

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.11.2017

Date of Verdict: 15.11.2017

Coram

The Hon'ble Mr. Justice **M.M.SUNDRESH**

Company Appeal Nos.12 and 13 of 2012 and 10 of 2014  
and  
M.P.Nos.1 and 1 of 2012

1.Tacel Sanitaryware Private Limited,  
R.S.No.120/6, Anna Nagar,  
Kattukudalore Road,  
Vridhachalam - 606 001.

2.B.Vridhagiri

V.Balaji

1.R.Meikandanathan  
2.P.Sivaraman  
3.S.Selvirathna  
4.V.Lalitha

Appellants in  
Company Appeal  
No.12 of 2012

Appellant in  
Company Appeal  
No.13 of 2012

Appellants in  
Company Appeal  
No.10 of 2014

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Vs

1.Abdul Latheef Meera Sahib  
2.A.Mohamed Ashhar  
3.V.Balaji

4.R.Meikandanathan  
 5.P.Sivaraman  
 6.S.Selvirathna  
 7.V.Lalitha  
 8.M/s.Tacel Ceramics Pvt. Ltd.,  
 R.S.No.118, Anna Nagar,  
 Vridhachalam - 606 001.

9.M/s.Tacel Pipes Pvt. Ltd.,  
 R.S.No.348, Anna Nagar,  
 Vridhachalam - 606 001.

.. Respondents in  
 Company Appeal  
 No.12 of 2012

1.Abdul Latheef Meera Sahib  
 2.A.Mohamed Ashhar  
 3.Tacel Sanitarywares Private Limited,  
 R.S.No.120/6, Anna Nagar,  
 Kattukudalore Road,  
 Vridhachalam - 606 001.

4.B.Vridhagiri  
 5.R.Meikandanathan  
 6.P.Sivaraman  
 7.S.Selvirathna  
 8.V.Lalitha

9.M/s.Tacel Ceramics Pvt. Ltd.,  
 R.S.No.118, Anna Nagar,  
 Vridhachalam - 606 001.

10.M/s.Tacel Pipes Pvt. Ltd.,  
 R.S.No.348, Anna Nagar,  
 Vridhachalam - 606 001.

.. Respondents in  
 Company Appeal  
 No.13 of 2012

1.Abdul Latheef Meera Sahib  
2.A.Mohamed Ashhar

3.M/s.Tacel Sanitaryware Private Limited,  
R.S.No.120/6, Anna Nagar,  
Kattukudalore Road,  
Vridhachalam - 606 001.

4.B.Vridhagiri  
5.V.Balaji

6.M/s.Tacel Ceramics Pvt. Ltd.,  
R.S.No.118, Anna Nagar,  
Vridhachalam - 606 001.

7.M/s.Tacel Pipes Pvt. Ltd.,  
R.S.No.348, Anna Nagar,  
Vridhachalam - 606 001.

.. Respondents in  
Company Appeal  
No.10 of 2014

Appeals filed under Section 10 F of the Companies Act, 1956  
against the order of the Company Law Board, Chennai dated  
17.05.2012 in C.P.No.62 of 2009.

For Petitioner ..

Mr.B.Vridhagiri,  
Party in person  
in Company Appeal No.12 of 2012  
Mr.S.Partheeban  
in Company Appeal No.10 of 2014  
No appearance in  
Company Appeal No.13 of 2012

For Respondents .. Mr.B.Kumar,  
 Sr. Counsel  
 for M/s.S.Manjula Devi  
 Mr.M.N.Hassan Naina  
 for R1 and R2  
 in all the Company Appeals  
 R3 to R9 - given up  
 in all the Company Appeals

**COMMON JUDGMENT**

As all these appeals emanated against the same order coupled with the fact that arguments have been addressed by the second appellant (B.Vridhagiri) in Company Appeal No.12 of 2012 as party in person and taking into consideration the submission made by the learned counsel for the appellants in Company Appeal No.10 of 2014 that such arguments may be taken as the arguments on behalf of all the appellants, they are accordingly disposed of by a common order.

