IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 21 OF 2013
IN
COMPANY APPLICATION NO. 39 OF 2009
IN
COMPANY PETITION NO. 12 OF 1998

Shri Vinod Kumar …Appellant / Orig. Petitioner
vs.
The Company Law Board & Ors. ...Respondents

WITH

COMPANY APPEAL NO. 88 OF 2013
IN
COMPANY APPLICATION NO. 39 OF 2009
IN
COMPANY PETITION NO. 12 OF 1998

Shri Vinod Kumar …Appellant / Orig. Petitioner
vs.
M/s.Sigmalon Equipments Pvt.Ltd. & Ors. ...Respondents

Mr.Atul Damle, Senior Advocate with Mr.Sanjay Gawde for Appellant.
Mr.Dinyar Madon, Senior Advocate with Mr.Bomi Patel with Ms.Poorva Garg with Mr.Parikshit Banpujari i/b. Mulla & Mulla & CBC for Respondent Nos.2 to 5.

CORAM : S.C. GUPTE, J.

27 JULY 2015

P.C. :

These appeals arise out of an order passed by Company Law Board ('CLB') on a company application of the Appellant.

2 The Appellant is a shareholder and director of the second Respondent company holding 40% shares therein. The other shareholders are Respondent Nos.3 to 6, who hold 60% of the shares of the second Respondent company. The petition was filed by the Appellant in the year 1998 under Sections 397 and 398 of the Companies Act, 1956 ('the Act') alleging oppression and

mismanagement. By its order dated 20 August 1999, the CLB gave two options to the Appellant. The first option was to continue with his 40% shareholding of the company and also his directorship with remuneration but without any power to interfere in affairs of the company. The second option was to sell his shares to the Respondents at a price to be determined by an independent valuer. The company was also directed to pay all arrears of remuneration and perquisites to the Appellant latest by 30 September 1999. The Appellant admittedly adopted the second option and agreed to sell his shares to the second Respondent. On 3 November 1999, the CLB recorded the agreement of the parties for appointment of M/s.Price Waterhouse Coopers (‘PWC’) as an independent valuer to determine the value of shares to be paid to the Appellant against his exit from the company. On 21 December 1999, a formal order was issued by the CLB appointing PWC as an Independent valuer with directions to complete valuation of shares by 20 March 2000. By a further order dated 1 May 2000, the CLB recorded that the Appellant would continue to be a director of the second Respondent company till his shares are purchased by the Respondents. The CLB fixed the date of valuation as 31 March 1998. By a further order dated 16 October 2000, the CLB clarified that the Appellant should continue to be a director of the company, and be entitled to the pay including allowances and perquisites, till his shares are purchased by the Respondents. On 13 December 2001, PWC submitted a report valuing the shares at Rs.2044/- per share. On objections by both sides, the CLB directed a fresh valuation. This order was passed on 26 August 2002. Thereafter, by their communication dated 18 November 2002, PWC informed the CLB that its original valuation report dated 13 December 2001 did not need any revision. Thereafter, the CLB, by its order dated 5 May 2003, accepted the valuation and held that the Respondent shall purchase the shares held by the Appellant in the second Respondent company at Rs.2044/- per share. As the Appellant held 7,420 equity shares of Rs.100/- each, the CLB arrived at the total amount payable for the shares as Rs.1,51,66,480/-. It directed that the payment should be made to the Appellant positively by 31 July 2003. The CLB also directed the Respondent company to pay arrears of salary / perquisites to the Appellant for the period upto 31 March 2002. This order of the CLB was challenged by both the parties before this Court. The appeals were disposed of by this Court by a common order dated 16 June 2005. This Court set aside the valuation of PWC on the ground of bias and directed the revaluation as of 31 March 2005. This Court also held that the Appellant was entitled to remuneration and perquisites till the date of valuation of shares and payment thereof.

3 Not being satisfied with this order, both sides preferred Special Leave Petitions before the Supreme Court. When the SLPs came up for hearing before the Supreme Court, learned Counsel for the Appellant submitted before the Court that there had been a complete change in the circumstances after the appeals were filed as the Respondents' group, which was in control of the company, had virtually sold all the movable assets and that therefore, it was now necessary that relief should be appropriately moulded in favour of the Appellant by taking note of all subsequent events and the situation as it now existed. The Appellant also filed an application (IA No.2/2007) to change the date of valuation to the current date and for release of salary and perquisites and for declaration of certain Board resolutions passed in the interregnum as null and void. The Supreme Court noted that the change of circumstances was not disputed by the Respondent, but that, according to learned Counsel for the Respondent, such change in circumstances was due to passage of time, natural course of events and the decisions taken by the Board of directors of the Respondent company in the usual course of business and about which the Appellant could have no grievance. The Supreme Court, in the premises, passed the following order on 17 September 2008:

