

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. CAPP No.29 of 2011 (O&M)
Date of decision : 28.07.2015

M/s Samrat Forgings Ltd. and ors.

...Appellants

Versus

Shri Jassoo Singh Basi and ors.

...Respondents

2. CAPP No.30 of 2011 (O&M)
Date of decision : 28.07.2015

M/s Rajasthan Global Securities Ltd.

...Appellant

Versus

Shri Jassoo Singh Basi and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Sanjay Joshi, Advocate
for the appellants (In CAPP No.29 of 2011)

Mr. Kanwal Goyal, Advocate
for the appellants (In CAPP No.30 of 2011)

Ms. Sushma Chopra, Advocate
for the respondent No.2 (In CAPP Nos.29 & 30 of 2011)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of CAPP No.29 of 2011 titled as M/s Samrat Forgings Ltd. and ors. Vs. Jassoo Singh Basi & ors. & CAPP No.30 of 2011 titled as M/s Rajasthan Global Securities Ltd. Vs. Jassoo Singh Basi & ors. The facts and question of laws in the aforementioned appeals are common, therefore they are decided together. Facts are taken from CAPP No.29 of 2011.

The present aforementioned appeals have been filed at the instance of M/s Samrat Forgings Ltd. & others, promoters/shareholders and M/s Rajasthan Global Securities Ltd. being the bona fide purchaser of the shares in the year 2006. Shorn of all the details, it would be apt to give preface of the matter.

During the pendency of the proceedings before BIFR, the order dated 21.08.1996 came to be passed in case No.012/92/251/88. The operative part of the order be read thus as under:-

“10. Shri N.K. Jain representing OA submitting on behalf of instructions that the dues were crystallized on 31.12.95 and interest payment thereon was to start from 1.1.96 on due dates which the company is not doing. The company should now be asked to pay the entire due interest from 01.1.96 within one month from the date of sanction. The company's representative agreed to pay this amount but request that the institutions should not charge any penal interest which was allowed by the Bench. Shri Jain further submitted that Rs.50 lakhs deposited in a 'no lien' account with Andhra Bank should be transferred to the institutions latest within one month. The Bench directed that this should be done.

11. The scheme is being sanctioned after including the amendments directed today. The sanctioned scheme is enclosed.

*Sd/-
(S.L. KAPUR)
MEMBER*

*Sd/-
(ASHOK CHANDRA)
MEMBER”*

In pursuance to the aforementioned direction, five lac equity shares were allotted to the four persons i.e. J.C. Chowdhary, Bindu Chowdhary, Rakesh M. Kumar, M/s Jay Dee Holdings Private Limited. The aforementioned allotment has been done in pursuance to the resolution dated 27.11.1996 (Annexure A-10). The matter kept on pending before BIFR and finally on 02.06.2006 (Annexure A-22), the BIFR disposed of the petition by observing as under:-

“4. Based on the OA's DRS, we have prepared a Draft Scheme for the revival of the company which is circulated herewith to all concerned for consent as required under Section 19 (2) read with Section 19 (1) of the Act. It is directed in terms of Section 18 (3) (a) of the Act that short particulars of the said scheme be published in two local dailies inviting objections/suggestions to it. We will hear objections/suggestions at the hearing on 14.08.2006 at 11:00 AM.

5. The Central/State Govt. concerned may, where required, seek requisite/additional information from the company immediately and would ensure to indicate within the specified time, their specific decision in terms of Section 19(2) of the Act otherwise it shall be deemed that consent has been given as the Board might not be able to establish the viability of the rehabilitation scheme under consideration expeditiously if the consent or objections are

nor received within the stipulated time limit. Further, at the hearing to consider objections/suggestions to the DRS, the officer attending must be fully briefed of the policy of the Central/State Govt. and would indicate whether consent was being given and if not, the reasons thereof why consent was not being given. He should also carry with him a copy of the policy guidelines of the State/Central Govt. The above would be equally applicable, mutatis mutandis, to all those who are to extend their consent in terms of Section 19 of the Act.

