(2012) 08 MAD CK 0149

In the Madras High Court

Case No : Company Appeal No. 14 of 2012

Kumbakonam Mutual Benefit Fund Ltd. APPELLANT

Vs

S. Kalyanasundaram and Others RESPONDENT

Date of Decision : 28-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Companies Act, 1956 — Section 10F, 167, 169(1), 169(4), 173

Citation : (2013) 575 CLA 524 : (2013) 179 CompCas 133

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : Harishankarmani in Company Appeal No. 14 of 2012 and H. Karthik Seshadri for M/s. Iyer and Thomas in Company Appeal No. 15 of 2012, for the Appellant; S. Subramanian (Caveators) in Company Appeals Nos. 14 and 15 of 2012, for the Respondent

Judgement

K.B.K. Vasuki, J.—While Company Appeal No. 14 of 2012 is filed by the company M/s. Kumbakonam Mutual Benefit Fund Ltd., represented by its general manager, Company Appeal No. 15 of 2012 is filed by the directors- cum -shareholders of the company. The appellants herein are respondents Nos. 1, 5, 6 and 8 in C.P. No. 422 of 2011 on the file of the Company Law Board, Chennai Bench filed by respondents Nos. 1 to 3 herein. For the sake of understanding it is stated that respondents Nos. 1 to 3 in both appeals are the petitioners in company petition and the appellant in C.A. No. 14 of 2012, who is the fourth respondent in C.A. No. 15 of 2012 and the appellants in C.A. No. 15 of 2012, who are respondents Nos. 7, 8 and 10 in C.A. No. 14 of 2012 and other respondents in both appeals are respondents Nos. 1 to 8 in company petition. For the sake of convenience, the parties are referred to as per their rank in the company petition.

2. Both these appeals are filed against the order dated July 27, 2012, made in C.P. No. 422 of 2011 by the Company Law Board in exercise of its power u/s 186(1) of the Companies Act, 1956, thereby directing the company to conduct, an extraordinary general body meeting to consider the authenticity of the

appointment of respondents Nos. 2 to 8 as directors of the first respondent-company within a period of 30 days from the date of receipt of a copy of this order, with due notice to all the shareholders/members of the company, with further direction that one member of the company present-in-person or by proxy shall be deemed to constitute a meeting.

3. The circumstances which led to the institution of the company petition before the Company Law Board by the petitioners, who are respondents Nos. 1 to 3 herein are as follows:

The company herein is incorporated under the Companies Act on December 1, 1903. During 2011, the board of directors of the company having the first petitioner Lakshminaryanan as its managing director convened 107th annual general meeting of the shareholders of the company at 10.30 a.m. on August 19, 2011 and notice for the annual general meeting is duly issued on June 29, 2011, with specified agenda consisting of 9 subjects. Out of 9 subjects, 5 are ordinary business and 4 are special business. Before the exact date of meeting, the board of directors apprehending untoward incident in the hands of the rival group consisting of respondents Nos. 2 to 8, approached the High Court by way of a writ petition seeking police protection for smooth conduct of the meeting and the same is also ordered. Two days prior to the meeting date police complaint came to be filed against the petitioners, who were the then managing director and directors.

4. It is the contention of the petitioners that they did not, attend the annual general meeting apprehending arrest in the hands of police officials and the contesting respondent took over the control of the meeting, thereby preventing the majority of other directors and shareholders except their supportive members-cum-shareholders from attending the meeting and additional agenda for removal of the petitioners before the expiry of their tenure of office and appointment of new directors in the vacancies arising due to such removal and retirement of other members by rotation are introduced and the entire board of directors are substituted by new managing director and directors by removal of the petitioners and by filling up the vacancies in the same meeting and the entire meeting was held contrary to the procedure laid down under the Act and in violation of the principles of natural justice and without giving an opportunity to the existing directors to have their say for removal and without considering the request of the retiring directors on rotation for reappointment, etc. By contending so, the petitioners came forward with C.P. No. 422 of 2011.

