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In the Bombay High Court

Case No : Company Appeal No''s. 8 and 12 of 2008 and 49 of 2009

**In Re: Vijaykumar Ramanlal Shah and Others
 Meenaben Vijaykumar Shah**

Date of Decision : 27-07-2010

Acts Referred:
Companies Act, 1956 — Section 10F, 397, 398, 402, 404
Constitution of India, 1950 — Article 10

Citation : (2011) 100 CLA 364

Hon'ble Judges : S.J. Vazifdar, J

Bench : Single Bench

Advocate : Mongol Bhandari, Pranjali Bhandari, Divya Sanghaui and R.D. Som, for the Appellant; Sunil Gupta, Jatin Jhaveri, Hemant Mehta and B.K. Bali, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, J.—Respondent Nos. 1 to 5 had filed Company Petition No. 37 of 2006 before the Company Law Board (''CLB'') under Sections 397 and 398 of the Companies Act, 1956 (''the Act''). Respondent No. 6, i.e., Shah Himmatlal Manilal & Co. Tobacco Products (P.) Ltd. was Respondent No. 1 in the company petition. The Appellants were Respondent Nos. 2, 3 and 4 in the company petition. Pursuant to an order dated 27th December, 2009, Respondent Nos. 7 to 13 were impleaded in Appeal No. 8 of 2008. The parties are related to each other and are members of different branches of the family which I will set out shortly.

2. The reference to the Respondents in this judgment will be to Respondent Nos. 1 to 5 herein, i.e., the Petitioners before the CLB. I will refer to the facts from and to the parties as they are arrayed in Appeal No. 8 of 2008.

3. The Respondents sought an order for a declaration that the alleged vacation of office by them as directors is null and void and that Respondent No. 2 continued as the working director of the company for the period after 31st March, 2006. Reliefs were sought, inter alia, for maintaining the authorized share capital of the company, for a declaration that any increase thereof is void, for rectification of

the register of members, challenging the allotment of shares to various persons and seeking the recovery of monies advanced by the company to third parties.

4. One Manilal Shah had three sons - Himmatlal, Ramanlal and Chandulal. Ramanlal had four sons and Chandulal had two sons. The details of these six gentlemen pertaining to the manner in which they are arrayed in Appeal No. 8 of 2008, the members of their groups and the shares held by each of them in the company are as under:

Statement showing the shareholding pattern of

Shah Himatlal Manilal & Co. TPP Ltd. (R-1)

as on 31st March, 2008

A=Appellant R=Respondent Name of the Shareholder No. of Shares % age

Vinod Ramanlal Shah 770 3.85

Vinod Ramanlal Shah (HUF) 245 1.23

R-10 Mrudulaben Vinod Shah 2065 10.33

A-3 Sanjay Vinod Shah 210 1.05

R-11 Ketan Vinod Shah 210 1.05

3500 17.50

A-1 Vijay Ramanlal Shah 352 1.75

Vijay Ramanlal Shah (HUF) 245 1.23

R-12 Meena Vijay Shah 1260 6.30

A-2 Anik Vijay Shah 1103 5.52

R-13 Kishan Vijay Shah 542 2.71

3500 17.50

R-3 Narendra Ramanlal Shah 725 3.63

Narendra Ramanlal Shah (HUF) 1175 5.88

1.50

R-4 Nikhil Narendra Shah 300 1.50

Tapan Narendra Shah 300 12.50

2500 0.35

R-9 Lalit Ramanlal Shah 70 8.93

R-7 Lalit Ramanlal Shah (HUF) 1785 8.23

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R-8 Dakaha Lalit Shah 1645 17.50