2.For the sake of brevity, the appellants in Company Appeal No. 12 of 2012 are taken as such for the purpose of disposing of the appeals. The other appellants are none other than the family members of the second appellant in Company Appeal No.12 of 2012.

3. Before going into the merits of the case, as espoused by the parties, let us have a revisit to the provisions governing.

4. Section 397 of the Companies Act, 1956 (hereinafter referred to as 'the Act') enables any member of a company to file an application to the Company Law Board for appropriate relief *qua* oppression. Section 398 of the Act inter alia provides for a relief in cases of mismanagement. In both these provisions, the Company Law Board has been invested with substantial powers as could be seen from the words "make such order as it thinks fit".

5. Under Section 402 of the Act, powers of the Company Law Board when an application is made either under Section 397 or 398 of the Act are prescribed. These powers are without prejudice to the generality of the powers which could be exercised under Sections 397 and 398 of the Act. Thus the powers are circumscribed and controlled by the provisions which clearly indicate that they are of wider import. Section 402 of the Act speaks about the orders that can be passed by the Company Law Board on the applications made under Sections 397

and 398 of the Act. These powers are illustrative in nature without affecting the general power granted under Sections 397 and 398 of the Act. Therefore, when these three provisions are put together and an applicant makes a request, the powers of the Company Law Board become substantial.

6. Wayback in the year 1964, Justice P.N. Bhagwati acting as a Judge of the Gujarat High Court in **Mohanlal Ganpatram Vs. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd., ((1964) 34 Compca 777(Guj))** has held as follows:

*"It does not say that a transaction amounting to fraudulent preference may be set aside only if it is effected within three months before the date of the application, or does it contain any words indicating that only transactions amounting to fraudulent preference effected within the said period of three months may be set aside and no others. The provisions in clause (f) of Section 402 are clearly not a provision which in any way derogates from the general power of the Court under Sections 397 and 398."*

7. The aforesaid principle of law would clearly establish the object, purpose and rationale involving the administration of the

company to be exercised by the Court.

8.In **V.S.Krishnan and Others Vs. Westfort Hitech Hospital Ltd., and Others ((2008) 3 SCC 363)**, the Apex Court made the following observations:

*"The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is malafide or for a collateral purpose, it would amount to oppression under Sections 397 and 398."*

9.In the decision of the Apex Court in **Sangramsinh P.Gaekwad and Others Vs.Shantadevi P.Gaekwad (dead) through LRs and Others ((2005) 123 Compas 566(SC))**, the following passage would be of relevance:

*"The jurisdiction of the Court to grant appropriate relief under [Section 397](#) of the Companies Act indisputably is of wide amplitude. It is also beyond any controversy that the court while exercising its discretion is not bound by the terms contained in [Section 402](#) of the Companies Act if in a particular fact situation a further relief or reliefs, as the court may seem fit and proper, is*

warranted."

10. Again, the High Court of Gauhati in **Deepaklohia Vs. Kamrup Developers Private Limited ((2010) 157 CompCas 82 (Gauhati))** was pleased to hold that the Company Law Board can pass a just and equitable order in the interest of justice. It is apposite to place hereunder the following paragraph:

*"The said provisions of the Act, therefore, make it clear that the Company Law Board, apart from passing orders, as it thinks fit, while dealing with an application under Section 397/398 of the Act, is also empowered to pass any such order, which in its opinion is just and equitable. The validity of an order passed by the Company Law Board, therefore, is to be judged in the backdrop of its power to pass such orders, as noticed above."*

11. A Division Bench of our High Court in **C.G. Holdings Private Limited rep. by its Director and Others Vs. Ramasamy Athappan and Others (2012 170 CompCas 93 (Mad))** after taking note of the earlier judgment, was pleased to make the following observation:

*132. In 1997(90) Company Cases 1, Division Bench of this Court had an occasion to consider the scheme of*

