

(1989) 08 BOM CK 0014

In the Bombay High Court

Case No : Company Petition No. 379 of 1989

In Re: Kenji Tamiya and another

Date of Decision : 31-08-1989

Acts Referred:

Companies Act, 1956 — Section 210, 220, 633(2)

Citation : (1990) 68 CompCas 142

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—This petition is filed by two directors of Orson Electronics Limited u/s 633(2) of the Companies Act, 1956, for being relieved from any criminal proceedings and/or liability that might be launched or brought or action taken against the petitioners in respect of default in complying with the provisions of section 210 and 220 of the Companies Act. The facts giving rise to the filing of the petition are as follows.

2. The petitioners are officers of a company registered in Japan and know as Sony Corporation. Sony Corporation entered into collaboration or joint venture agreement with Chhabria to establish Somtron Company at Hongkong. Holding of Sony Corporation was 40% while that of Chhabria 60%. In the year 1979, Orson Electronics Limited was incorporated in Indian company was 76%, while the balance 24% was distributed amongst the shareholders, who are Indian residents. In view of the holding of 76% of Somtron, two directors on the Board of Orson Electronics Limited were nominated from time to time by Sony Corporation. Petitioner No. 1 was appointed on the board of Orson Electronics Limited with effect from June 28, 1989. On May 9, 1986, the licence granted by Sony Corporation and the joint venture under which Somtron Company was established came to an end and Sony Corporation ceased to have any holding in Somtron company with effect from June 20, 1986, when the accounts and the claim of Sony Corporation were settled in Hong Kong.

3. On November 27, 1987, Shri Bhatia, who was the managing director of Orson Electronics Limited, informed petitioner No. 2 about his resignation from the

board of directors of Orson Electronics Limited. Shri Manu Chhabria, who was controlling Orson Electronics Limited, also informed the petitioners about the resignation of Bhatia and the fact that the statutory auditors, Ratan S. Mama and Co., noticed defects in the accounts for the year ending August 31, 1987, Chhabria further informed the petitioners that the board of Orson Electronics Limited had decided to appoint Lovelock and Lewes, a firm of chartered accountants, as it was felt that Bhatia and another director, Monitor, who had resigned, were guilty of several manipulations in respect of accounts of Orson Electronics Limited. The petitioners expressed surprise at the affairs of Orson Electronics Ltd. and suggested to Lovelock and Lewes, Price Water house and Co., who are the international chartered accountants and who are the accountants of Somtron and Company in Hong Kong, should be advised to investigate and audit the accounts. Shri Chhabria expressed his willingness to co-operate with Price Water house regarding investigation of Orson Electronics Limited.

4. In the meanwhile, some of the interim reports were tendered by Lovelock and Lewes, but Chhabria did not forward them immediately to the petitioners. Ultimately, a meeting took place in Bombay between petitioners No. 2 and the other directors of Orson Electronics Ltd. and the petitioners became aware that the balance-sheet and profit and loss accounts will not be laid before the company at the annual general meeting. The petitioners realised that failure of the company to prepare the balance-sheet and profit and loss account and laying it before the company at the annual general meeting would lead to breach of provisions of sections 210 and 220 of the Companies Act Section 210 demands that at every annual general meeting the board of directors shall lay before the company a balance-sheet and profit and loss account. Section 220 of the Companies Act demands that after the balance-sheet and profit and loss account have been laid at the annual general meeting, three copies should be filed with the Registrar within 30 days from the date of annual general meeting. The petitioners realised that it was not possible for the directors of Orson Electronics Limited to comply with the requirements of section 210 and 220 of the Companies Act and that that may lead to the Registrar of Companies filing prosecutions. The petitioners thereupon tendered their resignations as directors of Orson Electronics Limited and filed the present petition on June 28, 1989.

5. Shri Setalvad, learned counsel appearing on behalf of the petitioners submitted that this is a fit case for relieving the petitioners from criminal proceedings which may be instituted by the Registrar. Learned counsel urged that the petitioners are residents abroad and are not connected with the day-to-day management of the company. In fact, the petitioners were nominated on the board of directors as the petitioners are officers of Sony Corporation, which had holding of 40% in Somtron Company, Hong Kong. Shri Setalvad submits that the petitioners had taken reasonable precautions and had advised Chhabria to appoint Price Water house to investigate into the affairs. Shri Setalvad submits that whatever may be the default committed by the Indian directors of Orson

Electronics Limited, the petitioners cannot be held responsible, nor can it be suggested that the petitioners have acted mala fide or dishonestly or unreasonably. In my judgment, the submission urged by Shri Setalvad is correct and deserves acceptance. The petitioners are required to be relieved from any intended prosecution in respect of violation of provisions of section 210 and 220 of the Companies Act. I wish to make it clear that the fact that the Japanese directors are relieved would have no effect on the application made by the Indian directors seeking relief under sub-section (2) of section 633 of the Companies Act, and their case will have to be examined independently.

6. Accordingly, the petition succeeds and is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs.