

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

**COMPANY APPEAL NO.48 OF 2014
IN
COMPANY PETITION NO.70 OF 2006**

M/s. Cameo Fabrics Ltd. & Ors. .. Appellants

Vs.

Shri Jagdish Lal Gupta & Ors. .. Respondents

Ms.Ankita Singhania a/w Ms.Shruti Sardesai i/by Mr.Kuldeep Nikam for the appellant.

Ms.Meenakshi Arora, Senior Advocate a/w Ms.L.M. Jenkins for the respondent nos.1 to 5.

Mr.Rajnish Sinha a/w Ms.Minakshi Surve i/by Mr.Satyan Israni for the respondent no.10.

CORAM : R.D. DHANUKA, J.

DATE : 12th July 2017

P.C. :-

. By this appeal under Section 10F of the Companies Act, 1956, the appellants have impugned the order dated 7th January 2013 passed by the Company Law Board, New Delhi Bench, New Delhi in C.P. No.70 of 2006 directing the parties to make their submissions in Company Application Nos.250 of 2012 on the next date of hearing and adjourning the matter to 5th February 2013.

2. The appellants had filed Company Application No.250 of 2012 in Company Petition No.70 of 2006 inter alia praying for recall of the ex parte order dated 8th August 2006 passed by the Company Law Board in Company Petition No.70 of 2006 inter alia praying for lease out the fixed assets of the appellant no.1 i.e. 46, World Trade Centre,

Cuffe Parade, Mumbai and C-16, MIDC, Kalwa Industrial Estate, Thane. The appellant no.1 herein was the original respondent no.1 in Company Petition No.70 of 2006. Some of the relevant facts for the purpose of deciding this appeal are as under :-

3. The respondent no.1 and Smt. Rama Gupta, wife of the respondent no.1 herein had filed a Company Petition No.70 of 2006 under Sections 397 and 398 of the Companies Act, 1956 alleging oppression and mismanagement in respect of the appellant nos.2 and 3. In the said company petition, the respondent nos.1 and 2 had filed a company application in Company Petition No.70 of 2006 inter alia praying for various interim reliefs. The Company Law Board passed an ex parte interim order on 8th August 2006 in terms of prayer clauses 9(e) and 9(g) of the Company Petition No.70 of 2006 and directed the respondent nos.1 to 6 therein by way of injunction not to sell, transfer, alienate, dispose or create third party interest in the assets and properties of the company and to only conduct normal day to day activities. The Company Law Board directed the Bench Officer, Company Law Board, Mumbai to authenticate the statutory records of the appellant no.1 forthwith and to submit a report to the Principal Bench, Delhi immediately.

4. It is the case of the appellants that in view of the respondent nos.1 and 2 having filed various frivolous applications before the Company Law Board in the said Company Petition No.70 of 2006 and due to delayed tactics played by the respondent nos.1 and 2, hearing of the Company Petition No.70 of 2006 could not be concluded. It is the case of the appellants that the matter was listed for final hearing on 25th

July 2011 when the respondent nos.1 and 2 herein addressed their arguments before the Company Law Board in the said Company Petition No.70 of 2006. After conclusion of their arguments, the appellants herein who were the respondents to the said Company Petition No.70 of 2006 and other respondents commenced their reply. The matter was heard from 25th July 2011 to 29th July 2011, 18th August 2011, 6th and 7th September 2011, 20th and 21st October 2011 and thereafter on 20th December 2011 and 27th January 2012. It is the case of the appellants that the respondent nos.1 and 2 had already concluded their submissions. When the appellants and other respondents were addressing their reply, the respondent nos.1 and 2 insisted before the Company Law Board that their pending CA No.425 of 2007 for impleadment of Tara Industries Ltd. in Company Petition No.70 of 2006 be taken up for hearing. The appellants herein strongly opposed the said request of the respondent nos. 1 and 2 on various grounds. The appellants had concluded their submissions after being heard over 4 days and even at that stage did not urge any submission with respect to Company Application No.425 of 2007 for impleadment of Tara Industries Ltd. to Company Petition No.70 of 2006.

5. It is the case of the appellants that the Company Application Nos.514 of 2011 and 425 of 2011 were listed for hearing on 5th March 2012 when Company Application No.514 of 2011 was part heard and both the company applications were adjourned to 27th March 2012. On 27th March 2012, the company applications were adjourned to 17th April 2012 and thereafter to 21st May 2012. In the meantime, the learned Member of the Company Law Board before whom the company petition was part heard came to be transferred out of Delhi.

