(2008) 03 AP CK 0046

In the Andhra Pradesh High Court

Case No : Company Appeal No. 4 of 2007 and Company Applications No''s. 288, 289, 290 and 291 of 2008 and 1042, 1109, 1171, 1190, 1303, 1320 and 1358 of 2007

D. Ramkishore and Others — APPELLANT

Vs

Vijayawada Share Brokers Ltd. and Others — RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:
Companies (Court) Rules, 1959 — Rule 9
Companies Act, 1956 — Section 10F, 397, 398, 399, 400

Citation : (2008) 144 CompCas 326 : (2009) 89 SCL 279

Hon'ble Judges : Ramesh Ranganathan, J

Bench : Single Bench

Advocate : V.S. Raju, in Company Appeal No. 4 of 2007, Gangadhar Chamarthy, in C.A. Nos. 288 and 289 of 2008 and 1042 of 2007, Rupendra Mahendra, in C.A. Nos. 1109 of 2007, 209 and 291 of 2008, G. Sudha, in C.A. No. 1171 of 2007, C. Kodanda Ram, in C.A. No. 1190 of 2007, V.V. Anil Kumar, in C.A. No. 1303 of 2007, Y. Ratnakar, in C.A. No. 1356 of 2007 and Murlinarayana Bung, in C.A. No. 1320 of 2007, for the Appellant; V.S. Raju, for Respondent Nos. 1 to 22 in C.A. Nos. 288, 289, 290, 291 of 2008 and 1042, 1109, 1171, 1190, 1303 and 1356 of 2007, C. Kodanda Ram, in Company Appeal No. 4 of 2007, S. Ravi, for Respondent Nos. 1 to 3 and 5 in Company Appeal No. 4 of 2007, Respondent Nos. 23 to 28 in C.A. Nos. 288, 289, 290, 291 of 2008 and 1042, 1109, 1171, 1190 and 1356 of 2007 and Respondents Nos. 22 to 27 in C.A. No. 1303 of 2007, N. Subba Rao, for Respondent Nos. 8 to 11 in Company Appeal No. 4 of 2007, V. Hariharan, for Respondent No. 12 in Company Appeal No. 4 of 2007, P. Harinath Gupta and A. Sanjay, Commissioner, for the Respondent

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—This appeal is filed, u/s 10F of the Companies Act 1956, by 22 shareholders of the first respondent-company aggrieved by the order of the Company Law Board in C.P. No. 56 of 2002 dated November 10, 2006 (D. Ramkishore v. Vijayawada Share Brokers Ltd. [2007] 140 Comp Cas 180). The appellants herein, 22 in number, holding in excess of one-tenth of the total issued capital, and constituting more than one-tenth of total number of members of the respondent-company, approached the Company Law Board alleging certain acts of oppression and mismanagement in the affairs of the company, at the instance of the second respondent, relating mainly to (a) non-commencement of any activity of the company; (b) debiting personal and fictitious expenditure to the profit and loss account of the company; (c) misappropriating funds of the company by not accounting for the rentals, and other income, in the books of accounts; (d) illegal sale of the company''s landed property at a low price and utilizing the difference, of the unaccounted amount, for acquiring shares of other members in order to increase their voting power; (e) illegal removal of the directors and usurpation of the power of management by appointing their kith and kin on the board of directors of the company; (f) misuse of the office equipments for his personal business; (g) illegal writing off of the assets of the company by debiting the profit and loss account; (h) illegal forfeiture and re-issue of shares for personal gain; (i) non-maintenance of the minutes book of the meeting of the board of directors; and (j) non-delivery of the share certificates of the majority shareholders of the company. The petitioners sought the following reliefs from the Company Law Board:

(i) to supersede the board of directors and appoint an administrator to take charge of the affairs of the company.

(ii) to restrain the respondents from entering into or handing over possession of the company''s landed property to third parties.

(iii) to set aside the shares acquired by the second respondent and his relatives during the period between September, 2001 and September, 2002.

(iv) To restrain the second respondent and his relatives from conducting the affairs of the company.

(v) To direct the second respondent to reimburse the personal expenditure incurred by him and debited to the books of account of the company; and

(vi) To direct the second respondent to render accounts in respect of the rentals collected from M/s. Kakatiya Educational Institution.

