

(2007) 09 CAL CK 0034

In the Calcutta High Court

Case No : APOT No's. 451 and 460 of 2007 and ACO No's. 152 and 156 of 2007

**In Re: Uniworth Resorts Limited
 Ajay Prkash Lohia**

Date of Decision : 05-09-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 103
Companies Act, 1956 — Section 397, 398
Company Law Board Regulations, 1991 — Regulation 46
Income Tax Act, 1922 — Section 10E, 10E(5), 10F, 66(1)

Citation : (2008) 1 CALLT 1 : (2007) 4 CHN 712 : (2008) 143 CompCas 551 :
(2008) 4 CompLJ 305

Hon'ble Judges : Sanjib Banerjee, J

Bench : Single Bench

Advocate : S.B. Mookerjee, P.C. Sen, Ranjan Deb, S.N. Mookerjee, D. Basak, Ritu Bhalla, Manju Bhutoria, Neelina Chatterjeo and Neeladri Bhattacharya, for the Appellant; Goutam Chakraborty, Ratnanko Banerjee, D.N. Sharma and Mousumi Bhattacharya, for the Respondent

Judgement

Sanjib Banerjee, J.—The principal question of law that has been urged is as to whether on an application for amendment of the petition in proceedings under Sections 397 and 398 of the Companies Act, 1956, the Company Law Board may permit all the amendments to be incorporated without assigning any reason therefor. The order impugned in the company's appeal and in the appeal by the seventh respondent before the Company Law Board needs to be set out in its entirety:

Heard the parties on C. A. Nos. 131 and 132/07. Considering the contents of the amendment application and the legal submissions as well as plethora of case laws relied upon by the parties as well as Regulation 46 of the CLB to consider real controversies between the parties and to avoid multiplicity of litigation, I allow the petitioner to amend CP No. 46/2006. Petitioner to file amended petition within a week's time. Respondents to file reply to the amended petition within four weeks thereafter. Adjourned to 8.10.2007 at 2.30 p.m. and 9.10.2007 and 10.10.2007 at 2.30 p. m.

2. It appears on a plain reading of such order that the Company Law Board did, as it was obliged to, consider the contents of the amendment application. The order also records that legal submissions were made and that such legal submissions were also considered. The order also informs that a "plethora of case laws" was relied upon by the parties. This much, was recorded as to what transpired before the Company Law Board. As to the reasons for the order, Regulation 46 of the Company Law Board Regulations is cited and the amendment application has been allowed "to consider real controversies between the parties and to avoid multiplicity of litigation."

3. Without meaning any disrespect, that is the conclusion and not the reason. Reasons would be the links that would lead to such conclusion for such is a conclusion which is necessary for an amendment application to be allowed.

It appears from the nature of charges sought to be incorporated by way of amendment that the petitioners before the Company Law Board proceedings have been more hard done by, by the cryptic order than by the alleged machinations of the persons in control of the affairs of the company. But the respondents cannot fall back on the merits of the amendments sought and the justification for such order being passed, without the Tribunal having assigned the reasons that it ought to have in support of its conclusion.

4. The appellants in the two matters have referred to the judgments reported at Commissioner of Income Tax, Bombay Vs. Scindia Steam Navigation Co. Ltd., and rely on paragraphs 30 and 31 of the report. In that case, the Supreme Court was considering a reference u/s 66(1) of the Indian Income Tax Act, 1922 and the questions that can be considered in a reference. In the summary of the conclusion recorded at paragraph 31 of the report, it appears that if a matter was urged before the Tribunal (under the Income Tax Act) and such matter was considered or not considered, in either case it would be a matter covered by the order of reference. The appellants rely on such proposition in support of their contention that various questions of law were raised before the Company Law Board and such questions find no mention in the impugned order. In such questions having been raised, albeit their not finding reference in the order, there was a substantial question of law raised thereon

5. The appellants next rely on the judgment reported at Shah Babulal Khimji Vs. Jayaben D. Kania and Another, and on paragraph 120 of the report. At paragraph 120, Justice Fazal Ali has "summarized his conclusions as to when an appeal would lie u/s 103 of the Code of Civil Procedure. The appellants rely on the first sub-paragraph to suggest that an order allowing an amendment would be an appealable order. However, for the purpose of the present proceedings, even though the CPC would not strictly apply, Section 100 of the Code would be more apposite than Section 103 as the questions of law that are required to be raised in an appeal u/s 10F of the Companies Act, 1956 are somewhat similar to the questions of law required to be raised in a second appeal under the Code.

