

IN THE HIGH COURT OF DELHI AT NEW DELHI

COMPANY APPEAL (SB) No. 100 of 2012

Reserved on: January 24, 2013

Decision on: February 5, 2013

SANJAY GAMBHIR & ORS.

..... Appellants

Through: Mr. K. Datta with Mr. Manish
Srivastava and Mr. Diggaj Pathak,
Advocates.

Versus

D. D. INDUSTRIES LIMITED & ORS.

..... Respondents

Through: Mr. Vibhu Bakhru, Senior Advocate
with Mr. Akshay Makhija and
Ms. Liza M. Baruah, Advocates.

CORAM: JUSTICE S. MURALIDHAR

JUDGMENT

05.02.2013

1. The challenge in this appeal under Section 10 F of the Companies Act, 1956 ('Act') is to an order dated 22nd November 2012 passed by the Company Law Board ('CLB') in Company Application No. 417 of 2012 filed by Respondents 3 & 4 in Company Petition No. 92 (ND) of 2010.

Background facts

2. The background of the present appeal is that Appellant No. 1, Mr. Sanjay Gambhir, Appellant No. 2, Mrs. Reena Gambhir, wife of Appellant No.1, and Appellant No. 3 Mr. Kanish Raaj Gambhir, son of Appellant No. 1, along with Mr. Karan Gambhir, son of Mr. Surinder Kumar Gambhir and

brother of Appellant No. 1, held 33% share holding of D.D. Industries Limited ('DDIL'), Respondent No.1. Mr. Karan Gambhir is the Managing Director ('MD') of DDIL since the year 2005.

3. DDIL was initially incorporated under the Act on 30th March 1974 as Daulat Ram Dharam Bir Auto Private Limited. Later it was converted into a public limited company with the changed name of Daulat Ram Dharam Bir Auto Limited. Subsequently, the name was further changed to DDIL with a fresh certificate of incorporation, dated 10th May 1999, issued by the Registrar of Companies ('ROC'), Delhi and Haryana.

4. DDIL is a closely held company. Its entire share holding was initially held by the family members of late Mr. Dharambir Gambhir, late Mr. Subhash Gambhir and Mr. Surinder Gambhir (Respondent No.2). Pursuant to a family settlement Respondent No. 2 and his family became promoters of DDIL from 1993 onwards. Two of the sons of Respondent No.2, viz., Mr. Sanjay Gambhir (Appellant No.1) and Mr. Rajiv Gambhir (Respondent No.3) took over the running of the business. DDIL became a dealer of Maruti Suzuki in the year 1996. It is claimed that it is one of the successful dealers of Maruti Suzuki and has won awards. In the year 2005, the family decided to venture into real estate. Through a subsidiary company, D.D. Properties Private Limited ('DDPPL'), a large parcel of land was acquired in association with other family owned companies for an amount of approx. Rs.40 crores. It is claimed by the Appellants that the said amount was given as a loan to DDPPL with the understanding that it would be converted into equity and thereby DDPPL would become a subsidiary of DDIL. According

to the Appellants, since April 2010 Mr. Rajiv Gambhir, Respondent No.3 in connivance with Respondents 2 (Mr. Surinder Gambhir, father of Appellant No.1 and Respondent No.3) and Mr. Kunal Gambhir, Respondent No.4 (son of Mr. Rajiv Gambhir) started diverting DDIL's business of sale of CNG kits to outsiders upon receiving commission and that this was harming DDIL's business. Allegations of betrayal of trust and faith have been levelled by the Appellants against Respondents 2 to 4. It is alleged that with a view to take illegal control of Board of Directors ('BOD') of DDIL, Respondents 3 and 4 appointed four directors on 12th April 2010 without any prior notice to the Appellants. It is claimed that Respondents 2 to 4 sought to push their agenda of diluting the shareholding of the Appellants from 33% at present to an even smaller minority.

5. The Appellants state that the BOD of DDIL contained an equal number of representatives of the Appellant group ('A group') and of Respondents 2 to 4 ('B group'). Although the A group held only 33% shares they were always in majority in the BOD. On 8th April 2010, the A group appointed four additional directors. On 12th April 2010, the B group appointed four directors.

6. The resultant dispute led to Respondent No.4 filing CS (OS) No. 1158 of 2010 in this Court averring that board meetings of DDIL were held by the B group, including an Extraordinary General Meeting ('EGM') held on 30th March 2010 without notice to the A group. It is stated that Form 32 was unauthorizedly filed with the ROC stating that the directors of the B group had vacated office. The prayer in the suit was to declare the Board

Resolutions dated 10th November 2009, 1st March 2010, 8th April 2010 and 21st May 2010 as well as the resolution and minutes of the EGM dated 30th March 2010 null and void, illegal, invalid and *malafide*. A permanent injunction was sought to restrain the A group or their agents, representatives, servants, or nominees from approaching any statutory authority including the ROC. The additional directors appointed by the A group was sought to be restrained from representing themselves as directors of DDIL or changing the constitution of the BOD.

7. Mr. Karan Gambhir also filed a suit being CS (OS) No. 1297 of 2010 challenging the action of the BOD in seeking to take control of the management of DDIL by ousting the A group. In the suit it was prayed that the notice dated 6th June 2010 issued by Mr. Surinder Gambhir for the purpose of convening an EGM on 3rd July 2010 was illegal, unauthorized and should not to be given effect. A permanent injunction was also sought to restrain the B group from operating bank accounts or issuing any cheques without the signatures of Mr. Sanjay Gambhir. The A group also filed Company Petition No. 92 (ND) of 2010 in the CLB under Sections 397 and 398 of the Act against the B group. On 26th September 2010, the CLB passed an interim order to the effect that the resolutions passed at the Annual General Meeting ('AGM') dated 28th September 2010 shall be subject to the final outcome of the petition.

8. The Appellants (A group) contend that Mr. Surinder Gambhir, Mrs. Uma Kumari, Mr. Kunal Gambhir and Mr. Anil Bhaskar ceased to be directors of DDIL with effect from 28th March 2012 and that Mr. Rajiv Gambhir ceased

to be a director with effect from 3rd July 2012. They contend that there was a deemed vacation of office by the directors representing the B group on the ground that in the Board meeting held on 28th March 2012 attended by Mr. Surinder Gambhir, Mr. Kunal Gambhir, Mrs. Uma Gambhir and Mr. Anil Bhaskar a resolution was passed by giving a corporate guarantee in respect of a loan granted by ICICI Home Finance to DDPPL. It is stated that, inasmuch as, Mr. Anil Kumar Bhaskar was an employee of DDPPL, he and Respondents 2 to 4 were interested in the contract of guarantee and should have, therefore, disclosed their interest in the proposed transaction. Inasmuch as they failed to do so, they were deemed to have vacated the office of directors and should have refrained from discussing and voting on the said resolution. Even when the minutes of meeting of 28th March 2012 were placed before the Board, Respondents 2 to 4 failed to disclose their interest. It is stated that not only were the directors bound to disclose their interest in such transactions under Section 299 of the Act, but were also debarred from discussing or voting under Section 300 of the Act. It is further stated that the resolution passed was in contravention of the provisions of Sections 299 and 300 of the Act. It could not have been passed without prior approval of the Central Government in terms of Section 295 of the Act. It is stated that on the vacation of office by five out of six directors, only one director, Mr. Karan Gambhir, remained and he convened a meeting on 24th July 2012 for the limited purpose of appointing two additional directors so that the quorum was properly constituted to hold further Board Meetings of DDIL.

9. Respondent No.3 filed I.A. No. 14084 of 2012 in CS (OS) No. 1297 of

2010 seeking to restrain the A group directors from entering or interfering in the peaceful possession in respect of various premises including F-1/9, Okhla Industrial Area, Phase-I, New Delhi. A large list of properties was made part of prayer 'a'. It was prayed that Board Resolution passed on 27th July 2012 or any of the earlier meetings concerning the subject matter should not be given effect to. It was prayed that the A group directors should not be permitted to upload any Forms/Resolutions pertaining to DDIL on the websites of the ROC. A direction was sought to restrain Appellant No.1 from using his digital signatures in any manner whatsoever and direct ROC to remove the Form 32 filed by him pursuant to the purported Board meeting and restore the status of the BOD as on 23rd December 2011. On 4th August 2012 Respondent No.2 filed CS (OS) No. 2363 of 2012 seeking similar reliefs. It is stated that the application filed by Respondent No.2 under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure ('CPC') is pending.

Proceedings in the CLB

10. Respondent Nos. 3 and 4 filed an application being C.A. No. 417 of 2012 dated 9th August 2012 in the CLB seeking the holding of an EGM of the shareholders of DDIL in the presence of an observer. They sought waiver of the statutory 21 days' advance notice to hold the EGM. It was prayed that ROC should initiate prosecution proceedings against the A group for filing forms containing information false to their personal knowledge misusing the digital signature.

11. Before the CLB, it was contended by the B group that the A Group was

in a minority even with the shareholding of 33% whereas the B group was in the majority with a shareholding of 66%. It was contended that Mr. Karan Gambhir misused the digital signature and filed Form 32 with the ROC showing that Mr. Surinder Gambhir, Mr. Kunal Gambhir, Mrs. Uma Gambhir and Mr. Anil Bhaskar had vacated offices as directors on 28th July 2012. He filed another Form 32 on 22nd August 2012 showing Mr. Rajiv Gambhir as having vacated office as director on 3rd July 2012. Thereafter, Mr. Karan Gambhir appointed Mr. Kanish Raaj Gambhir (Appellant No.3) as additional director by filing Form 32. It was contended that the additional directors appointed by Mr. Karan Gambhir had no right to carry on their functions against the wish of the majority and that the affairs of DDIL were being run prejudicial to the interests of the majority. Therefore, they sought to hold an EGM.

12. The A group contended that in terms of Regulation 75 of Table –A of Schedule 1 of the Act, the BOD had been validly constituted with the additional directors appointed by Mr. Karan Gambhir. It was further contended that since this Court was already seized of the very issues raised in the pending suits, the CLB ought not to entertain the application. It was further submitted that a requisition ought to have been submitted by the A group in the first instance to the BOD under Section 169 of the Act requesting for an EGM. The A group submitted that the CLB could issue a direction for holding an EGM only when it came to the conclusion in terms of Section 186 of the Act that it was otherwise impracticable to hold such meeting.

Impugned order of the CLB

13. Dealing with the above contentions, it was observed by the CLB in the impugned order that the BOD meant “the board running at the wish of majority of the shareholders” and that it was pointless for the majority to have sent any notice to the BOD controlled by the A group under Section 169 of the Act. In such instance, the only hope that the shareholders had was to approach the CLB. As regards Section 186 of the Act, the CLB observed that a holistic approach had to be adopted. In order to restore corporate democracy, an EGM had to be called. The CLB further observed that its jurisdiction under Sections 397 and 398 of the Act was independent of the jurisdiction exercised by this Court in the civil suits. The B group was, therefore, not precluded from seeking reliefs as prayed for. It was observed that since Mr. Karan Gambhir would continue as MD no prejudice would be caused to the A group.

14. Accordingly, by the impugned order dated 22nd November 2012 the CLB allowed the said application and directed DDIL to call an EGM for holding election to the BOD within 15 days. An observer was also appointed to be present at the time of holding the EGM.

Submissions of counsel

15. There were three propositions advanced by Mr. K. Datta, learned counsel for the Appellants. He submitted that if the Act envisaged a certain procedure for performing an act, it had to be performed in that manner or not at all. The requirement of Section 169 of the Act could not have been dispensed with. Secondly, he submitted that Section 186 of the Act was in

