dik

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 77 OF 2014

Sanjay Purushotamdas Bathija ...Appellant
vs
Prashant Properties & Investment Pvt. Ltd. & Ors. ...Respondents

.....

Ms Rita Bhatia a/w Bharat Bhatia for the Appellant.
Mr Himank Singh i/b Raval – Shah & Co. for the Respondent.

.....

CORAM : S.C. GUPTE, J.
AUGUST 28, 2015

P.C. :

The Company Appeal impugns an order passed by the Company Law Board ("CLB") under Section 111 (4) read with Sections 397 and 398 of the Companies Act, 1956 ("the Act"). The subject matter of the Appeal is an allotment of shares in favour of the Appellant.

2 The Appellant has been holding 33.33 % shares in the first Respondent company. The original share capital of the company consisted of 510 subscribed and paid up shares of the face value of Rs.100 each. Out of these shares the Appellant held 170 shares. The other shareholders of the company were one Bharati Bhatija (10 shares), one Madan Mohan Bhatija- brother of the Appellant (310 shares), Madan Mohan Bhatija – HUF (10 shares) and Shyamsundar Katara – uncle of the Appellant (10 shares). This was the position prior to year 2001. Having regard to the subsequent transfers of shares, by 7 December 2002, whereas the Appellant continued to hold 170 shares, that is to say 33.33 % shareholding in the first Respondent company, Bharati came to hold 330 shares, whilst Madan Mohan Bhatija continued to hold 10 shares. The transfer of shares in favour of Bharati was challenged by the Appellant before the City Civil Court, Bombay. Short Cause Suit No.1603 of 2011 filed by the Appellant in this behalf is still pending before the City Civil Court, Bombay. There

is no interim relief, however, granted by the City Civil Court to the Appellant in that suit. On 7 December 2002, the first respondent company issued 4490 shares to one R.O.I. Exim Pvt. Ltd. This allotment was challenged by the Appellant before the CLB. By its order dated 26 November 2006, the CLB quashed this allotment and directed the Company to re-allot 4490 shares to the existing shareholders. This order was not complied with for a substantial length of time. Thereafter, on 17 September 2012, the first Respondent company informed the Appellant that the company was cancelling allotment of 4490 shares allotted to R.O.I. Exim Pvt. Ltd. and proposing to re-allot the same to the existing shareholders in accordance with their existing percentage of holdings in the company. The company also called for payment of share subscription amount towards this allotment. Accordingly, the Appellant submitted a cheque in the sum of Rs.1,48,200/- towards 1482 equity shares of Rs.100/- each in the company towards 33.33 % shares from out of the new allotment. The company by its order dated 23 October 2012, confirmed having received the share allotment money and informed the Appellant about issuance of 1482 shares as per the CLB order dated 22 November 2006. Subsequently, on or about 30 May 2014, the first Respondent sent another communication to the Appellant informing the Appellant *inter alia* that the Company was proposing to cancel the allotment of 4490 shares and re-allot 4490 shares to the existing shareholders, in accordance with their shareholding ratio. According to the company, this was necessary due to the following reason. Though in compliance with the CLB order dated 26 November 2006, the first Respondent company cancelled the allotment of shares issued to ROI Exim and reduced the share capital in its books to Rs.51,000/- as it existed prior to that allotment, no effect was given to the same in the records of the Registrar of Companies (ROC). As a result the company's records did not reconcile with the ROC records. In between, the Act was amended and the requirement of minimum share capital of Rs.1 lac was introduced in the law. The company could not, in the premises, go ahead and cancel the allotment of 4490 shares, since that would have brought down the capital in the ROC records to below Rs.1 lac and the computerized filling system would not have accepted that. Thus it was proposed that whilst the Respondent company would comply with the CLB order of 22 November 2006 by cancelling the old erroneous allotment in the records of ROC and making a fresh allotment of those shares to the existing shareholders, it had to adopt a peculiar strategy to achieve this. That strategy was to make new allotment of 4490 shares to the existing shareholders, cancel the old allotment of 4490 shares to R.O.I. Exim, thereafter cancel the new allotment of 4490 to the existing shareholders and then re-allot the 4490 shares to earlier wrongly issued to R.O.I. Exim to the existing shareholders so as to comply with the CLB order. When the Company, accordingly, after issuing 4490 new shares and allotting the same to the existing shares, proceeded to cancel the allotment, the Appellant challenged the action on the part of first Respondent company. In the impugned order, the CLB proceeded to hold that the device adopted by the Respondent company was necessary, since in absence of such device, the system of MCA would not have accepted e-filing of the necessary form and that after uploading 4490 shares, they would cancel the old allotted 4490 shares in terms of the CLB order and re-allot them to the existing shareholders.

2 There is no error of law in the impugned order. The cancellation of 4490 newly issued shares, earlier allotted to existing shareholders (including 1482 shares allotted to the Appellant) and re-allotment of 4490 earlier issued shares so as to comply with the CLB order and thereby maintaining the existing shareholding ratio amongst the shareholders of the Respondent company, is merely a formality. What is important is to note that the Appellant has throughout been holding 33.33 % of the shareholding in the first Respondent company and that he continues to do so till date and even after cancellation and re-allotment of the shares. Besides, after the impugned order of the CLB, the company has already proceeded to re-allot 4490 shares to the existing shareholders which includes allotment of 1482 shares to the Appellant. Even the Appellant has, without prejudice to his rights, paid for these re-allotted shares separately.

3 In that view of the matter, there is no merit in the appeal and the same is dismissed. The first Respondent company shall refund the amount of Rs.1,48,200/- held by the first Respondent company towards the cancelled allotment of 1482 shares to the Appellant. Such refund shall be made within a

period of three weeks from today. Learned Counsel for the first Respondent company states that an inspection of records of the company shall be offered to the Appellant, in accordance with the order passed by the CLB on 22/27 June 2013, and as requisitioned by the Appellant on 22 August 2014, within a period of three weeks from today. The statement is accepted. Such inspection shall be given in respect of such of the requisitioned documents as are available with the first Respondent company. The appeal is disposed of accordingly.

(S.C.GUPTE J.)