

(1995) 04 MAD CK 0047

In the Madras High Court

Case No : O.S. Appeals No's. 39 of 42 of 1995

N. Jagan and another

APPELLANT

Vs

Investment Trust of India Ltd.

RESPONDENT

Date of Decision : 03-04-1995

Acts Referred:

Companies Act, 1956 — Section 81(1A)

Citation : (1996) 85 CompCas 75

Hon'ble Judges : S.S. Subramani, J;M. Srinivasan, J

Bench : Division Bench

Advocate : S. Govindswaminathan for Sriram Panchu, N.L. Raja and Sivanadha Raj, for the Appellant; Mohan Parasaran, for the Respondent

Judgement

Srinivasan, J.—These appeals are against orders passed by the single judge sitting on the original side, in applications filed in two suits. The

plaintiff in each suit is a shareholder in the defendant-company, each owning about 150 shares. In terms of percentage, it is pointed out that the

total of 300 shares held by the two plaintiffs comes to 0.0014 per cent. The plaintiffs have, in the suits, challenged two resolutions passed by the

company at the extraordinary general meeting held on May 9, 1994. O. A. No. 592 of 1994 in C. S. No. 705 of 1994 and O. A. No. 591 of

1994 in C. S. No. 1006 of 1994 are for injunction restraining the defendant from giving effect to resolutions Nos. 1 and 2 passed at the said

meeting in any manner or acting in pursuance thereof. O. As. Nos. 1006 and 1007 of 1994 are for injunction restraining the defendant from issuing

21,79,000 equity shares of Rs. 10 each at a premium of Rs. 30 per share to the equity shareholders on rights basis as announced by them in the

letter of offer. The learned single judge has found that a prima facie case has not

been made out to grant injunction as prayed for by the plaintiffs, particularly because the general body has passed the resolutions at the extraordinary general meeting. He has held that the plaintiffs have no right to dictate terms to the company to fix the value of the share at a particular rate and, therefore, they are not entitled to get any order for interim relief.

In that view, the learned judge has dismissed all the four applications before him.

2. No doubt the contention that the learned single judge has not considered separately the objections of the plaintiffs to resolution No. 2 is

somewhat justified, but we are of the opinion that the orders of the learned judge can be sustained. At the outset, it must be pointed out that when

the appeals were taken up for hearing, learned senior counsel appearing for the appellants stated categorically that he is not challenging the first

resolution passed by the company in view of the fact that no useful purpose will be served. According to him, the resolution has already been given

effect to and, therefore, he is not pressing the challenge.

3. With reference to the second resolution, he has argued that the only reason given in the explanatory statement issued u/s 173 of the Companies

Act along with the notice of the meeting being to enhance the interest of the promoters, is not a valid one to sustain the resolution. According to

him, the Supreme Court has categorically laid down in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* [1981] 51

Comp Cas 743; AIR 1981 SC 1289, that a resolution aimed purely at enabling promoters to gain main control over the company, is illegal.

Secondly, it is argued that the explanatory statement issued u/s 173 of the Companies Act ought to contain all the relevant facts which are material

so as to enable the shareholders to form a judgment with regard to the correctness of the proposed resolution and the course to be adopted by

them. It is further contended that the resolution cannot authorise the board of directors to issue the shares and the power can be exercised only by

the general body u/s 81(1)(a) of the Companies Act. It is submitted that the decision to issue further shares to the promoters at a paltry premium,

leads to a loss of about Rs. 17 crores to the company and the resolution is, therefore, entirely against the interest of the company.

4. We are of the opinion that the question whether the resolution will lead to a heavy loss to the company, will depend on the evidence and it is not

a matter which could be decided at this stage without any materials before court. Secondly, the applicability of the decision of the Supreme Court

in Needle Industries" case [1981] 51 Comp Cas 743 to the present company is also questioned by the defendant. According to learned counsel

for the defendant, the company which was dealt with by the Supreme Court in that case was a deemed public limited company and the principles

laid down therein cannot apply to the defendant company, which is a regular public company. It is also pointed out that the question before the

Supreme Court was raised at the instance of the minority shareholders u/s 397 of the Companies Act and the Supreme Court had referred to all

the relevant facts and circumstance of the case before deciding the question of law. The proposition laid down by the Supreme Court cannot be

torn out of the context and made use of in the present case in view of the different facts herein.

5. As pointed out by learned counsel for the defendant, the plaintiffs are holding only minuscule shares. The plaintiffs cannot claim to represent the

minority shareholders though in paragraph 11 of the plaint, there is an allegation that minority shareholders are sought to be dwarfed by the

dominant group. There is no material before the court to show whether they is any dominant group or a minority group. At any rate, the plaintiffs

cannot claim to represent them.

6. The plaintiffs did not participate in the meeting and the resolutions were passed unanimously by the general body. The plaintiffs have taken the

benefit of resolution No. 1 and also subscribed to allotment of rights shares. It is also submitted by learned counsel for the defendant that the

provisions of section 81(1A) form an exception to the provisions of section 81(1) (a) of the Companies Act. It is not necessary for us at this stage

to go into that question. It is contended by the defendant that in view of the proposed economic reforms, the company wants to protect its interests

and consolidate the existing shareholdings.

7. In our opinion, at this interlocutory stage, we would not interfere with the order of the learned judge, who has exercised his discretion against the

grant of injunction. The circumstances, which we have pointed out earlier, are sufficient to hold that the plaintiffs cannot stop the implementation of

the resolutions passed by the general body unanimously. It is also to be noted

that the plaintiffs not having challenged resolution No. 1 and having obtained the benefit thereof, cannot prevent the implementation of resolution No. 2. There is also no substance in contending that the board has no power to make allotment of shares as it is seen that the resolution is a special one contemplated u/s 81(1A) of the Companies Act and it has authorised the board of directors to make the allotment.

8. In those circumstances, we do not find any justification whatever to interfere with the order of the learned judge in these appeals. Hence, they are dismissed. There will be no order as to costs.