2. The Company Law Board, while rejecting the contentions, however, held that it was immaterial whether or not the petitioners had made out a case u/s 397/398 for grant of any relief to bring to an end the acts complained of, that these and other developments referred to in its order had resulted in a deadlock in the affairs of the company, that the relationship between the shareholders had not been reconcilable in view of several rounds of litigation and that the parties had lost mutual trust and confidence. In exercise of the powers conferred u/s 402, the Company Law Board directed that the company should convene and hold a meeting of its members to elect directors not exceeding five in number, upon which the Board so constituted would appoint one of the directors to be the managing director, that hon''ble justice Mr. P. Ramakrishnam Raju (retd.) would

preside over the meeting convened in terms of the order, that he was at liberty to take the services of any practicing company secretary of his choice in the discharge of his functions, that the chairman should work out the entire modalities of convening and holding of a general meeting in consultation with the company, that the chairman of the meeting should forward a report on the proceedings of the general meeting within ten days of conclusion of the meeting, that the board of directors constituted in terms of the order should forthwith replace the existing board and would (a) manage the day-to-day affairs of the company as per the memorandum and articles of association of the company; (b) take necessary steps, for due and proper sale of the landed property belonging to the company, under the supervision of the chairman and distribute the proceedings to all the shareholders according to their holding in the company; (c) deliver share certificates to the members in respect of their holding in the company. The Company Law Board confirmed the sale of 570 sq. yards of the landed property already effected and registered by the company in favour of third party purchasers and held that the remuneration of the chairman and the practicing company secretary should be fixed in consultation with the company and should be borne by the latter. While disposing of the company petition, the Company Law Board observed that the connected applications also stood disposed of accordingly, that all the interim orders were vacated and that liberty was being given to apply to the Company Law Board in case of any difficulty in implementing the order.

3. While admitting the appeal this Court, by order in C.A. No. 198 of 2007 dated February 2, 2007, suspended the order of the Company Law Board. Thereafter, C.A. No. 277 of 2007 was filed by the appellants herein, under Rule 9 of the Companies (Court) Rules, 1959, seeking a direction to the respondent-company to take necessary steps for the sale of the property belonging to the company, under the supervision of the chairman appointed by the Company Law Board, at the best possible price and to distribute the sale proceeds. This court, in its order dated March 22, 2007, felt it appropriate to appoint advocate commissioner for disposal of the property and appointed Sri A. Sanjay Kishore, and Sri P. Harinath Gupta, advocates as commissioners for effecting sale of the land of an extent of 4470 square yards on an "as is where is" basis. The advocates commissioner were directed to cause necessary publication in local newspapers, invite tenders, undertake negotiations for the sale of the assets in question and, after completing negotiations, to place the entire material before this Court, within a week of conducting the auction, for passing appropriate orders. This Court fixed the minimum upset price at Rs. 15,000 per square yard and directed that Rs. 50,000 be paid as earnest money deposit for participating in the auction. The earnest money deposit was to be made by way of demand drafts drawn in favour of the Registrar (Judicial) of the Andhra Pradesh High Court. The fee of the advocates commissioner was tentatively fixed at Rs. 25,000 each and they were informed that the required amount, for causing publication, and to meet incidental expenses, would be deposited by the appellants within one week.

4. This Court, in its order dated April 20, 2007, noted that the advocates commissioner had represented that the total extent of land owned by the company was in three bits of 3,420 square yards, 975 square yards and 350 square yards, that these three bits were separate and distinct with different boundaries and were not contiguous and that it would be proper to sell these extents of land under separate lots. This Court directed the advocates commissioner to effect sale of land under three separate lots, i.e., lot No. 1 consisting of 3,420 square yards, lot No. 2 consisting of 975 square yards and lot No. 3 of 350 square yards, fixing the minimum upset price at Rs. 35 lakhs, Rs. 11 lakhs, and Rs. 4 lakhs respectively, after carrying out publication in "Vaartha" and "Eenadu" main editions; and "Andhra Jyothi" and "Deccan Chronicle" Vijayawada local editions. The advocates commissioner were directed to negotiate with the bidders and, thereafter, file a report before the court in terms of the order passed by the court earlier. On receipt of the report of the advocates commissioner this Court, in its order dated June 11, 2007, accorded them permission to deposit the entire amount received by them, both by way of demand drafts and cash, along with a detailed statement of the amounts received, in the registry of the High Court. On June 26, 2007, this Court took note of the memo of the advocates commissioner wherein they had stated that cash of Rs. 30,000 and demand drafts for Rs. 2,30,50,000 were deposited in the accounts section, of the High Court registry on June 18, 2007. On applications being filed by the unsuccessful bidders seeking refund of the earnest money deposit, paid by them along with the tender form, this Court permitted refund of the earnest money deposit to some of them.

