
(1998) 12 DEL CK 0011
In the Delhi High Court
Case No : CO. A. No. 2 of 1998

Boiron

APPELLANT

Vs

Sbl Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 16-12-1998

Acts Referred:

Citation : (1999) 48 DRJ 31

Hon'ble Judges : Dr. M.K. Sharma, J

Bench : Single Bench

Advocate : Mr. S. Ganesh, Mrs. Anjali K. Verma, Mr. Amit Bansal and Mr. B.A. Ranganathan, for the Appellant; Mr. M.G. Ramachandran and Ms. Vanita Sahni, for the Respondent

Judgement

Dr. M.K. Sharma, J.—The present appeal is directed against the impugned judgment and order passed by the Company Law Board on 1.3.1998 in Company Petition No. 63/1997.

2. By this judgment and order, I propose to dispose of the said appeal preferred by the appellant u/s 10F of the Companies Act. The appellant assails the findings of the Company Law Board on the ground that the said findings are not supported by materials on record and are contrary to or irreconcilable with the evidence on record. According to the appellant, the said judgment is also contrary to several mandatory requirements of the Companies Act, particularly, the provisions of Sections 283, 291, 209(4A), 370 and 301 of the Companies Act.

3. The appellant which is a French Company holding 30% of the share capital of SBL Pvt. Ltd. as filed a petition under Sections 397 and 398 of the Companies Act alleging various acts of alleged oppression and mismanagement in the affairs of the Company SBL Pvt. Ltd., the respondent No. 1 was incorporated some time in the year 1979 with the technical know-how provided by the appellant. Originally there were four groups of shareholders including the appellant Company, but, some time in the year 1985, there was change in the share holding and the respondent No. 3 through its associate Company, respondent

No. 2, became the major shareholder holding about 60% shares in the Company. The aforesaid change of shareholding came about with the consent and concurrence of the appellant who is holding 30% shares in the Company. After gaining majority Control, the respondent No. 3 has been managing all affairs of the Company. The relationship between the two took a different turn some time during later part of 1996 culminating in filing of the application under Sections 397 and 398 by the appellant.

4. The main grievance of the appellant as raised in the petition under Sections 397 and 398 of the Companies Act is that respondent No. 3 being in control of the management of the Company has been diverting the funds of the Company to various of its associated Companies without proper notice or approval of the Board resulting in alleged siphoning of funds. According to the appellant, the same was done without any resolution of the Board and without any agreement. After considering the pleadings and arguments of the Counsel for the parties, the Company Law Board found that there are mainly three grievances of the appellant which were that certain funds had been given to associate Companies of respondent No. 3 without any interest and that to without the knowledge and consent of the petitioner that increasing the share capital of the Company by a rit issue when there is no need for increasing the share capital and that matters relating to M/s. SBL India Limited.

5. The Company Law Board on appreciating of the pleadings and documents placed on record found that so far non-charging of interest on various loan advanced by the respondent No. 1 was concerned, it was not that the appellant was not aware of such loan as the same were reflected in the annual reports. It was, however, found by the Company Law Board that the question of interest was never raised as the respondent No. 1, was not originally paying any interest to respondent No. 2 and once the Arbitrator had awarded 14% interest to respondent No. 2, it was but natural that the loans given by the Company should also be subject to interest and, Therefore, the grievance of the appellant to that extent was found to be well established. The Company Law Board as a matter of fact found that the Company agreed to charge interest on certain loans given to the parties as indicated in their letter dated 10th December, 1997 although there was no such indication of charging of interest on security deposit given to Rockland Estate Pvt.Ltd., Team Designs Pvt. Ltd. and SBL India Pvt. Ltd., which are the main grievances of the appellant.

6. On appreciation of the documents on record, the Company Law Board found that non-charging of interest on the security deposit would not prejudicially affect the Company inasmuch as the payment of rent would have been more or less equal to the interest chargeable. The Company Law Board also found that the Company was vacating the premises belonging to Rockland Estate Pvt. Ltd. and the amount of Rs. 72 lacs outstanding and given as security deposit was being refunded by Rockland Estate Pvt. Ltd., and that only a sum of Rs. 2 lacs was kept as security deposit with Aspire Investment Pvt. Ltd. On the basis of the

same, the Company Law Board was of the opinion that the interest of the Company was in no way being jeopardised by the aforesaid transactions. Regarding the violation of the provisions of Section 370 and other provisions, Company Law Board stated that in absence of full details, it was not possible to give any finding, and even otherwise mere violation of provisions of a statute when it itself provides for penal action, per se, would not be treated as an act of oppression.

7. The Company Law Board found that SBL (Sikkim) is a separate entity and was not funded by the Company in question and the said controversy relating to SBL (Sikkim) Pvt. Ltd., could be put to an end by entering into a manufacturing agreement with SBL (Sikkim) Pvt. Ltd., for fixing such charges as it deemed fit, for production of Company's products in SBL (Sikkim) Pvt. Ltd., which according to the Company Law Board, would set at rest the grievance of the petitioner.