*the Act pertaining to corporate management of the Companies. Observing that under Sections 398 read with 402 of the Companies Act, power has been conferred upon the Court (Company Law Board) to make such order as it thinks fit, it was held as under:*

*"Under section 397 read with section 402 power has been conferred on the court 'to make such orders as it thinks fit if it comes to the conclusion that the affairs of a company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members and that to wind up the company would unfairly prejudice such member or members but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up 'with a view to bringing to an end the matters complained of'. Similarly, under section 398 read with section 402 power has been conferred upon the court 'to make such orders as it thinks fit', if it comes to the conclusion that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or that a material change has taken place in the management or control of the company by reason of which it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or or in a manner prejudicial to the interests of the company 'with a view to bringing to an end or preventing the*

*matters complained of or apprehended' (emphasis supplied). Both the wide nature of the power conferred on the court and the object or objects sought to be achieved by the exercise of such power are clearly indicated in sections 397 and 398.....*

*While exercising the powers under sections 397 and 402 of the Companies Act, the court is considering not only the relief that is sought for, but also considers as to what is the nature of the complaint and how the same has to be rectified. It is the interest of the company that is being considered and not the individual dispute between the petitioner and the respondent. If that be so, the interest of the company requires that the majority shareholders must have their say in the management...."*

*The same principle was reiterated in ALDGATE INTERNATIONAL SA VS. AL CHAMPDANY INDUSTRIES LIMITED AND OTHERS, (2011 (164) Comp. Cases 123).*

Thus, in the light of the aforesaid pronouncement and the discussion made, there is no difficulty in holding that the power of the Company Law Board is wide enough to be exercised in the interest of justice.

12.As against the decision of the Company Law Board aforesaid, an appeal would lie under Section 10F of the Act. This provision

permits any person aggrieved by a decision or an order of the Company Law Board to file appeal before the High Court. However, there lies a caveat. Such an appeal is not a regular first appeal but only on the question of law, which in turn must emanate from the order appealed against. Therefore, the statute prohibits an adjudication otherwise on a question of law. The High Court merely provides a remedy under the statute and hence is bound to act within the restrictive play field under Section 10F of the Act. This provision also debars the High Court from venturing into the facts.

13. Having understood the scope of the relevant provisions, let us go into the factual matrix. The first appellant in Company Appeal No.12 of 2012 was originally incorporated on 28.03.2002 and thereafter changed into a new name with effect from 21.07.2005. It engaged in the business of manufacturing and dealing of ceramic and sanitary ware etc. There are two other allied companies. All these companies were run by the same family.

14. The first appellant got into a financial crisis. According to the party-in-person, it was due to the non-availability of natural gas. This resulted in a memorandum of understanding being entered into

between the first appellant represented by the second appellant (party-in-person) and the first respondent. Accordingly, it was executed on 12.11.2007. The terms reduced into writing and not in dispute are as follows:

*(i)The networth of the company is Rs.2,95,12,693/-*

*(ii)The land on which the factory is occupying on rental basis, is to be bought by the Company and its value is Rs.1,23,60,000/- out of which petitioner has to contribute his 49% of the value as his share.*

*(iii)R2 is to make good the net loss by contributing Rs.90 lakhs.*

*(iv)The accounting and marketing functions to be taken over by P1.*

*(v)R2 shall manage administration, production and quality control.*

*(vi)Both P1 and R2 shall jointly manage the financial requirements.*

*(vii)All statutory and other liabilities prior to the MOU is to be borne by R2.*

15. 49% of the shares has been fixed by taking into consideration, the total value of the company. Respondents 1 and 2 were inducted as Directors of the company on 12.11.2007. On the very same day, a sum of Rs.2,05,17,620/- was remitted into the account of the first appellant. There is no dispute that this amount was utilized for the first appellant. On the same day, one more agreement was entered into for the sale of the land owned by one of the appellants in favour of the first appellant. This was with respect to the land which was already on lease in favour of the first appellant. A sum of Rs.25 lakhs has been paid being part of the sale consideration of Rs.30 lakhs and it appears, the remaining amount was also paid subsequently.