3500 0.35

Nilesh Chandulal Shah 550 6.31

R-5 Nilesh Chandulal Shah (HUF) 1262 1.94

Bela Nilesh Shah 388 0.50

Pooja Nilesh Shah 100 1.00

Pratik Nilesh Shah 200 12.50

2500 2.75

Premilaben Natwarlal Shah 1288 3.03

R-2 Pinal Natwarlal Shah 606 3.03

R-1 Pragnesh Natwarlal Shah 606 12.50

2500 9.95

Shah Himatlal Manilal & Co. 1990 0.05

Himco Fertilisers (P.) Ltd. 10 10.00

Total 20000 100

5. The company petition was filed on 25th April, 2006.

6. It is not necessary for the purpose of these appeals to set out the facts pertaining to the merits of the matter for the company petition was ultimately disposed of on the basis of an understanding arrived at between the Appellants and Respondent Nos. 1 to 5 herein. The matter has taken two drastic turns after the settlement, both as a consequence of the Appellants stand qua the settlement.

7. The first turn resulted on account of the Appellants attempt, with the aid of Respondent Nos. 7 to 13, to wriggle out of the settlement. However, Respondent Nos. 1 to 5 thereafter settled the matter with Appellant No. 3 and Respondent Nos. 7 to 11. The equation, therefore, changed drastically leaving only Appellant Nos. 1 and 2 and Respondent Nos. 12 and 13 who are part of one group on one side. In their group is also Vijay R Shah (HUF). The impugned order of the CLB directs the implementation of the settlement only between the parties thereto, which included Appellant Nos. 1 and 2. Once their shares are transferred, the remaining shares in their group are only about 10.23 per cent.

8. This resulted in the second turn. Faced with this changed scenario, they now contend that the agreement which they sought to wriggle out of be implemented by compelling Respondent Nos. 1 to 5 to purchase these 10.23 per cent shares as well.

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9. This contention is astounding for it is based on the premise that the settlement was a composite one where under Respondent Nos. 1 to 5 had agreed to purchase the shares standing not merely in the names of the Appellants, but in the names of all the members of their respective groups. I agree that this appears to have been the understanding between the Appellants and Respondent Nos. 1 to 5 although the other members of the groups were not parties to the settlement. The submission is astounding for, as I will demonstrate, while wriggling out of the settlement the Appellants had at one stage themselves at least acquiesced in the case of the other members of their group that they were not bound by it.

10. Appellant No. 1, by a letter dated 7th July, 2007, addressed to Respondent No. 1 recorded that at a meeting held at the suggestion of the Appellants, it was decided that all the disputes be settled. After referring to the offer made by Respondent No. 1, he submitted that the parties should part ways amicably. He submitted that a valuation of the company be done and thereafter either side may buy out the shares of the other.

11. Respondent No. 2, by a letter dated 24th July, 2007, addressed to Appellant No. 1, made certain suggestions regarding the settlement.

12. Appellant No. 1 in response, by his letter dated 26th July, 2007, addressed to Respondent No. 2 stated that the parties had lost trust in each other and were unable to any on business together. He stated that it would, therefore, be in the interest of all to part ways amicably. After making certain suggestions, he stated as follows:

In case, you do not wish to go for the valuation of the company, as suggested in my earlier letter, you may suggest a price with an option to us to buy or sell at the said price or vice versa, i.e., we will suggest a price and you can choose to buy or sell your share at the price suggested by us.

13. The Appellants thereafter filed CA No. 510 of 2007 before the CLB setting out the above correspondence. They stated that the parties, though related, had lost all confidence and trust in each other and were unable to work together and that whether the petition is allowed or dismissed, the disputes between the parties would not attain any finality. They suggested, therefore, that the parties should part ways amicably, that it was in the interest of all the parties to arrive at a settlement which would bring to an end the disputes and that it was within the powers of the CLB to pass orders in this regard. Prayer (a) is as follows:

(a) Direct the valuation of Respondent No. 1 and thereafter direct either the Petitioners and/or Respondents to buy out the other at a fair price.

14. By an order dated 13th November, 2007, the CLB adjourned the petition in view of the parties having expressed their intention to settle the matter as evidenced by CA No. 510 of 2007.