8. It was also found that increase in the share capital had been under the consideration of the Board for a long time and that there was a decision to increase the share by the Company and was approved in the Board meeting held on 29.3.1994 wherein it was also decided to issue shares to respondent No. 2 against the loans outstanding. On appreciation of the evidence on record, it was held that the directions given in the letter would take care of all the grievances and even after that in the event of any difference arising between the parties, the only solution could be that the appellant would sell his shares to respondent No. 2 on a valuation made by a valuer since the respondent No. 2 is the major shareholder and respondent No. 3 has been in management of the Company for long. Being aggrieved by the aforesaid judgment and order, the present appeal has been preferred.

9. Mr. S. Ganesh appearing for the appellant during the course of his submissions stated that the said judgment and order of the Company Law Board suffers from many infirmities as the Company Law Board failed to consider and deal with various materials and evidence on record in respect of dealings with SBL (Sikkim) Pvt. Ltd., loans and advances by SBL Pvt. Ltd., to Shreshta Group and regarding payment of interest on the advances made by SBL Pvt. Ltd. to Rockland Estate Pvt. Ltd. and Aspire Investment Pvt. Ltd. Counsel also submitted that the Company Law Board also disregarded the materials and evidence on record in respect of investment of Rs. 50.11 lacs in gas cylinders made by the Company with absolutely no return to SBL Pvt. Ltd. which amounts to a gross act of mismanagement. According to him the Company Law Board also faulted in not directing any investigation although the respondent agreed to the same in their written submission filed before the Company Law Board. 10. Mr. M.G. Ramachandran, Counsel appearing for respondent No. 1 submitted that the present appeal is not maintainable as it does not give rise to any substantial question of law. According to him, the challenge of the appellant is mainly on findings of fact arrived at by the Company Law Board on the basis of which no appeal would lie before this Court. In support of his contention, the learned

Counsel relied upon the decisions in *Minoo H. Moodi Vs. Hemant D. Vakil and Others*, reported in (1977) 89 Company Cases 546, *Mattulal Vs. Radhe Lal*, and *Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another*, . He further submitted that the Company Law Board has considered all the issues and, thereafter as given a clear and categorical finding that the respondent had conducted the affairs of the Company in a transparent manner and there is no case of any mismanagement and oppression and, Therefore, no question of law arises from the aforesaid findings of fact recorded by the Company Law Board. He also submitted that so far dealing with SBL (Sikkim) Pvt. Ltd. is concerned, the Company Law Board has directed for entering into a manufacturing agreement with SBL (Sikkim) Pvt. Ltd., for fixing such charges as it deemed fit in pursuance of which directions such an agreement has been arrived at and, Therefore, there could be no grievance in respect of the said transactions. He similarly contended that in respect of other dealings also there was no act of any mismanagement or oppression and thus the appeal is required to be dismissed.

11. In the light of the aforesaid submissions of the learned Counsel appearing for the parties, I propose to deal with the contentions in Serialtim.

12. Mr. S. Ganesh, Counsel for the appellant submitted that the entire profits made by SBL (Sikkim) Pvt. Ltd., should be to the account of SBL Pvt. Ltd., not only for future, but, for the past as well. According to him although the Company Law Board had given a direction for entering into a manufacturing agreement with SBL (Sikkim) Pvt. Ltd., the same takes care only of the future, but, does not create any obligation for the past transactions and thus, the findings suffer from infirmity.

13. My attention was also drawn to the letters dated 21.8.1995, 24.8.1995 and 12.12.1995 which deal with operating profit and not the entire profit. In the letter dated 21.8.1995, the appellant accepted that the Sikkim Laboratory is an investment of Himat Enterprise Pvt. Ltd., and not of respondent No. 1. The letter dated 24.8.1995 also speaks about Sikkim operations being self-financed through tax-free profits being generated in Sikkim. These letters when read in its true content and perspective would clearly suggest that the parties did not intend that the entire profits of SBL (Sikkim) Pvt. Ltd. would go to SBL Pvt. Ltd. Admittedly SBL (Sikkim) Pvt. Ltd. is a separate legal entity, having an independent identity. It is also not the case of the appellant that SBL (Sikkim) Pvt. Ltd. was founded by the respondent No. 1. Subsequent to the aforesaid directions issued by the Company Law Board, the Board of Directors of respondent No. 1 decided that a clear margin of minimum 15% on the products procured from SBL (Sikkim) Pvt. Ltd., would be beneficial to respondent No. 1 and is an appropriate arrangement. During the course of his arguments, Mr. M.G. Ramachandran stated that the aforesaid margin of minimum 15%, obligation is not only to the future, but, also to the past transactions. The order passed by the Company Law Board directing a manufacturing agreement to be signed between SBL (Sikkim) Pvt. Ltd., and SBL taking into account all relevant factors and

further leaving the reasonableness of the arrangement to the wisdom of the Board of Director of SBL is found to be a just and proper order in the case subsequent to which such an agreement has been approved by the Board of Directors of the respondent No. 1 with clear margin of 15% and, Therefore, it cannot be held that there is any mismanagement or oppression on that count.