5. Sri V.S. Raju, learned Counsel for the appellants, would submit that no directions were passed by this Court requiring the advocates commissioner to take charge of the company''s assets and that the first respondent-company is protecting its assets from third party encroachment. While questioning the correctness of the findings of the Company Law Board, on the sale of certain properties of the first respondent-company by the second respondent, learned Counsel would, however, emphasise that the appellants were aggrieved mainly by that portion of the order of the Company Law Board wherein the general meeting of the shareholders of the company was directed to be convened to elect directors, one of whom was to be its managing director. Learned Counsel would contend that, since the board of directors was required to be elected by the shareholders of the company, and as the shareholders had already elected the board of directors in its meeting held on September 30, 2003, the Company Law Board had exceeded its jurisdiction in directing a fresh meeting of the shareholders of the company to be convened to elect the board of directors and, in effect, directing supersession of the existing board without justification. Learned Counsel would submit that the legally elected board of directors of the company should be permitted to discharge its functions and, save illegality in the discharge of their functions, they should not be replaced without just cause.

6. Sri Y. Ratnakar, learned Counsel appearing for some of the members of the

first respondent-company, would seek a declaration from this Court that the respondents, whom he represents, are in the management of the company. Learned Counsel would request this Court to issue necessary guidelines to safeguard the money received on the sale of the assets and to ensure that the sale proceeds are properly distributed among all the shareholders of the company.

7. Both Sri S. Ravi and Sri v. Hariharan, learned Counsel appearing on behalf of some of the respondents, on the other hand, would contend that the Company Law Board had rightly directed that a fresh board of directors be elected, in a general meeting convened for the purpose, to replace the earlier board in view of the disputed manner in which the earlier board was elected on September 30, 2003. They would contend that the Company Law Board had the necessary power and discretion to issue such a direction u/s 402 of the Companies Act, and that such exercise of discretion did not constitute an error of law necessitating interference in appellate proceedings u/s 10F of the Companies Act. According to learned Counsel, even if this Court were to be satisfied that the Company Law Board had erred in the exercise of its jurisdiction, or that it had erroneously recorded a finding of fact, no interference was called for as the remedy of an appeal, u/s 10F of the Companies Act, was available only on a question of law.

Section 10F of the Companies Act: Its scope:

8. u/s 10F of the Companies Act, 1956, any person aggrieved by any decision or order of the Company Law Board may file an appeal to the High Court on any question of law arising out of such order. It is only on a question of law, and not of fact, that an appeal would lie against the order of the Company Law Board to the High Court. There is no jurisdiction to entertain an appeal on grounds of erroneous findings of fact, however gross the error may seem to be, for if the question to be decided is one of fact it does not involve an issue of law. (Deity Pattabhiramaswamy v. S. Hanymayya AIR 1959 SC 57). It is only an error of law which can be corrected by the High Court in exercise of its jurisdiction u/s 10F of the Companies Act. If the finding recorded by the Company Law Board is one of law or of mixed law and fact, the High Court can certainly examine its correctness, but if it is purely one of fact, the jurisdiction of the High Court would be barred. (Mattulal Vs. Radhe Lal,). A finding on a question of fact is open to attack as erroneous in law only if it is not supported by any evidence, or if it is unreasonable and perverse, but where there is evidence to consider, the decision of the Company Law Board is final even though the High Court might not, on the materials, have come to the same conclusion if it had the power to substitute its own judgment. (SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.,). In between the domains occupied respectively by questions of fact and of law, there is a large area in which both these questions run into each other, forming enclaves within each other. The questions that arise for determination in that area are known as mixed questions of law and fact. These questions involve first the ascertainment of facts on the evidence adduced

and then a determination of the rights of the parties on an application of the appropriate principles of law to the facts ascertained. The ultimate finding on the issue must, therefore, be an inference to be drawn from the facts found, on the application of the proper principles of law, and in such cases an inference from facts is a question of law. In this respect, mixed questions of law and fact differ from pure questions of fact in which the final determination, equally with the finding or ascertainment of basic facts, does not involve the application of any principle of law. The proposition that an inference from facts is one of law will be correct in its application to mixed questions of law and fact but not to pure questions of fact. When the finding is one of fact, the fact that it is itself in inference from other basic facts will not alter its character as one of fact. (SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS.,).