the nature of a special provision and had to be mandatorily complied with. The general power of the CLB under Section 403 of the Act was hedged in by the specific requirement of Section 186 of the Act. Even Section 151 CPC could not be invoked when there was a specific provision in the CPC itself. Thirdly he submitted that by allowing the application of the B group the CLB granted an interim relief that was outside the scope of the main petition. Further, the CLB had legitimized the appointment of the same persons who had demitted office as directors of DDIL thus rendering the proceedings in the suits in this Court infructuous. Mr. Datta insisted that the CLB should have placed certain safeguards to ensure that power of the majority to bring about the change was not unfettered. Reliance was placed by Mr. Datta on the decision of the Supreme Court in ***R. Rangachari v. S. Suppiah* AIR 1976 SC 73**, of the Calcutta High Court in ***Bengal and Assam Investors Limited v. J.K. Eastern Industries Private Limited* 1956 Calcutta 658**, of the High Court of Justice (Chancery Division Companies Court) in ***Stephen Anthony Monnington v Easier PLC* (2005) EWHC 2578 (Ch)** and of the Company Law Board in ***B. Mohandas v. A.K.M.N. Cylinders (P) Ltd.* Vol. 93 (1998) Company Cases 532 (CLB)**.

16. Countering the above submissions, Mr. Vibhu Bakhru, learned Senior counsel for the Respondents, submitted that the actions by Mr. Karan Gambhir in declaring on 24th July 2012 that four of the directors had demitted offices was unilateral. This was without any notice to the directors. This was followed by his misusing the facility of digital signature by uploading Form 32. The same device was used when he illegally appointed additional directors and presented the B group with a *fait accompli*. Mr.

Bakhru questioned the veracity of the minutes of the meeting of BOD purportedly held on 24th July 2012. It was virtually a one-man meeting with only Mr. Karan Gambhir, who described himself as 'Director/Chairman', the only person in attendance. There was absolutely no validity to such a meeting. In the circumstances, it was useless to even send a notice under Section 169 of the Act to the BOD for holding an EGM. The only option available to the B group was to approach the CLB. Referring to Section 299 of the Act, Mr. Bakhru submitted that under Section 283 (1) (i) of the Act, the office of director would become vacant if he acted in contravention of Section 299 of the Act. In the first place there had to be a determination of the violation of Section 299 of the Act. In the facts and circumstances of the case, the said provision was not attracted at all since the interest of the directors had been disclosed at an earlier meeting held on 28th March 2012. In any event there was no provision in the Act that prevented a director who was disqualified under Section 299 read with Section 283 (1) (i) of the Act from being subsequently appointed as such. There was in any event no warrant for the unilateral decision by Mr. Karan Gambhir that four of the directors of the B group had demitted office. Mr. Bakhru also submitted that the nature of the action under Sections 397 and 398 of the Act was derivative. There could be instances where, as in this case, a minority group of shareholders could oppress the majority. The power of the CLB under Section 403 of the Act was wide enough to issue directions for the proper administration of the affairs of DDIL. It was not circumscribed by Section 186 of the Act.

Decision in the appeal

17. The Court proposes first to consider the appeal filed against the impugned order dated 22nd November 2012 of the CLB. At the outset it must be noted that the scope of interference by the Court in an appeal under Section 10 F of the Act is limited to examining substantial questions of law that arise from the order of the CLB. It was explained by the Supreme Court in ***V.S. Krishnan v. Westfort Hi-tech Hospital Ltd. (2008) 3 SCC 363*** (SCC p. 374) as under:

“It is clear that Section 10-F permits an appeal to the High Court from an order of the Company Law Board only on a question of law i.e. the Company Law Board is the final authority on facts unless such findings are perverse, based on no evidence or are otherwise arbitrary. Therefore, the jurisdiction of the appellate court under Section 10-F is restricted to the question as to whether on the facts as noticed by the Company Law Board and as placed before it, an inference could reasonably be arrived at that such conduct was against probity and good conduct or was *mala fide* or for a collateral purpose or was burdensome, harsh or wrongful. The only other basis on which the appellate court would interfere under Section 10-F was if such conclusion was (a) against law or (b) arose from consideration of irrelevant material or (c) omission to consider relevant materials.”

