

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :07.08.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

COMPANY APPEAL.No.1 of 2015
and
M.P.Nos.1 to 3 of 2015

1. Easwaramurthy Arumugam
2. Arumugam Maheshwaran
3. Saraswathi Arumugam

...Appellants

Vs.

1. Sree Thirumalai Electronics Pvt.Ltd
having its registered Office at
346/101, Kumaran Road,
Tirupur, Coimbatore District 641 601
2. Mr.Pattulinghanatarajan Ramesh
3. Ms.Roopu Rekha Kathirvelu
4. Mr.C.Palaniswamy Gounder
5. Ms.Usha Mase
6. Ms.K.Srivalli
7. Ms.Pavithra
8. Mr.Lickmi Chand Jain
9. Mrs.Prema Muthugounder
- 10.Mrs.Illangani Perumal

...Respondents

Prayer:- This Company Appeal has been filed under Section 10F of the Companies Act, 1956 to set aside the order dated 09.03.2015 passed by the Hon'ble Company Law Board, Chennai Bench, Chennai in C.P.No.19 of 2015.

For Appellants : Mr.P.H.Aravindh Pandian,
Senior Counsel for
Mr.Harishankar Mani

For Respondents 1 to 7 : Ms.Chitra Narayanan

For Respondent 8 : Mr.R.Sankaranarayanan

For Respondents 9 & 10 : No Appearance

J U D G M E N T

The Company Appeal is directed against the order passed by the Company Law Board in C.P.No.19 of 2015 on 09.03.2015. The said petition was filed before the Company Law Board under Sections 397 and 398 of Companies Act 1956. This Company Appeal is filed raising the following substantial questions of law:

- a) Whether the Hon'ble Company Law Board was right in concluding that interim relief No.9.1 is infructuous on the ground that the Extra ordinary general meeting was already held, without considering the fact that the Company Petition was filed prior to the date of EGM?
- b) Whether the Hon'ble Company Law Board was right in not considering interim relief No.9.2 seeking order that any resolution passed at the EGM held on 26.02.2015, is non-est and non-binding on the respondent Company, till the disposal of the Company Petition or on the Appellants and the purported resolutions passed there at shall not be given effect to?
- c) Whether the Hon'ble Company Law Board was right in concluding that interim relief No.9.3 that sought an order restraining the respondents from passing any resolution for the removal of the 1st Appellant as Managing Director of first respondent company, without the leave of the Bench, as infructuous, on the ground that EGM has already been held and necessary form has been filed by the respondents?
- d) Whether the Hon'ble Company Law Board was right in not considering the fact that the Extra Ordinary General Meeting on 26.02.2015 was not held in accordance with the provisions of Section 100(2) of the Companies Act, 2013 as the respondents 2 and 3 were not authorized by the Board to issue any notice?
- e) Whether the Hon'ble Company Law Board was right in not considering the fact that the Extra Ordinary General Meeting on 26.02.2015 was not held in accordance with the provisions of Section 101(1) of the Companies Act, 2013 as 21 days clear notice was not given by the respondents 2 and 3?.
- f) Whether the Hon'ble Company Law Board was right in not considering the fact that the Extra Ordinary General Meeting on 26.02.2015 was not

held in accordance with the provisions of Section 101(2) of the Companies Act, 2013 as the items No.4 and 5 as listed out in the notice dated 04.02.2015 was not transacted at the EGM?.

- g) Whether the Hon'ble Company Law Board was right in not considering the fact that the Extra Ordinary General Meeting on 26.02.2015 was not held in accordance with the provisions of Section 101(2) of the Companies Act, 2013 as a new item that was not listed in the notice dated 04.02.2015 was transacted at the EGM as item No.4? Based solely on such new item that authorized the 3rd respondent to file forms, several illegal forms have been filed by the 3rd respondent to file forms, several illegal forms have been filed by the 3rd respondents with the Registrar of Companies, Coimbatore thereby changing completely the board structure of the Company and also for shifting of registered office of the Company.
- h) Whether the Hon'ble Company law Board was right in not allowing interim reliefs 9.1 to 9.3 when the EGM itself was not convened or conducted as per the provision of Companies Act, 2013?.
- i) Whether the Hon'ble Company Law Board was right in coming to a conclusion that the Appellants have not made a prima facie case without going into the merits of the case?
- j) Whether in the facts of the case Hon'ble Company Law Board was right in passing the order impugned?.