15. The Appellants'' advocate, by a letter dated 7th December, 2007, informed

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the Respondents advocates that the Respondents were willing to buy or sell the shares at Rs. 1,788 per share. The Respondents were called upon to communicate their offer to the Appellants.

16. The Respondents'' advocates, by a letter dated 10th December, 2007, communicated their acceptance of the offer of selling of the said shares at Rs. 1,788 per share. They agreed to purchase the shares at that price. Paragraph 2 of the letter reads as under:

2. The total consideration for your clients shares (including the rights shares), namely, 7,000 shares, which comes to 7000 x Rs. 1,788 which is equal to Rs. 1,25,16,000, shall be paid by means of pay order by my clients to your clients within a period of 12 months.

17. The letter suggested modes of securing the interests of all the parties. It was also stated that the Respondents acceptance would be filed before the CLB on the same day.

18. Prayer (a) of CA No. 510 of 2007, set out earlier, was relied upon by Mr. Gupte, learned senior counsel appearing on behalf of Respondent Nos. 1 to 5 to contend that the use of the word "parties" in paragraph 4 and the reference to "Petitioners and/or Respondents" in the prayer indicated that the agreement pertained only to the parties to the company petition and not all the members of the groups of each of the parties. He also relied upon the fact that the application did not mention the other members of the family/group of the parties to the petition. I cannot agree.

19. The reference to 7,000 shares in these letters establishes that the proposal and the acceptance was with respect of even the shares of those members who were not parties to the petition. Whether the parties to the petition had authority to bind them is another matter. I am unable, therefore, to accept Mr. Gupte''s submission in this regard.

20. By an order dated 10th December, 2007, the CLB recorded that the Appellants had agreed to be sold at the said price per share. The matter was adjourned to enable the parties to work out the modalities in this regard. Status quo as regards the assets of the company was ordered to be maintained.

21. By an order dated 20th December, 2007, the CLB recorded that the parties had been heard as regards the modalities to effectuate the settlement. The CLB passed certain directions as to the modalities to effectuate the settlement as the Appellants had agreed to be sold and the Respondents had agreed to buy them at the said price. The directions in this regard are as under:

(1) The Petitioners are hereby directed to give a bank guarantee for the full sum within three weeks'' time, pay 50 per cent of the total price within one month from now, and the balance 50 per cent be paid within next three months time.

(2) As, the firm is under dissolution and the matter is under consideration of the

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arbitrator, the Respondents and Petitioners are given liberty to request the arbitrator in this regard, and if permitted by the arbitrator, those shares be also paid off by the Petitioners within one month of the arbitrator''s directions, if any, in this regard.

(3) The Petitioners are hereby directed to vacate the premises belonging to Respondent No. 2 within four weeks'' time from today.

(4) The Petitioners and Respondents are directed to pay the directors'' dues relating to salary, and other emoluments due within one months'' time.

(5) Petitioner No. 1 is hereby inducted as director in the company with effect from today to enable both the parties equal representation on the Board till full payment is made to the Respondents.

22. With the above directions. Company Application No. 510 of 2007 was disposed of, the interim orders were continued and the parties were directed to report compliance after which the petition was to stand dismissed as withdrawn.

23. The Respondents did better than they were directed to by the order of the CLB dated 20th December, 2007. They obtained thirteen demand drafts dated 7th, 8th, 9th, and 10th January, 2008, for an aggregate sum of Rs. 1,25,16,000 which was the entire consideration for the purchase by them of the said shares. Under the order dated 20th December, 2007, a bank guarantee for the full amount was to be obtained within three weeks, i.e., on or before 11th January, 2008. Fifty per cent of the consideration was to be paid within one month and the balance consideration was to be paid within the next three months. Instead of the same, the Respondents arranged to pay the entire amount well before they were expected to.

