IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL (L) NO. 25 OF 2015
IN
CLB COMPANY PETITION NO. 39 OF 2011

Lirin Road Lines Pvt.Ltd. & Anr. …Appellants
vs.
Kirti C. Chheda & Anr. ...Respondents

with

COMPANY APPEAL (L) NO. 26 OF 2015
IN
CLB COMPANY PETITION NO. 36 OF 2011

Simplex Crane Services Pvt.Ltd. & Anr. …Appellants
vs.
Pravin Chheda & Anr. ...Respondents

with

COMPANY APPEAL (L) NO. 27 OF 2015
IN
CLB COMPANY PETITION NO. 37 OF 2011

Lirin Road Lines Pvt.Ltd. & Anr. …Appellants
vs.
Pravin Chheda & Anr. ...Respondents

Mr.Kamlesh Tiwari for Appellants.
Mr.Erach Kotwal i/b. Rajiv Deokar for Respondent No.1 in Coappl 25/2015 and for Respondent No.2 in Coappl 26/2015 and 27/2015.
Mr.Gaurav Mehta i/b.Dhiren Akbari for Respondent No.2 in Coappl 25/2015, for Respondent No.1 in Coappl 26/2015 and 27/2015.

CORAM : S.C. GUPTE, J.

20 AUGUST 2015

P.C. :

These appeals impugn a common judgment delivered by the Company Law Board, Mumbai Bench (“CLB”) on 9 April 2015 in a group of company petitions filed by the Respondents under Sections 397 and 398 of the Companies Act, 1956.

2 The Respondents and Appellant No.2, who are real brothers, carried on business of transport in partnership since 1980. In 1993, the partnership was converted into a company. That company - Lirin Roadlines Pvt.Ltd. - is Appellant No.1 in Company Appeal (Lodging) No.25 of 2015 ("Lirin"). The brothers held 1/3rd of the subscribed and paid up equity share capital of the company each and were also its directors. The brothers, later on, formed another company - Simplex Crane Services Pvt.Ltd., which is Appellant No.1 in Company Appeal (Lodging) No.26 of 2015 ("Simplex"). The brothers continued to be directors in Simplex as well. The gist of the Respondents' case before the CLB was this : By the end of 2000, Lirin and Simplex were both doing extremely well. Around the time, Lirin had a fleet of almost 350 vehicles. By 2003, though the companies were still doing well, there was a liability of Rs.18 crores. There was some talk of exit of one of the brothers at that time, but it was decided that the exit should await 2-3 years during which the liabilities could be cleared. Around 2006, when the liabilities were almost cleared, the brother proposing to exit proposed a valuation and payment of his share, which was opposed by Appellant No.2. Differences between the brothers thereafter escalated, and this led to the filing of the petitions by the Respondents against Lirin, Simplex and the third brother, Appellant No.2 in all these appeals. Various allegations of oppression and mismanagement are made by the Respondents against the Appellants. These include the following :

a. Illegal removal of the Respondents as the Directors of the Companies.

b. Illegal appointment of additional director(s) without following due course of law and with a malafide motive to gain control over the affairs of the Companies.

c. Illegal holding of AGM in contravention of the provisions of the

Companies Act and Articles of the Companies.

d. Failure to hold EOGM.

e. Siphoning / Diversion of funds by Appellant No.2.

f. Sale of vehicles without consent of the Respondents at an undervaluation and for personal gains.

g. Stopping of payments of salary and creating false liabilities, manipulation and tampering of accounts of the companies.

h. Non-disclosure of Accounts / Documents / Financial Details.

f. Committing acts to the detriment of the Companies and their shareholders.

g. Attempt to dilute the shareholding of the Companies.

3 In its impugned order, the CLB held that the principles of quasi-partnership are applicable to the two companies, Lirin and Simplex; that both the Respondents were removed without following due process and such removal amounted to a gross act of oppression within the meaning of Section 397 of the Act. The CLB also found the appointment of additional directors by the Appellants illegal and fraudulent. The CLB found merit in the Respondents' allegations of mismanagement in the conduct of affairs of the two companies. The CLB found that Appellant No.2 through his son and son-in-law was running a parallel company by the name of Lirin Logistics Pvt.Ltd.; that he had diverted the business of the companies; that there were financial irregularities in the statements of accounts; and that there were also irregularities in holding meetings of the companies. The CLB came to a conclusion that all these acts taken together were wrongful, burdensome, harsh and unfair to the Respondents and also amounted to mismanagement. The CLB, accordingly, allowed the

Respondents' petitions, by granting the following reliefs, apart from other miscellaneous reliefs.

> **(i)** Re-instatement of the Respondents on the boards of the two companies;
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> **(ii)** Removal of directors other than Appellant No.2;
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> **(iii)** Directions to hold board meeting and EOGM for necessary compliance and appointment of statutory auditor;
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> **(iv)** Directions to conduct a special audit of the companies for the period from 1.4.2010 through the statutory auditor and recovery of losses from Appellant No.2 upon diversion and misappropriation of funds being found.