18. In ***PPN Power Generating Co. Ltd. v. PPN (Mauritius) Co. 2005 (3) Arb.LR 354 (Madras)***, a Division Bench of the Madras High Court held that the High Court would interfere with an order of the CLB granting interim relief only where the CLB had acted perversely or had ignored the settled principles of law.

19. The narration of facts reveals that although the A group was in the minority as far as the shareholding of DDIL was concerned, they constituted

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a majority of the BOD till disputes arose between the parties. The A group in fact filed Company Petition No. 92 (ND) of 2010 under Sections 397 and 398 of the Act before the CLB alleging various acts of oppression and mismanagement. The A group filed an application seeking stay of a meeting of the BOD called by the B group for 29th June 2012. In the said application it was stated by the A group as under:

“That the control of the Respondent No. 1 company is in the hands of the Respondent and their group of Directors, who are, at present, represented by five Directors on board and thus, in majority. The Petitioners and their group of Directors, at present, have only a single Director on Board and are thus, in minority. The Petitioners and their group of Directors have been slowly removed from the Board illegally, despite the fact that the Petitioners and their group of Directors are still holding 33% shareholding in the Respondent No. 1 Company. It is pertinent to mention that Petitioners Nos. 1, 2 and 3 have been removed illegally by the Respondent No. 1 Company.”

20. There was therefore a clear acknowledgment by the A group that by that date their directors had been removed from the BOD of DDIL. Further, in para 9 it was acknowledged that “it is the admitted case of the Respondents that Mr. Karan Gambhir is the Managing Director of the Respondent No. 1 company and is as such fully incharge of the divisions under his control. However, the Respondents and their group of Directors are constantly causing hindrance in his discharging his responsibilities as a Managing Director.” Interestingly, in para 12 of the application the A group mentions that a meeting of the BOD had been held on 28th March 2012 but does not state anything about the directors of the B group having failed to disclose their interest.

21. The said application by the A group also mentioned that the B group had filed CS (OS) No. 1158 of 2010 (*Kunal Gambhir v. D.D. Industries*) whereas the A group filed CS (OS) No. 1297 of 2010 (*Karan Gambhir v. D.D. Industries*). In CS (OS) No. 1297 of 2010 two separate applications were filed by both groups. An order had been passed by this Court on 20th January 2012 in the said applications directing the parties to exchange documents.

22. When the said application of the A group was listed before the CLB on 28th June 2012 the following order was passed by the CLB:

“Petitioner filed an application to stay the Board meeting of the Respondent No. 1 Company scheduled to be held on 29.6.2012 and prays to remove Agenda Item Nos. 2, 3, 4, 5 and 6 from the Agenda of the Board meeting and for further orders as this Board may deem fit in the facts and circumstances of the case.

Grievance of the Petitioner in the application is that company is going to issue Right shares at a price as agreed among Directors and to manage the shortage of funds and also to discuss the working style of Mr. Karan Gambhir who is not the Petitioner in the petition.

The Respondent made a submission that Mr. Karan Gambhir is not a Petitioner in the Petition and litigation is pending in between Mr. Karan Gambhir and Respondents herein before the Hon'ble High Court of Delhi and Mr. Karan Gambhir and the Petitioner herein had defaulted in making payments to the company, thereby Respondents placed an agenda to discuss the proposal to augment funds by issue of right shares and to discuss the working style of Karan Gambhir.

In view of the submissions made by both the parties, Respondents are at liberty to hold Board meeting scheduled to be held on 29th June 2012 and the resolution passed at the Board meeting shall be subject to the outcome of the petition.

Accordingly application is disposed of.

The matter will come up in the list as fixed earlier.”

23. The above order was not appealed against or stayed. In light of the above order, there was no occasion for Mr. Karan Gambhir to unilaterally hold a meeting of BOD on 24th July 2012 and declare the deemed vacation of office by the directors of the B group with reference to the meeting of the BOD held on 28th March 2012. Even while the CLB was seized of the petition of the A group, and this Court of the suits, there was no occasion to hold such meeting without seeking leave of either. Further it is extraordinary that a ‘one-man’ meeting was held by Mr. Karan Gambhir designating himself as Director/Chairman, without notice to the B group, declaring in the said meeting that they ceased to be directors. Mr. Karan Gambhir took a risk in proceeding with such unilateral action of doubtful validity. He persisted with it by using the digital signature in his capacity as MD to uphold Form 32 thus purporting to present the CLB and this Court with a *fait accompli*.