24. The Respondents, by a letter dated 10th January, 2008, informed the Appellants that they would mention the above petition for directions for modification of the order dated 20th December, 2007, on 11th January, 2008.

25. The Appellants advocates, without ascertaining the purpose for which the Respondents were intending to mention the matter, by a letter dated 10th January, 2008, alleged that there was non-compliance on the Respondents'' part of the order dated 20th December, 2007 as the time to furnish the bank guarantee had expired on 9th January, 2008. They alleged that the Respondents were, therefore, in breach of the order dated 20th December, 2007 and that they were no longer interested in selling their shareholding to the Respondents. They further alleged that in view thereof, the Appellants were entitled to purchase the Respondents'' shares for which they were willing to make payment within three months from the date of passing of fresh orders in this regard by the CLB.

26. The contention that the period of three weeks expired on 9th January, 2008, is incorrect. The period of three weeks would have expired on 10th January, 2008. However, on 10th January, 2008 itself, the entire payment was kept ready. Even assuming that there was a technical delay of one day, I would ignore the

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same.

27. The Respondents, by their advocates letter dated 10th January, 2008, rightly stated that the Appellants'' advocates letter dated 10th January, 2008 was addressed without even caring to find out the purpose of the Respondents'' earlier letter dated 10th January, 2008 ; that all the demand drafts were ready and but for the modification required by the CLB, the same would have been handed over to the Appellants on the very day. It was further correctly pointed out that they had done more than they were expected to under the order dated 20th December, 2007.

28. The Respondents filed Company Application No. 23 of 2008 seeking a modification of the order dated 20th December, 2007 by being permitted to tender the entire price to the Appellant instead of furnishing a bank guarantee and paying the amount in installments.

29. The CLB, by an order dated 11th January, 2008, recorded that the Respondents had tendered drafts for the entire consideration in favour of the Appellants, but that the Appellants had not entered appearance. The Appellants were granted liberty to apply and the company application was adjourned to 15th January, 2008.

30. I am constrained to state that the Appellants'' advocates'' letter dated 10th January, 2008, alleging breach and stating that the Appellants were no longer interested in selling their shareholdings to the Respondents was nothing, but an attempt to wriggle out of the settlement. This is established beyond doubt by their conduct and the conduct of the members of their groups.

31. Respondent Nos. 7, 8 and 9 soon thereafter, in January 2008, filed Company Application No. 32 of 2008 seeking to be impleaded. They also sought an order setting aside the consent order dated 20th December, 2007, contending that the consent order was contrary to Article 10 of the articles of association of the company and that they were not bound by the same as they were not parties to the proceedings.

32. In February 2008, Respondent No. 10, i.e., the mother of Appellant No. 3, Respondent No. 12, i.e., the wife of Appellant No. 1 and Respondent No. 13, son of Appellant No. 1 filed Company Application No. 102 of 2008 seeking to be impleaded and for an order setting aside the order dated 20th December, 2007, as against themselves contending that they had not authorized the Appellants to sell their shares and that, therefore, the consent order was not binding upon them.

33. In February 2008, Respondent No. 11, i.e., the brother of Appellant No. 3 filed Company Application No. 103 of 2008 seeking to be impleaded and for an order setting aside the order dated 20th December, 2007 on the ground that the settlement recorded therein was contrary to Article 10 of the articles of association of the company.

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34. By an order dated 15th January, 2008, the CLB directed the parties to file written arguments within ten days. The CLB recorded that the Appellants had refused to accept the demand drafts, permitted the Respondents to deposit the demand drafts with the Bench Officer and directed the same to be retained till further orders. The order further recorded that the Appellants neither rejected nor supported Company Application No. 32 of 2008 taken out by Respondent Nos. 7, 8 and 9. The petition was adjourned to 13th February, 2008.

