narinder Lal as managing directors of the company. The said approval was granted subject to the various terms and included the following condition :

“The total remuneration of each managing director by way of commission and salary shall not exceed Rs. 1,20,000 (Rupees one lakh twenty thousand) per annum.”

The company made a representation to the appellant Board that the aforesaid ceiling of Rs. 1,20,000 would not adequately remunerate the two managing directors and that the aforesaid ceiling be raised. The Board rejected that representation. Three writ petitions were thereafter filed in January 1969 by the company and Shri Rajinder Lal and Shri Narinder Lal for restraining the appellant Board from giving effect to the condition set out above that the total remuneration of each managing director should not exceed Rs. 1,20,000 per annum. Prayer was made that the appellant Board be directed to accord approval for payment to the managing directors the remuneration as passed in the resolution of the Board of Directors along with the necessary perquisites.

The petition was registered by the appellant Board and the affidavit of the Secretary of the Board was filed in opposition. At the hearing in the High Court the following two questions were agitated on behalf of the respondent company and its managing directors :

“(1) Whether the administrative ceiling imposed by the Board on 28-9-1967 on the remuneration payable to the Managing Directors by the Company is *ultra vires* or illegal?

(2) Whether the refusal by the Board to enhance the remuneration of the Managing Directors above the ceiling of Rs. 50,000/- for the loss year was bad because the Company was not granted adequate hearing and because the order of refusal did not state the reasons therefor ?”

The High Court answered the second question against the respondent company. This question also no longer survives in these appeals. On the first question, the High Court after referring to the various provisions held that the action of the Board in reducing the remuneration of the managing directors was arbitrary and void. In this connection, the High Court observed :

“But any condition regarding remuneration which is contrary to the provisions of sections 198 and 309 would not be regarded as germane to section 269 inasmuch as the Legislature has exhaustively dealt with remuneration in sections 198 and 309 with the effect that section 269 does not include in its scope any element regarding the fixation of remuneration.”

Referring to the general administrative policy of the Government of fixing ceiling on managerial remuneration, the High Court observed

A that any such policy which resulted in placing a ceiling below the legislative ceilings fixed by sections 198 and 309 was illegal as being contrary to sections 198 and 309. In the result, the High Court quashed the condition imposed by the Board fixing the remuneration of the managing directors.

B In appeal before us Mrs. Shymala Pappu has assailed the correctness of the judgment of the High Court. As against that, Mr. Puri on behalf of the respondents has canvassed for the correctness of that judgment.

In order to appreciate the respective arguments, it may be necessary to set out the necessary provisions of the Act, as they stood at the relevant time. Sub-sections (1), (2) and (3) of section 198 read as under :

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D “198. Overall maximum managerial remuneration and managerial remuneration in case of absence or adequacy of profits.—(1) The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company, to its directors and its managing agents, secretaries and treasurers or manager in respect of any financial year shall not exceed eleven per cent of the net profits of that company for that financial year computed in the manner laid down in sections 349, 350 and 351, except that the remuneration of the directors shall not be deducted from the gross profits :

E Provided that nothing in this section shall affect the operation of sections 352 to 354 and 356 to 360.

(2) The percentage aforesaid shall be exclusive of any fees payable to directors under sub-section (2) of section 309.

F (3) Within the limits of the maximum remuneration specified in sub-section (1) a company may pay a monthly remuneration to its managing or whole-time director in accordance with the provisions of section 309 or to its manager in accordance with the provisions of section 387.”

Section 269 reads as under :

G “269. Appointment or re-appointment of managing or whole-time director to require Government approval in certain cases.—(1) In the case of a public company or a private company which is a subsidiary of a public company, whether such public company or private company is an existing company or not, the appointment of a person for the first time as a managing or whole time director shall not have any unless approved by the Central Government :

H Provided that in the case of a public company, or a private company which is a subsidiary of a public company, incorporated after the commencement of the Companies (Amendment) Act, 1960, the appointment of a person as a managing

or whole-time director for the first time after such incorporation may be made without the approval of the Central Government but such appointment shall cease to have effect after the expiry of three months from the date of such incorporation unless the appointment has been approved by that Government.

(2) Where a public company or a private company which is a subsidiary of a public company, is an existing company, the re-appointment of a person as a managing or whole-time director for the first time after the commencement of the Companies (Amendment) Act, 1960, shall not have any effect unless approved by the Central Government."

Sub-sections (1), (2) and (3) of section 309 read as under :

"309. Remuneration of directors.—(1) The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with and subject to the provisions of section 198 and this section, either by the articles of the company, or by a resolution or, if the articles so require, by a special resolution, passed by the company in general meeting and the remuneration payable to any such director determined as aforesaid shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity :

Provided that any remuneration for services rendered by any such director in any other capacity shall not be so included if—

- (a) the services rendered are of a professional nature : and
- (b) in the opinion of the Central Government, the director possesses the requisite qualifications for the practice of the profession.

(2) A director may receive remuneration by way of a fee for each meeting of the Board, or a committee thereof, attended by him :

Provided that where immediately before the commencement the Companies (Amendment) Act, 1960, fees for meetings of the Board and any committee thereof, attended by a director are paid on a monthly basis, such fees may continue to be paid on that basis for a period of two years after such commencement or for the remainder of the term of office of such director, whichever is less, but no longer.

(3) A director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of a monthly payment or at a

- A specified percentage of the net profits of the company or partly by one way and partly by the other :

Provided that except with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together."

- B Sub-section (1) of section 637A reads as under :

"637A. Power of Central Government to accord approval, etc., subject to conditions and to prescribe fees on applications.—(1) Where the Central Government is required or authorised by any provision of this Act,—

- C (a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter;

(b) to give any direction in relation to any matter; or

(c) to grant any exemption in relation to any matter;

- D then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption."

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After hearing learned counsel for the parties and giving the matter our earnest consideration, we are of the opinion that the view taken by the High Court in **quashing the condition imposed by the** appellant Board about the fixation of the remuneration of the managing directors cannot be sustained. The High Court in arriving at its conclusion took the view that section—198 and the proviso to sub-section (3) of section 309 specially dealt with the question which arose for determination. In view of those provisions, the High Court inferred that sections 269 and 637A upon which reliance had been placed by the appellant Board could not be of much avail to the appellant. Mr. Puri on behalf of the respondents has adopted the same reasoning in this Court and has contended that section 198 and the proviso to sub-section (3) of section 309 being special provisions relating to the remuneration of managing directors, they would exclude so far as that question is concerned, general provisions like those contained in sections 269 and 637A. The above reasoning, we find, is vitiated by an innate fallacy. Section 198 deals with the overall maximum managerial remuneration and managerial remuneration in the case of absence or adequacy of profits. The total managerial remuneration payable by a public company or a private company which is a subsidiary of a public company to its managerial staff, according to sub-section (1) of that section, cannot exceed 11 per cent of the net profits for a financial year. The total managerial remuneration covers the remuneration not merely of the managing

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directors but also of other managerial personnel like secretaries, treasurers and managers. Sub-section (3) of the section provides that within the limits of the maximum remuneration, a company may pay a monthly remuneration to its managing director in accordance with section 309. Sub-section (1) of section 309 prescribes the formalities which have to be complied with for fixing of the remuneration of a managing or full-time director of a company. We are not concerned with sub-section (2) of that section. Sub-section (3), which constitutes the main plank of the case of the respondents, provides that a director who is either in the whole-time employment of the company or a managing director may be paid remuneration either by way of monthly payment or at a specified percentage of the net profits of the company or partly by one way or partly by the other. According to the proviso to that sub-section, except with the approval of the Central Government, such remuneration of the whole-time director or managing director shall not exceed 5 per cent of the net profits for one such director and if there is more than one such director 10 per cent for all of them together. Perusal of section 309 shows that it does not deal with the appointment of managing directors. It only pertains to the remuneration of managing or whole-time directors who have already been appointed. The effect of the proviso to sub-section (3) of section 309 is that if the tenure of a managing director who has already been appointed continues after the coming into force of the Act, the remuneration to be paid to such a managing director shall not after the coming into force of the Act exceed 5 per cent of the net profits for one such director, and if there be more than one such director, 10 per cent for all of them together.

The present, however, is not a case of managing directors having been appointed earlier and continuing to act as such after the coming into force of the Act. Shri Rajinder Lal and Shri Narinder Lal have been appointed managing directors of the company for the first time after the coming into force of the Act. Their appointment as managing directors had to be approved in terms of section 269 of the Act. The company consequently applied to the Central Government for approving their appointment. The appellant Board, to whom the powers of the Central Government have been delegated for this purpose, while granting approval to the appointment of the aforesaid two persons as managing directors, inserted the condition that the total remuneration of each managing director by way of commission and salary shall not exceed rupees one lakh twenty thousand per annum. The above remuneration is in addition to the benefit of certain perquisites which would be available to the managing directors. The Board, in our opinion, acted well within its power in imposing this condition. Section 637A of the Act makes it clear *inter alia* that where the Central Government is required or authorised by any provision of the Act to accord approval in relation to any matter, then, in the absence of anything to contrary contained in such or any other provision of the Act, the Central Government may accord such approval subject to such conditions, limitations or restrictions as it may think fit to impose. In view of the provisions of sections 269 and 637A of the Act, we find no infirmity in the condition imposed by the

- A** appellant Board. The provisions of both sections 269 and 637A expressly deal with the question which arises directly in this case.

We may observe that according to the affidavit filed on behalf of the appellant Board, since 1959 the said Board has been imposing a maximum administrative ceiling on the total amounts payable to a managing director. The basic principle that has been kept in view by the Board is that no individual should be paid remuneration exceeding Rs. 1,20,000 per annum or Rs. 10,000 per month. A large number of instances have also been given by the Board and it would appear therefrom that the maximum remuneration which has been allowed by the Board to the managing director of any company is Rs. 1,20,000.

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- C** The High Court, in our opinion, was in error in quashing the order of the Board. We accordingly accept the appeals, set aside the judgment of the High Court and dismiss the writ petitions. Looking to all the facts, we leave the parties to bear their own costs throughout.

P.B.R.

*Appeals allowed.*