*Sd/-
(A.K. Goswami)
Member*

*Sd/-
(Ravindra Gupta)
Chairman”*

Accordingly, the order of the BIFR in its letter and spirit was complied with which fact is evident from the details of the payment made to Financial Institutions vide Annexure A-20. The respondent Nos.1 and 2 being Promoters and Shareholders invoked the jurisdiction of the Company Law Board by filing petition i.e. CP No.42 of 2006 under Sections 397, 398 and 399 of the Companies Act, 1956 and the Company Law Board vide order dated 06.06.2006 passed interim direction by saying that no shares on a preferential basis shall be allotted, if approved in the EGM on 08.06.2006.

In the aforementioned petition, categorical pleading was made that respondents-herein appellants-therein were having 2,67,229 equity shares in the total paid up Equity Share Capital of respondent No.1 company and total paid-up equity share capital of respondent No.1-company as on 31.03.2005 was Rs.158.03 lacs, and, therefore, shareholding came to be 16.90%. The Company Law Board vide order dated 17.04.2007 by treating the shareholding of the respondents as 16.90% vacated the order

dated 06.06.2006. The order reads thus:-

“COMPANY LAW BOARD

PRINCIPAL BENCH

NEW DELHI

CP No.42 of 2006

CA No. OF

PRESENT: SMT. VIMLA YADAV MEMBER

*ATTENDANCE CUM ORDER SHEET OF THE HEARING
OF PRINCIPAL BENCH OF THE COMPANY LAW
BOARD ON 17.04.2007 AT 10.30 A.M.*

*NAME OF THE COMPANY: M/s SAMRAT FORGINGS
LTD.*

SECTION OF THE COMPANIES ACT: 397/398/399

S.No. Name (In Capital Letters) Designation Representation

<i>1.</i>	<i>U.K. Chaudhary</i>	<i>Sr. Advocate</i>	<i>Respondent</i>
<i>2.</i>	<i>Ranjana Roy Gawai</i>	<i>Advocate</i>	<i>Respondent</i>
<i>3.</i>	<i>Saurabh Kalia</i>	<i>Advocate</i>	<i>Respondent</i>
<i>4.</i>	<i>Rohit Gupta</i>	<i>Director</i>	

ORDER

Petitioners have not entered appearance. They have sought adjournment through a letter which has been objected to and replied in writing by the Respondents. Respondents point out that the Petitioners are resorting to delaying tactics for oblique purpose. Respondents heard. Order dated 06.06.2006 is hereby vacated and the Respondents are allowed to issue shares on preferential basis. Respondents state (the Respondent's counsel and Shri Rohit Gupta-Director) that in case the Petitioner's C.P. No.42 of 2006 is allowed, Petitioners shareholding (admitted) 16.90% would be provided. Adjourned to 26.07.07 at 10:30 a.m. Respondents to serve it on the Petitioners who are at liberty to apply within 2 days.

*Sd/- Smt. Vimla Yadav
Member
17.04.2007”*

It is pertinent to note that during the interregnum, respondents moved an application for seeking amendment of the petition/aforementioned, the same was contested by the appellants. However the Company Law Board vide order dated 27.02.2009 (Annexure A-35), permitted the respondent to withdraw the company petition bearing No.42 of 2006 with a liberty to file the same as the primary ground for amendment and was to add/implead the several other parties, however, subject to payment of cost of Rs.50,000/-. Operative part of the order be read as under:-