5. The reliefs sought for in the company petition, the copy of which is enclosed at pages 13 to 25 of the typed set of papers filed in C.A. No. 14 of 2012, are as follows:

(a) that the first respondent-company shall be directed by an order to conduct an extraordinary general meeting u/s 186(1)(a) and (b) of the Companies Act within the time frame as may be fixed by this Hon''ble Bench with a specific agenda to consider the authenticity in the appointment of respondents Nos. 2 to 8 as directors of the first respondent, and for appointment of directors to the first respondent-company by its shareholders in the place removed/ disqualified director/s by following the procedure in accordance to the law;

(b) that the first respondent-company shall be directed by an order to facilitate the conduct of the extraordinary general meeting as may be ordered in such manner under the chairmanship of a retired judge of the High Court/Supreme Court or such other person of repute/ stature as shall be appointed by this Hon''ble Bench; and

(c) to give suitable ancillary or consequential directions in relation to the calling, holding and conducting of the extraordinary general meeting of the first respondent-company.

6. The petitioners have in the company petition, in addition to raising serious allegations against validity of conduct of 107th annual general meeting and validity of removal of the directors and appointment of new board of directors, explained the circumstances under which the petitioners are compelled to approach the Company Law Board to conduct the extraordinary general meeting of the first respondent-company. It its stated among other grounds that the petitioners are holding 65,060 shares out of 22,58,600 shares which is much less than one-tenth share, which is the criteria for making requisition to convene extraordinary general meeting and in view of non-fulfilling the requisite criteria under law, the petitioners are compelled to approach the Company Law Board to convene the extraordinary general meeting to consider the specific agenda, i.e., authenticity of the appointment of respondents Nos. 2 to 8 as directors of the first respondent and for fresh appointment of directors by its shareholders in the place of removed/disqualified directors by following due procedure and other incidental reliefs contained in paragraphs VI(b) and (c) of the company petition.

7. The company petition is seriously opposed by the company and the existing board of directors by raising both legal and factual objections. According to the respondents, the petitioners have wantonly not attended the annual general meeting held on August 19, 2011 and the 107th annual general meeting was conducted, after due notice and after duly complying with all the statutory procedural requirements and annual general meeting was conducted smoothly in accordance with the procedure laid down under law and the ordinary and special business of the meeting was duly passed by the majority of shareholders and the removal and disqualification of the directors and appointment of new directors was duly and validly made. It is further contended by them that the petitioners have not made out their case that the prevailing situation is such that it rendered it impracticable to call for the meeting of the company without the intervention of court by invoking section 186 of the Act and section 186 is not applicable to the situation prevailing in the respondent-company and the agenda mentioned in the relief portion regarding authenticity of the appointment of the respondents as directors and for appointment of new directors cannot be transacted in the

extraordinary general meeting and the reliefs sought for in the company petition are legally and factually not sustainable.

8. The Company Law Board has, after contest, disposed of the company petition under the impugned order dated July 27, 2012, thereby directing the company to convene extraordinary general meeting for the purpose and in the manner as directed in the order. While doing so, the Company Law Board found that there is no agenda for removal of the petitioners and for appointment of the respondents as new directors in the notice for the 107th annual general meeting which is mandatory and the removal of the directors is to be transacted by passing a special resolution and there is no mention of removal of the petitioners from the post of directors in the minutes passed in the annual general meeting and that the respondents have not followed the procedure as contemplated under law and the same amounts to clear violation of law and principles of natural justice and corporate democracy, as such, it is impracticable for the petitioners, who hold lesser share than one-tenth of total shares to call for a extraordinary general meeting of the first respondent-company. By holding so, the Company Law Board in exercise of the power u/s 186(1) of the Companies Act, directed the company to conduct extraordinary general meeting. Aggrieved against the same, the company and its existing directors, i.e., respondents Nos. 1, 5, 6 and 8 have come forward with these two company appeals before this court.

9. Company Appeal No. 14 of 2012 is admitted on the following questions of law:

(a) Whether the Company Law Board was right in concluding that non holding of requisite number of shares by the respondents amounts to impracticability in calling an extraordinary general meeting ignoring the fact that the appellant-company is regularly holding its general meetings in accordance with law ?

(b) Whether the Company Law Board has power to go beyond the scope of section 186 of the Act ?

(c) Whether the Company Law Board was right in considering other allegations in a petition filed under the provisions of section 186 of the Act ?