4 The CLB order is impugned in these appeals on various grounds. The Appellants have, however, not been able to point out any question of law on which the impugned order could be shown to be erroneous. The preliminary objections of the Appellants to the maintenability of the original petitions had absolutely no merit. The CLB rightly held that a petition complaining of oppression and mismanagement is maintenable at the instance of majority shareholders. There can hardly be any contest on that proposition. So also, the acts complained of in the petitions actually come within the provisions of Sections 397 and 398 and cannot be termed as personal disputes which ought to be taken before a civil court. There is also no merit in the argument on limitation. The CLB held that the Respondents were aggrieved by unilateral decisions taken by Appellant No.2 at the back of the Respondents in 2011 and immediately thereafter, the petitions were filed. No exception can be taken to this finding on a question of law.

5 On merits, the principal contest was on removal of the Respondents as directors of the companies. The CLB has, in the first place, observed that the companies were in the nature of quasi-partnerships. That was a mixed question of law and facts. The conclusion is based on material available before the CLB

and does not disregard any relevant document or material. In the backdrop of this nature of the companies, the CLB came to the conclusion that the two grounds on which removal of the Respondents was sought to be justified were untenable. The first ground was non-disclosure of interests by the Respondents under Section 299 of the Act. There is absolutely no material on record to show any contravention on the part of the Respondents of Section 299. Section 299 talks about the director's concern or interest in any contract or arrangement entered into or to be entered into by or on behalf of the company and disclosure of such concern or interest at the board meeting. There is no specific instance of any concern or interest in any such contract or arrangement being undisclosed on the part of the Respondents. The other ground is absence of the Respondents at three consecutive meetings of the board. On this, the CLB came to a conclusion that the Respondents had successfully established that no valid notice of the alleged board meetings was served on the Respondents. The CLB found the removal of the Respondents on the ground of failure to attend meetings illegal and non-est. Once again, this is a conclusion of fact based on analysis of material available before the CLB and does not either take into account any irrelevant material or disregard any relevant material. No question of law can be said to arise in respect of the conclusion. The CLB found appointments of other persons as directors to be illegal. The CLB also found that Appellant No.2 had committed breach of fiduciary duty in his capacity as a director of the companies and also there was mismanagement of their affairs. It was found as a matter of fact that Appellant No.2 was running a parallel competitive business in the name of his family members; that due to this the companies' business had gone down; that there were irregularities in the statements of account and also in conducting meetings. On the other hand, the CLB found no substance in the Appellants' counter allegations against the Respondents. Much of all this is a pure factual content. No question of law is demonstrated to be arising in connection therewith. The CLB granted reliefs, which are permissible under Section 402, after finding acts of oppression and mismanagement and applying its mind to justification of making a winding up order and unfair prejudice to the complaining members.

6 No question of law arises in the appeal, except perhaps the

question of direct recovery of losses from Appellant No.2 after a special audit, in the event of findings of diversion or misappropriation in such audit. The matter ought to be decided by the CLB itself after hearing the parties on the conclusion of special audit. Learned Counsel for the Respondents has no objection to this part of the impugned order being set aside.

7 According, the following order is passed:

(i) The company appeals are dismissed and the order passed by the Company Law Board, Mumbai Bench on 9 April 2015 in CLB Company Petition Nos.36 of 2011, 37 of 2011 and 39 of 2011 is confirmed, save and except the sentence appearing in Clause (d) of the order, commencing with the words "In case, it is found that" and ending with the words "recovered from him, from his personal resources";

(ii) By consent of parties, the direction contained in Clause (d) of the order dated 9 April 2015 commencing with the words "In case, it is found that" and ending with the words "recovered from him, from his personal resources" shall stand set aside;

(iii) It is directed that in the event it is found in the special audit to be conducted in pursuance of the order dated 9 April 2015 that Appellant No.2, namely, Rasiklal C. Chheda, diverted and / or misappropriated any funds of the companies or caused any loss to the companies by committing any misappropriation or diversion of funds, the Company Law Board shall pass appropriate orders regarding recovery of such loss from Appellant No.2 after hearing all the parties. To the extent such orders are to be passed upon completion of the special audit referred to in the order dated 9 April 2015, Company Petition Nos.36 of 2011, 37 of 2011 and 39 of 2011 shall remain pending before the Company Law Board;

(iv) M/s.Kalyaniwalla & Mistry are appointed as Auditors to carry out a special audit referred to in the order dated 9 April 2015. The fees of the auditors shall be paid by the two companies, namely, Lirin Road Lines Pvt.Ltd. and Simplex Crane Services Pvt.Ltd. Whilst conducting the special audit of the companies, if the papers require any documents concerning Lirin Logistics Pvt.Ltd., the same shall be handed over to the auditors upon a request made in that behalf to Appellant No.2. The parties to inform M/s.Kalyaniwalla & Mistry about their appointment in accordance with this order.

(v) Learned Counsel for the Respondents states that their clients' sons shall not enter the premises of the companies or interfere with the conduct of the affairs of the companies. The statement is accepted.

(vi) The parties will be at liberty to apply to this Court in the event of any difficulty in the conduct of the special audit in accordance with the order dated 9 April 2015. Such application to be made in the disposed of appeals herein.

(vii) Liberty to the parties to apply to the Company Law Board in the pending company petitions about any other relief forming part of the pending company petitions, including for recovery of losses after conduct of the special audit.

(S.C. Gupte, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/Order :