35. The timing of the Appellants'' letter dated 10th January, 2008 seeking to resile from the settlement and the filing of Company Application Nos. 32,102 and 103 of 2008 speak for themselves. It is too much of a coincidence to presume that the parties acted independent of each other and without a common intention. These facts establish that there was a concerted attempt on the part of the Appellants and the applicants in the company applications to wriggle out of the said settlement recorded in the orders of the CLB.

36. By an order dated 29th February, 2008, the CLB disposed of Company Application Nos. 23, 32, 102 and 103 of 2008 and the company petition itself. It was rightly held that the order dated 10th December, 2007 was a consent order between the Appellants and the Respondents. However, the directions issued in the order dated 20th December, 2007, regarding the modalities of the working of the settlement were not with the consent of the parties. This is evident from the fact that the order dated 20th December, 2007, itself records that since there was a difference of opinion about the modalities of payment, the CLB, after hearing the parties, issued the said directions in this regard. The CLB rightly rejected the contention that there was a breach on the Respondents part of the order dated 20th December, 2007 by reason of their not having furnished the bank guarantee for the Respondents as, in fact, they had arranged for the payment of the entire sum well in advance. The Appellants contention in this regard requires merely to be stated, to be rejected. I am, with respect, surprised that such a contention was even raised.

37. It is of vital importance to note that the CLB recorded the stand on behalf of the Appellants that they could sell what they had, viz., 1,663 shares. The Petitioners and the Respondents agreed to the Appellants in the company applications being impleaded. The CLB, accordingly, allowed their being impleaded. The CLB, thereafter observed as under:

As regards their other prayers, I find no reason to grant the same in view of the fact that consent order is dated 10th December, 2007, there is no prayer to set aside that order dated 20th December, 2007 is only to work out the modalities to implement consent order dated 10th December, 2007, and also in view of the power of the CLB under Sections 402 and 404 of the Act. To make it more clear, the applicants prayer with respect to setting aside of the order cannot be acceded to in law and in fact in any manner. They have not even been participating in the affairs of the company.

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Now coming to the consent order dated 10th December, 2007, the BO is hereby directed to return the drafts deposited with him to the Petitioners. Petitioners are hereby directed to pay Respondent Nos. 2, 3 and 4 an amount of Rs. 29,73,444 for their 1,663 shares [1188+475 (rights issue)] on 10th March, 2008 at 2.30 PM in the presence of the BO, in the CLB court room. In case the Respondents fail to receive the consideration for their shares of the appointed date and time, the Petitioners shall deposit the same in Respondent No. 1''s account and credit the Respondents account accordingly.

With the above directions CP No. 39 of 2006 stands dismissed as withdrawn. All company applications stands disposed of. All interim orders stand vacated. I hereby impose cost of Rs. 50,000 on Respondent No. 2 for having consented to sell and then have proceeded to derail the proceeding. Cost be paid to the legal aid Cell of the Delhi High Court.

38. The Lalit Shah group thereafter filed AO No. 21 of 2008 before the Aurangabad Bench of this Court challenging the orders dated 10th December, 2007, 20th December, 2007 and 29th February, 2008.

39. On 10th March, 2008, the Respondents tendered the bank drafts aggregating to Rs. 29,73,494 for payment to the Appellants in respect of their shares. The matter was, however, adjourned to 24th March, 2008, in view of the pendency of AO No. 21 of 2008. On 24th March, 2008, the matter was adjourned sine die with liberty to mention.

40. On 28th March, 2008, AO No. 21 of 2008 was disposed of on the ground that the original side of this Court had jurisdiction to entertain an appeal u/s 10F. The Lalit Shah group filed SLP (Civil) No. 9871 of 2008 against this order and judgment. The said SLP was withdrawn on 29th June, 2009.

41. On 17th March, 2008, Respondent Nos. 12 and 13, i.e., the wife and son of Appellant No. 1 filed Company Appeal No. 12 of 2008 challenging the said orders. The Appellants filed Company Appeal No. 8 of 2008 on 12th April, 2008, challenging the said orders.

