Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 30/08/2026

(2016) 03 KAR CK 0326

In the Karnataka High Court

Case No : COMPA No. 5 of 2016

Chethan Bhaskar Shetty APPELLANT

Vs

Astrix Technologies Private Limited RESPONDENT

Date of Decision : 23-03-2016

Acts Referred:
Companies Act, 1956 — Section 397, 398

Citation : (2016) 197 CompCas 188 : (2016) 136 SCL 208

Hon'ble Judges : Jayant Patel and Mrs. B.V. Nagarathna, JJ.

Bench : Division Bench

Advocate : Sri. Perikal K. Arjun, Advocate for M/S. I. Sagar Associates, for the Appellant; Sri. Vivek Holla, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

1. The present appeal is directed against the order passed by the Company Law Board (herein after referred to as the ?CLB?) whereby the CLB has issued directions and disposed of the company petition.

2. We have heard Mr.Perikal K. Arjun, learned counsel for the appellants and Mr.Vivek Holla, learned counsel appearing for the main contesting party-respondents No.2 and 3 i.e., the original petitioners No.1 and 2 who are appearing on caveat.

3. Learned counsel for the appellants contended that original petitioner No. 1 had resigned and thereafter a meeting was held and various decisions were taken including that of permanent directorship and affirmative vote. The allegation of misappropriation of money were net proved before the CLB since the procedure before the CLB is by way of summary procedure. He further contended that the decisions were already taken by the Board and the Articles were also amended accordingly The CLB ought not to have issued the directions which are issued in the impugned order.

Learned counsel lastly contended that even if it is considered that original

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chethan-bhaskar-shetty-appellant-...

petitioners No. 1 and 2 are having 66% shareholding and appellant No.1 is having 1% shareholding and appellant No. 2 is having 33% shareholding then also the CLB ought not to have permitted original petitioners No.1 and 2 and respondent No.3 to sign and issue the cheque(s) with signature of two for operation of the Bank accounts of respondent No. 1-Company. He submitted that if such a direction is allowed to operate the original petitioners No.1 and 2 will manage the affairs of the company as per their desire and there will be complete exclusion in participation of the group representing 33%. Hence, such a direction ought not to have been issued by the CLB. He also contended that the direction issued for examination by the statutory auditor in connection with the alleged misappropriation of money was also uncalled for, particularly when the appellants have no faith in the statutory auditor who is appointed by a group of original petitioners No. 1 and 2. However, he conceded that if in any event the examination is to be made, the same should be made by an independent auditor other than the statutory auditor. He submitted that if the learned counsel appearing on caveat for original petitioners No 1 and 2 agrees to a name of a chartered accountant, such chartered accountant can be entrusted with the audit work. He submitted that the Court may issue appropriate direction to any other authority to give such work of the auditor for examination, but in any case, he should not be the statutory auditor of the Company.

4. Whereas Mr.Vivek Holla, learned counsel appearing through caveat contended that in the operation of the Company, there are certain routine expenses and tax liabilities, namely payment of salary and payment of statutory dues etc., in respect of which if no compliance is made, it would create further complication. He submitted that the original respondent no.3-the appellant herein mas; not agree to sign the cheque at all for operation of bank account of the Company and the resultant situation would be that there wall be more complication in the administration. However, he fairly submitted that if this Court is inclined to alter the mode of operation, limiting to routine expenses of salary of the staff and statutory dues and for other such operations with regard to the requirement made for the signature of original petitioners No. 1 and 2 as well as of original respondent No.3, his client would have no objection. On the aspect of appointment of auditor for examination of the allegation of misappropriation of money, he has submitted that if the name of the auditor is left to any authority, which this Court may find it appropriate, the original petitioners No.i and 2, his client would have no objection for such purpose.

5. We have considered the order passed by the CLB and more particularly, the reasons recorded from paragraph-7 to 7.3 of the impugned order. It appears that: the original petitioners No.1 and 2 are holding 66% shareholding whereas original respondent No.3 is having 1% shareholding and original respondent is having 33% shareholding. If a question is considered in the context of majority and minority group, one can say that the original petitioners No. 1 and 2 were having majority as against original respondents No.2 and 3 were in a minority. The discussion made by the CLB shows that though respondent Nos.2 and 3 were

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chethan-bhaskar-shetty-appellant-…

in minority, the group of original petitioners No.1 and 2 who were in majority were oppressed for being compelled to sign the resignation and also compelled to sign other resolutions of the Board, including that of permanent directorship and also affirmative vote of respondents No 2 and 3 and the amendment of articles of association etc. It appears to us that a view taken by the CLB for functioning of the Company under the principles of partnership cannot be said to be unreasonable. Further, the minority has oppressed the majority under one pretext or the other and the CLB has issued consequential direction, which cannot be said to be erroneous or beyond the scope of its power nor it can be said to be perverse exercise of its discretion. At this stage, we may reiterate that the CLB has issued the following directions:

(a) The appointment of the Respondents No. 4 to 10 was baa in law and hence, declared null and void;

