IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 36 OF 2011
IN
COMPANY PETITION NO. 22 OF 2009

WITH
COMPANY APPLICATION NO. 32 OF 2012

Yogesh Parmar …Appellant / Orig.Petitioner
vs.
Lahoti Terra Knitfab Limited & Ors. ...Respondents

Mr.Sharam Jagtiani with Mr.Anosh Sequeira i/b. Hariani & Co. for Appellant.
Mr.Hemant Sethi i/b. Hemant Sethi & Co. for Respondent No.1.
Mr.Simil Purohit with Rajendra Kookada i/b. Aditya Khanna for Respondent Nos.2 to 8.

CORAM : S.C. GUPTE, J.

10 SEPTEMBER 2015

P.C. :

The company appeal impugns an order passed by the Company Law Board ("CLB") rejecting the Appellant's petition under Sections 397 and 398 of the Companies Act, 1956.

2 The Appellant is a 43.35% shareholder of the first Respondent company having subscribed to 2.16 lakh equity shares of Rs.100/- each originally, i.e. having invested a sum of Rs.2.16 crores in the company. The balance shareholding is held by Respondent No.2, who was the promoter of the company. The company, by its EOGM held on 27 December 2008, decided to increase its authorised share capital. Thereafter, the company issued further shares and made an offer to the predecessor in title of the Appellant, who was the original Petitioner before the CLB (since deceased), for subscription of the shares in the same ratio as respectively held by the two shareholders of the company. The Appellant / his predecessor failed to subscribe to the shares offered. Instead, a petition was filed before the CLB that the original investment of

the Petitioner was on the footing that he would have an affirmative vote and a seat in the Board of Directors of the company. Secondly, it was submitted that the EOGM of the first Respondent company, which was held for increase in the authorised share capital, was without notice to the original Petitioner and further that there was no diligent offer of further share capital issued to the original Petitioner.

3 On the first point, learned Member of the CLB observed that there was no clause in the Articles of Association of the company with respect to either affirmative vote of the original Petitioner or a seat to her in the Board of Directors of the company. The CLB further held that there was no documentary proof to show that the Petitioner had at any time made a request for participation in the management of the company or an access to the financial records of the company. It is an admitted position that even a Shareholders' Agreement providing for an affirmative vote or seat to the original Petitioner on the Board of Directors of the company was not executed between the parties. Even if there was such an agreement, it is doubtful whether in the absence of incorporation of such agreement by amending the Articles of Association of the company, such right could have been enforced by the original Petitioner. The matter not having reached even the stage of inter se agreement between the shareholders with respect to either the affirmative vote or the seat in the Board of Directors to the original Petitioner, it is difficult to accept the submission that the CLB ought to have recognised such affirmative vote or the seat of Board of Directors. In any event, no question of law arises from the conclusion of the CLB in this behalf.

4 As for the offer of shares, the only ground on which the offer is contested today before this Court is that the notice of EOGM for increase in authorised share capital of the company was not duly issued and that Article 84 of the Articles of Association of the company provides for a consequence of non-service of such notice. Though the impugned order of the CLB itself recites that the original Petitioner had claimed that the increase in the authorised share capital from Rs.4 crore to Rs.15 crore was effected without any statutory notice to the original Petitioner or without compliance with the provisions of the Act, there

is no relief claimed in the original petition in respect of the EOGM held by the company for increase in its authorised share capital. Be that as it may, the main contention advanced before the CLB, as reflected in the impugned order, seems to be not making of a proper offer by the first Respondent company to the original Petitioner. As far as the offer made to the original Petitioner is concerned, the CLB found, as a matter of fact, that there were notices issued at the registered address of the original Petitioner available with the company; that when such notices were returned with the remark “left”, a communication was addressed by the company to the Appellant herein reiterating such offer. In any event, it transpires from the record of the case that even by way of an ad-interim order passed by the CLB on 20 March 2009, an option was made available to the original Petitioner / her predecessor to subscribe to the shares offered, but that the Petitioner / her predecessor never accepted this offer. Even today before this Court, it is not the Appellant's case that he was ready to subscribe to the shares offered by the first Respondent company. On these facts, the conclusion of the CLB that there was a diligent offer by the company to the original Petitioner, cannot be faulted on any legal ground. No question of law arises with this part of the impugned order.

5 In that view of the matter, there is no question of law, which arises for the consideration of the Court concerning the impugned order. The appeal is, accordingly, dismissed. No order as to costs.

6 In view of the dismissal of the appeal, the application does not survive and the same is also disposed of.

(S.C. Gupte, J.)