(2006) 08 DEL CK 0117

In the Delhi High Court

Case No : Company Appeal No. 23 of 2005 and C.A. No. 1702 of 2005

E. Shanmugam APPELLANT

Vs

APS Cam-O-Matec P. Ltd. and Others RESPONDENT

Date of Decision : 10-08-2006

Acts Referred:
Companies Act, 1956 — Section 10F, 397, 398

Citation : (2009) 148 CompCas 701

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : S. Ganesh, N.K. Dave and Vikrant Singh, for the Appellant; S.K. Taneja and Puneet Taneja, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—This appeal has been filed u/s 10F of the Companies Act, 1956 ("the Act").

2. The appellant herein was a director of APS Cam-O-Matec P. Ltd. ("the respondent-company") and was/is holding 40 shares. The balance 200 shares were equally held by Mr. Surjit Singh and Mr. Lakhbir Singh. Thus, the appellant held 16.66 per cent, of the paid-up capital and the balance 83.32 per cent, were held by the respondent-group. This shareholding pattern continued till fresh shares were issued on December 9, 2002. 9,760 additional shares were allotted to Mr. Lakhbir Singh and after the said allotment the shareholding of the appellant got reduced from 16.66 per cent, to barely 0.004 per cent.

3. It is admitted by counsel for the parties that further shares were issued on December 9, 2002, pursuant to the direction given by the Ministry of Company Affairs that minimum paid-up share capital of a company should be Rs. 1 lakh.

4. Disputes and differences arose between the appellant on one side and Mr. Surjit Singh and Mr. Lakhbir Singh on the other side and in June, 2004, a petition under Sections 397 and 398 for oppression and mismanagement was filed by the

appellant before the Company Law Board. The said petition has been disposed of by the impugned order dated June 27, 2005.

5. Learned Counsel appearing for the appellant submitted that the impugned order is perverse and, therefore, a substantial question of law arises out of the order dated June 27, 2005. He has specifically referred to the observations made by the Company Law Board in paragraphs 19 and 20 of the impugned order. It is submitted that the finding of the Company Law Board that the petitioner had not come before the Board with clean hands, is factually incorrect. It is further submitted that the finding of the Company Law Board that loan of Rs. 2.50 lakhs was given to the appellant is also not correct. It is stated that Rs. 2.50 lakhs was given to the appellant as an imprest amount for meeting miscellaneous expenditure and was not a loan.

6. Learned Counsel for the appellant also refers to averments made in the rejoinder written submissions, wherein allegation was made that Rs. 51.76 lakhs representing the sale proceeds of the respondent-company have been diverted and siphoned off by the respondent-directors.

7. Learned Counsel for the respondents, on the other hand, submitted that impugned order is just and fair and no substantial question of law arises. Directions have been given for valuation of 40 shares held by the appellant by a chartered accountant on the basis of the balance-sheet of the company as on March 31, 2003. He also points out that directions have also been given with regard to payment of arrears of the salary payable to the appellant at the rate of Rs. 30,000 per month after adjusting Rs. 2.50 lakhs which was given in advance as imprest amount to the appellant. It is stated that no account has been rendered by the appellant for Rs. 2.50 lakhs.

8. During the course of hearing, however, learned Counsel for the respondents agreed and has given a concession that the valuation of 40 shares held by the appellant can be made on the basis of paid-up share capital prior to issue of further shares on December 9, 2002.

9. I have examined the contentions of the parties. The appeal u/s 10F of the Companies Act, 1956, is maintainable only on a question of law and not on a question of fact. A perverse order is one, which is contrary to the facts and evidence on record and an order which no reasonable adjudicating authority would pass after examining the material placed before it.

10. The fact that the appellant has signed the balance-sheet as on March 31, 2003, is an admitted position. In this balance-sheet the issue of fresh shares on December 9, 2002, was duly reflected. Thus, the finding of the Company Law Board that fresh shares were issued with the knowledge and approval of the appellant cannot be regarded as perverse. The appellant by his conduct had accepted and agreed to issue of fresh shares to the respondents. Nothing on record was filed to show and establish that the appellant had protested against the issue of new shares to the respondent-group in December, 2002. The

memorandum of understanding dated July 15, 200U, was with Mahle Migma Ltd., and not the respondent-company. Even otherwise by conduct, it was modified and altered. The appellant was fully aware of the issue of fresh shares and has signed balance-sheet for year ending March 31, 2003, without any reservation and protest. The petition under Sections 397 and 398 was filed 18 months after the issue of the new shares.

11. The appellant concealed the fact that he had signed the balance-sheet and accounts for the year ending March 31, 2003. He should have filed a copy of the balance-sheet for the year ending March 31, 2003, before the Company Law Board. On the other hand, he made allegations that fresh shares were issued to the respondent-group without his knowledge and information. This is factually incorrect.

12. It is also an admitted fact that the appellant is now working on his own and has floated two companies in competitive business.

13. In these circumstances, I find that directions issued by the Company Law Board for valuation of shares held by the appellant are justified. The Company Law Board has also issued directions for payment of arrears of remuneration at the rate of Rs. 30,000 per month. The question whether Rs. 2.50 lakhs, which was advanced to the appellant and has been duly accounted for, is a matter of accounts. This Court need not go into this aspect. If required, the appellant and the respondent can approach the Company Law Board.

14. With regard to the allegation of siphoning off and diversion of funds of Rs. 51.76 lakhs, there is no such averment in the petition under Sections 397 and 398 of the Act. No application/pleading was also filed by the appellant making the above allegation. Learned Counsel for the respondent on the other hand submitted that the deposits made by the family members of the respondent-group were repaid.

15. An appeal u/s 10F of the Act is maintainable only on a question of law arising out of the impugned order. An allegation which was not examined or raised before the Company Law Board cannot be raised before the High Court for the first time in an appeal u/s 10F of the Act refer SETH PUSHALAL MANSINGHKA (P.) LTD. Vs. COMMISSIONER OF Income Tax, DELHI, RAJASTHAN AND MADHYA PRADESH., and Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., .

16. In view of the above. I do not find any merit in the present appeal and the same is dismissed.

17. However, it is clarified that valuation of 40 shares of the appellant will be made on the basis of the paid-up share capital prior to December 9, 2002, in view of the concession and consent of learned Counsel for the respondents.

