

(2013) 03 DEL CK 0034

In the Delhi High Court

Case No : CO.A. (SB) No. 18 of 2008

Nagesh Kumar and Another

APPELLANT

Vs

Nagesh Hosiery Exports Ltd. and Others

RESPONDENT

Date of Decision : 05-03-2013

Acts Referred:

Companies Act, 1956 — Section 10F, 397, 398

Citation : (2013) 113 CLA 554 : (2013) 177 CompCas 115 : (2013) 2 CompLJ 534 : (2013) 199 DLT 88 : (2013) 119 SCL 24

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Krishna Kumar with Mr. Kaustubh Shukla, for the Appellant; Sanjay Maria, Advocate for R-3 and Ms. Sangita Bhayana, Advocate for R-2, for the Respondent

Judgement

S. Muralidhar, J.—This appeal u/s 10F of the Companies Act, 1956 ("Act") is directed against a judgment dated 11th June 2008 passed by the Company Law Board ("CLB"), Principal Bench in Company Petition No. 97 of 2006 filed by Appellant 1, Mr. Nagesh Kumar and his wife Appellant 2, Mrs. Renu Mehra.

Background Facts

The background to the present appeal is that Respondent 2 Mr. Vidya Prakash Mehra, is the father of Appellant 1 Nagesh Kumar, Respondent 3 Mr. Ravinder Kumar and Respondent 4 Mr. Rakesh Kumar. Respondent 2, along with his brother Mr. Dharam Pal was running a partnership firm in the name of M/s. Nagesh Hosiery Mills ("NHM"). As a result of disputes between the partners, a deed of dissolution was executed by them on 30th July 1983. Under the dissolution deed, inter alia, the immovable property being building No. B-1-1214 near Kailash Cinema Chowk in Civil Lines, Ludhiana was divided into two parts. One part was allotted to the parties of the 4th, 5th and 6th parts i.e. Mr. Ashok Kumar, Mr. Rajan Kumar and Mr. Mukesh Kumar sons of Mr. Dharam Pal. The other portion was given to the parties of the 1st, 2nd and 3rd parts i.e. Mr.

Ravinder Kumar, Mr. Nagesh Kumar and Mr. Rakesh Kumar. Likewise, another immovable property being a building at GT Road, village Bhaura, Ludhiana was divided into two parts and distributed to the two sets of parties. The relevant clause in this regard reads as under :

d) That immovable property being Building No. B-XXXII-933 at G.T. Road, Village Bhaura, Ludhiana has been divided into two parts as indicated in the plan attached herewith marked annexure 4. The portion shown by the slightly irregular rectangle ABCDEFGHIJ shaded green (Area of land 15,310. 7/9 Sq. Yards) in the plan has been allotted and given to the parties of the 4th, 5th and 6th parts hereto collectively, while as the slightly irregular rectangle BCEDEFGHIJKL shaded red (Area of land 15,310. 7/9 sq. yards) in the plan has been allotted and given to the parties of the 1st, 2nd and 3rd parts hereto collectively.

2. The Respondent 1 company Nagesh Hosiery Exports Limited ("NHEL") was incorporated in 1980 with its registered office in Greater Kailash, New Delhi. Appellants 1 and 2 Nagesh Kumar and his wife Renu Mehra, held 40,940 equity shares in NHEL. This represented 20.47% of the 1,99,500 paid up equity shares of Rs. 10 each of NHEL. 25,950 shares were held by Mrs. Suhag Rani, the mother of the Appellant 1 and Respondents 3 and 4. 22,600 shares were held by Respondent 2 Mr. Vidya Prakash Mehra as Karta of the Hindu Undivided Family ("HUF") comprising of himself and his sons. The other shareholders included Mr. Nagesh Kumar who holds 27,750 shares, Mrs. Renu Mehra who holds 13,190 shares, Mr. Ravinder Kumar who holds 25,750 shares, Mr. Rakesh Kumar who holds 30,100 shares, Mrs. Charu Mehra, Respondent 5 and wife of Mr. Ravinder Kumar, who holds 15,189 shares and Mrs. Sudha Mehra, Respondent 6 and wife of Mr. Rakesh Kumar, who holds 10,840 shares. In terms of the annual return filed by NHEL with the Registrar of Companies ("ROC"), Mrs. Shammi Sobti holds 17,290 shares and Mr. Om Prakash Khanna holds 50 shares.