(d) Whether the Company Law Board has the right to compare the notice calling for annual general meeting and minutes of annual general meeting in a petition filed u/s 186 of the Act ?

(e) Whether the Company Law Board was right in passing order directing the appellant-company to call for an extraordinary general meeting to consider an agenda which is outside the scope of extraordinary general meeting ?

(f) Whether the Company Law Board was right in concluding that removal of a director can be made only by way of passing a special resolution under the provisions of section 284 of the Act ?

(g) Whether the Company Law Board has jurisdiction to go into the authenticity of appointment of directors who were duly appointed at the previous annual general meeting held on August 19, 2011, in a petition u/s 186 of the Act ?

10. Company Appeal No. 15 of 2012 is admitted on the questions of the law raised in connected Company Appeal No. 14 of 2012 along with the following additional questions of law:

(a) Whether the Company Law Board was right in considering other allegations with regard to directorship in a petition filed under the provisions of section 186 of the Act, when there was no legitimate challenge to the convening and holding of an annual general meeting on August 19, 2011 ?

(b) Whether a petition u/s 186 itself is maintainable to agitate issues pertaining to an election of directors in a concluded general meeting ?

11. According to learned counsel for the appellants, the impugned order passed by the Company Law Board is without jurisdiction and beyond the scope of section 186(1) of the Companies Act. It is also contended on their side that the impracticable situation under which the Company Law Board assumes jurisdiction to call for the meeting as contemplated under the relevant provisions of law must be viewed from a reasonable point of view and the extraordinary power shall be exercised very sparingly with great caution, so as to avoid the court in participating internecine squabbles of the company, which the court would not ordinarily expected to do and it can be sparingly exercised with great caution only in the larger interests of the company for removing a deadlock which is otherwise irremovable.

12. The further argument advanced on the side of the appellants that the 107th annual general meeting is validly held as evident from the documents produced on the side of the appellants before the Company Law Board and the validity or otherwise of removal of directors and appointment of fresh directors in any of the vacancies cannot be challenged by convening extraordinary general meeting as the alleged act of removal of the petitioners as directors and appointment of the respondents in such vacancies is infringement of the individual membership right and can be lawfully challenged only before the civil court by way of a regular civil suit for the reliefs claimed and calling for the meeting to consider such dispute as specific agenda is unknown to law and outside the scope of enquiry u/s 186 of the Companies Act.

13. Per contra, learned counsel for the respondents would contest the appeals, not only by defending the impugned order on merits, but also by questioning the very maintainability of the appeals. According to the respondents, the impugned order is based on the findings, which are purely factual in nature and the same does not involve any questions of law much less substantial questions of law to entertain the appeals. The present appeals, involving no questions of law for consideration of this court, are not maintainable u/s 10F of the Companies Act.

14. Heard the rival submissions made on both sides and perused the records.

15. Before going into the legality and validity of the impugned order on merits,

the first aspect, to be considered herein is as to whether the appeals involve any questions of law for determination of this court and are hence maintainable u/s 10F of the Companies Act.

16. This court has no quarrel, with the observation laid down in the authorities cited on the side of the respondents. The Supreme Court in the judgment reported in Deity Pattabhiramaswamy Vs. S. Hanymayya and Others, and our High Court in the judgment reported in Deity Pattabhiramaswamy Vs. S. Hanymayya and Others, held that the second appeal u/s 100 of the Code of Civil Procedure, 1908 and appeal u/s 10F of the Companies Act of the High Court are confined to determination of substantial questions of law and questions of law and no appeal shall lie on the ground of erroneous finding of fact, however gross error may seem to be based upon appreciation of relevant evidence. But this court is of the considered view that the observation of the Supreme Court and our High Court is not applicable to the facts of the present cases for the following reason.

17. As the case dealt with by the Supreme Court u/s 100 of the CPC is second appeal, which is maintainable only on substantial question of law, the observation of the Supreme Court is hence inapplicable to the facts of the present appeals arising under the Companies Act. As far as the observation made in our High Court case is concerned, the same is also factually distinguishable and is hence inapplicable to the present appeals.