24. As rightly pointed out by Mr. Bakhru, the occasion for Mr. Karan Gambhir to invoke Section 283 (1) (i) read with Section 299 did not arise. A perusal of the minutes of the BOD meeting held on 28th March 2012 read with the notes accompanying the agenda for the meeting reveals that the *factum* of the exposure of DDIL to the loans advanced to DDPPL was disclosed. It was in the above circumstances that the B group filed Company Application No. 417 of 2012 seeking an order for convening an EGM of the shareholders of DDIL under the supervision of an Observer.

25. The question of law that arises for consideration in the present appeal is whether the impugned order of the CLB overlooks the mandatory requirement of law under Sections 169 and 186 of the Act as urged by the Appellants? Sections 169, 186 and 403 of the Act read as under:

“169. Calling of extraordinary general meeting on requisition. (1) The Board of directors of a company shall, on the requisition of such number of members of the company as is specified in sub-section (4), forthwith proceed duly to call an extraordinary general meeting of the company.

(2) The requisition shall set out the matters for the consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) The number of members entitled to requisition a meeting in regard to any matter shall be—

(a) in the case of a company having a share capital, such number of them as hold at the date of the deposit of the requisition, not less than one-tenth of such of the paid-up capital of the company as at that date carried the right of voting in regard to that matter;

(b) in the case of company not having a share capital, such number of them as have at the date of deposit of the requisition not less than one-tenth of the total voting power of all the members having at the said date a right to vote in regard to that matter.

(5) Where two or more distinct matters are specified in the requisition, the provisions of sub-section (4) shall apply separately in regard to each such matter; and the requisition shall accordingly be valid only in respect of those matters in regard to which the condition specified in that sub-section is fulfilled.

(6) If the Board does not, within twenty-one days from the date of the deposit of a valid requisition in regard to any matters, proceed duly to

call a meeting for the consideration of those matters on a day not later than forty-five days from the date of the deposit of the requisition, the meeting may be called—

(a) by the requisitionists themselves;

(b) in the case of a company having a share capital, by such of the requisitionists as represent either a majority in value of the paid-up share capital held by all of them or not less than one-tenth of such of the paid-up share capital of the company as is referred to in clause (a) of sub-section (4), whichever is less; or

(c) in the case of a company not having a share capital by such of the requisitionists as represent not less than one-tenth of the total voting power of all the members of the company referred to in clause (b) of sub-section (4).

Explanation. For the purposes of this sub-section, the Board shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by sub-section (2) of section 189.

(7) A meeting called under sub-section (6) by the requisitionists or any of them—

(a) shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by the Board; but

(b) shall not be held after the expiration of three months from the date of the deposit of the requisition.

Explanation.—Nothing in clause (b) shall be deemed to prevent a meeting duly commenced before the expiry of the period of three months, aforesaid, from adjourning to some day after the expiry of that period.

(8) Where two or more persons hold any shares or interest in a company jointly, a requisition, or a notice calling a meeting, signed by one or some only of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.

(9) Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board duly to call a meeting shall be repaid to the requisitionists by the company; and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.”

.....

“186. Power of Tribunal to order meeting to be called. (1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the Tribunal may, either of its own motion or on the application of any director of the company, or of any member of the company who would be entitled to vote at the meeting,--

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions, modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act and of the company's articles.

Explanation.--The directions that may be given under this sub-section may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.”

.....

“403. Interim order by Tribunal. Pending the making by it of a final order under section 397 or 398, as the case may be, the Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the

company's affairs, upon such terms and conditions as appear to it to be just and equitable.”