> "6. In view of the changed circumstances and in view of the submission of the appellant that the grounds urged by him for challenging the alteration of date of valuation as 31.3.2005 no longer exists, and the challenge to the order of the Board and the order of the High Court by both parties, we consider it appropriate to set aside the order of the Company Law Board dated 5.5.2003 and the order of the High Court dated 16.6.2005 and remand the matter to the Board for reconsideration and fresh appropriate decision by taking note of all events which have taken place till now and the facts and circumstances as they exist today, in accordance with law. The appeals of both sides are allowed in part accordingly, leaving open all

> contentions. All pending applications stand disposed of.
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> 7. The appellant is at liberty to raise the issue of salary and perquisites payable to the appellant from 1.10.1999, also before the Board. As the matter has been pending for a considerable time and the very pendency has led to the change of the circumstances, we request the Company Law Board to dispose of the matter expeditiously. Both the parties agree to appear before the Company Law Board without further notice on 13.10.2008 and take further order from the Board."

4 The Appellant thereupon preferred the present company application in the original company petition under Sections 397 and 398 of the Act. The Appellant made extensive prayers in the company application, which *inter alia* included declaration of various Board resolutions passed by the Respondents in 2006 and 2007 as null and void and handing over to the Appellant the management of the Respondent company as a sole director thereof with directions to the Respondents not to interfere with the day to day affairs of the company till the shares of the Appellant were evaluated and purchased by the legal representatives of the second Respondent (Ashok Kumar – Respondent No.6 herein.) Whilst the matter was pending before the Supreme Court, the original Respondent died. The legal representatives of Respondent No.6 are now before the CLB in the new company application as Respondent Nos.3, 4 and 5. (They are also Respondent Nos.3 to 5 in the present appeal.) The company application is disposed of by the CLB by the impugned order. In the impugned order, the CLB rejected the following prayers:

> "a. To declare the Board Resolutions dated 9.5.2006, 27.12.2006, 27.1.2007 and 28.9.2007 and minutes of EOGM dated 24.5.2006 and 28.1.2007 passed by the Respondents No.2 to 5 as null and void and direct the second respondent group for not taking any further action based on aforesaid Board Resolution and EOGM without approval of this Hon'ble Board.
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> b. To direct Respondents No.3 to 5 to hand over management of the Respondents No. company immediately to the Petitioner being sole director of the Company and direct them not to interfere in the day to

day affairs of the company till the shares held by Petitioner are evaluated and purchased by the LRs of the second Respondent.

c. To direct the Respondents No.3 to 5 to either deposit or give Bank Guarantee for a sum of Rs.16.91 crores referred in the Petitioner's Affidavit dated 16th September 2008. Alternatively, to direct the aforesaid Respondents to hand over movable and immovable properties to a person / receiver appointed by this Hon'ble Board and direct him to keep all the cash inflows in separate bank account pending finalization of the matter."

As far as the other prayers are concerned, the CLB issued suitable directions for filing of affidavits by the parties indicating facts, circumstances and events that had taken place between 31 December 1999 and until the date of the Supreme Court order to enable the Bench to pass appropriate directions to the valuers / auditors to arrive at a fair value of the shares as of 17 September 2008. The CLB passed other appropriate directions, including calling for various details concerning the remuneration including perquisites demanded by the Appellant as well as names of auditors / valuers and issued other suitable directions in that behalf. This was with a view to enable the CLB to pass orders on the following prayers in the company application :

"d. To direct the Respondents to give inspection of statutory records of the companies SEPI and Sigmalloy to the Petitioner.

e. To direct the Company to pay 'on account' Rs.80.00 (Eighty lakhs) against arrears of remuneration and perquisites to the Petitioner and also to keep on making payment to him @ 2/3 of drawn by the 2nd respondent and his family members as on 30.9.1999 till his shares are evaluated and payment is made thereof.

f. To direct the Respondent No.1 company to pay the Petitioner, arrears of remuneration and perquisites from 1st October 1999 to 31st December, 2008 amounting to Rs.1,39,05,482/- (at the rate of 2/3rd of the respondents group was withdrawing as on 30.9.1999) along with interest at the rate of 15% (cumulative basis) thereupon from the date amount became due till the final payment is made.

> g. To direct till payment of arrears of remuneration and perquisites of Rs.33,57,782/- for the period upto 30.09.1999 as on 31.12.2008 plus interest of 15% (cumulative basis) thereupon till date of final payment is made by the Respondent No.1 Company."

The CLB proposed to consider these prayers in the main company petition and disposed of the company application in terms of the impugned order. This order is in challenge in the present appeal.