9. It is within this limited scope that the contentions urged on behalf of the appellants must be examined. The grievance of the appellants, with regards the sale of a portion of the land belonging to the first respondent-company by the second respondent, has been dealt with elaborately by the Company Law Board in the order under appeal. The Company Law Board observed that, at the annual general meeting held on September 30, 1998, the board of directors was authorized to "sell a part or full of the land owned or to be owned by the company", that at the board meeting held on September 29, 1999, the board of directors, which included petitioner No. 21, had authorised the second respondent and the Director (Finance) to enter into an agreement with M/s. Vijayawada Share Brokers Ltd. (VSBL) for sale of 4/15th undivided share of the landed property for a consideration of Rs. 51 lakhs which, however, came to be terminated on account of non-fulfilment of the terms of the agreement by M/s. VSBL as borne out by the minutes of the meeting dated December 23, 2000. The Company Law Board noted that petitioner No. 21 was a party to the resolution cancelling the transaction with M/s. VSBL, that inability of M/s. VSBL to arrange for further payment in terms of the agreement had forced the first respondent-company to return the advance of Rs. 18 lakhs paid by VSBL and that, at the board meeting held on December 24, 1999, the directors including petitioner No. 21, while deliberating the issue relating to the sale of landed property, had recorded the hurdles faced by the company. The Company Law Board noted that the first respondent-company faced hurdles such as lukewarm and poor enquiries for purchase of a portion of the site in spite of sounding and engaging several real estate brokers in the city, that the rates quoted were around Rs. 2,000 per sq. yard for the bit on the southern side, that some more legal hurdles had to be removed and that the first respondent was not ready to deliver the property. The Company Law Board also noted that the board of directors, in their meeting held on March 23, 2000, had recorded that there were no serious enquiries for the company''s vacant property, that the minutes of the board meeting held on June 23, 2000, revealed the futile attempts of the company, in identifying prospective purchasers, in spite of engaging various property brokers and the periodical offers made to its members and that, ultimately, they were able to secure a

purchaser for 700 sq. yards at Rs. 2500 per sq. yards subject to certain conditions regarding the approach road which ultimately came to be withdrawn by the purchaser. The Company Law Board noted that the first respondent had failed to attract any offers despite advertisement in the local newspapers on more than one occasion in April, 1998 and February, 1999, that in the annual general meeting held on September 26, 2002, the second respondent, as the chairman of the meeting, while giving details of the problems faced by the company on account of withdrawal of the power of attorney given by petitioners Nos. 2 and 4 in favour of the company and as a result of encroachment of 350 square yards of the landed property of the company by Peddireddy Peddiraju, had also furnished details of the proposal for sale of 570 sq. yards of landed property situated adjacent to the encroached property. The Company Law Board noted that the sale of 570 sq. yards of land was reportedly intended to create a buffer, between the illegal occupant and the company''s remaining landed property, and that the report of the directors dated August 30, 2001, for the year ended March 31, 2001, showed that the company was pursuing the legal issues concerning its lands. The Company Law Board held that, in the above background, the market value of the property as disclosed in the valuation certificate produced by the petitioners of Rs. 7000 per sq. yard could not be realistic, that the market value and saleable value of any property could not be one and the same, that petitioners Nos. 1 and 2, in their letters dated September 7, 2002 and September 16, 2002, had offered to purchase the landed property at the rate of Rs. 3000 and Rs. 3200 per sq. yard which would indicate that the market rate could not be Rs. 7000 per sq. yard as reported in the valuation certificate and that, in such circumstances, it was not inclined to interfere with the management decision of the board of directors of the company for having sold 570 sq. yards at the rate of Rs. 2200 per sq. yard. The Company Law Board directed that the purchasers should derive valid title to the property acquired from the company.

