
(2014) 09 P&H CK 0209

In the Punjab And Haryana At Chandigarh

Case No : C.M.A. Nos. 7, 79, 80 and 81 of 2014 in C.A.P.P. No. 1 of 2014

A.P. Refinery Private Ltd.

APPELLANT

Vs

AAR KAY Chemicals Pvt. Ltd.

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Companies Act, 1956 — Section 10-F, 111(4)(a)(ii), 237(b), 397, 398

Citation : (2014) 09 P&H CK 0209

Hon'ble Judges : Mahesh Grover, J

Bench : Single Bench

Advocate : Jai Shree Thakur, Advocate for the Appellant; Tushita Ghosh, Rupa Pathania and G.S. Hooda, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mahesh Grover, J.

C.A.P.P. No.1 of 2014

1. This is an appeal u/s 10-F of the Companies Act, 1956 directed against the order dated 3.1.2014 passed by the Company Law Board in C.P. No.146(ND) of 2012.

2. To put it briefly, the Company Petition was filed by M/s AAR KAY Chemicals Pvt. Ltd. against one A.P. Refinery Pvt. Ltd. under Sections 397,398, 237(b) read with Sections 111(4)(a)(ii), 402, 403, 405 and 539 read with Section 406 of the Companies Act, 1956 alleging mis-management in the conduct of its affairs which had caused great prejudice to the share holders of the members of the Company namely A.P. Refinery Pvt. Ltd.

3. When the matter was heard by the Company Law Board, it passed an order soliciting the response of the respondents (the appellants herein), but no interim direction was given which led to the filing of an appeal by M/s AAR KAY Chemicals Pvt. Ltd. bearing No. C.A.P.P.32 of 2012.

4. The primary grievance raised in this appeal was that the the company i.e. M/s AAR KAY Chemicals Pvt. Ltd. should have been allowed access to the records such as statement of accounts, accounts-book and minutes book especially when a prayer had been made for its production and authentication.

5. Before this Court, the plea of the appellants (i.e. M/s A.P. Refinery Pvt. Ltd.) was that the relevant documents would comprise only those records which are relevant to the issue before the Board, and not the entire record.

6. Considering the aforesaid, this Court disposed of the appeal in the following terms :-

?(8) Having heard learned counsel for the parties and in the light of the stand taken by the respondents on 31.1.2013, there can indeed be no doubt that the appellants are entitled to inspect the "relevant" records comprising the statement of accounts, accounts book as well as minutes book containing the decisions taken by the Board of Directors of the respondent-company. However, the determination of the relevancy of the documents/record can be left to the discretion of the Board before whom the principal dispute is still pending consideration. The nature of lis would guide the Board for determining the relevancy of records/documents.

(9) Consequently, the appeal is allowed in part and the order under appeal dated 20.11.2012 passed by the Board is modified to the extent that the respondents shall produce the above mentioned original records before the Board on 16.4.2013. Before deciding the matter on merit, the Board would ensure that all the relevant documents/record to which the appellants are found entitled to inspect and authenticate are produced and the needful done. After providing the copies of relevant records to the appellants and giving reasonable opportunity to the parties to complete their pleadings, the Board shall decide the main dispute.?

7. Thereafter the Company Law Board considered the rival contentions of the parties and disposed of the prayer for inspections of records by observing as follows :-

Therefore, for the purposes of the allegations in relation to above, the order dated 20.3.2013 very aptly determines the entitlement of the petitioners to inspect the Statement of Accounts, the Account Books as well as the Minutes Book containing the decisions taken by the Board of Directors of R-1 Company. In my considered opinion these along with the audited balance sheets of 2010-11, 2011-2012 and transfer deeds bearing Nos. 32004, 32005, 32006, 32006, 32008 and 316498 would only be relevant for purposes of inspection by the petitioners. The petitioners cannot be permitted to undertake a roving and fishing inspection into other documents in the list in para 4 (supra) which do not appear to me to be relevant in the light of nature of the lis. It is also to be born in mind that the minutes of the meeting held at the office of Mr. Ashish Chopra, counsel for the petitioners on 14.2.2013 also discloses the documents which have been inspected and copies of which have been filed with the petition.

