In the High Court of Punjab and Haryana, at Chandigarh

Company Appeal No. 23 of 2014 (O&M)

Date of Decision: 16.09.2022
Reserved On: 25.08.2022

Varun Mishra

... Appellant(s)

Versus

Shri Krishna Pharmacy Pvt. Ltd. and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Puneet Bali, Senior Advocate
with Mr. Ranjit Saini, Advocate
for the appellant(s).

Mr. Atul V. Sood, Mr. Siddharth Aggarwal and
Mr. Prateek Gupta, Advocates, for the respondents.

Anil Kshetarpal, J.

1. While assailing the correctness of the order dated 25.06.2014, passed by the Company Law Board, New Delhi Branch, New Delhi, while deciding Company Petition No. 65(ND) of 2009, the appellant (complainant before the Company Law Board) has filed the present appeal under Section 10F of the Companies Act, 1956 (hereinafter referred to as "the 1956 Act").

2. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

3. In substance, the dispute is between the uncle and his nephew in relation to the affairs of the respondent No.1 company. Initially, there were three directors of the company, namely Sh.Chander Shekhar Mishra, late Sh.Sanjay Mishra and Sh.Satpal Mishra. All three were the brothers. Sh.Satpal Mishra has resigned on 31.01.2007. He is not in picture since

then. Sh.Sanjay Mishra died on 12.04.2008. The appellant is from his family. The appellant filed a petition under Section 397, 398 read with Section 402 and 406 of the 1956 Act, complaining oppression and mismanagement by the majority share holders. Basically, the appellant sought two substantive reliefs- (1) the allotment of 4000 equity shares of the company to his uncle and his family members be set aside and (2) the respondent No.2 and 3 be directed to refund all the funds, alleged to have been misappropriated by them which includes a sum of ₹5,30,00/-.

4. The respondent No.1 is a private limited company, having authorized capital of ₹10,00,000/-, divided into 19,500 equity shares. 9500 shares of ₹100/- each are of A-Class shares, while 10,000 shares of ₹5/- each are classified as B-Class shares. The issued and paid-up capital of the company is ₹8,86,700/-, divided into two classes of shares. 8239 shares of ₹100/- each are classified as A-Class shares and 8560 shares of ₹5/- each are classified as B-Class shares. It includes 4000 disputed shares of ₹100/-, which are alleged to have been illegally allotted in favour of the respondent No.2 and his family members.

5. The allotment of 4000 shares in favour of the respondent No.2 and his family members was made in the year 2003. Thereafter, the respondent No.1-company filed the balance sheets as existing on 31.03.2004, 31.03.2005 and 31.03.2006 to prove that the share application money pending in the previous year i.e. in the year 2003 was reflected to be converted into 4000 shares and since then, the share capital of the company is reflected as ₹8,86,700/-. The appellant came to be appointed as a Director by the Board of Directors in its meeting held on 30.09.2008. The appellant was not in the picture when the allotment of 4000 shares was made in the

year 2003. Late Sh.Sanjay Mishra never objected to the allotment of 4000 shares on the basis of share application money pending in the previous year. The appellant claims that the signatures of his father on the statutory filings are forged and fabricated. The appellant relies upon a report of the private Handwriting and Fingerprint Expert. Such a report is only an opinion of the Expert. In the exercise of the appellate jurisdiction, this Court does not find it appropriate to go into the aforesaid issue, particularly when no material was produced before the Company Law Board in this regard. In any case, the appellant has the remedy of going to the Civil Court, however, he has failed to approach the Civil Court despite an observation having been made in this regard by the Company Law Board in the impugned order dated 25.06.2014.

6. The other allegation is regarding the siphoning of funds. The respondent No.1-company purchases its raw material from M/s Kashmir Herbal Remedies. An amount of ₹6,00,000/- has been paid through the cheques bearing No. 232481, 232491 and 232497 on 16.04.2009. It is not the case of the appellant that the company was not supposed to pay the said amount to the aforesaid supplier. In such circumstances, there is hardly any substance in this argument of the learned counsel.

7. It is well settled that the past and concluded acts of the company do not fall within the jurisdiction and ambit of Section 397 and 398 of the 1956 Act. In substance, the appellant complains of wrongful allotment of 4000 shares in the year 2003 in favour of the respondent No.2 and his family members. The appellant came to be inducted as a Director in the month of September, 2008. His father remained alive upto 12.04.1998. The appellant's father never objected to the allotment at the

relevant time. The allotment has been made four years prior to appointment of the appellant as a Director. In such circumstances, it is evident that the appellant has invoked the jurisdiction under Section 397 and 398 of the 1956 Act with respect to the past and concluded acts.

8. Moreover, as per Section 10F of the 1956 Act, the appeal is maintainable only on a question of law. The appellants has failed to draw the attention of the Court to any such question of law involved in the present case. Additionally, it may be noted that the appellant has not displayed bonafide conduct as he, illegally, tried to show ante-dated appointment of his mother in the company and also attempted to show that respondent No.2 has resigned. Both these facts have been found to be factually incorrect.

9. Moreover, the proceedings under Section 397 and 398 of the 1956 Act are summary in nature and the issues which require appreciation of detailed evidence cannot be adjudicated. Hence, it is not considered appropriate to decide the aforesaid issue, in the facts of this case, in these proceedings.

10. Consequently, finding no merit, the present appeal is dismissed.

11. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

September 16, 2022
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No