16. There was series of correspondence between the parties thereafter. There were correspondence between the creditor bank and the second appellant. There was also some understanding on the increase of share holding pattern to 76:24 between respondents 1 and 2 and the second appellant. Under Ex.B39, it was also informed to the creditor bank on 19.08.2008. It was followed by another letter

dated 22.08.2008. They have been sent on behalf of the first appellant by notifying the first respondent as the Chairman and the second appellant as the Managing Director.

17.The second appellant/party-in-person sent a communication under Ex.B43 dated 16.10.2008 to the first respondent seeking to extend the letter of credit. In the said letter, he also indicated that the draft agreement would be cleared from his end. This letter of credit is with respect to an export order. The first respondent made a reply under Ex.B44 stating that the second appellant could not perform the letter of credit as per Rules despite an extension granted. The letter also indicates that the plant has been shut down without intimation. Accordingly, a request was made to pay back the investment made in the company.

18.The request made was followed by two more communications. Thereafter, the second appellant replied stating that the intention was to grab the company. He reiterated that the first respondent was only a joint venture partner as per the memorandum of understanding and not otherwise.

19. When the dispute *inter se* was going on, the second appellant and others did two things. The Annual General meeting was held on 30.09.2008 apparently without notice to the respondents. The notice of the Annual General Meeting was purportedly approved at a Board meeting held on 04.09.2008. The names of respondents 1 and 2 were dropped as Directors with effect from 30.09.2008. However, Form No.32 was filed only on 26.06.2009.

20. The Extraordinary General Meeting was also held on 05.01.2009 authorizing the increase of capital from Rs.3.20 crores to Rs.5.20 crores. Form No.5 has been filed again belatedly on 01.04.2009. The articles of association have also been amended and Form No.23 has been filed on 28.03.2009. There was nothing to indicate the service of notice on the respondents. Resultantly, on 13.03.2009, 20 lakhs shares were issued to the sister concerns who were arrayed as Respondents 8 and 9 before the Company Law Board. There was no consideration for the allotment of shares. Apparently, the consideration as sought to be projected was the usage of machineries and assets.

21.The net result of the above was the removal of respondents 1 and 2 as Directors and about 29% shares had been drastically reduced.

22.Under those circumstances, respondents 1 and 2 approached the Company Law Board for appropriate action seeking to invoke Sections 397 and 398 of the Act and by exercising the power available under Section 402 of the Act. Before the Company Law Board, parties were heard at length. They were also permitted to file written arguments. Though a contention has been sought to be raised before this Court by the appellants that it is the respondents, who have not come to the Court with clean hands as particularly in not extending the letter of credit, it was not raised specifically before the Company Law Board. By way of a reply in the counter affidavit, it has only been stated that the respondents failed to take appropriate action for procuring orders both export and indigenous. Thus, it can, at best be stated as a vague statement. No such contention was also raised in the written arguments and thus indicated in the order passed. The only recording in the order was with respect to the steps taken by the respondents in organizing the letter of credit worth Rs.65 lakhs while

securing the export order. The communication between the parties as seen from Ex.B43 dated 16.10.2008 and Ex.B44 dated 16.10.2008 would also show that the first respondent has clearly told the second appellant that it is he who has failed to take the necessary and appropriate action. The records also would reveal that the second appellant did not raise this issue thereafter.

23.The Company Law Board came to the conclusion that divesting the respondents 1 and 2 on 30.09.2008 constituted oppressive act. After all, the second appellant and his family members owned the company in all respects. The entire action on the part of the appellants by conducting the Annual General Meeting and General Body Meeting was one out of design to reduce the share holding of the respondents and to remove them from the directorships by back door method. Accordingly, it was held that such action lack probity and good faith especially when there was no notice. Resultantly, the respondents are entitled to get their directorship with the first appellant restored. It was further held that the notices of Extraordinary General Meeting did not contain a proposal for alteration. Two different set of documents were issued. Thus the Extraordinary General Meeting held was invalid.

