(1999) 10 CAL CK 0009

In the Calcutta High Court

Case No : A.P.O.T. No. 543 of 1999 and A.C.O. No. 103 of 1999

Graphic Machinery and Appliances Pvt. Ltd. and Another — APPELLANT

Vs

P.K. Mukherjee and Others — RESPONDENT

Date of Decision : 14-10-1999

Acts Referred:
Companies Act, 1956 — Section 402

Citation : (2000) 99 CompCas 264

Hon'ble Judges : Satya Brata Sinha, Acting C.J.;M.H.S. Ansari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.H.S. Ansari, J.—The instant appeal is directed against an order of the Company Law Board dated May 17, 1999, in Company Petitions Nos. 38 of 1992 and 37 of 1993.

2. By the order under appeal, the Company Law Board refused to order investigation into the affairs of the company namely, Graphic Machinery and Appliances Pvt. Ltd. (hereinafter referred to as "the said company") as was sought for in C. P. No. 38 of 1992.

3. However, in so far as C. P. No. 37 of 1993 is concerned, the Company Law Board held that a case had been made out by the petitioner before it, respondent herein for grant of appropriate relief in terms of Section 402. The main prayer in the said petition related to reconstitution of the board with the inclusion of the petitioner as director. The Company Law Board accordingly reconstituted the board of directors with the petitioner before it (respondent herein) and the appellant as directors.

4. The above order has been assailed in the instant writ application mainly on the ground that in making the said order, the Company Law Board has observed that the said reconstituted board may result in deadlock which may ultimately even result in the company going for winding up.

5. It was the submission of learned counsel for the petitioner that the very object of the orders in such matters is to resolve the disputes between the parties and if the Company Law Board was of the opinion, as it was, that the parties do not see eye to eye, the proper order to be passed in the matter would have been to permit the majority shareholder to buy out the shares of the minority shareholder.

6. On behalf of the respondent, it was submitted that the orders passed by the Company Law Board impugned in the instant appeal are not of a permanent nature but are a temporary arrangement and, therefore, the question of the deadlock continuing or of the company going in for winding up as has been suggested by learned counsel for the appellant is neither correct nor the said contention is tenable.

7. Learned counsel for the respondent has also drawn our attention to the various acts and conducts of the appellant herein which have been noticed by the Company Law Board in the order under appeal and submitted that in view of the said findings of the Company Law Board, the order under appeal has to be upheld.

8. A perusal of the order under appeal would disclose that the appellant herein has neither appeared before the Board nor filed any counter or affidavit-in-opposition. The appellant has not co-operated in the matter of determining the face value of the shares for which the valuer had been appointed with the intention of settling the dispute between the parties. The accounts of the company were also not finalised. An administrator was appointed pursuant to an order of the Company Law Board who sought for his release as the appellant refused to co-operate with him.

9. It has also been noticed that there was only one director in the company, viz., the appellant and that no other director either was appointed or co-opted and further it has been observed that neither annual general body meetings have been held nor accounts have been finalised from 1987, onwards.

10. Such being the position, we are inclined to accept the submission made by learned counsel for the respondent and uphold the order passed by the Company Law Board. We do not find any legal infirmity in the order under appeal. There are no merits in the instant appeal and, accordingly, the same deserves to be dismissed and is accordingly dismissed.

S.B. Sinha, Actg. C.J.

11. I agree.