6. It is the case of the appellants that since hearing of the said Company Petition No.70 of 2006 could no longer be heard expeditiously and conclusively at an early date, the appellants filed Company Application No.450 of 2012 inter alia praying for recall of the ex parte order dated 8th August 2006 passed by the Company Law Board in Company Petition No.70 of 2006 and for seeking permission to lease out fixed assets of the appellant no.1 i.e. 46, World Trade Centre, Cuffe Parade, Mumbai and C-16, MIDC, Kalwa Industrial Estate, Thane. The respondent nos.1 and 2 opposed the said application.

7. Learned counsel for the appellants submits that in view of the said ex parte interim injunction granted by the Company Law Board in the said Company Petition No.70 of 2006, the appellant no.1 was not able to give the said two properties on lease thereby causing tremendous hardship to the appellant no.1. She submits that instead of hearing of the said Company Application No.250 of 2012 for recalling of the ex parte of the order dated 8th August 2006 which was in force against the appellants and instead of vacating the said order dated 8th August 2006, the Company Law Board simplicitor adjourned the said Company Application No.250 of 2012. She submits that the said order thus passed by the Company Law Board deserves to be set aside and ex parte order dated 8th August 2006 deserves to be recalled.

8. Learned counsel for the respondent nos.1 and 2, on the other hand, submits that the said company appeal is not maintainable on the ground that no order is passed by the Company Law Board rejecting the said Company Application No.250 of 2012 filed by the appellants

inter alia praying for recall of the ex parte order dated 8th August 2006. She submits that the order granting adjournment by the Company Law Board is only procedural order and cannot be impugned in the company appeal filed under Section 10F of the Companies Act, 1956. She submits that no question of law arises in this appeal filed under Section 10F of the Companies Act, 1956 and thus the company appeal shall be dismissed with exemplary costs.

9. A perusal of the record indicates that there is no dispute that the Company Law Board has passed ex parte order dated 8th August 2006 against the appellant no.1. There is also no dispute that the appellants herein had filed Company Application No.250 of 2012 on 1st May 2012 inter alia praying for recall of the said ex parte order dated 8th August 2006.

10. A perusal of the impugned order dated 7th January 2013 passed by the Company Law Board indicates that on 7th January 2013, the Company Law Board had directed the parties to make their submissions in three Company Applications including the Application No.250 of 2012 on the next date of hearing and adjourned those applications to 5th February 2013. On 5th February 2013, the Company Law Board adjourned the hearing of the Company Petition No.70 of 2006 to 28th March 2013.

11. It is thus clear that the Company Law Board has not disposed of the said Company Application No.250 of 2012 filed by the appellants inter alia praying for recall of the ex parte interim order dated

8th August 2006 and the said company application is still pending for hearing and final disposal. It is submitted that the impugned order does not determine/decide any real or substantive rights of the parties. It is submitted that the order dated 8th August 2006 passed by the Company Law Board has not been challenged before the Company Law Board and till binding on the appellants. She submits that by an order dated 20th April 2011, the Company Law Board had already dismissed the Company Application No.370 of 2012 filed by the appellants inter alia praying for modification/verification of the order dated 8th August 2006 in view of the objections raised by the respondent nos.1 and 2 and others who were representing 80% of the shareholdings of the appellant no.1-company.

12. In my view, grant of adjournment simplicitor of the Company Application No.250 of 2012 by the Company Law Board is only a procedural order and is not appealable under Section 10F of the Companies Act, 1956. Though the Company Law Board ought to have heard the said Company Application No.250 of 2012 inter alia praying for recall of ex parte order dated 8th August 2006 at the earliest, the said company application was adjourned by the Company Law Board on one or the other grounds. Be that as it may, simplicitor adjournment of the company application does not raise any question of law which can be adjudicated in an appeal filed under Section 10F of the Companies Act, 1956. In my view, the Company Law Board ought to have disposed of the said Company Application No.250 of 2012 expeditiously.

13. I therefore pass the following order :-

(i) Company Appeal No.48 of 2014 filed by the appellants is dismissed as not maintainable;

(ii) National Company Law Tribunal, New Delhi is directed to dispose of the Company Application No.250 of 2012 which was filed by the appellant no.1-company before the Company Law Board, Principal Bench, New Delhi expeditiously and not later than three months from the date of communication of this order. National Company Law Board, New Delhi to act on the authenticated copy of this order.

R.D. DHANUKA, J.