“15. It is correct to contend that Regulation 46 of the CLB Regulations has been provided to rectify defects or errors in any proceedings and the applicants/petitioners case is not covered by the situations contemplated by Regulation 46. The applicants/petitioners have not been able to refute the respondents' contention that the amendment sought in the petition was in the knowledge of the applicants/petitioners at the time of filing of the petition as they had already taken inspection of the ROC's records. Responding to the respondents' allegation that the applicants had abandoned their interest in the revival of the company for the past so many years, the applicants' Justification has been that the company was before the BIFR from 1988 till 2006. However, their reliance on the case law to show that they had, in fact, not abandoned the company is not of much relevance in the case seeking amendment to the CP, as the touchstone to be applied is the submitted up situations as given in Uniworth's case (supra) under which alone amendment can be permitted. When the test of due diligence is applied, the

applicants fail. The amendment sought, though it appears to be covered under the situation at (iv) in the principles summed up in Uniworth's case (supra), but that too is subject to the test of due diligence. Therefore, the prayer to amend the CP in this composite application seeking impleading of other parties as well cannot be allowed. The application is dismissed being not maintainable. However, keeping in view the fact that the applicants/petitioners are NRIs who have admitted to have made huge investment and that the R-1 was before the BIFR for a long period ultimately to be revived and since the applicants also seek several other parties to be impleaded in this matter, the applicants are given the liberty to withdraw this CP and file a fresh CP by paying a cost of Rs.50,000/- to the respondents and in case the applicants choose to withdraw the CP to file a fresh CP, the interim orders, if any, granted in this matter shall continue to operate till further orders in the matter.

16. CA No.278/08 is disposed of in above terms.”

The respondents in the year 2009, filed a second Company Petition bearing No.9/ND of 2009 by invoking the provisions under Sections 397, 398, 402, 403 & 406 read with Schedule XI and Section 237 of the Companies Act, 1956 (hereinafter referred to as 'the Act'). In the aforementioned petition, despite various reliefs, the primary relief sought was by way of challenging order for removal of Directorship of respondent which according to them, could not be deemed to be removed under provision of Section 283(1G) of the Act, as sought to be projected by appellants(herein) respondents(therein) and as well as the allotment of shares made in 02.06.2006. It is the aforementioned company petition which has been finally decided vide impugned order dated 29.03.2011/05.08.2011

and has been challenged by the appellants vide present appeals.

Mr. Sanjay Joshi, and Mr. Kanwal Goyal, learned counsels appearing on behalf of appellants raised the multifold arguments which are summarized hereinabove.

(1) The removal of the Directorship under Section 283(1)(g) of 'the Act' cannot be agitated in petition filed under Section 397(ii) of the Act.

(2) The allotment of preferential shares in pursuance to the direction contained in the order dated 02.06.2006 passed by the BIFR, cannot be challenged in view of the bar as envisaged under Section 26 of the Sick Industrial Companies (Special Provisions) Act, 1985.

(3) In previous petition i.e. CP No.42 of 2006, the respondents have admitted their shareholding. The respondent cannot be permitted to approbate and reprobate in the same breath on the premise that they did not have the knowledge of the allotment of shares on 02.06.2006.

(4) Increase in shareholding/preferential have been done for the interest and proper functioning of the company which was not prejudicial to the interest of the shareholders and Directors.

(5) M/s Rajasthan Global Securities Ltd. are the bona fide purchaser of the shares, which have been purchased in pursuance to the order dated 17.04.2007.

In support of the aforementioned, appellants have cited the judgment of Hanuman Prasad Bagri etc Vs. Bagress Cereals Pvt. Ltd. & ors 2001(4) SCC 420, Dale and Carrington Invt. P. Ltd. Vs. P.K. Prathapan & ors. 2005(1) SCC 161, Sangramsinh P. Gaewad & ors. Vs. Shantadevi P. Gaewad (Decd.) by LRs & ors 2005(11) SCC 314, Tata Motors Ltd. Vs.

