(2009) 07 AP CK 0035

In the Andhra Pradesh High Court

Case No : Company Appeal No''s. 19 and 20 of 2005

B. Subba Reddy APPELLANT

Vs

S.S. Organics Limited and V.N. Sundana Reddy RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34(2), 8
Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Commissions of Inquiry Act, 1952 — Section 4
Companies Act, 1956 — Section 10E, 10E(4C), 10E(6), 111A, 163
Company Law Board Regulations, 1991 — Regulation 44
Constitution of India, 1950 — Article 338, 338(5), 338(8)
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 15, 19, 26

Citation : (2009) 151 CompCas 190

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Vedula Venkata Ramana, in Company Appeal No. 19 of 2005 caveat filed by Srinivasa Inyengar in Company Appeal No. 20 of 2005, for the Appellant; C. Kondanada Ram in Company Appeal No. 20 of 2005, for the Respondent

Judgement

V.V.S. Rao, J.—Both these appeals are against an interlocutory order dated 10.10.2005 passed by the Company Law Board (CLB), Chennai, in Company Application No. 54 of 2005 in Company Petition No. 22 of 2005. Company Appeal No. 19 of 2005 is filed by the petitioner before the CLB and the other one is filed by the respondents in Company Petition before the CLB. Therefore, it is appropriate to dispose of the two appeals by a common order by referring to the parties as they are arrayed in Company Petition No. 22 of 2005 before CLB.

2. The petitioner filed the petition under Sections 111A, 163, 196, 237(b), 397, 398, 402, 403, 406, 408 and Schedule XI of the Companies Act, 1956, challenging the allotment 20 lakhs shares of Rs. 10/- each made on 25.04.2003 in M/s. S.S. Organics Limited (hereafter called, the Company) in exclusion of the petitioner as oppressive and alleging several acts of misappropriation. The respondents moved Company Application No. 54 of 2005 questioning the

jurisdiction of the CLB to entertain the Company Petition mainly on the ground that the impugned allotment of shares was made pursuant to an order dated 12.02.2002 of the Board for Industrial and Financial Reconstruction (BIFR) sanctioning the scheme of rehabilitation of the Company. The application was opposed by the petitioner. By impugned order the CLB disposed of the miscellaneous petition in the following manner.

...Towards this end, the provisions of Section 15 and 19 of SICA provide a scheme where a company which has become sick can register itself with BIFR which is vested with the powers under the provisions of the said Act which shall after making enquiry may provide for package for rehabilitation of the company and/or make the company viable to that the business of the company can continue. Whereas, Section 397/398 a code by itself containing special provisions empowering the CLB to make such orders as it thinks fit with a view to bringing to an end, the acts of oppression and mismanagement, complained of by any aggrieved members. Thus, the scope and jurisdiction of BIFR and CLB are in entirety different. Therefore, the plea of Shri R. Murari, learned Counsel that Section 26 does not provide for bifurcation of the subject matter of an action as in the case of proviso to Section 34(2)(a)(iv) of the Arbitration & Conciliation Act, 1996, providing for bifurcation of the subject matter does not merit any consideration. The principles laid down by the Apex Court in Sukanya Holdings Private Limited v. Jayesh H.Pandya (supra), having arisen in the context of the provisions of Section 8 of the Arbitration & Conciliation Act, in my considered view, have no application to the case on hand. I, therefore, do not hesitate to conclude that the acts of management and statutory violations set out in the company petition could be bifurcated and dealt with, separately and accordingly jurisdiction could be exercised by the Bench to adjudicate the disputed issues in regard to the alleged acts of mismanagement and statutory violations....

3. The petitioner in his appeal mainly contends that CLB is not vested with the power to entertain preliminary objections whereas the respondents contended in their appeal that CLB ought to have rejected the Company Petition in view of the pendency of the proceedings before the BIFR in view of Section 26 of the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA).

4. The contentious issue in these two appeals is whether CLB is vested with the power to entertain applications to decide preliminary issues. It is no gainsaying that CLB is a creature of a statute u/s 10E of the Companies Act. Its proceedings are governed by the regulations made by CLB u/s 10E(6) of the Companies Act. These regulations known as Company Law Board Regulations, 1991 (hereafter called, Regulations), promulgated by CLB do not contain any regulation, which specifically confer power on CLB to decide preliminary issues. Respondent filed interlocutory application under Regulation 44 of the Regulations, which in the considered opinion of this Court does not even remotely suggest that power to decide preliminary issues inheres in the CLB.

5. Section 10E(4C) of the Companies Act is to the effect that every Bench of CLB

shall have powers which are vested in a Court under Code of Civil Procedure, 1908 (CPC), while trying a suit in respect of only the following matters: a) discovery and inspection of documents, b) enforcing the attendance of witnesses, c) compelling production of documents or material objections, d) examining witnesses on oath, e) granting of adjournments and f) reception of evidence on affidavits. This would show that all the powers under CPC are not vested in the CLB.

6. In this context, a reference may be made to the decision of the Supreme Court in All India Indian Overseas Bank SC and ST Employees'' Welfare Association and Others Vs. Union of India (UOI) and Others, . In the said case, the National Commission ; for Scheduled Castes and Scheduled Tribes directed the Executive Director of Indian Overseas Bank (IOB) to stop promotion process pending further investigation into the allegation of contravention of Government directives relating to reservation for SC/ST employees in IOB. Accordingly, IOB stayed the promotions. IOB Officers'' Association and other candidates challenged the same before Delhi High Court by filing a writ petition. On the ground that National Commission had no power to issue interim orders, the writ petition was allowed. The same was challenged by All India Indian Overseas Bank SC and ST Employees'' Welfare association. Reliance was placed on Clauses (5) and (8) of Article 338 of Constitution of India in support of the contention that the Commission had power to pass such orders. The Hon''ble Supreme Court after considering Clauses (5) and (8) of Article 338 of Constitution of India and also the earlier decision in M.V. Raj wade v. Dr. S.M. Hassan AIR 1954 Nag 71 and Dr Baliram Waman Hiray Vs. Justice B. Lentin and Others, (in relation to Section 4 of Commissions of Inquiry Act, 1952), laid down as under.

Interestingly, herein, in Clause (8) of Article 338, the words used are "the Commission shall...have all the powers of the Civil Court trying a suit". But the words "all the powers of a Civil Court" have to be exercised "while investigating any matter referred to in Sub-clause (a) or inquiring into any complaint referred to in Sub-clause (b) of Clause 5". All the procedural powers of a civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of Clause (8) of Article 338 of the Constitution.

7. The learned Counsel for the respondents have not placed before this Court any provision of Companies Act or Regulations (except Regulation 44) which confers the power on the CLB to decide preliminary issues as per order XIV Rule 2 of CPC. It must be, therefore, held that CLB has no power to decide preliminary issues nor can exercise powers under CPC other than those conferred u/s 10E(4C) of the Companies Act.

8. Therefore, Company Appeal No. 19 of 2005 is allowed, and Company Appeal No. 20 of 2005 is dismissed. This Court, however, observes that if Company

Petition No. 22 of 2005 is still pending before the CLB the parties shall be at liberty to raise all the grounds, which were also raised in Company Application No. 54 of 2005. There shall be no order as to costs.