(b) The Resolutions for the removal/resignation of the Petitioner No.1 and Respondents No.2 & 3 were bad in law and the same are declared null and void and thus, the Petitioners No.1 & 2 and Respondent No.3 each having 33% shareholding to act as whole time directors;

(c) The Respondent No.2 owning 1% shareholding to continue as ordinary director;

(d) No director to get permanent directorship and affirmative vote for passing the resolution(s) in the Board/Shareholders meeting (s) and hence. 1 he resolution passed for appointment of Respondents No.2 & 3 as permanent directors and affirmative vote to them is declared null and void,

(e) The Petitioners No.1 & 2 and Respondent No. 3 will be the joint signatories to the Bank Accounts of the Respondent No. 1 Company so that any two of them may sign and issue the cheque(s);

(f) The Petitioners as well as the Respondents will desist from writing letters to the Banks and other authorities against the interest of the company and hence, will cooperate with each other for the proper and efficient working of the Respondent Company;

(g) The Respondent No.1 Company will make necessary correction or alteration in its statutory records and returns filed with Registrar of Companies within four weeks;

(h) The statutory auditor to examine the allegations of misappropriation of money in the process of audit and the findings, if any be reported in the auditor?s report to the balance sheet.

6. As such, we are not impressed by the submission that the CLB could not have issued directions on the premise that the original petitioners No.1 and 2 were compelled to sign certain resolutions of the Beard >f Directors. It is true that CLB cannot undertake full-fledged fact finding enquiry as that of a Civil Court. If one

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chethan-bhaskar-shetty-appellant-…

is having a majority in the shareholding pattern etc., he would not abandon the right in favour of the minority, nor would he create a situation which would result into putting himself into a minority position. When one is in a majority, he, in normal circumstances, would not agree for the amendment in the Articles/ Resolutions for prejudicing the interest of the majority. By applying reasonable prudence, in our view, the CLB could have issued appropriate directions. It is not a case where somebody was to be punished on account of coercion or force applied, but any action undertaken which prima facie is not acceptable by applying reasonable prudence can be undone in a summary'' exercise of power which has been so done in the present case by the CLB. Hence, we are not inclined to accept the submission as canvassed on behalf of the appellants, save and except observed hereinafter.

However, there is some substance in the contention raised so far as direction No.(e) is concerned. It is true that by direction No.(e) situation may be created for operation of the bank account by original petitioners No.1 and 2 only and respondent No.3-the appellant herein may be kept away from the Management in spite of the fact that he is having 33% shareholding but at the same time, original respondent No.3 cannot be permitted to create a situation of statement in paying the routine expenses for the operation of the Company. In the circumstances, we find that direction No.(e) can be modified in a manner that if the expenses are to be incurred which are routine in nature namely paying salary of the staff or for payment of statutory dues of the Company, the signature of any two should be sufficient for the operation of the bank account. But, for operation of the bank account, to incur other expenses, the signature of either of petitioners No.1 or 2 may be there but there should be signature of respondent No.3 and in the absence thereof, the operation of the bank account shall not be made for incurring such other expenses.

7. As such, there is no material produced on record to contend that the appellant herein-original respondent No.3 and his group are having no confidence in the statutory auditor. No material is produced to show that the statutory auditor was appointed by the original petitioners No.1 and 2 still act or that the auditor is acting as per the directions of petitioners No.1 and 2. However, at the same time confidence in the enquiry for examination of the record to be made by the Auditor is required. Hence, we find that if there is joint consensus amongst original petitioners No.1 and 2 as well as original respondent No.3, for a particular auditor, he can be assigned he work for examination of the record of the Company as per the direction No.(h) but in the absence thereof, the matter should be left to the Registrar of the Companies to nominate an auditor for examination of the record of the Company.

8. In view of the aforesaid observations and discussion, the direction Nos.(a) to (d) and (f) and (g) issued by the CLB are not interfered with. However, direction Nos.(e) and (h) shall stand modified as under:

(e) Petitioners No.1 and 2 and respondent No.3 will be the joint signatories of the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chethan-bhaskar-shetty-appellant-…

bank account of respondent No. 1-Company and such shall be required for incurring expenses on behalf of the Company, excluding the routine expenses for payment of salary of the staff and for payment of any statutory dues of the Company. In case of routine expenses such as payment of salary of the staff and statutory dues, signature of any of the two persons from amongst the aforesaid three shall be sufficient for the operation of the bank account;

(h) The Auditor, who is to be nominated by the Registrar of Companies, in case there is no consensus between the parties, shall examine the allegations of misappropriation of money in the process of audit and the findings, if any, be reported in the auditors report and the balance sheet.

9. It is observed that, if within a period of two wrecks, original petitioners No. 1 and 2 as well as original respondent No.3 give a common name of any auditor, the Registrar of Companies shall assign the work to such auditor, failing which, within a period of two weeks therefrom the Registrar of Companies shall exercise his power for nominating the auditor as referred to herein above.

10. The appeal is disposed of accordingly. In view of the disposal of the appeal, pending applications (I.A. Nos. 1/16, 2/16) also stand disposed off.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/chethan-bhaskar-shetty-appellant-…