10. On the plea that the second respondent had failed to account for the shortage of the landed property, owned by the company, the company Law Board noted that there was no documentary evidence to show the extent of landed property acquired for the purpose of the company, that the agreement dated October 25, 1997, showed that the company had offered an extent of 6000 sq. yards of landed property by way of security in favour of M/s. Merfin (India) Ltd. on behalf of its members and there was no reason for the company to give security of only 6000 sq. yards of landed property if it had acquired 6222.75 sq. yards. The Company Law Board found no force in the plea, raised on the behalf of the petitioners, with regards shortage of the property of the company.

11. As noted above, an appeal u/s 10F of the Companies Act, 1956, is on a question of law and not of fact, and, even if the Company Law Board is held to have erred in exercise of its jurisdiction on a question of fact, no interference would still be called for. The Company Law Board has elaborately dealt with the contention regarding sale of landed property of an extent of 570 sq. yards and

has, for just and valid reasons, held that the action of the respondents in selling an extent of 570 sq. yards at Rs. 2200 per sq. yard could not be faulted. No question of law arises, on the aforesaid findings of fact recorded by the Company Law Board, necessitating interference in appellate proceedings u/s 10F of the Act.

Nature and extent of power conferred on the Company Law Board u/s 402 of the Companies Act:

12. Sri V.S. Raju, learned Counsel for the appellants, would contend that, since a duly elected board of directors was constituted in the meeting held on September 30, 2003, the Company Law Board ought not to have directed that a meeting of the shareholders should be convened to elect a board of directors afresh, not exceeding five in number, one of whom was to be the managing director. According to learned Counsel, the only order which the Company Law Board ought to have passed, in exercise of its jurisdiction u/s 402 of the Companies Act, was to appoint a chairman for the purpose of taking appropriate steps for the sale of the landed property of the first respondent-company, distribute the sale proceeds among the shareholders according to their holding and to deliver share certificates to the members in respect of their holding in the company. Learned Counsel would submit that, instead of directing a board of directors to be elected afresh, the Company Law Board should have permitted the existing board of directors to assist the chairman to implement the directives issued.

13. In its order, in C.P. No. 56 of 2002 dated November 10, 2006, the Company Law Board observed that the first respondent-company had become a member of the Bhubaneshwar Stock Exchange Ltd., and of the Interconnected Stock Exchange India Ltd., as early as in the year 1996 and ever since then the company did not carry on its main activity as disclosed in the audit report, forming part of the annual reports, for the period between 1995-96 and 2001-02, that the landed property belonging to the company could not be divided among the 216 existing members and was being exposed to various inevitable risks, that the petitioner group consisting of 130 members was willing to sell its entire stake in the company to the respondents but the respondents were not willing to purchase the shares of the petitioners group in its entirety, but only the shares of the petitioners and that the respondents were not willing to sell their shares to the petitioners. The Company Law Board held that these facts justified the making of a winding up order on just and equitable grounds which would, however, unfairly prejudice the members and that the most equitable relief, in removing the existing impasse, was to sever the relationship by disposing of the landed property and apportioning the sale proceeds among the shareholders especially when the purpose for which the land was acquired could not be accomplished. Having so observed the Company Law Board, in exercise of its jurisdiction u/s 402 of the Companies Act, 1956, and with a view to bring to an end all the matters complained of, issued certain directions a part of which the appellants herein are aggrieved by.

14. The scheme of Sections 397 - 406 in Chapter VI of Part VI of the Companies

Act, constitute a code by itself for granting appropriate relief to oppressed minority shareholders, a power of the widest amplitude. (Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others,). The court has very wide remedial powers if it concludes that the petition is well founded. Whatever remedy is sought by the petitioner, the court has to consider what order is appropriate at the time of the hearing and not what was appropriate at the time the petition was presented. In fashioning the appropriate relief, the court must take account of facts which arose between the date of presentation of the petition and a finding by the court that the petition was well-founded. The court has a general power to make such order as it thinks fit for giving relief in respect of the matter complained of, including the making of an order forbidding the company from making any alterations, (either at all or of a specified kind), to the memorandum or articles of association without the leave of the court. (Palmer''s Company Law : Sweet and Maxwell).