26. As far as the power of the CLB to grant interim relief under Section 403 is concerned, it is power incidental to the power to order substantial reliefs as set out in Section 402. The width of the power is indicated by the words “any interim order which it thinks fit” and “such terms and conditions as appear to it to be just and equitable.” The power is not limited by other provisions of the statute. Section 402 in fact begins with the words “Without prejudice to the generality of the powers of the Tribunal...”. There is nothing to indicate that while exercising the powers under Sections 402 or 403 of the Act the CLB has to necessarily account for the mandatory requirements of other provisions like Sections 169 or 186 of the Act. The language in fact appears to indicate to the contrary. It permits the CLB to pass orders as long as it is in the interests of the proper conduct of the affairs of the company and it is “just and equitable” to pass such order. Whether in fact the order is justified will of course depend on the facts of each case.

27. It is not possible to accept the submission of the learned counsel for the Appellants that the requirement of a group of shareholders desiring the convening of an EGM having to first make a requisition to the BOD is mandatory and in circumstance can be dispensed with, even by the CLB while making an order under Section 403 of the Act. That interpretation would in fact be contrary to the legislative intent behind Sections 402 and 403 of the Act and dilute the power of the CLB to pass orders which it

thinks to be just and equitable in the facts of a case, particularly when an impasse has been created by one group of shareholders making it pointless for the other group to even make such requisition. In ***Bengal and Assam Investors Limited v. J.K. Eastern Industries Private Limited*** it was acknowledged by the Calcutta High Court that when a Court directs a meeting to be held under Section 186 of the Act “it must necessarily modify or supplement the Articles or the Act.” In similar circumstances, the Bombay High Court while interpreting Section 171 of the Act, held in ***Shailesh Harilal Shah v. Matushree Textiles Ltd. (1995) Vol 82 Company Cases 5 (Bom)*** that the requirement of 21 days’ advance notice for holding an AGM was not mandatory notwithstanding the use of the word “shall” in that provision. As regards Section 186 of the Act, the Supreme Court in ***R. Rangachari v. S. Suppiah*** has explained that before ordering the convening of a meeting the CLB must be satisfied that it is not practicable to (a) call for, (b) hold and (c) conduct such meeting. Therefore it will have to be examined in the facts of each case, whether the three requirements were cumulatively met to justify an order by the CLB.

28. There is thus no difficulty in reconciling the provisions of Section 403 with Sections 186 and 169 of the Act. The facts and circumstances of each case will determine the extent to which it is practicable to hold meetings of a company. Where the unilateral acts of a MD representing a minority group of shareholders result in their capturing the BOD, a situation of a minority oppressing the majority can be said to exist. It would be futile for the majority shareholders to expect a meeting to be convened on their making a request to the BOD under Section 169 of the Act. These factors would

weigh with the CLB while exercising its powers under Section 403 of the Act while considering the request to convene an EGM.

29. Turning to the case on hand, the requirement under Section 186 of the Act that it must be impracticable to call, hold and conduct a meeting of a company, other than an AGM, can be said to be fulfilled in the above facts and circumstances. As rightly observed by the CLB, it was pointless for the B group to send a notice under Section 169 of the Act to the BOD comprised entirely of directors of the A group for convening an EGM. In all probability that request could have been rejected. In the face of the unilateral acts of Mr. Karan Gambhir, the B group was not acting unreasonably in anticipating rejection of their request by the BOD constituted only by the directors of the A group. The CLB in the impugned order has rightly distinguished the decisions relied upon by the Appellants, which were pressed into service in these proceedings as well.

30. As far as the question of the CLB building in safeguards into its decision is concerned, the minutes of the meeting of the EGM held under the supervision of the Observer shows Mr. Karan Gambhir continues as MD of DDIL. Thus the interests of the A group who continue as minority shareholders of DDIL and who are represented by Mr. Karan Gambhir on the BOD are accounted for.

Conclusion

31. Consequently, this Court is satisfied that no ground has been made out for interference with the impugned order dated 22nd November 2012 of the

CLB. The appeal is, accordingly, dismissed with costs of Rs. 20,000 which will be paid by the Appellants to Respondents 2 to 4 within four weeks from today.

S. MURALIDHAR, J.

FEBRUARY 5, 2013

Ak/Rk