18. It is only at this juncture, the questions of law on the basis of which the appeals are admitted by this court are to be considered. In both the appeals, the correctness of the impugned order is challenged mainly by questioning; the jurisdiction of the Company Law Board to entertain the reliefs by invoking the provisions of section 186(1) of the Companies Act and the impugned order is also challenged as lacking in jurisdiction and falls outside the purview of the Company Law Board in respect of specific finding rendered on the validity or otherwise of removal of the then existing directors and appointment of new directors. As the main issue raised herein is against the propriety of removal of existing directors and appointment of new directors and the jurisdiction of the Company Law Board to direct extraordinary general meeting to decide the same as one of the agenda and as such issues are purely legal in nature, the objection regarding maintainability of the appeals is liable to be negatived.

19. On merits, there is undoubtedly serious dispute among the parties with regard to the management of affairs of the company by the existing board of directors. Both the removal of the petitioners as directors and appointment of new directors impugned in this proceedings is made only in the 107th annual general meeting held on August 19, 2011. Though, one of the petitioners as managing director called for the 107th annual general meeting and though the petitioners, apprehending untoward incident against smooth conducting of the 107th annual general meeting, obtained police protection from the High Court and though sufficient police protection is provided, in compliance with the

direction of this court, the petitioners did not admittedly attend the meeting. The explanation sought to be offered for their failure to do so is, as if police complaint is lodged against them on August 17, 2011, two days prior to annual general meeting and the petitioners, apprehending arrest in the hands of the police personnel, avoided attending annual general meeting and the same is purposely done by the contesting respondent only to prevent the petitioners, other directors and shareholders supporting the petitioners'' group from attending the meeting and only the supporters of the contesting respondent are allowed to attend the meeting and the business regarding removal of directors and appointment of new directors are lastly included and are passed without discussion and without following the procedure.

20. The reading of the impugned order reveals that the Company Law Board arrived at a conclusion that it is impracticable for the petitioners to call for an extraordinary general meeting of the first respondent-company and the Company Law Board by exercising power u/s 186(1) of the Companies Act, directed the company to conduct extraordinary general meeting as sought for in the petition to consider the authenticity in the appointment of respondents Nos. 2 to 8 as directors mainly on two grounds: (i) the petitioners put together hold 65,060 shares as on the date of filing of this petition out of 22, 58, 600 shares and the same does not satisfy the requisite criteria as contemplated u/s 169(4) of the Companies Act and,(ii) the 107th annual general body meeting is not conducted, following the procedure laid down under law and the same is in clear violation of the provisions of law and principles of natural justice and the same is evident from the order directing police protection to be given to conduct annual general meeting in cordial atmosphere.

21. In (1968) 2 Comp LJ 155; (1970) 40 Comp Cas 491 (Cal) (Ruttonjee and Co. Ltd., In re), the principles to be adopted in an application u/s 186 are summarised as follows (page 518 of 40 Comp Cas):

1. The court would not ordinarily interfere with the domestic management of a company which should be conducted in accordance with its articles.

2. The discretion granted u/s 186 should be used sparingly and with caution so that the court does not become either a shareholder or a director of the company trying to participate in the internecine squabbles of the company.

3. The word ''impracticable'' means impracticable from a reasonable point of view...

6. But where the meeting can be called only by the directors and there are serious doubts and controversy as to who are the directors or where there is a possibility that one or other or both the meetings called by the rival groups of directors may be invalid, the court ought not to expose the shareholders to uncertainties and should hold that a position has arisen which makes it ''impracticable'' to convene a meeting in any manner in which meetings of the company may be called.

7. The court should exercise its powers u/s 186, when, upon considering all the facts and circumstances of a case, it can say with a reasonable approach to certainty or even prima facie that a meeting called in the manner in which meetings are ordinarily called under the Act or under the articles, would be invalid.

8. Before the court exercises its discretion u/s 186 the court must be satisfied, when a director or a member moves an application, that it has been made bona fide in the larger interests of the company for removing a deadlock otherwise irremovable.