15. The powers u/s 402 are residuary in nature and are in addition to the powers available to the Company Law Board under Sections 397 and 398 of the Companies Act. (Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others,). The powers of the court u/s 402 of the Companies Act are wide and, thereunder, the court may make any order for the regulation of the conduct of the company''s affairs upon such terms and conditions as may, in the opinion of the court, be just and equitable in the circumstances of the case. (Richardson and Cruddas Ltd. Life Insurance Corporation of India Vs. Haridas Mundhra and Others,). Technicalities cannot be permitted to defeat exercise of the equitable jurisdiction conferred by Section 402. (Needle Industries (India) Ltd. and Others Vs. Needle Industries Newey (India) Holding Ltd. and Others,).

16. Having regard to the object that is sought to be achieved by Sections 397 and 398 read with Section 402, the powers of the court thereunder cannot be read as subject to the provisions contained in the other chapters of the Companies Act which deal with normal corporate management of a company. The topic or subjects dealt with by Sections 397 and 398 are such that it becomes impossible to read any such restriction or limitation on the powers of the court acting u/s 402. Without prejudice to the generality of the powers conferred on the court, Section 402 proceeds to indicate what types of orders the court could pass. Under Clause (a) of Section 402, the court''s order may provide for the regulation of the conduct of the company''s affairs in future and under Clause (g) the court''s order may provide for any other matter for which, in the opinion of the court, it is just and equitable that provision should be made. An examination of the aforesaid sections brings out two aspects : first, the very wide nature of the power conferred on the court, and, second, the object that is sought to be achieved by the exercise of such power, with the result that the only limitation that could be impliedly read on the exercise of the power should be that nexus must exist between the order that may be passed thereunder and the object sought to be achieved by those sections and, beyond this limitation which arises by necessary implication, it is difficult to read any other restriction or limitation

on the exercise of the court''s power. Further, Sections 397 and 398 are intended to avoid winding up of the company if possible and keep it going while at the same time relieving the minority shareholders from acts of oppression and mismanagement or preventing the company''s affairs from being conducted in a manner prejudicial to public interest and, if that be the objective, the court must have the power to interfere with the normal corporate management of the company and to supplant the entire corporate management, or rather mismanagement, by resorting to non-corporate management, which may take the form of appointing an administrator or a special officer or a committee of advisors, etc., who would be in charge of the affairs of the company. The court could even have a truncated form of corporate management if the exigencies of the case required it and any truncated form of corporate management can never conform to all the provisions dealing with corporate management. While acting u/s 398, read with Section 402 of the Companies Act, the court has ample jurisdiction and very wide powers to pass such orders and give such directions as it thinks fit to achieve the object and there can be no limitation or restriction on such power as requiring it to be exercised subject to the other provisions of the Act dealing with normal corporate management or that such orders and directions should be in accordance with such provisions of the Act. (Pramod Kumar Mittal Vs. Andhra Steel Corporation Ltd. and Others,). No canon of construction would permit an interpretation in which the statutory power of the court for its exercise depends upon the vote of the members of the company (Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others, . The court, u/s 398 read with Section 402 of the Act, can give appropriate directions which are contrary to the provisions of the articles of the company or the provisions of the Companies Act (Debi Jhora Tea Co. Ltd. Vs. Barendra Krishna Bhowmick and Others,). Constitution of an advisory Board is within the competence of the court u/s 402 of the Companies Act, 1956 (Richardson and Cruddas Ltd. Life Insurance Corporation of India Vs. Haridas Mundhra and Others,). On a true construction the court has the widest possible jurisdiction and ample powers to bring about the desired result. The court can reframe or insert a new article which would be in conflict with some of the provisions of the Act. (Pramod Kumar Mittal Vs. Andhra Steel Corporation Ltd. and Others,).