Pharmaceutical Products of India & Anr. JT 2008(9) SC 227, Tamil Nadu Industrial Development Corporation Ltd. Vs. Board for Industrial and Financial Reconstruction and ors. (2008) 145 CC 24 (Mad) & S.Sukhdeep Singh Jhikka Vs. S. Ajit Singh Deogan CAPP NO.10 of 2008, P&H, to

contend that order with regard to the cessation of the Directorship cannot be challenged in the proceedings under Section 397(2) of 'the Act', allotment had been done for taking into consideration the affairs of the company which are in any manner prejudicial to the public interest, much less, Shareholders and Directors, under the provisions of Sick Industrial Companies (Special Provision) Act, 1985 (hereinafter to be referred as 1985 'SICA') being a special law vis-a-vis 1956 Act i.e. Companies Act 1956. In essence the provisions of Special Act would override the provision of General Act. The increase and reduction in the share would be in the realm of the Experts and not of the Company Law Board and allotment of shares would not constitute an Act of oppression.

Ms. Sushma Chopra, learned counsel appearing on behalf of respondent No.2 submits that objection of limitation cannot be raised by the appellant as the appellants in pursuance to the order passed by Company Law Board, while allowing amendment, accepted the cost of Rs.50,000/-. Respondents did not have knowledge of allotment of the shares caused in 2006. The order of the Company Law Board is fair, legal and justified and is not liable to be set aside as it has taken into consideration the interest of the Promoters/Shareholders and Directors.

I have heard learned counsel for the parties and appraised the paper book with their able assistance.

In order to appreciate the submission, that the respondent did not have the knowledge of the allotment of shares caused in 2006, this Court cannot be remained oblivious to the order dated 06.06.2006 (Annexure A-40), whereby the respondent had challenged notice of holding of EGM vide which the Company intended to allot preferential shares. The aforementioned order was vacated vide order dated 17.04.2007 (Annexure A-32), wherein the respondents had admitted their shareholding to the extent of 16.90%. Thus, they cannot be permitted to challenge the allotment of the preferential shareholders on the premise that shareholding had considerably reduced, much less, they are estopped, have acquiesced, thus in my view the respondents had the knowledge of the meeting of EGM scheduled for the purpose of allotment of preferential shareholding and, therefore, the Second petition on the same cause of action was not maintainable, De hors of the fact that permission was granted by the Company Law Board to file a fresh company petition. There is another aspect of the matter. On the perusal of the operative part of the order, Company Law Board granted the permission/aforementioned on the premise that respondents had sought to implead many other parties, therefore, the appellant cannot be prevented to raise the plea of limitation vis-a-vis the maintainability.

Even otherwise the allotment of preferential shareholding was not made by the company on account of their volition or some resolution but on the basis of the Draft Rehabilitation Scheme as noticed by the BIFR in its order dated 02.06.2006, the said order in view of Section 26 of the 'SICA' cannot be challenged. For the sake of brevity, Section 26 is

reproduced hereinbelow:-

“26. Bar of jurisdiction:- No order passed or proposal made under this Act shall be appealable except as provided therein and no civil court shall have jurisdiction in respect of any matter which the Appellate Authority or the Board is empowered by, or under, this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

In view of the specific bar under Section 26 of 1985 Act, in Company Law Board, has vide impugned order increased the share capital of the respondent and as well as various other Directors, thus has committed judicial acrimony inasmuch as that it has not noticed the conceded position that the petitioners have still 16.90% of shareholding and cessation of Directorship cannot be challenged under provision of Section 397 as there is separate remedy under 1956 Act. Be that as it may, even otherwise, the respondent had lost right to challenge the cessation of Directorship “as Deemed cessation under Section 283(1g) of 1956 Act” had taken place as wayback as 1987. The Hon'ble Supreme Court had addressed the issue on the maintainability of the petition for removal of the Directorship under Section 397 of the 1956 Act and it has been consistently held that the person having such grievance cannot agitate before Company Law Board.

In view of what has been observed above, the impugned order dated 05.08.2011 is not sustainable and, accordingly set aside and appeals are accordingly allowed.

Since, M/s Rajasthan Global Securities Ltd. have become the Promoters and Shareholders in view of the allotment of the preferential

shareholders, their right would be equally protected and it made clear that their right cannot be effected as they have been allotted shares in consonance with the direction passed by the BIFR/Company Law Board.

28.07.2015

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**(AMIT RAWAL)
JUDGE**