5 In support of the appeal, the only contention advanced by Mr.Damle, learned Senior Counsel, appearing for the Appellant is that the Supreme Court order of 17 September 2008 reopened the entire controversy between the parties, including the original acts of oppression and mismanagement and all acts subsequent to the filing of the original petition. It is submitted that all these acts should be considered by the CLB in a correct perspective for grant of relief and that such relief also envisages striking down of the various Board resolutions passed by the Respondents and handing over management of the Respondent company to the Appellant and so also passing of suitable directions regarding attachment of assets of the Respondent company. He submits that the observation of the CLB, that these prayers were beyond the scope of the directions of the Supreme Court, was clearly erroneous having regard to the order of the Supreme Court.

6 At the outset, it is pertinent to note that the order of the CLB dated 20 August 1999 giving two options to the Appellant, namely, either to continue his shareholding or directorship without power to interfere in the affairs of the company or to sell his shares to the sixth Respondent's group at a price to be determined by an independent valuer, was not challenged before this Court or the Supreme Court and continues to hold the field. So also do the orders recording the Appellant's opting for the second option to sell his shares to the sixth Respondent's group and directing the Respondents to purchase the Appellant's share. The disputes, which were adjudicated by the CLB in its order dated 5 May 2003, were confined only to two issues, namely, (a) the valuation of the shares so

as to determine the compensation payable to the Appellant for his exit from the company, and (b) payment of remuneration and perquisites to the Appellant including its cut-off date. It was this order, which was carried in appeal before the High Court and finally, to the Supreme Court, where the Supreme Court passed its order of 17 September 2008. The Supreme Court set aside the order of the CLB of 5 May 2003 as well as the order of the High Court dated 16 June 2005 thereon and remanded the matter to the CLB. The CLB was directed to take into account all events which have taken place till now (i.e. upto the date of the Supreme Court order) and the facts and circumstances as they exist today (i.e. of 17 September 2008), in accordance with law. But these events were to be taken note of and the facts and circumstances were to be considered in the light of and for the sake of the controversy pending before the CLB at that stage, namely, the two aspects described above. The CLB no doubt will take into account everything that has transpired, since the filing of the petition and upto 17 September 2008, including the various resolutions passed by the Board of directors of the Respondent company and its several acts committed in the management of the affairs of the company but only insofar as they have a bearing on the two aspects noted above. The Board resolutions or the acts of management on the part of the Respondents are not amenable to a *per se* challenge so as to quash the same. The Appellant also cannot seek an order of taking over the management of the Respondent company under the guise of this fresh consideration.

7 This is precisely what the CLB held. The CLB has correctly construed and applied the order of the Supreme Court passed on 17 September 2008. Leaving open all contentions clearly meant that the parties were entitled to advance all contentions relevant to the valuation of the shares and the determination of the remuneration and perquisites payable to the Appellant by bringing to the notice of the Board the happenings subsequent to 3 December 1999 until the date of the order of the Supreme Court and thereafter to arrive at a fair valuation. In that view of the matter, the reliefs sought in terms of prayer clauses (a), (b) and (c) were clearly irrelevant and could never be allowed. As far as other prayers are concerned, namely, arriving at an appropriate valuation of shares and determination of the remuneration and perquisites payable to the

Appellant, the CLB has merely called for information on affidavits from the parties to enable it to apply the mandate of the Supreme Court order dated 17 September 2008.

8 In the premises, no error of law can be found with the impugned order of the CLB. Accordingly, Appeal No.21/2013 is dismissed. There shall be no order as to costs.

9 As far as the other appeal, namely, Company Appeal No.88/2014 is concerned, the same challenges an order passed by the CLB on 1 May 2013 appointing M/s.Dargdulal K. Jain and Company, Chartered Accountants, as valuers, to determine the fair value of the shares of the company as on 17 September 2008. This order is challenged by both the parties.

10 It is submitted before the Court on behalf of the Appellant that the Appellant does not challenge the appointment of the individual valuer as such, but that such valuer should have been appointed whilst the Appellant's companion appeal, namely, Company Appeal No.21/2013, was pending before this Court. The companion appeal having now been disposed of by the present order, the Appellant submits that the same valuer appointed by the CLB in its order dated 1 May 2013 may be continued by this Court.

11 Learned Counsel for the Respondents also has no objection to this valuer being continued subject to the valuer being still on the panel of the Official Liquidator attached to this Court.

12 The valuer still continues to be on the panel of the Official Liquidator. Accordingly, Appeal No.88 of 2014 is disposed of by continuing the appointment of M/s.Dargdulal K. Jain and Company, Chartered Accountants, as valuers in terms of the order passed by the CLB. No order as to costs.

(S.C. Gupte, J.)