22. In Bengal and Assam Investors Ltd. Vs. J.K. Eastern Industries Private Ltd., it is observed by the Calcutta High Court that the court can discharge that function only vicariously through a Chairman or President, whom it appoints. Judicial work of court through a delegate is never an efficient innovation in jurisprudence. Section 186 of the Companies Act, 1956, introduces this power which is also by its nature irresponsible. It is irresponsible power because even after the court has called, held and conducted meetings, it is not made responsible for the consequences that follow in the sense that it is left with no standing machinery to see to their proper working. As the power is great, unsuitable and irresponsible, the discretion granted u/s 186 of the Companies Act must be very sparingly used and it should be used with great caution, so that this court does not become either a shareholder or a director of the company trying to participate in the internecine squabbles of the company prudent person of business has not a sensitive, officious view of intervention in case of every rivalry between two groups of directors and prudence demands that this court should ordinarily keep itself aloof from participating in such squabbles.

23. The High Court of Andhra Pradesh in the judgment reported in Dr. Jayaram Chigurupati, rep by his power of Attorney Holder, Mrs. Padmasree Chigurupati, rep by his power of Attorney Holder and Zenotech Vs. Ranbaxy Laboratories Limited, Zenotech Laboratories Limited and Daiichi Sankyo Company Limited, and two others cited on the side of the contesting respondents, has at inner page 5 of the same, observed that for exercising the power u/s 186, the Company Law Board is not required to enter upon a consideration of various allegations and counter allegations as regards the management of the company. The Andhra Pradesh High Court has observed so, by having found from the tenure of the allegations made against each other as in the present case that there is no agreement between two contesting groups with regard to administration of the company in question and the Andhra Pradesh High Court is of further view that the impracticability or otherwise can be decided only by drawing a reasonable presumption from the surrounding circumstances.

24. The Madhya Pradesh High Court has in the judgment reported in In Re: The Pasari Flour Mills Ltd., held that u/s 186(1) of the Companies Act, it is quite unnecessary to consider which of the parties are responsible for the dispute and who is acting in a high handed manner,

25. Whereas, as rightly argued by learned counsel for the appellants, the Company Law Board in the present case, while deciding question as to whether intervention of the court is warranted or not has gone to the extent of deciding against the validity of removal of directors and appointment of fresh directors and rendered specific finding as if there is flagrance and violation of procedural law and principles of natural justice and the same is against corporate democracy. The Company Law Board has not considered the allegations raised against each other, by appreciating the overall circumstances. The findings, the correctness of which are questioned herein, are rendered mainly by highlighting the allegations raised on the side of the petitioners in the company petition and the same are, hence one sided and such finding is one of the main grounds on which the impracticability to convene the meeting is decided by the Company Law Board. In my considered view, the decision on impracticability to convene any meeting on such findings is to be necessarily held as perverse.

26. Regarding the plea that it is impracticable to convene the meeting without the intervention of the court, it is averred in the company petition that it has become impracticable to approach the first respondent-company with a request to call for extraordinary general meeting only in view of the intimidating attitude of respondents Nos. 2 to 8 and the inability of the petitioners to fulfil one-tenth share criteria to make the requisition as required u/s 169(4) of the Companies Act.

27. As far as the ground regarding lack of requisite number of shares held by the petitioners in company petition is concerned, the statutory requirement that it is pre-requisite to call for meeting is not disputed. However, the same cannot be one of the grounds on which the question of impracticability be decided. It is now well-settled that (i) the expression "impracticable" is not to be construed as "impossible" Shrimati Jain Vs. Delhi Flour Mills Co. Ltd. and Others, (ii) The word "impracticable" means impracticable from a reasonable point of view. The court must take a "common sense view" of the matter and must act as a prudent person of business-- In Re: Malhati Tea Syndicate Ltd., In Re: Malhati Tea Syndicate Ltd., ; (iii) It must not be held impracticable on the slightest excuse that the directors cannot agree Bengal and Assam Investors Ltd. Vs. J.K. Eastern Industries Private Ltd.,

28. The other ground regarding the so called intimidating attitude of the contesting respondents is concerned, the same is not satisfactorily substantiated. The mere fact that the police complaint is given two days prior to the date of meeting will not by itself go to prove the allegations in this regard. Further, the petitioners cannot be permitted to resort to the same for the reason that it is the petitioners who called for the meeting and obtained police protection for the smooth conduct of the meeting. When it is the admitted case that the order granting police protection is duly complied with by providing necessary police protection, the petitioners cannot be permitted to contend that they are prevented from attending the meeting. No other ground is averred in the petition

and is proved before the Company Law Board to hold that the situation is such that it created a dead lock and it is totally impossible to call for any meeting with such dissenting shareholders and without the intervention of the court.

