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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CO.A(SB) 40/2012**

**BHUPINDER KUMAR SEKHRI & ORS.** ..... Appellants  
Through: Mr. Abhinav Vashisht, Senior Advocate  
with Ms. Akansha Srivastava, Advocate.

versus

**VIJAY KUMAR SEKHRI & ORS.** ..... Respondents  
Through: Mr. Manish Jain, Advocate with  
Mr. Ankur Garg, Advocate.

Reserved on : 31<sup>st</sup> May, 2012

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Date of Decision: 02<sup>nd</sup> July, 2012

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

### **J U D G M E N T**

#### **MANMOHAN, J :**

1. Present appeal has been filed under Section 10F of the Companies Act, 1956, (for short 'Act') challenging the judgment and order dated 12<sup>th</sup> January, 2012 whereby the appellant company's petition being Co. Pet. 94/ND/2010 has been dismissed by the Company Law Board (for short 'CLB') after observing as under:-

“35.....

(vi) *The Respondents in C.P. No.94 have rightly contended that merely filing of certain statements/statutory Returns with the ROC, which were necessitated in the facts of this case, can in no manner be held to be acts and oppression or mismanagement in the affairs of the R-1 Company. Mere irregularities or illegalities per se are not oppressive.*

(vii) *Further, the Respondents in C.P. No. 94 have rightly pointed out that the Petitioners along with Respondent Nos. 8 to 10 admittedly hold 75% of the shareholding, there was nothing to stop them from rectifying the situation.*

(viii) *In any case, it is an admitted position that the Petitioners in C.P. No. 94 have already entered into agreement to sell their shareholding to other members, though they may still be continuing to hold the membership in the Register of Members and may be eligible to file a petition under Sections 397/398 of the Act in terms of Section 399 of the Act, such irregular filings, if irregular and illegal can be easily remedied by the majority shareholders holding 75% shares.....*

2. At the outset, Mr. Abhinav Vashisht, learned senior counsel for appellant submitted that he did not wish to challenge the impugned order to the extent it dismissed the appellant company's petition, but he pressed the present appeal only on the ground that in the absence of finding of oppression and mis-management, the CLB could not have proceeded to direct the appellant to purchase/buy the shareholding of respondents No.1 to 6. In this connection, he relied upon a judgment of the Supreme Court in

***Incable Net (Andhra) Limited and Others vs. AP Aksh Broadband Limited***

***and Others (2010) 6 SCC 719*** wherein it has been observed as under:-

*“52. The decision in V.S. Krishnan case is more apposite to the facts of the case. Quoting Halsbury, this Court observed that the expression “oppression” within the meaning of Sections 398, 399 and 402 of the Companies Act had been interpreted to mean that the conduct of the majority shareholders towards the minority shareholders was harsh, burdensome and wrong and that such conduct was mala fide and was for a collateral purpose which would result in an advantage for some shareholders over others, although the ultimate object might be in the interest of the company. However, the facts disclosed in this case do not establish such conduct on the part of Respondent5. Until the conduct of the majority shareholders was found to be oppressive in terms of the above description, under Sections 397 and 398 of the Companies Act, 1956, the Company Law Board was not competent to invoke its jurisdiction under Section 402 of the said Act to set right, or put an end to such oppression”.*

3. As far as the CLB's power to direct one of the unwilling parties to enter into a contract for purchase of shares is concerned, this Court is of the opinion that the power of the CLB is of extremely wide amplitude. Section 402 of the Act is reproduced hereinbelow:-

***“402. Powers of [Tribunal] on application under section 397 or 398--*** Without prejudice to the generality of the powers of the [Tribunal] under section 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, the consequent reduction of its share capital;*

*(d) the termination, setting 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,*

*[\*\*\*]*

*(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 the 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 under section 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.”*

4. Supreme Court in ***Needle Industries ( India) Ltd. & Ors. Vs. Needle Industries Newey (India) Holdings Ltd. & Ors. AIR 1981 SC 1298*** has held as under:-

*“172. Even though the company petition fails and the appeals succeed on the finding that the Holding Company has failed to make out a case of oppression, the court is not powerless to do substantial justice between the parties and place them, as nearly as it may, in the same position in which they would have been if the meeting of 2<sup>nd</sup> May were held in accordance with law.....”*

(emphasis supplied)

5. In ***M.S.D.C. Radharamanan vs. M.S.D. Chandrasekara Raja and Another (2008) 6 SCC 750*** the Apex Court specifically rejected the submission that the CLB was not justified in issuing a direction to the petitioner to purchase the shares of the respondent under Section 402 of the Act, despite arriving at a finding of fact that no act of oppression had been committed by him. The relevant portion of the said judgment is reproduced hereinbelow:-

*“7. Mr. C.A. Sundaram, learned Senior Counsel appearing on behalf of the appellant, in support of the appeal, submitted:*

1. The Company Law Board was not justified in issuing the impugned direction in purported exercise of its jurisdiction under Section 402 of the Act directing him to purchase the shares of the respondent despite arriving at a finding of fact that no act of oppression has been committed by the appellant.

2. The condition precedent for exercise of such power being oppression on the part of a Director of a company being not satisfied, the impugned judgment is wholly unsustainable.....

8. Mr. K. Parasaran, learned Senior Counsel, appearing for the respondents, on the other hand, would contend:

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4. The Company Law Board, in exercise of its jurisdiction under Sections 397 and 398 read with Section 402 of the Companies Act has the requisite jurisdiction to direct a shareholder to sell his shares 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.

