
(1999) 04 MP CK 0020
In the Madhya Pradesh High Court
Case No : Company Appeal No. 3/99

Kowa Spinning Limited

APPELLANT

Vs

Khandwala Securities Ltd. and Others

RESPONDENT

Date of Decision : 08-04-1999

Acts Referred:

Companies Act, 1956 — Section 397 , 398, 399, 400, 401

Citation : (2000) 1 CompLJ 228 : (2000) ILR (MP) 866

Hon'ble Judges : Shambhoo Singh, J;B.A. Khan, J

Bench : Division Bench

Advocate : Choudhary, for the Appellant; Bharucha, for the Respondent

Final Decision : Dismissed

Judgement

B.A. Khan, J.—Appellant company is engaged in manufacture of yam and related products. It appears that it struck a "bought out deal" with respondent pursuant to sponsorship agreement, dated 20.10.1994 whereby respondent purchased its 20.8 lakhs equity shares on behalf of itself and some co-investors for a face value of Rs. 10 on the terms and conditions set out in the agreement. Later, differences cropped up between the two leading to filing of Company Petition No. 9/99 by respondent before Company Law Board under Sections 397 and 407 of the Companies Act. [Cf. Khandwala Securities Limited and Ors. v. Kowa Spinning Limited and Ors. (2000) 1 Comp LJ 78 (CLB)]. The Board put appellant on notice and passed interim order, dated 25.2.1999 directing it to grant inspection of its records, list whereof was indicated and to make available copies of records/documents. The Board also granted appellant company time to file a reply to company petition upto (within ?) 20.3.1999. It seems that no reply was filed by the appellant and company petition was admitted to hearing on 26.5.1999.

2. Appellant feels aggrieved of interim order passed by the Board, dated 25.2.1999 and has filed this appeal u/s 10 of the Companies Act seeking its setting aside. The case set up is that Company Law Board had no jurisdiction to grant the interim order in the face of the provisions of Section 403 of Companies

Act and when appellant had questioned the very maintainability of the company petition moved by respondent which was yet to be decided. It is also projected that respondent's company petition was essentially for enforcement of the sponsorship agreement executed between the parties for which separate remedy was available under the Companies Act which was not availed of by the respondent.

3. Appellant's counsel, Shri Choudhary, was at pains to canvass that respondent's company petition was not maintainable and passing of interim order by the Board was not, therefore, warranted unless the maintainability of the petition was decided one way or the other. He also laboured on interpreting terms of Section 403 to suggest that powers of the Board to grant interim relief were limited and that an interim order could be passed by it only for regulating the conduct of the company's affairs and grant of inspection of the appellant's records in the present case could not be said to be an order concerning the regulation of the conduct of appellant's affairs. He also alleged that Board had passed the interim order in disregard of the established principle for grant of such orders without recording its satisfaction whether respondent had established a prima facie case and whether any balance of convenience was on its side. He sought support from *Dalpat Kumar and another Vs. Prahlad Singh and others*, ; *United Commercial Bank Vs. Bank of India and Others*, and *Kasturi (G.) v. N. Murali* (1991) 1 Comp LJ 125 (Mad): (1992) 74 Comp Cas 661 (Mad).

4. Shri Bharucha, learned counsel for respondent company on the other hand contended that the interim order passed by the Company Law Board was innocuous in the facts and circumstances of the case and was only aimed at requiring the appellant to discharge its statutory obligation under Companies Act. He invited attention of the court to the Annexure appended to the interim application filed before the Board to show that the inspection sought for was otherwise covered by the relevant provisions of the Companies Act. He sought support from Delhi High Court judgment in *Rajdhani Rollers Flour Mills v. Mangilal Bagri and Ors.* (1991) 1 Comp LJ 349 (Del) : (1991) 70 Comp Cas 788 (Del)).

5. This is not a case where Board had passed an interim order in the absence of appellant or without according any consideration to any objection filed by it. Record shows that appellant had not filed reply to respondent's company petition even till recently. Therefore, its present plea questioning the maintainability of respondent company petition was not before the Board at the time of passing of the interim order. Naturally, Board could not be expected to get rid of the maintainability issue first before passing the interim order.

6. Appellant's contention that impugned order was passed in contravention of terms of Section 403 also requires to be taken with a pinch of salt. Relevant section reads thus :

"403. Pending the making by it of a final order u/s 397 or 398, as the case may be, the (Company Law Board) may, on the application of any party to the

proceeding, make any interim Order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable."

A perusal of the provisions of this section would show that Company Law Board was competent to pass an interim order which it thought fit for regulating the conduct of company's affairs on such term and condition as may appear to it just and equitable. Expression "regulating the conduct of company's affairs" is all expansive and can bring within its ambit, anything that has to do something with the conduct of the company's affairs. Therefore, inspection of records of the company in a company petition under Sections 397 to 407 could very well be said to be concerning the regulation of the company's affairs and cannot be treated to be outside the purview of the provision.

7. As such, it is too much to say that Company Law Board had passed impugned interim order contrary to the terms of this provision when the Board was empowered to pass any such order which appear to it just and equitable in the facts and circumstances of the case. It was the sole domain of the Board to adjudge and evaluate whether such order was just and equitable in the circumstances of the case.

8. The other issue raised by Shri Choudhary concerning the merit of the matter and related to the maintainability of Company Petition No. 9/99 and its side lights including whether respondent company was seeking enforcement of the sponsorship agreement and whether it should have resorted to arbitration provided in such agreement are issues to be examined and decided by the Company Law Board and are not relevant for testing the validity of the interim order." There is no quarrel with the proposition that Company Law Board was required to take in regard recognised established principles like prima facie case, balance of convenience and irreparable loss, etc., while passing the interim order and granting the interim relief. Though the impugned order is not a detailed order and does not per se record that Board had found a prima facie case in favour of respondent, but the very fact that it had admitted the company petition showed that such prima facie case existed.

9. For all this, we find no merits in this appeal which is dismissed.