29. In this context it is but relevant to refer to the observation made in the judgment reported in The Indian Spinning Mills Ltd. and Others Vs. His Excellency Lt. General Madan Shamsher Jang Bahadur Rana and Others,) wherein the order of the single judge thereby calling a meeting was dismissed by the Division Bench on the ground that the calling of a meeting by the requisitionists would lead to endless litigation and where matters may arise for debate and discussion, which were already the subject-matter of suits.

30. Next, the reliefs sought for in the company petition is to be referred to herein to ascertain the maintainability of the same u/s 186(1) of the Act in the light of legal principles laid down by the Supreme court in the judgment reported in R. Rangachari Vs. S. Suppiah and Others, The main relief sought for in the company petition is to direct the first respondent-company to conduct an extraordinary general meeting u/s 186(1)(a) and (b) of the Companies Act with specific agenda to consider the authenticity in the appointment of respondents Nos. 2 to 8 as directors of the first respondent and for appointment of fresh directors to the first respondent-company by its shareholders in the place of removed/ disqualified directors by following the procedure laid down under law, with further direction to conduct extraordinary general meeting under the chairmanship of a retired High Court/ Supreme Court Judge and to issue suitable ancillary or consequential directions in relation to the calling holding and conducting of the extraordinary general meeting of the first respondent-company.

31. The reading of the relevant provisions of law u/s 186 would show that the power vested upon the court u/s 186(1) is to (a) order a meeting of the company to be called, held and conducted in such manner as the company court thinks fit and (b) give ancillary or consequential direction as the court thinks expedient, including directions modifying or supplementing in relation to the calling holding and conducting of the meeting. As per section 186(2) any meeting called, held and conducted in accordance with any such order, shall for all purposes, be deemed to be a meeting of the company duly called held and conducted. The Supreme Court has in the judgment reported in R. Rangachari Vs. S. Suppiah and Others, cited above, had an occasion to deal with the purpose and object for which the court can be approached u/s 186 and held that "the order under clause (a) is brought up for all the purposes, i.e., calling holding and conducting of the meeting and the use of the Word ''and'' between the words ''held'' and conducted in clause (a) of sub-section (1) Clearly shows that the court has no power to make any order regarding the holding and conducting of any meeting which has already been called without ordering a meeting of the company to She called in place of the meeting already called. It is also further held that if an order under clause (a) has been made such ancillary or consequential directions as the court thinks expedient could be given under clause (b) including a direction within the

meaning of the explanation appended thereto. The Supreme Court based its interpretation of subsection (1) by also relying upon sub-section (2), as per which, any meeting called, held and conducted in accordance with an order under sub-section (1) to be a meeting of the company duly called, held and conducted. The Hon''ble apex court, having observed so in paragraph 6 of its judgment and having found in paragraph 7 of its judgment that, the company petition, which came up for consideration before the Supreme Court, did not seek any prayer for an order for the calling of a meeting of the company, held the application as presented before the court u/s 186 is not maintainable without any prayer for an order that the meeting of the company be called. In my considered view, the observation of the Supreme Court in the case cited above is squarely applicable to the facts of the present cases, wherein also, the main relief sought for in paragraph VI(a) of the company petition is only to conduct extraordinary general meeting and further direction sought for are only for the conduct of the same. When the observation of the Supreme Court is to the effect that the power of the court u/s 186 is to make an order for three purposes, i.e., calling holding and conducting of the meeting the prayer sought for herein is only for third purpose to conduct an extraordinary general meeting, without any prayer for calling and holding of the meeting and the finding given regarding impracticability is for different purpose, i.e., to call for the meeting and the relief granted is also for third purpose (i.e.) to conduct the meeting. Applying the ratio laid down by the Supreme Court to the facts of the present case, this court is compelled to say that such relief sought for and granted herein is incomplete and is hence not maintainable without a prayer to call for and to hold meeting and without seeking one such relief in paragraph VI(a), the ancillary and consequential directions sought for in paragraph VI(b) and (c) are also not maintainable.