17. In exercise of its discretionary jurisdiction, u/s 402 of the Companies Act, 1956, the Company Law Board has appointed a retired judge of the High Court of A.P. as the chairman of the first respondent-company and has held that a new board of directors, (five in number), should be elected by the members in a general meeting of the company to assist the chairman. A perusal of the order under appeal would indicate the reasons which weighed with the Company Law Board in issuing directions for a fresh board of directors to be elected instead of permitting the board of directors, elected in the meeting held on September 30, 2003, to continue to assist the chairman. In the order under appeal, the Company Law Board noted that the minutes, of the eighth annual general meeting of the company reportedly held on September 30, 2003, revealed that

the meeting could not be completed in a peaceful manner, that the company could not give effect to any of the resolutions passed at the eighth annual general meeting on account of the restraint order obtained by one of the shareholders in M.P. No. 22569 of 2003 filed before the High Court of Andhra Pradesh and that the matter was pending before the Additional Senior Civil Judge, Vijaya-wada, in O.S. No. 827 of 2003. The Company Law Board noted that, according to the petitioners, members belonging to the respondent group did not participate in the eighth annual general meeting and that respondents Nos. 3 and 6 were not re-elected as directors of the company. The Company Law Board observed that these developments had resulted in a deadlock in the affairs of the company, that the relationship between the shareholders was not reconcilable and that the parties had lost mutual trust and confidence. Since the meeting held on September 30, 2003, whereby the board of directors were elected, had itself led to serious disputes, the Company Law Board, in exercise of its wide remedial powers u/s 402, directed that a meeting of the members of the company be called for to elect a fresh board of directors and that the retired judge of the Andhra Pradesh High Court should preside over the meeting so convened. That the Company Law Board has the power, to issue such directions, u/s 402 of the Companies Act, 1956, is not in dispute. As such exercise of discretion by the Company Law Board, u/s 402 of-the Companies Act, in directing that a fresh board of directors be constituted to assist the chairman, (a retired judge of the A.P. High Court), cannot be said to give rise to a question of law necessitating interference in appellate proceedings u/s 10F of the Companies Act, 1956.

18. Before parting with the case, it is necessary to note the contention of Sri Y. Ratnakar, learned Counsel appearing on behalf of some of the members of the first respondent-company. Learned Counsel would seek a declaration from this Court that the members, whom he represents, are in the management of the first respondent-company. Whether such a declaration could be given in an appeal u/s 10F of the Companies Act, 1956, is itself, debatable. Even otherwise this question does not necessitate further examination since the members, on whose behalf Sri Y. Ratnakar has entered appearance, have not even chosen to prefer an appeal against the orders of the Company Law Board. They are not entitled to seek directions in an appeal, filed u/s 10F of the Companies Act, wherein they are arrayed as respondents. The contention of learned Counsel that necessary guidelines should be issued by this Court to safeguard the money received on the sale of the assets and to ensure that the sale proceeds are properly distributed among all the shareholders of the company, does not also necessitate examination since the Company Law Board while giving directions u/s 402 of the Companies Act on the manner in which the landed properties of the first respondent-company should be brought to sale, and the proceeds should be distributed among the shareholders according to their holding in the company, has left it open for an application to be made to it in case any difficulty arises in implementing the order in C.P. No. 56 of 2002 dated November 10, 2006.

19. While both Sri V.S. Raju and Sri Y. Ratnakar would request this Court to direct the advocates commissioner to complete the sale transaction, and distribute the sale proceeds to the members of the company, I am not persuaded to do so since the jurisdiction of this Court, in an appeal u/s 10F of the Companies Act, is limited only to questions of law. It is wholly inappropriate for this Court to take upon itself the task of selling the landed properties of the first respondent-company, and in distributing the sale proceeds, as this Court, in proceedings u/s 10F of the Companies Act, 1956, can neither substitute itself for that of the Company Law Board nor can it exercise the powers conferred on the Company Law Board u/s 402 of the Companies Act. The interlocutory orders passed by this Court during the pendency of the appeal, including those appointing advocates commissioner for the sale of the landed property of the first respondent-company, inviting bids by prescribing the earnest money deposit, receiving the bid amounts, etc., would not survive disposal of the appeal.

20. Since bids have been received by the advocates commissioner from several persons, and the money received has been deposited in the High Court Registry, pursuant to the interim orders passed during the pendency of this appeal, it is but appropriate that the amount received either from the highest bidders, or from the unsuccessful bidders, be returned to them. The High Court Registry shall, on such persons being identified by their respective Counsel, return the money received from them by way of an account payee cheque drawn in their favour.

All the company applications are, accordingly, disposed of. Subject to the above, Company Appeal No. 4 of 2007 fails and is accordingly, dismissed.

