

(2010) 01 KAR CK 0037

In the Karnataka High Court

Case No : Company Appeal No. 16 of 2009 and Miscellaneous Civil No's. 21244 and 21428 of 2009

Dirak Dieter Ramsauer

APPELLANT

Vs

S.D. Chakravarthy

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Companies Act, 1956 — Section 10 F, 403

Citation : (2010) 4 CompLJ 153 : (2010) 2 KCCR 1316 : (2010) 99 SCL 208

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : S.S. Naganand and Nandish Patel, for the Appellant; Vijay Desai, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal purporting to be u/s 10F of the Companies Act, 1956 ("the Act") is directed against the order dated 19-8-2009 passed on Company Application No. 35/2009 filed on Company Petition No. CP/34/397/CB/2009 pending before the Chennai Bench of Company Law Board, Chennai.

2. There is a delay of 31 days in preferring this appeal. The Misc. Civil Application No. 21244/2009, accompanied by the affidavit, is filed by the appellant, praying for condonation of delay in filing the appeal. Notice had been issued to the respondents who are represented by their counsel for M/s. J. Sagar Associates and Sri Vijay Desai, learned advocate appears for the first respondent.

3. Though, Sri S.S. Naganand, learned senior counsel, appearing for the appellants, points out that the notices issued to the respondents are not yet responded, we find that not of much significance.

4. As no serious opposition is aired against the application filed for condonation of delay, the Misc. Civil Application No. 21244/09 is allowed, accepting the contents of the affidavit accompanying the application at its face value. Delay in

filing the appeal is condoned and we have heard the learned Counsel for the parties on merits of the appeal also.

5. Order under appeal is one passed on an application filed u/s 403 of the Companies Act, by the respondent-company in the main petition, seeking for vacating an earlier ex parte interim order that had been passed by the Company Law Board on 8-5-2009 at the instance of the company-petitioner (second respondent herein) who is a shareholder of the Company holding 49 per cent of the shares, whereas other 51 per cent of the shares of the Company is held by the first and second appellants put together who are foreign companies.

6. In this appeal, the Company is arraigned as the second respondent, which was the first respondent in the Company Petition. The appellants figured as respondents 2 and 3 in the Company Petition.

7. The operative portion of the order passed by the Company Law Board on 8-5-2009, produced as Annexure "J", to the Memorandum of appeal, is as under:

(a) The Respondents shall maintain the status quo in respect of shareholding pattern of the Company as of today (i.e., 8-5-2009);

(b) The Respondents shall not in any manner act or do or cause to be done, anything, which will prejudice the interests of the Company;

(c) The Petitioner is hereby directed to file proof of service of notice on all the Respondents and also serve a copy of this order to all the Respondents and file proof of service for both, before this Bench within a period of two weeks;

(d) The Respondents are at liberty to apply.

8. It is making use of the liberty under Clause (d) of this order, the appellant had come up with the application u/s 403 praying for vacating of this order. The application had been opposed to by the Company-petitioner by filing written objections. The Company Law Board took up the application for examination, resulting in the impugned order.

9. It is purporting to be aggrieved by this order, particularly, sustaining the order dated 8-5-2009 insofar as it relates to the observations contained at subparagraph (b), that the present appeal is preferred u/s 10F of the Act.

10. The Registry had raised a preliminary objection regarding the maintainability of such an appeal u/s 10F of the Act.

11. Though, this office objection is sought to be explained away by Mr. Nandish, learned Counsel appearing for the appellant, by explaining that a question regarding maintainability arose only in a connected appeal that had been filed by the very appellant in OSA. 15/2009, which was directed against an order passed by the Company Law Board, on an application filed by the appellants u/s 8 of the Arbitration and Conciliation Act, 1996 and in fact, the present appellant had succeeded in that appeal in terms of the orders passed by this Court on

18-12-2009 and the matter was remanded to the Company Law Board for re-examination of the application u/s 8, etc., and such a situation as to whether the Appeal No. 15 of 2009, was one filed u/s 37 or an appeal u/s 10F of the Act, does not arise in this appeal, but it was peculiar to the facts and circumstances of Company Appeal No. 15 of 2009 and the maintainability of the present appeal does not admit any ambiguity or doubt, we are prima facie, of the view that the appeal u/s 10F of the Companies Act can only be against the main order passed by the Company Law Board on a petition and not against all or any order passed on every application filed in a pending petition before the Company Law Board.

12. Be that as it may, we are inclined to examine the merits of this appeal keeping open the question as to whether an appeal of the present nature u/s 10F of the Act is tenable as against the orders passed by Company Law Board on Interim Application and during the pendency of the main application which can be examined in a case where it is directly in issue and parties make it an issue and particularly if the respondent who is put on notice, were to join issue on the maintainability of the appeal.

13. We are proceeding to examine the merits of the appeal independent of the aforestated question. We find the present appeal is absolutely meritless, notwithstanding the very spirited and vehement submissions made not only by Mr. Nandish, learned Counsel appearing for the appellant, but also by Mr. S.S. Naganand, learned senior counsel, who had joined midstream to make further submissions in the matter on merits of the order impugned in this appeal and the appeal itself.

14. In the impugned order, the Company Law Board has not done anything more than directing the appellants to adhere to the procedures in accordance with law and it can never be termed as an order adverse to the interest of the appellants. If the Company Law Board has restrained the appellants from embarking on such acts, not permitted in law, it cannot be characterised in law to be an order prejudicial to the interest of the appellants or to the Company.

15. It does not require any authority or wisdom to say that no shareholder of a Company should be allowed to act to the prejudice or detrimental to the interest of the Company of which himself or herself is a shareholder. An innocuous order of this nature can never be said to be giving raise to a cause of action or can the appellant be said to be aggrieved by such an order warranting examination of merits of such an order in an appeal u/s 10F of the Act. Appeal has absolutely no merits.

16. Sri Vijay Desai, learned Counsel appearing for the respondents, submits that the order in no way affects the interest of the appellant and it protects the interest of the Company of which both the appellants and first respondent are the shareholders, though appellants hold 51 per cent and the first respondent hold 49 per cent.

17. In the facts and circumstances, we find the order passed by the Company

Law Board is quite justified, warranted and is fully in consonance with the statutory provision. There is no need for us to interfere with the order of this nature.

18. Appeal is dismissed.

19. In the wake of order passed as above, the Misc. Civil Application No. 21428/09 is also dismissed.