2. The brief facts relevant for the purpose of deciding the appeal are as follows:-

The first respondent company was promoted by the first appellant and one Late R.Muthu Gounder. The 9th and 10th respondents are wife and daughter of the said Muthu Gounder who were taking care of the Company after the said Muthu Gounder. The first appellant, who was the Executive Director from the date of incorporation of the Company has been witnessing the Company's growth. Admittedly, late Muthu Gounder and the first appellant were instrumental in the company's prosperity and growth. Though the respondents 2 to 7 who are the shareholders were appointed as Directors of the Company, they were not actively participating in the business of the Company. In the year 1974, the Company purchased the land measuring an extent of 8.41 acres in Hosur. The

Company has put up its factory on the said land and the commercial production started in the year 1978. In fact, the Company had to borrow funds from various Banks for the operations of the Company. In the process of repayment, the Company had to part with an extent of 5 acres to settle the dues to the Banks and other Creditors. When it became absolutely difficult for the appellants to continue the business and manage the affairs of the Company, the work orders were going out resulting in huge loss. The loss of the Company was attributed to the advancement of technology which the Company could not keep pace with.

3. After 2013, it was allegedly became difficult to continue with the operations as the appellants could not mobilise further funds for the working capital requirement of the Company. Therefore, it was decided to close down the factory and the Board of Directors, namely, the first and second appellants and the second and third respondents passed a resolution on 09.12.2013 in the Board Meeting to close the factory and also close all the bank accounts after settling their respective dues and also the dues of the workers of the Company.

4. At this juncture, it was decided by the management to find out a suitable investor who could buy the stakes and come up with a detailed business plan. Accordingly, the only asset belongs to the company viz., the land and buildings measuring about 2.84 acre was decided to be sold to the eighth respondent herein including the purchase of the shares of the Company held by both the plaintiff and respondent groups. The eighth respondent also promised to revive the operations of the Company by infusing substantial funds to further its business operations. The appellants and the respondents received an offer from the eighth respondent who was keen on taking over the entire company through purchase of the shareholdings in the Company. Several rounds of negotiations took place between the eighth respondent and the management of the Company through the first appellant. It was agreed by all the parties that the shares of the Company held by the appellants and respondents would be transferred to the eighth respondent on condition that he would revive the operations of the Company. However, the purchaser requested for some more time to organise the funds and it was agreed to postpone the takeover by another three months and it was clearly indicated that time is the essence of the Contract. The purchaser was also supplied with all the copies of the required documents for enabling him to come up with the business plan as promised. While so, the second and third respondents had received the majority of the share consideration and handed over the share certificates and share transfer deeds to the eighth respondent. The said transfer of shares are challenged by the appellants herein contending that the eighth respondent had colluded with the second and third respondent to create a rift between the family members with ulterior motive.

5. The appellants herein also claimed to have received an undated letter calling for General Body Meeting under the provisions of Section 100 of Companies Act, 2013 to move resolutions, appoint themselves as Directors of the first respondent Company. The first appellant sent a letter, pointing out the discrepancies in the letter calling for the meeting only to receive an abusive reply through mail. The arrangement to transfer the entire shareholding to the eight respondent / buyer was left as such and had planned to reconstitute the Board. Nevertheless, the first appellant convened a Board Meeting on 31.01.2015 in good faith. However, no decision could be taken in the said meeting. It was later realised that the said Board Meeting was to remove the first appellant as Managing Director and appoint a new Managing Director from among the respondents to support the case of the respondents like approval of share transfers. The first appellant also claimed to have written on 10.02.2015 stating that no EGM is required to be conducted. Nevertheless, the respondents 2 and 3 on their own, received a notice calling for EGM on 26.02.2015. The appellants understand that the said EGM was convened on 26.02.2015 to have complete control of the Board and usurp the management of the Company.

6. After the said Board meeting only the appellants understood the malafide intention of the respondents. The notice calling for the EGM to induct the respondents 4 and 6 as Directors of the first respondent Company is challenged in the Company Petition as it suffers from insufficient time period as contemplated under the provisions of the Companies Act.

7. Pet contra, the respondents had submitted that the said EGM was already held on 26.02.2015 and necessary forms with the MCA portal has also been filed. Therefore, it was contended by the respondents that the prayer in the Company Petition itself had become infructuous.

8. The Company Law Board without even affording an opportunity for the respondent for filing the counter and furnishing the necessary documents to the appellants had declined the relief of interim orders, as no grounds were made out for the same and posted the matter for hearing on 28.04.2015.