3. It is stated that on account of differences between the parties, a Memorandum of Understanding ("MoU") was entered into on 10th April 1993 between Mr. Vidya Prakash Mehra Respondent 2 (referred to in the MoU as party of the First part), Mr. Ravinder Kumar Respondent 3 (referred to in the MoU as party of the Second part), Appellant 1 Mr. Nagesh Kumar, (referred to in the MoU as party of the Third part) and Mr. Rakesh Kumar Respondent 4 (referred to in the MoU as party of the Fourth part). It was inter alia agreed that no new order would be taken in the name of NHEL or the firm M/s. Nagesh Hosiery Exports ("NHE"). It was agreed that "all the four parties may do their independent business of any kind in any name but would not use the name of Nagesh Hosiery Exports Limited or Nagesh Hosiery Exports till the question of goodwill is decided amongst all the four parties". It was also agreed that "All the properties including land, building, machinery, whatsoever, assets visible and invisible, shall be divided in four equal shares of the parties." A similar arrangement was arrived at in respect of NHE.

4. The MoU contained a clause for settlement of disputes by reference being

made to Mr. Ram Pal, son of Mr. Ram Sahai (a brother of Mr. Vidya Prakash Mehra), Mr. R.S. Walia and Mr. Shambu Nath Khanna.

Genesis of the disputes

5. The genesis of the disputes which led to the filing of the petition before the CLB by the Appellants is stated to be a notice dated 2nd January 2006 issued for convening an Extraordinary General Body Meeting ("EGM") of NHEL for the removal of Appellant 1. It is the case of Appellant 1 that he never received any such notice. It is further stated that a board meeting was convened on 9th January 2006 as a precursor to the convening of the EGM on 8th February 2006. Appellant 1 contends that he did not receive notice of the said board meeting either. Appellant 1 also denies receiving the notice claimed by the Respondents to have been purportedly sent to him on 10th January 2006.

6. The EGM was held on 8th February 2006 in which a resolution was passed removing Appellant 1 as Director of NHEL with immediate effect. Appellant 1 states that he learnt some time in August 2006 that a board meeting had been convened in which it was decided that NHEL would apply to the State Bank of India ("SBI") for a loan of Rs. 1 crore. Accordingly, on 16th August 2006, Appellant 1 sent a letter to SBI representing that NHEL was not authorised to seek the loan. A copy of the letter was sent to Respondents 2, 3 and 4. On 25th August 2006, Respondents 2, 3 and 4 replied through their Advocate stating that the loan had been correctly applied for. The reply stated that Appellant 1 had been removed from the Directorship of NHEL by the board resolution dated 9th January 2006.

Proceedings in the CLB

7. On 11th October 2006 Appellants 1 and 2 filed Company Petition No. 97 of 2006 in the CLB under Sections 397 and 398 of the Act alleging oppression and mismanagement. On 12th October 2006, the CLB appointed a Bench Officer to authenticate the members' register, minutes of the board and general meetings, the fixed assets register and the dispatch and attendance registers of NHEL. Respondent 2 was directed by the Bench Officer by an order dated 12th October 2006 to produce the statutory records of NHEL.

8. The Appellants state that when the Bench Officer visited the registered office of NHEL at Greater Kailash on 19th October 2006 he found that no books of accounts were maintained. This is denied by the Respondents.