32. As already referred to above, the subject to be discussed in the meeting is the impugned appointment of respondents Nos. 2 to 8 and also for appointment of fresh directors to the first respondent-company. The appointment of respondents Nos. 2 to 8, which is sought to be discussed in the proposed extraordinary general meeting, is admittedly in the vacancies arising out of removal of petitioners Nos. 1 to 3 as directors and in the vacancies arising out of retirement of other directors on rotation. It is but relevant to mention at this juncture that the other directors, who retired on rotation and whose vacancies are filled up by appointment of the respondents by names B. Prakasam and Ko. Si. Elango did not join either as the petitioners nor arrayed as party respondents in the company petition. There is also no material available to show that the other directors, who retired and whose vacancies are filled up, have any grievance against their disqualification. Further, the petitioners have not at all averred about the steps taken on their part to make any attempt to convene the meeting and substantiated the same during enquiry. The 107th annual general meeting were over on August 19, 2011 and the company petition was filed only on November 25, 2011. During the interregnum period, no steps appear to have

been taken on the part of the petitioners to make any representation either by them or through any other dissenting shareholder to convene any extraordinary general meeting nor the petitioners have initiated any other appropriate legal proceedings thereby challenging their removal and appointment of fresh board as illegal.

33. In this context, the attention of this court is drawn to some of the authorities of other High Courts for the legal proposition that only civil suit is maintainable for determination of certain disputes Avanthi Explosives P. Ltd. Vs. Principal Subordinate Judge, Tirupathi and Another, (ii) In Re: Ruttonjee and Co. Ltd., (iii) Bengal and Assam Investors Ltd. Vs. J.K. Eastern Industries Private Ltd., and (iv) Shrimati Jain Vs. Delhi Flour Mills Co. Ltd. and Others,

34. In all these cases, the civil suits are under identical situation filed for determination of rights of the parties. The parties, who are either aggrieved by the illegal removal of directors or appointment of new board of directors or improper conduct of annual general meeting, etc., approached civil forum by way of civil suits, challenging such conduct of the meeting or removal or appointment of directors and the suit reliefs sought for therein are declaratory reliefs with or without consequential reliefs and pending civil litigation, the parties approached the Company Law Board for appropriate orders by way of interim arrangements.

35. As a matter of fact, in the judgments cited on the side of the respondents, viz., (i) Sri Sinna Ramanuja Jeer and Others Vs. Sri Ranga Ramanuja Jeer and Another, and (ii) Indian Kanoon--http: //indiankanoon.org/doc/806881/Calcutta High Court (Amrita Bazar Patrika P. Ltd. v. Gyaneshwar Mishra), the Company Law Board is approached by the so called aggrieved person only during the pendency of civil litigation between two group of directors. In my considered view, as the right to hold directorship is individual right and as any interference into the same is invasion of such independent civil right, the remedy available to the petitioners against their alleged illegal removal and appointment of directors is only by way of civil suit and not by way of approaching the Company Law Board for convening the meeting for considering the propriety of the same as one of the agenda in the same.

36. The Madhya Pradesh High Court in the judgment reported in In Re: The Pasari Flour Mills Ltd., though found that it is impracticable to convene the meeting, refused to call for a meeting mainly on the ground that the agenda "appointment of directors" to be discussed in the meeting cannot be transacted in extraordinary general meeting and it will be futile and merely ceremonial to hold a meeting of the company, pending serious disputes regarding directorship and transfer of shares and the whole thing has been in a mess. The Madhya Pradesh High Court, by observing so, arrived at a conclusion that the main and substantial reliefs cannot be granted and accordingly dismissed the petition.

37. Here again, when the relief sought for is against the alleged interference of individual right, the same cannot, without approaching any civil court of law, be

discussed and decided in the extraordinary general meeting. Further, the Calcutta High Court in the judgment reported in In Re: Ruttonjee and Co. Ltd., was of the view that the court should not be a party to removal of permanent directors (or of any director) of a company by exercising its discretion u/s 186 and by dispensing with the said special notice in the absence of concrete, precise and specific charges against the directors with relevant evidence in support thereof.