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15. Ordinarily, therefore, in a case where a case of oppression has been made 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, it 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.

16. The deadlock in regard to the conduct of the business of the Company has been noticed by the Company Law Board as

also the High Court. Keeping in view the fact that there are only two shareholders and two Directors and bitterness having crept in their personal relationship, the same, in our opinion, will have a direct impact in the matter of conduct of the affairs of the Company.

17. When there are two Directors, non-cooperation by one of them would result in a stalemate and in that view of the matter the Company Law Board and the High Court have rightly exercised their jurisdiction.

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22. The provisions of the Act vis-à-vis the jurisdiction of the Company Law Board must be considered having regard to the complex situation(s) which may arise in the cases before it. No hard-and-fast rule can be laid down. There cannot be any doubt whatsoever that the acts of omission and commission on the part of a member of a company should be qua the management of the company, but it is difficult to accept the proposition that the just and equitable test, which should be held to be applicable in a case for winding up of a company, is totally outside the purview of Section 397 of the Act. The function of a Company Law Board in such matters is first to see as to how the interest of the company vis-à-vis its shareholders can be safeguarded. The Company Law Board must also make an endeavour to find out as to whether an order of winding up will serve the interest of the company or subvert the same. Further, if an application is filed under Section 433 of the Act or Section 397 and/or Section 398 thereof, an order of winding up may be passed, but as noticed hereinbefore, the Company Law Board in a winding-up application may refuse to do so, if any other remedy is available. The Company Law Board may not shut its doors only 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.

23. Sections 397 and 398 of the Act empower the Company Law Board to remove oppression and mismanagement. If the consequences of refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the company, would still the Company Law Board be powerless to pass appropriate orders is the question. If a literal interpretation to the provisions of Section 397 or 398 is taken recourse to, may be that would be the consequence. But jurisdiction of the Company Law Board having been couched in wide terms and as diverse reliefs can be granted by it to keep the company functioning, is it not desirable to pass an order which for all intent and purport would be beneficial to the company itself and the majority of the members? A court of law can hardly satisfy all the litigants before it. This, however, by itself would not mean that the Company Law Board would refuse to exercise its jurisdiction, although the statute confers such a power on it.”

(emphasis supplied)

6. Further, this Court is of the view that in the case of ***Incable Net (Andhra) Limited and Others*** (supra), the question of law raised in the present case by Mr. Abhinav Vashisht, learned senior counsel for Appellant, did not arise for consideration. In fact, in ***Incable Net (Andhra) Limited and Others***, there was no direction by the CLB to any of the parties to purchase the shares of the other faction. Consequently, the said judgment is inapplicable to the facts of the present case.

7. It is also pertinent to mention that same Bench of the Supreme Court which had decided the case of ***Incable Net (Andhra) Limited and Others***

(supra) has in a subsequent judgment of ***Chatterjee Petrochem (India) Private Limited vs. Haldia Petrochemicals Limited and Others*** (2011) 10 SCC 466

held as under:-

“150. No doubt, in *Needle Industries* case, this Court had observed that the behavior and conduct complained of must be held to be harsh and wrongful and in arriving at such a finding, the Court ought not to confine itself to a narrow legalistic view and allow technical pleas to defeat the beneficial provisions of the section, and that in certain situations the Court is not powerless to do substantial justice between the parties, the facts of this case do not merit such a course of action to be taken. Such an argument is not available to the Chatterjee Group, since the alleged breach of the agreements referred to hereinabove, was really in the nature of a breach between two members of the Company and not the Company itself. It is not on account of any act on the part of the Company that the shares transferred to CP(I)PL were not registered in the name of the Chatterjee Group. There was, therefore, no occasion for the CLB to make any order either under Section 397 or Section 402 of the aforesaid Act. If, as was observed in *Radharamanan* case, the CLB had given a finding that the acts of oppression had not been established, it would still be in a position to pass appropriate orders under Section 402 of the Act. That, however, is not the case in the instant appeals.”

8. Further, this Court in ***M/s. Venture India Properties P. Ltd. & Ors. vs. Capt. Manmohan Singh Kohli & Ors.*** 2011(123 )DRJ 520 and ***IFCI Ltd. vs. TFCI LTD.*** (2011 )3Comp LJ 603 (Del), has taken the view that the powers under Section 402 of the Act are residuary in nature and in addition to the powers available under Sections 397(2) and 398(2) of the Act. This Court

further held that CLB has the power to make such order as it thinks fit with a view to bring an end to the matters complained of under Section 397(1) of the Act and/or with a view to prevent the matters complained or apprehended under Section 398(1) of the Act. Consequently, the submission made by learned counsel for appellant is untenable in law.

9. Since in the present case, all the three group of shareholders had filed separate petitions alleging oppression and mis-management, this Court is of the view that there is a lack of confidence and trust amongst the shareholders. This Court is further of the opinion that pending disputes between the shareholders, the respondent company would not be able to fully exploit the valuable piece of land that it owns at Karol Bagh. It is pertinent to mention that the two Sekhri family factions have filed independent cross appeals with regard to another order passed by the CLB concerning their family settlement.

10. Consequently, this Court is of the view that the order passed by the CLB is not only imminently fair, but it also does substantial justice between the parties and is in the interest of the company. In view of the aforesaid, present appeal being bereft of merits is dismissed, but with no order as to costs.

**MANMOHAN, J**

**JULY 02, 2012**

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