9. On 5th December 2006, the Appellants filed an application being CA No. 446 of 2006 before the CLB. On the same day, a direction was issued by the CLB permitting the Appellants to furnish a list of documents that they desired to inspect in the records of NHEL. The Appellants state that the aforementioned orders dated 12th October 2006 and 5th December 2006 were disregarded by the Respondents. The Appellants, therefore, filed CA No. 47 of 2007 on 31st January 2007 in the CLB for interim directions and for contempt. The Appellants

contend that instead of complying with the orders of the CLB Respondents 2 to 4 continued to siphon off the funds of NHEL. They are alleged to have adopted dilatory tactics by making it appear that they were willing to settle the disputes when in fact they were not prepared to do so. In the list of dates filed by the Appellants (and not in the memorandum of appeal) it is stated that on 17th August 2007 when the parties were present before the CLB, the Appellants agreed to leave NHEL, if the Respondents agreed to pay them the fair market value of their shares and that since the Respondents did not agree, the matter was fixed for final arguments on 12th October 2007. It is stated that thereafter an additional affidavit was filed by the Appellants in the CLB bringing on record further facts to show oppression and mismanagement by the Respondents. It is stated that no interim orders were passed by the CLB but arguments were heard from time to time and orders reserved on 5th March 2008.

Impugned order of the CLB

10. On 11th June 2008, the CLB passed the impugned order, inter alia, holding as under:

(a) The allegations of acts of oppression and mismanagement of the affairs of NHEL resulting in the depletion of its reserves remained uncontroverted. Though it was a fit case for winding up of NHEL, such an order would clearly prejudice the interests of the Appellant 1 and other shareholders.

(b) The petition was a composite one in which complaints were made not just about the Directors but also of siphoning of the funds resulting in depletion of the reserves. The objections as to maintainability were not tenable. The petition could not be thrown out at the threshold.

(c) The prayers sought in the petition were different from those in the civil suits between the parties. The contention of the Respondents that the Appellants had indulged in forum shopping was, therefore, rejected.

(d) The MoU was 13 years old and had been referred to only for the collateral purpose of giving the backdrop to the facts and circumstances of the case.

(e) The Respondents' contention that Appellant 1 had attended the board meetings of NHEL regularly including the ones on 1st September 2004 and 1st September 2005, and had approved the annual accounts for the years 2003-04 and 2004-05 also remained uncontroverted.

(f) The Appellants had themselves restricted their prayers to the determining of their share holding to 27.106% instead of 20.47% that is instead of the admitted 40940 shares, their shareholding should increase by a further 13137 shares i.e. totaling 54077 shares (13137 shares being 1/4th of the total share holding of late Mrs. Suhag Rani and 1/4th of the total share holding of the HUF held by Mr. Vidya Prakash Mehra).

(g) The Appellants had further restricted their prayers to the valuation of their

share holding to enable them to exit NHEL as they were not willing to continue with the Respondents.

11. It was held that the claim of the Appellants for a 1/4th share of the holding of Mrs. Suhag Rani and Mr. Vidya Prakash Mehra as Karta could not be adjudicated in the petition before the CLB. Therefore only the admitted share holding of 40940 shares amounting to 20.47% of the total shareholding of NHEL could be said to be validly held by the Appellants.

12. In conclusion the CLB held as under:

that to end the matters complained of directing the petitioners to go out of the R-1 company on receipt of fair value of their shares totaling 40940 @ Rs. 706.73 being admitted value per share total value being 2,89,33,526.20 within six weeks of the receipt of this order so as to enable them to go out of the R-1 company would meet the ends of justice. Accordingly I hereby direct the respondents to pay the total value so determined. The R-1 company is entitled to get back the vacant possession of its assets from the petitioners or receive market value of the occupied premises, building, plant and machinery from the petitioners on determination from a valuer whom the parties agree to appoint. If the petitioners fail to co-operate with the R-1 for the determination of the value of their occupied premises including land plants and machinery and do not accept the fair value determined for their shareholding the petition shall be deemed to have been dismissed and all interim orders shall also be deemed to have been vacated.

Proceedings in the present appeal

13. In the present appeal, notice was first issued on 21st July 2008, on which date the following order was passed:-

CA No. 759 of 2008 & CO. A. (SB) No. 18 of 2008

Notice.