38. Regarding the manner of convening the meeting of different types and nature of the business be transacted in the same and the mode of passing resolutions, the relevant provisions of law in the Companies Act would disclose that the meeting to be periodically convened are annual general meeting and extraordinary general meeting. Annual'' general meeting shall be held in each year and not more than 15 months shall lapse between two annual general meetings. Whereas extraordinary general meeting shall be as per section 169(1) called for and held on requisition of such number of members of the company as is specified in sub-section (4), i.e., one-tenth of such of the paid-up capital of the company having a share capital. While the annual general meeting shall be called either by the company or by the Central Government u/s 167 on the application of any member of the company and u/s 189(1), ordinary and special resolution can be passed in the general meeting extraordinary general meeting Shall be under impracticable situation, called by the Company Law Board by exercising its power u/s 186. u/s 186, the court is empowered to call for any meeting other than the annual general meeting.

39. The reading of section 173(1)(a) discloses that all business to be transacted at the meeting shall be deemed special, with the exception of business relating to (i) consideration of accounts, balance-sheets, and the reports of the board of directors and auditors; (ii) declaration of dividends; (iii) appointment of directors in the place of retiring; and (iv) appointment of and fixing of remuneration of the auditors.

40. The combined appreciation of sections 173 and 186 reveals that appointment of directors in the place of those retiring shall be made only in the annual general meeting and appointment of respondents Nos. 2 to 8 in the place of retiring directors by rotation, which is impugned herein, cannot be transacted in the extraordinary general meeting, as such, the relief sought for in the company petition calling for extraordinary general meeting to discuss the authenticity of the appointment of respondents Nos. 2 to 8 is not maintainable.

41. In this context, the observation of the Madhya Pradesh High Court in In Re: The Pasari Flour Mills Ltd., is squarely applicable to the facts of the present case. The company petition is filed u/s 186 to call for extraordinary general meeting for appointment of directors. The Madhya Pradesh High Court, though found that all the parties have made out a clear case of impracticability, dismissed the petition, mainly on the ground that the business of appointment of directors cannot be transacted in extraordinary general meeting.

42. Further, section 284 deals with vacation of directions under specific circumstances. Section 284 provides for removal of directors by ordinary resolution before the expiry of period of his office. The relevant provision of law reads that the removal of directors is only by ordinary resolution, but under special notice. What is contemplated u/s 284(2) is special notice of any resolution for removal of directors and not a special resolution, which is totally different and distinct, as such the finding of the Company Law Board that it shall be done by special resolution is contrary to law. Further, as per section 284(5) and (6) vacancy created by the removal of directors under this section may, if he had been appointed by the company in the general meeting or by the board in pursuance of section. 262 be filled up by the appointment of another director by the meeting at which he is removed, if not it may be filled as casual vacancy in accordance with the provisions of section 262, Under, section 262, such resulting casual vacancy be filled by the board of, directors at a meeting of the board.

43. Further/under section 284(7) the directors so removed is at liberty to initiate proceedings for recovery of compensation and damages against his removal and against any fresh appointment in the resulting vacancy. The director, who is not given any notice of resolution due to any default, shall make representation to be read out in the meeting without prejudice to his right of being heard orally.

44. When that being the procedure laid down under law regarding mode of convening of different type of meeting and the nature of the business to be transacted therein and nature of notice to be issued and mode and nature of resolution to be passed therein and the manner in which it is to be challenged and the remedy available to the aggrieved party, the petitioners cannot be permitted to aver denial of any knowledge either of the same. u/s 186 as the power of the court can be exercised only when it is impracticable to call for a meeting of a company, other than an annual general meeting, in any manner in which other meetings of the company may be called or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles, the failure on the part of the petitioners to resort to any other mode as prescribed under the Act, shall disentitle them to invoke the power of the court u/s 186 of the Act.

45. Viewing from any angle, the company petition arising out of which is the order impugned herein is not maintainable for the relief sought for therein and the impugned order passed is beyond the jurisdiction of the Company Law Board vested upon the same u/s 186 of the Companies Act and the impugned order is the outcome of total non-application of mind and the same is biased and all the questions of law and additional questions of law framed in these two appeals are hence answered in favour of the appellants. In the result, both the appeals are allowed by setting aside the order dated July 27, 2012, made in C.P. No. 422 of 2011 by the Company Law Board, Chennai Bench, Chennai. Consequently, connected miscellaneous petitions are closed.

