(2007) 08 MAD CK 0059

In the Madras High Court

Case No : C.M.A. No. 3006 of 2005

Dinesh Kumar Jhunjhunwala APPELLANT

Vs

The Karur Vysya Bank Ltd. RESPONDENT

Date of Decision : 10-08-2007

Acts Referred:

Companies Act, 1956 — Section 150, 150(1), 150(2), 150(3), 151
Depositories Act, 1996 — Section 11, 6(2)

Citation : (2007) 5 CompLJ 131 : (2007) 79 SCL 227

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : K. Ramasamy, for the Appellant; T.K. Bhaskaran, for Srinath Sridevan, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—This Civil Miscellaneous Appeal is filed against the order of the Company Law Board, Southern Region

Bench, Chennai, dated 5.5.2005, insofar as directing the respondent to furnish the extract of its Register of Members, excluding the list of

beneficial owners of shares of the Bank.

2. Notice of motion was ordered in the appeal on 18.10.2005 and after service of notice, the appeal was listed and on 24.7.2007, by consent of

the learned Counsel appearing for the appellant as well as respondent, the appeal was taken up for final disposal.

3. The brief facts necessary for disposal of the appeal are that the respondent/ Bank is a Company having its Registered Central Office at Erode

Road, Karur. The Company is engaged in banking business. The appellant is a member of the Company, holding 100 equity shares. On

18.10.2004 the appellant applied for the extracts of register of members not earlier than 30.9.2004. On 27.10.2004, the respondent Company

refused to give the extracts of its register of members to the petitioner. Hence the Company petition No. 13/163(6)SRB/2005 was filed before the

Company Law Board, Chennai Bench, with a prayer to direct the Company for an inspection and for issuing of extracts of its register of members

to the petitioner.

4. The said petition was resisted by the respondent Bank by filing a reply contending that the petitioner had never made request for inspection and

he had stated that he will not be in a position to come for inspection, but still he requires the extracts of its register of members. The same is

contrary to Section 163(2) of Companies Act, 1956, as the persons claiming right to seek copy of register of members should have inspected the

register, which is a pre-condition for demanding extract of members list. Stating the said defence, the respondent opposed the company petition

and without prejudice to the said contention, the respondent admitted that on 25.10.2004 it received a fax dated 18.10.2004 from the petitioner

stating that he will not be in a position to come for inspection of register of members and with a request to provide for an extract of the entire

register of members as on 16.10.2004, for which a reply was already given by the respondent Bank. It is also stated in the reply that in terms of

Section 6(2) of the Depositories Act, 1996, the name of the Depository is entered in the register of members of the Company as registered owners

of the demat shares and once the name of the depositories are entered in the register of members, the said register is complete in respect of the

shares issued by the Company, fulfilling the requirements of Section 150 of the Companies Act, 1956, and the register of beneficial owners is

maintained only by a depository in terms of Section 11 of the Depository Act and not by the Company and the Company only receives a status list

of the beneficial owners periodically.

5. The Company Law Board, considering the rival contentions raised, by order dated 24.5.2005, even though held that the right to seek copy of

the register of members is available only to the members, who inspected the register, the prayer of the petitioner cannot be declined considering his

old age. The operative portion of the order reads as follows:

...However, I do not propose to decline the prayer of the petitioner considering his old age. At the same time, it shall be borne in mind that neither

Section 150 makes any reference to the list of beneficial owners as a part of the register of members nor Section 163 envisages the right for

inspection as well as copy of the list of beneficial owners. Therefore, in order to meet the ends of justice, I hereby direct that the petitioner or his

authorized representative will undertake inspection of the register of members of the Bank upon which the Bank will furnish an extract of its register

of members, maintained in accordance with Section 150 of the Act, at the cost of the petitioner, which shall, however, not include the list of

beneficial owners of shares of the Bank....

6. The direction given by the Company Law Board, not including the list of beneficial owners of the shares of the Bank in the membership list, is

challenged in this appeal by raising the following questions of law:

(1) Whether the register of members u/s 150 of the Companies Act, 1956, includes the beneficial owners of the respondent bank?

(2) Whether the register and index of the beneficial owners maintained u/s 152A of the Companies Act, 1956, can be deemed to be an index of

members and register of members within the meaning of Section 150, 151 of the Companies Act, 1956?

(3) Whether the member includes beneficial owners of the respondent bank within the meaning of Article 2(vi) of the Articles of Association of the

respondent Bank?

(4) Whether the register of beneficial owners maintained u/s 11 of the Depositories Act, 1996, will be deemed to be register of members,

maintained u/s 150 of the Companies Act, 1956?

7. The learned Counsel appearing for the appellants contended that Section 41 of the Companies Act, 1956, defines ''member'' and Section 41(3)

automatically gives membership right to beneficial owner of share and they form part of members of the Company as per Section 150 of the

Companies Act, 1956. The learned Counsel also submitted that as per Section 11 of the Depositories Act, 1996, every depository shall maintain a

register and index of beneficial owners in the manner provided u/s 150, 151 and 152 of the Companies Act, 1956, and Section 11 of the

Depositories Act, 1996, does not exclude Companies from maintaining the register of members including the beneficial owners. It is also submitted

that if a Company''s shares are in demat form, all the shareholders will be beneficial owners, and the entire depository will be called as registered

owners and therefore the register of member of every Company should contain particulars of beneficial owner and registered owners.