Mr. Sanjay K. Maria, Advocate accepts notice. Let a copy of the paper book be supplied to learned counsel for the respondent.

Memo of appearance filed in court is taken on record. Let reply be filed within six weeks. Rejoinder thereto, if any, be filed before the next date of hearing.

Upon hearing learned counsel for the parties and perusal of the record placed before this court, it is directed that the parties shall maintain status quo with regard to the title, possession and construction on the property bearing Khasra No. 6/2/2, 3/2, 4/1/2/2, 4/2/2, 6/2-6/3, 7/1, 7/3, 8, 9/1, 9/3, 3/1/1, 13/1/2, 14/1, 14/1/2, 18/2/1/1, 18/2/1/2, 19/1/1, 19/1/2, 22/1/1, Khata/K No. 139/136 Jamabandi 2004-2005, Taraf Vill. Bhoura, HB No. 88, district Ludhiana as well as the property at M.C. No. B-XXXII 933, G.T. Road, Village Bhoura, Ludhiana being Khasra No. 6/9/4, 10/4, 11/3, 12/1, 12/2, 19/1/4, 19/1/5, 20/1, 21/1/2, 7/15/3, 16/2, 17/1, 24/1, 25/1.

Learned counsel for both sides appearing before this court have pointed out that the real dispute between the parties is between a father and two sons on one side as against the third son on the other. A prayer is jointly made that the parties may be referred to mediation to explore the possibility of an amicable resolution of the disputes.

Accordingly, the appellant and respondent nos. 2, 3 & 4 are directed to appear before the Delhi High Court Mediation Centre on 30th July, 2008 at 3:00 p.m. to explore the possibility of an amicable resolution of the disputes.

List on 3rd November, 2008.

Dasti.

14. It was reported to the Court on 13th August 2009 that no settlement was possible. Interim orders were continued till further orders.

15. At a subsequent stage, the parties again sought adjournments stating that since they were closely related they were hopeful of an amicable settlement. Ultimately, it was informed to the Court on 11th October 2012 that if no settlement is possible by the next date, the matter would be heard on merit. The final arguments were heard on 10th January 2013 and 22nd January 2013.

Submissions of counsel for the Appellants

16. The submission of Mr. Krishna Kumar, learned counsel for the Appellants, is that once the CLB had come to the conclusion that there was no defence by the Respondents to the charge of oppression and mismanagement, the CLB was bound to put an end to the matter complained of by passing an appropriate order under Sections 397 and 398 of the Act. However, in the instant case despite upholding the Appellants' contention of oppression and mismanagement, neither was the wrong undone nor were the Appellants suitably compensated. It is submitted that the impugned order is on the face of it perverse and ought to be set aside on this ground alone.

17. Secondly it is submitted that each of the group had equal share of 25% in NHEL. It was never urged by the Respondents that the valuation of assets should be as on the date of the filing of the petition. The valuer appointed by the Respondents had prepared a report as on 27th May 2007, which was the date of the preparation of the report. It was only during the arguments in the present appeal that the Respondents have contended that the valuation should be as on the date of the filing of the petition in the CLB, i.e., 11th October 2006. The valuation, as determined by the CLB, was inadequate and unreasonable. In any event, the impugned order had been passed on 11th June 2008 and even on that date, the valuation of the assets was in excess of the value as on 27th May 2007. It is contended that inasmuch as the Respondents failed to comply with the impugned order of the CLB by not making the payment within the time stipulated, and also not seeking extension of time for making the payment, the question of the Respondents now making the payment of only so much of the

amount as directed by the CLB was ruled out. It was submitted that the Respondents could not take advantage of their own wrong. The land belonged to NHEL and in May 2007 its value was about Rs. 4.75 crores, while at the time of passing of the impugned order by the CLB, i.e., June 2008, its value was Rs. 15 crores. It is stated that the present value of the land in question is about Rs. 24 crores. What was originally agricultural land has since been declared to be industrial land and, therefore, commands a good price in the market.