7. To conclude, the petitioners are entitled to inspect only the following documents :

(a) Minutes of all Board meetings during April 2010 to October 2012.

(b) Statement of Accounts and account books during the aforesaid period, i.e. April, 2010 to October, 2012.

(c) The Audited Balance Sheets for the years 2010-11 and 2011-2012, and lastly

(d) The transfer deeds bearing Nos.32004, 32005, 32006, 32007, 32008 and 316498.

Bench Officer is directed to provide inspection of only the above mentioned documents to the petitioners and also to provide to them duly attested photocopies thereof under acknowledgment.

8. The aforesaid is now the cause of grievance to the appellants, who contend that access to the records would prejudice the appellants as the respondents herein are the competitors who cannot be permitted access to the documents and records as granted by the Company Law Board.

9. Though the appellants made grievance of the entire issues initially and objected to it with great vehemence, but the challenge to the order granting access to the minutes of the Board meetings during October, 2010 to April, 2012 was consensually given up and the remaining prayer granted as against the items mentioned at (b), (c) and (D) extracted above continues to be the cause of grievance to the appellants.

10. Learned counsel for the appellants contends that this Court had granted the limited prayer to provide access to the respondents herein only to the records which were relevant to the issues as would be indicated from the order of this Court dated 20.3.2013, the relevant portion of which has already been extracted above. He states that the grievance of the appellants is regarding transfer of 14,96,000 equity shares belonging to the five companies affiliated to the respondent/company in a clandestine manner and this being registered in the members of register of the respondent/company under Ledger Folio No.39 in favour of another company arrayed as respondent No.2 before the Board. His further grievance is regarding dilution of the share holding of M/s AAR KAY Chemicals Pvt. Ltd. by allotment of equity shares of the appellant/company on 29.6.2011 and 11.11.2012 reducing the share holding of the respondents herein to an abject minority of 9.25%. Apart from this, a grievance has also been made by the respondent regarding transfer of other shares in a similar fashion. The allegations went on further to say that to cover the illegalities, the companies arrayed as respondents No.3 and 4 before the Board deposited a cheque issued by respondent No.2 before the Board for Rs. 15,10,960 on 22.4.2011 in one of the accounts of the respondent/company i.e. M/s AAR KAY Chemicals Pvt. Ltd. and on such cheque being dishonoured on 23.4.2011, it was again deposited through R.T.G.S. on 26.4.2011. According to the appellants, the access to

records should have been centred around this controversy alone and access to the records as granted by the Company Law Board was totally contrary to the issues raised and the prayer granted by this Court in its earlier order.

11. The respondents, on the other hand, justify the order passed by the Company Law Board.

12. On due consideration of the matter, I am of the view that the appeal is without any substance. The controversy and the resultant prayer made by the respondents for access to the records has been satisfactorily taken note of by the Company Law Board in the order impugned. It is not only one transfer of share which has been allegedly done wrongly to the detriment of the respondents who were the petitioners before the Company Law Board, but a number of such transactions which have been mentioned in the petition itself. Apart from this, allegations have been made regarding mis-management and gross under-utilization of the installed capacities and exploitation thereof by showing no profitability.

13. It has to be understood that mis-management is a much wider term, determination of which would have to take into account the conduct of the company spread over a period of time which in turn can be ascertained only on the basis of record which may span over some period of time covering the allegations set up by a person alleging such acts of omissions and commissions.

14. The Company Law Board rightly took note of the periods ranging from 2010 to 2012 as allegations of misconduct have been largely attributed to this period. The Company which is not a part of the administrative decisions of another company, cannot naturally pin itself down to one particular document with certainty if it has to establish the allegations which have a broader spectrum.

15. Therefore, taking into consideration the totality of the circumstances, the controversy raised before the Company Law Board and the prayer granted by it in the impugned order, I do not find any reason to interfere with it.

16. The appeal being without any merit, is dismissed.

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17. As the main case has been decided, therefore, there is no need to pass separate orders in the miscellaneous applications. Hence, the same are disposed of accordingly.