24. Coming to 20 lakhs equity shares issued to the sister concerns, the Company Law Board was pleased to hold that there was absolutely no material that it was supported by consideration besides done without notice to respondents 1 and 2. By such a clandestine and unilateral act, the stake of respondents 1 and 2 got reduced from 49% to 30% in one stroke. Having found that the sale consideration having been parted with, it was held that steps should be taken to get the sale deed registered in the name of the company as the objection was only on the inability to do registration for want of money to pay the stamp duty.

25. A factual finding has been given that there was no action taken on the part of the first respondent to take control of the company or in getting back the investment. Incidentally, it was held that considering the admitted fact that money being infused into the company and in view of the subsequent development, the case of the respondents deserves to be considered in the affirmative. On the question of conduct, the Company Law Board has held that the conduct of the appellants requires to be commented upon as against the respondents. Not only the respondents were removed with their

shares reduced by a well thought out action but the appellants have also reported to the bank with the false statement that the respondents 1 and 2 have resigned from the company.

26. After having found all the above issues against the appellants, the Company Law Board by taking note of the facts surrounding granted a lesser relief. Accordingly, it directed repayment of Rs.2,48,17,620/- being the investment made by respondents 1 and 2 both at the time of entering into the memorandum of understanding and thereafter with 6% interest per annum. The amount due was made chargeable on the immovable properties. The liability has been fastened on all the appellants. It is this order which is sought to be challenged before this Court.

27. The appellants would submit that respondents 1 and 2 have not come with clean hands. The loss has occurred because of the non-cooperation. There is nothing wrong in the Annual General Meeting and the Extraordinary General Meeting conducted. The intention of respondents 1 and 2 was to grab the company. The memorandum of understanding will not bind the first appellant as it was only between the second appellant and the first respondent. The transaction is only a

loan transaction. The decisions relied upon by respondents 1 and 2 are not applicable to the case on hand. There is no way the properties of the Directors and the one which is the subject matter of the agreement could be included. The liability of the company cannot be fastened on the Directors. There is no oppression or mismanagement involved. The Company Law Board has not taken into consideration the relevant facts. It has also applied the facts wrongly. In support of the contentions of the appellants, the following judgments have been relied:

(i) *Shanthi Prasad Jain Vs. Kalinga Tubes Ltd.*, ((AIR 1965 SC 1535)

(ii) *Maharaja Exports and Another Vs. Apparels Export Promotion Council* ((1986) 60 Compcas 353)

(iii) *V.B.Rangaraj Vs. V.B.Gopalakrishnan and Others* (AIR 1992 SC 453)

(iv) *Hari Vishnu Kamath Vs. Ahmad Ishaque and Others* (AIR 1995 SC 233)

(v) *Hanuman Prasad Bagri and Othes Vs. Bagress Cereals (P) Ltd. and Others* (AIR 2001 SC 1416)

(vi) *Somalingappa Shiva Putrappa Mugabasav Vs. Shree Renuka Sugars Ltd.*, ((2002) 110 Compas 371)

(vii) *Radhe Shyam Tulsian and Others Vs. Panchmuky Investments Ltd.*, ((2003) 113 Compas 298)

(viii) *S.B.P.Anand Mohan Vs. Graphic Impressions (Madras) Limited and Others* ((2004) 120 Compas 265)

(ix) *P.Natarajan Vs. Central Government and Others* ((2004) 119 Compas 41)

(x) *Sangramsinh P.Gaekwad and Others Vs. Shantadevi P.Gaekwad (dead) through LRs and Others* ((2005) 123 Compas 566(SC))

(xi) *Ramesh Chand Goyal and another Vs. Himalaya Communications Ltd. and another* ((2006) 129 Compas 297)

(xii) *Westfort Hitech Hospital Ltd., and another Vs. V.S.Krishna and Others* ((2007) 137 Compas 151)

(xiii) *V.S.Krishna Vs. M/s. Westfort Hitech Hospital Ltd.*, ((2008) 3 SCC 363)