6. The necessity for a judicial order or a quasi-judicial order recording reasons and the extent of adequacy of reasons have been stressed upon by the petitioners by referring to the judgment reported at S.N. Mukherjee Vs. Union of India, . Paragraphs 32 and 36 of the report have been placed to suggest that the requirement for furnishing reasons is a facet of the principle of natural justice. To boot, Section 10E of the Companies Act under which the Company Law Board assumes jurisdiction, is referred to. Sub-section (5) of Section 10E incorporates the principle of natural justice and, in any event, such principles would have applied even if there was no specific mention thereof.

7. The contesting respondents, the petitioners in the Company Law Board proceedings, submit that the amendments sought to be incorporated were on questions of fact and the Company Law Board was satisfied that such questions needed to be answered. The Company Law Board gave some reasons, it is submitted, that the new charges brought were necessary to be dealt with to effectually conclude the disputes between the parties. It is submitted by the petitioners in the Company Law Board proceedings that in passing the order, however short, the obligation was discharged in that it was recorded that if new proceedings were to be founded by the Company Law Board petitioners on the new charges, that would give rise to multiplicity of judicial proceedings which ought to be avoided.

8. The respondents refer to an order of status quo that was obtained by them shortly upon C. P. No. 46 of 2006 having been instituted in June of 2006. The contesting respondents suggest that it is only upon the company's affidavit being furnished that they came to know that the status that they had urged as prevailing as on the date of institution of the proceedings had been sought to be altered. The petitioners in the Company Law Board proceedings submit that their original shareholding of about half the paid up capital of the company was shown to have shrunk to less than a half per cent of the subsequently increased paid up capital of the company.

9. It will appear from the order, and without going into the other grounds of appeal, that protracted proceedings were had before the order came to be passed. It would not suffice for a Tribunal enjoying all the trappings of a Court that the Company Law Board does, to merely record that legal submissions were made, they were required to be appreciated and reasons therefore ought to have appeared in the order. If judgments were cited, such of them as were relevant for deciding the matters in issue ought to have been referred to, discussed and relied upon or distinguished.

In passing the order under appeal, the Company Law Board has completely abdicated its jurisdiction, and obligation, as to the decision-making process. The order passed may as well be a rubber stamp prepared to be used in every case where the Company Law Board is of the opinion that the amendments prayed for should be allowed. There is no reference to any fact or the context in which the amendments were sought to be allowed. There is no mention of what grounds

were urged in opposition and why such grounds were unmeritorious. The Tribunal need not have expended pages over the matter but it was necessary to indicate why the order came to be passed.

10. Judicial orders of such nature need to meet the twin tests of "why" and "what". It is the "why" that sustains the "what", Reasons are the safeguard, against the ipse dixit of the decision-making process. They discuss how the judicial mind has been applied to the matter in issue and convey the nexus between the matters that have been considered and the conclusion based thereon. The justification and the reasonableness of a conclusion depend on the reasons given in support thereof. The order impugned has no element of why" for the "what" therein to stand on.

11. It is also off some significance that the impugned order has been made at the threshold of proceedings where a petitioner has to pass the just and equitable test before he can have a look in. The Company Law Board has inherited a jurisdiction that has a rich legacy. It has the authority, in such jurisdiction, to hold that a perfectly legal act may, in the context, be inequitable or that an apparently illegal act is justified in the context or by necessity.

12. The order impugned does not show inadequacy of reasons, it has no reasons at all. And in giving no reasons in making the order, a question of law has arisen that can be taken up u/s 10F of the Act.

The order impugned is set aside. The Company Law Board shall hear the matter afresh and, if legal submissions are made and "plethora of cases" are placed, they will be referred to and discussed in the order that may be passed upon the fresh consideration of the matter following this remand.

13. The Company Law Board should endeavour to dispose of the amendment application within a period of six weeks from the date of deposit of an authenticated copy of this order.

14. Both the appeals and applications are disposed of. There will be no order as to costs.

It is made clear that the merits of the amendment application have not been gone into and none of the allegations that find place in the Memorandum of Appeal or the stay petition should be deemed to have been admitted by the petitioners in the Company Law Board proceedings.

15. Urgent photostat certified copy of this order, if applied for, be made available to the parties concerned upon compliance with all requisite formalities.