9. When the appeal came up for admission, this Court had granted an order of status quo in M.P.No.1 of 2015, which was filed to stay the operation of the resolution passed at the Extra Ordinary General Meeting held on 26.02.2015. In the Injunction application filed to restrain the respondents from appointing the Managing Director of the first respondent at the Board Meeting Scheduled on 23.02.2015, interim injunction was granted by this Court.

10. As the Company Petition is filed under Sections 397 and 398 of Companies Act, the Company Law Board had, without going into the merits of the case and considering the relevant documents with respect to the allegations made, declined the reliefs on the ground that the relief sought had become infructuous, which is incorrect. As the Company Petition has to be decided based on the materials that may be furnished by both the parties, the Company Law Board ought not to have dismissed the same even before the service of the papers on the respondents to substantiate their claim.

11. In such circumstances, the Company Petition is remitted back to the Company Law Board with direction to hear the appeal, afford an opportunity to both the parties to file their counter, rejoinders and relevant material papers and thereafter consider and pass orders on or before 30.09.2015.

12. Till the appeal is disposed of by the Company Law Board, this Court is inclined to direct status-quo to be maintained with respect to the operation of the resolutions passed at the Extra Ordinary General Meeting held on 26.02.2015 and at the consequential Board Meeting held on 05.03.2015, including changing the designation of the first appellant from Managing Director to Director and shifting the registered office of the first respondent to the residence of the second respondent. There would also be an order of interim injunction, restraining the respondents from appointing the Managing Director of the first respondent.

13. With the above observations, the Company Appeal is disposed of. Connected Miscellaneous are also closed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

srn

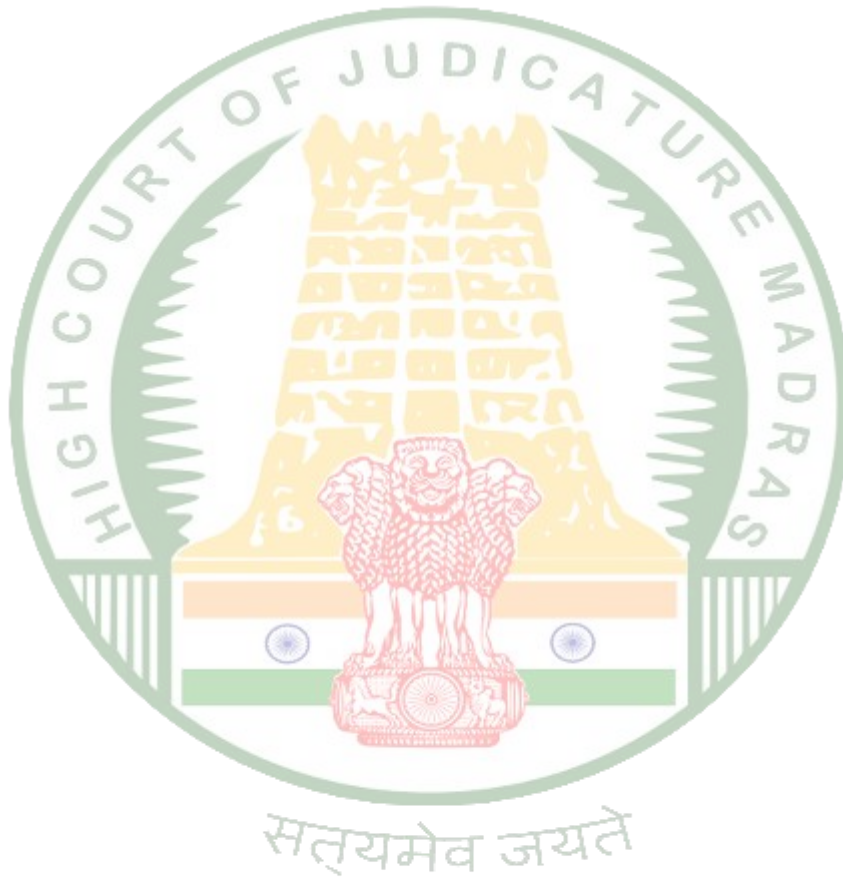
To

The Company Law Board,
Chennai Bench, Chennai

+1 cc to M/s.Chitra Narayan, Advocate, sr.41045 (11/09/2015)

COMP.APPEAL.No.1 of 2015
and
M.P.Nos.1 to 3 of 2015

SVI (CO)
PSI (24.08.2015)



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