

4

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CO.A(SB) 46/2010

ANAND KUMAR JAIN & ORS

..... Appellants

Through: Mr. A.N. Haksar, Senior Advocate with
Mr. P.K. Mittal and Mr. Udayan Jain,
Advocates.

versus

ANIL KUMAR JAIN & ORS.

..... Respondents

Through: Mr. Abhinav Vasisht, Senior Advocate
with Mr. Suraj Prakash and Mr. Raman
Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

16.11.2011

%

By the impugned order dated 05th July, 2010, petition filed by the appellants before the Company Law Board under Sections 397 and 398 of the Companies Act, 1956 has been dismissed on the ground of forum shopping.

But admittedly all the prayers sought for before the Company Law Board have not been sought for in other proceedings pending before other forums. In fact, in the opinion of this Court, the Company Law Board has erroneously proceeded on the basis that only one issue namely, right, title and interest of the parties qua property No.B-43, G.T. Karnal Road, Industrial Area, New Delhi was involved in the company petition. A

Signature Not Verified

Digitally Signed By: AMULYA
Certify that the digital file and
physical file have been compared and
the digital data is as per the physical
file and no page is missing.

7

perusal of the prayer clause in the company petition reveals that various other prayers have been sought for. Consequently, the finding of forum shopping is contrary to facts.

Moreover, in the view of the stand of the respondent that Memorandum of Understanding dated 26th March, 2006 executed between the parties is null and void, the company petition before the Company Law Board, in the opinion of this Court, constitutes an alternative argument of the appellants in the event the suit filed by the present respondent were to succeed.

In *M/s. Ammonia Supplies Corporation (P) Ltd. v. M/s. Modern Plastic Containers Pvt. Ltd. AIR 1998 SC 3153* and *Claude-Lila Parulekar (Smt) Vs. Sakal Papers (P) Ltd. & Ors., (2005) 11 SCC 73*, the Supreme Court has held that the Company Law Board has exclusive jurisdiction to decide certain disputes pertaining to the status and rights of parties as shareholders and directors. It has further been held that the jurisdiction of Civil Court is impliedly barred in these respects. Accordingly, even if some common prayers with regard to the appellants' rights and status as shareholders and directors, had been made before the Civil Court, the Civil Court would have no jurisdiction to decide such a dispute.

Consequently, the impugned order dated 05th July, 2010 is set aside and the Company Law Board is at liberty to proceed with the matter

including all pending applications. However, as Mr. Abhinav Vashisht, learned senior counsel for the respondents states that there are other grounds on which the appellants' petition before the Company Law Board is not maintainable, it is clarified that it shall be open to the Company Law Board to decide afresh the respondent's application being C.A. 305/2008 if it so desires or dispose of the same along with the main case.

All the rights and contentions of both the parties are left open.

With the aforesaid observations, present appeal stands allowed and the impugned order is set aside.


MANMOHAN, J

NOVEMBER 16, 2011

js