8. The learned Counsel appearing for the respondent Bank submitted that Section 150 of the Companies Act, defines register of members and sets

out particulars to be contained therein. Section 152A provides that register and index of beneficial owners maintained by the Depository shall be

deemed to be index of members for the purpose of the Act and the beneficial owners cannot be deemed to be members and therefore register of

members contained in Section 150 will only contain particulars other than beneficial owners. The learned Counsel also submitted that Section

163(2) and (3) of the Companies Act, 1956, do not suggest that register of members would include the list of beneficial owners.

9. I have considered the rival submissions made by the learned Counsel appearing for the appellant as well as learned Counsel for the respondent

Bank.

10. The point in issue is whether register of members include ''beneficial owners'' and whether they are deemed to be members of the concerned

Company?

11. The question of law framed in question No. 4 alone is to be answered in this appeal. For proper appreciation, Sections 150 and 151 is

extracted hereunder:

150. Register of Members. (1) Every company shall keep in one or more books a register of its members, and enter therein the following

particulars:

(a) the name and address, and the occupation, if any, of each member;

(b) in the case of a company having a share capital, the shares held by each member distinguishing each share by its number except where such

shares are held with a depository, and the amount paid or agreed to be considered as paid on those shares;

(c) the date at which each person was entered in the register as a member; and

(d) the date at which any person ceased to be a member:

Provided that where the company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register shall

show the amount of stock held by each of the members concerned instead of the shares so converted which were previously held by him.

(2) If default is made in complying with Sub-section (1), the company, and every officer of the company who is in default, shall be punishable with

fine which may extend to five hundred rupees for every day during which the default continues.

151. Index of members. (1) Every Company having more than fifty members shall, unless the register of members is in such a form as in itself to

constitute an index, keep an index (which may be in the form of a card index) of the names of the members of the company and shall, within

fourteen days after the date on which any alteration is made in the register of members, make the necessary alteration in the index.

(2) The index shall, in respect of each member, contain a sufficient indication to enable the entries relating to that member in the register to be

readily found.

(3) The index shall, at all times, be kept at the same place as the register of members.

(4) If default is made in complying with Sub-section (1), (2) or (3), the company, and every officer of the company who is in default, shall be

punishable with fine which may extend to five hundred rupees.

Section 41 of the Companies Act, 1956, define ''member of a Company'', which reads as under:

41. Definition of ""member"".

(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its

registration, shall be entered as members in its register of members.

(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a

member of the company.

(3) Every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository shall be

deemed to be a member of the concerned company.

Section 41(3) was inserted after the enactment of Depositories Act, 1996 (Act 22 of 1996), with effect from 20.9.1995. At this juncture, it is just

and proper to verify the definition of member defined u/s 41, prior to the enactment of Depositories Act, 1996, which reads as follows:

41. Definition of ""member"".

(1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its

registration, shall be entered as members in its register of members.

(2) Every other person who agrees in writing to become a member of a company and whose name is entered in its register of members, shall be a

member of the company.

From the perusal of the above definition prior to 20.9.1995, it could be seen that the membership of the Company was having a limited meaning

and coverage.

12. Section 41(3) clearly states that every person holding equity share capital of a Company and whose name is entered as beneficial owner in the

records of the Depository, shall be deemed to be a member of the concerned Company. Thus, every beneficial owner, whose names are

maintained by the depository, shall be deemed to be a member of the concerned Company by virtue of operation of law.

13. Section 152A of the Companies Act, 1956, also states that the register and index of the beneficial owners maintained by a depository u/s 11

of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may be, for

the purposes of the Companies Act, 1956.

14. The definition of ''member'' includes beneficial owner, whose name is entered in the records of the depository, shall be deemed to be a

member of the concerned Company with effect from 20.9.1995. The respondent cannot now contend that the register of members to be

maintained u/s 150 of the Companies Act, 1956, will not cover the beneficial owner, whose name is entered in the records of the depository. Once

the members of the depository are deemed to be members of the Company, register of the Company, which is being maintained as per Section

151 and 152 of the Companies Act, 1956, must contain the names of the beneficial owners maintained by the Depository. Section 163 of the

Companies Act, 1956, mandates the company to keep the register and returns for inspection. Hence the order passed by the Company Law

Board directing the respondents to furnish the list of members extract of register of its members, excluding the list of beneficial owners of the shares

of the bank is unsustainable as the same is contrary to Section 41(3) of the Company Act, 1956, and also in violation of Section 152A of the Act.

15. If the interpretation given by the Company Law Board is to be accepted, the insertion of Section 41(3) will be rendered meaningless. Thus, it

is clear that after enactment of the Depository Act, 1996 (Act 22 of 1996), the membership of the Company got widened and the beneficial

owners, whose name are entered in the records of the depository, shall also be deemed to be the member of the concerned company.

16. The member of the Company is defined without any ambiguity in the Companies Act, 1956 and the intention of the legislature shall not be given

a narrow interpretation as argued by the learned Counsel for the respondent. Hence, it is not open to the respondent Bank now to contend that it

will maintain a list of members, excluding the beneficial owners, whose names are found in the records of the depository. Therefore, the direction

given by the Company Law Board, which is questioned by the appellant, deserves to be quashed and accordingly the same is set aside. The

respondent is bound to furnish copy of all members of the Company and not in exclusion of the beneficial owners, whose names are found in the

register of depository.

The Civil Miscellaneous Appeal is allowed. No costs.