*(xiv) Sachin Bansal Vs. Accent Shoes (P) Ltd.,  
((2009) 150 Compas 319)*

*(xv) C.G.Holdings Private Limited and Others Vs.  
Cheran Enterprises Private Limited and Others ((2010)  
159 Compas 266)*

28. The learned senior counsel appearing for respondents 1 and 2 would submit that the appeals are not maintainable as there is no compliance of Section 10F of the Act. A factual adjudication is not permissible before this Court. The powers of the Company Law Board being substantial and wide, the relief can be moulded in the interest of justice. The findings would clearly show that it is the appellants, whose hands are not clean. When there is no dispute about the money injected by respondents 1 and 2 and in view of the facts as discussed by the Company Law Board, the order passed, does not warrant any interference. In support of his contention, the learned senior counsel made reliance on the following decisions:

*(i) C.G.Holdings Private Limited and Others Vs.  
Cheran Enterprises Private Limited and Others ((2012)  
109 CLA 238)*

*(ii) Dilip S.Dhanukar Vs. Kotak Mahindra Co. Ltd., and  
Anr. (Manu/SC/8289/2007)*

(iii) *Kammins Ballroom Co. Ltd., Vs. Zenith Investments (Torquay) Ltd.*, ((1970) 2 ALL ER 871))

(iv) *Mohanlal Ganpatram Vs. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd.* ((1964) 34 Compas 777(Guj))

(v) *V.S.Krishnan and Others Vs. Westfort Hitech Hospital Ltd., and Others* ((2008) 3 SCC 363)

(vi) *Sangramsinh P.Gaekwad and Ors. Vs. Shantadevi P.Gaekwad (dead) through LRs and Others* ((2005) 123 Compas 566(SC))

(vii) *Deepaklohia Vs. Kamrup Developers Private Limited* ((2010) 157 Compas 82(Gauhati))

29.As discussed above, the powers of the Company Law Board are rather wide. When the powers are wide so is the element of discretion. The Company Law Board gave a specific finding bringing the case under Sections 397 and 398 of the Act, thus exercised the powers under Section 402 of the Act. There is no dispute on the memorandum of understanding entered into. It has been entered into by the second appellant on behalf of the first appellant. The fact that it has been given effect to is not in dispute through the shares allotted and as seen from the subsequent documents including the correspondence with the bank. Therefore, it is not open to the appellants to contend that it was purely an agreement between the second appellant and the first respondent. Similarly, the transaction is

not a pure and simple money transaction. If that is the case, there was no need to remove the Directors and reduced the shares through the meetings conducted without respondents 1 and 2. All these aspects have been considered at length by the Company Law Board. This Court does not find any perversity in the decision arrived at. Having found that the appellants are still holding 51% of the shares and having the company run by the family members, the Company Law Board rightly granted the relief. The appellants could not produce any document to show that due procedure has been followed in conducting the meetings. In fact, as rightly found by the Company Law Board, there was no need for such a meeting at all. There was no consideration passed. Obviously, the attempt was to cripple and curtail the activities of respondents 1 and 2 qua the company.

30. The findings have been rendered only on facts. When such is the position, as rightly submitted by the learned senior counsel for the respondents, appeal is liable to be dismissed for want of existence of a question of law. When once the appellants are unable to frame a question of law and convince the Court of its existence, the appeal becomes not maintainable. In other words, this Court can go into the appeals only on satisfying the existence of question of law and

thereafter answers it. In such view of the matter, this Court does not find any question of law involved, warranting interference.

31.The decisions relied upon by the appellants are not applicable to the case on hand. The Company Law Board, in the considered opinion of this Court, has passed a very fair order, extending an element of fairness on its part to both the parties, though the appellants may not deserve otherwise. Accordingly, all the appeals stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2017

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To

The Company Law Board,  
Chennai.

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**M.M.SUNDRESH, J.**

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Pre-delivery order in  
Company Appeal Nos.12 and  
13 of 2012 and 10 of 2014

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15.11.2017