14. Regarding the grievance of the appellant with regard to loans and advances made to various parties, I have considered the submissions of the learned Counsel appearing for the parties in respect of the same. According to the appellant, loans and advances to Aspire Investment Pvt. Ltd., Himat Investment Ltd. and Rockland Estate Pvt. Ltd., were wrongly advanced by respondent No. 1. So far Aspire Investment Pvt. Ltd., is concerned, the allegation was that an amount of Rs. 21.50 lacs was advanced to the said Company by the respondent No. 1. According to the respondent as of today, outstanding advance from Aspire Investment Pvt. Ltd., is only Rs. 2.77 lacs. It is true that an amount of Rs. 21.50 lacs was advanced to Aspire Investment Pvt. Ltd., towards security deposit for commercial use of the premises made available to respondent No. 1 by the said Company. Aspire Investments Pvt. Ltd., had given its premises on lease at Calcutta to the Company. The Company Law Board consideration of the evidence on record found that for leasing the said property to the respondent No. 1, the respondent No. 3 had taken only security deposit and not any rent. It is stated that the entire security deposit except Rs. 2.77 lacs has since been returned by Aspire Investments Pvt. Ltd., to respondent No. 1 leaving a balance of only Rs. 2.77 lacs.

15. So far advances made to Rockland Estate Pvt. Ltd., towards security deposit for commercial use of its premises is concerned, the same was advanced for an area of about 1100 sq.ft. in Connaught Place to respondent No. 1 in the year 1991. So far that premises is also concerned, the respondent No. 1 had the benefit of using the said premises also without payment of rent.

16. The aforesaid transactions were entered into with the full knowledge of all concerned and were duly disclosed in the annual accounts of the Company which would be disclosed from the accounts for the years ending 31.3.1995, 31.3.1996 and 31.3.1997 and the balance sheet of the year 1994-95 was also signed by the nominee director of the appellant wherein the said advances were disclosed. The balance sheet for the concerned year was also stated to have been sent to the appellant. Since the Company Law Board has also found that the Company had the benefit of the premises without payment of rent and, Therefore, there was no case of mismanagement and oppression, no objection could be taken to such a finding and, Therefore, the grievance of the appellant on that count is found to be baseless and without merit.

17. The grievance of the appellant with regard to entering into the business of dealing with gas cylinders and purchase made of 10,000 gas cylinders worth Rs. 50.11 lacs, was found by the Company Law Board that the said amount spent on the gas cylinders was reflected in the balance sheet and, Therefore, was to the

knowledge of the appellant. The appellant did not raise any issue with regard to the same in any of his pleadings before the Company Law Board. The fact that respondent No. 1 commenced leasing business was discussed in the Board Meeting and was duly disclosed in the annual accounts of the Company for the year ending 31.3.1996,. Such diversification of business by a Company with full knowledge of the Board of Directors and the shareholders cannot amount to acts of mismanagement and oppression and, Therefore, the grievance of the appellant on the count is misplaced and the contention has no basis.

18. Regarding alleged violation of Sections 370, 295 etc., of the Companies Act, the Company Law Board has held that regarding the contention that there is violation of the provisions of Section 370, no details have been given and, Therefore, no finding could be given on the aforesaid allegations. It was also held that mere violation of the provisions of a statute when it itself provides for penal action, per se, could not be treated as an act of oppression. The said findings cannot be said to be illegal and unjustified and thus, the contention of the learned Counsel for the appellant has no force at all.

19. Counsel for the appellant also submitted that at least an order should be passed u/s 402 and investigation into the affairs of SBL Pvt. Ltd. and its management was required and orders should have been passed by the Company Law Board u/s 402 directing an investigations into the affairs of SBL Pvt. Ltd. and its management. Counsel for the appellant submitted that the respondent in its written submissions also agreed to get the records scrutinised by an independent auditor as may be nominated by the Board. He submitted that in spite of the aforesaid stand taken by the respondent the Company Law Board illegally rejected the prayer for investigation on the ground that the petitioner did not furnish the detailed particulars to convince that an order of investigations was to be made. The transactions at all times, particularly, against which the grievances has been raised were reflected in the accounts of the Company duly audited by the auditors. The Company Law Board has come to a finding of fact that the appellant was fully aware of the dealings and that the respondent No. 1 had furnished all the information in respect of the same. The Company Law Board held that the respondent No. 1 was able to furnish every information that was needed to adjudicate on the issues before the Company Law Board and, Therefore, no ground has been made out for an investigation.

20. The said finding of the Company Law Board is a finding of fact and cannot be interfered with by me exercising powers and jurisdiction u/s 10F of the Companies Act. No other issue and/or contention is raised by the Counsel appearing for the appellant. On consideration of the records, I am of the considered opinion, that the findings and the order of the Company Law Board do not suffer from any infirmity in any manner and, Therefore, the appeal stands dismissed, but, in the facts and circumstances of the case, I leave the parties to bear their own costs.