42. The said Ketan filed Company Appeal No. 3 of 2009, challenging the said orders. The said appeal, however, was allowed to be withdrawn by an order dated 12th June, 2009.

43. Khanwilkar J, by an order dated 19th June, 2009, stated that whether the impugned orders are consent orders or not would have to be clarified by the CLB. It was observed that if the CLB clarified that the orders were consent orders, the appeal would not be maintainable.

44. The Appellants filed Company Application No. 336 of 2009 before the CLB seeking the said clarification.

45. The CLB, by an order dated 23rd June, 2009, held that the orders dated 20th December, 2007 and 29th February, 2008 were in continuation of the consent

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order dated 10th December, 2007 and were also consent orders.

46. The order and judgment dated 23rd July, 2009 is, strictly speaking, not a clarification as to whether or not the said orders were consent orders. The CLB appears to have construed the said orders and held them as a question of law to be consent orders. In other words, the CLB has not stated whether it passed the order with the consent of the parties or not.

47. Appellant Nos. 1 and 2 filed Company Appeal No. 49 of 2009 challenging the order dated 23rd July, 2009.

48. It would make no difference whether the said orders dated 20th December, 2007 and 29th February, 2008 are consent orders or not. Considering the view that I have taken, it is not necessary for me to express any opinion regarding the same. Appeal No. 49 is, accordingly, disposed of.

49. On 3rd July, 2009, Respondent Nos. 12 and 13, i.e., the wife and son respectively of Appellant No. 1 filed Company Application No. 335 of 2009 before the CLB for an order directing the Respondents to purchase their shares as well in terms of the CLB''s orders dated 10th December, 2007 and 20th December, 2007. The company application is pending before the CLB.

50. The reason for their taking out the company application is not far to see. During the pendency of these proceedings the Respondents settled with all the other parties. Finding themselves in a corner, the other members of the group of Appellant No. 1, viz., Respondent Nos. 12 and 13 and the HUF of Appellant No. 1 who now hold barely more than ten per cent of the equity shares of the company seek to enforce the settlement which was validly arrived at, but which they sought to wriggle out of. That, however, is a matter which the CLB will decide in Company Application No. 336 of 2010 I express no opinion about its maintainability.

51. There can be no exception to the order passed by the CLB. The order dated 10th December, 2007 was admittedly with the consent of the parties and, in fact, at the request of the Appellants who had them selves taken out Company Application No. 510 of 2007. The order dated 29th December, 2007, was not sought to be set aside by the Appellant. Their only contention was that the Respondents had failed to comply with the condition thereof, viz., furnishing the bank guarantee within three weeks. I have already rejected this submission. Ultimately, by the order dated 29th February, 2007, only the parties to the proceedings have been ordered and directed to comply with their obligations in terms of the settlement. They can possibly have no grievance in regard thereto. The applicants in the said company applications, i.e., Respondent Nos. 7 to 13 have not been forced to comply with the settlement. That some of them settled their differences with the Respondents separately is another matter altogether.

52. By the impugned orders, the CLB has only enforced the settlement between the parties thereto. If any of the other parties are aggrieved by the transactions,

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including on the basis of their being contrary to the articles of association of the company, they must adopt independent proceedings which would be decided on their own merits. The applicants in Appeal No. 12 are at liberty to adopt separate/ independent proceedings for the redressal of their grievance in respect of the said settlement, including on the basis of Article 10. The question whether the company ought to register a transfer pursuant to the said settlement and orders or not is a matter which does not arise in the present appeals.

53. I am not inclined to interfere with the order of costs of Rs. 50,000 for more than one reason. The CLB rightly came to the finding that the Appellants tried to wriggle out of a settlement. The manner in which they sought to do so does not warrant any interference with the order of the CLB. Further, no question of law arises in this regard.

54. In the circumstances, the appeals are dismissed, but subject to the above clarification.

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