18. Thirdly it is submitted that the condition that the Appellants should return the possession of the land and building of NHEL was erroneous and not based on any record. NHEL had only vacant land. The land and building in possession of the Appellants belonged to the partnership firm, NHM and not to the company. It is stated that the dissolution deed dated 30th July 1983 and the wealth tax returns supported the fact that the three brothers had partitioned the land between themselves. Reference is made to Suit No. 459 dated 28th August 2007 filed by Respondent No. 2 in the Court of the Civil Judge/Judicial Magistrate, Ludhiana, where he admitted that the property is acquired by the firm and belonged to the three brothers.

19. Fourthly, it is submitted that the finding that the Appellants had approved the balance sheet as on 31st March 2006 was based on no evidence whatsoever. Further, the balance sheet was not signed by the Appellants. Reference is made to the decisions in Dr. Hemant Kumar Rohatgi and Another Vs. South Delhi Maternity and Nursing Home Private Ltd. and Others, , Vinod Kumar Vs. Sigmalon Equipment P. Ltd. and Others, and Dale and Carrington Invt. (P) Ltd. and Another Vs. P.K. Prathapan and Others, . It is accordingly prayed that Respondents 2 to 4 should be debarred from being directors of NHEL and the board should be reconstituted with the Appellants being part of it.

20. In the written submissions filed by the Appellants, an alternative prayer is made as under:

c. Without prejudice to the Prayers above, the Appellants may be permitted to leave the Respondent Company by disposing of its shares, and for the value of the shares, the Appellants may be given-

(i) 20.57% of the vacant land held by the Company be given and physical possession of the same given forthwith Or in the alternative 20.57% of the present market value of the land not being in any event, more than 2 months prior to the date of payment to the Appellants and;

(ii) 20.57% of the other assets including cash reserves and;

(iii) All the perquisites and privileges, the Appellants are entitled to till the amount is received together with interest.

(In the event, the effective ownership of the shares are taken into consideration including the shares belonging to the mother as well as to the HUF, the holding of the Petitioner's group increases to 27%. Also, as per the MOU dated 10.04.1993,

Page No. 17, Volume I, the Petitioner's group in any event, was entitled to 25%. In the event, value to the extent of only 20.57% is taken i.e. actual holding, in such an event, the Petitioners may be entitled to claim further reliefs in respect of the other shares held indirectly as legal heir and as member of HUF.)

21. It is further prayed that an independent Chartered Accountant should be appointed to conduct a special audit to determine the amount siphoned off by the Respondents during the period and to ask them to make good the losses. It is prayed that a direction should be issued to the Respondents not to dispose of the vacant land of the company and to preserve the assets in the meanwhile.

Submissions of counsel for the Respondents

22. Mr. Sanjay Maria, learned counsel for the Respondents, vehemently opposed the above contentions of the Appellants. It is stated that the Appellants had themselves restricted their prayers before the CLB by filing an additional affidavit dated 12th February 2008, para 8 of which reads as under:

8. That as already pointed out in the proceedings the issue that requires to be resolved is only:

- a. the extent of shareholding
- b. the value of shares that belong to the Petitioners' group.

23. It is submitted that the Appellants themselves having restricted their prayers to the extent mentioned above, the order passed by the CLB can hardly be said to be illegal.

24. It is submitted that the scope of the interference by this Court in exercise of its powers u/s 10F of the Act was limited to examining questions of law that arise from the impugned order and that in the instant case there was no such question of law. It is submitted that the Appellants are inviting the Court to interfere on pure questions of facts. Reliance is placed on the decisions in *Shri V.S. Krishnan and Others Vs. Westfort Hi-tech Hospital Ltd. and Others*, , *Scottish Cooperative Wholesale Society Ltd. v. Meyer* 1958 3 All E.R. 66 (H.L.), *Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others*, , (2011) 101 CLA 277 , (2012) 106 CLA 551 and *Chatterjee Petrochem (I) Pvt. Ltd. Vs. Haldia Petrochemicals Ltd. and Others*, .

25. On merits learned counsel for the Respondents reiterates the submissions made before the CLB. According to him the occasion for the Respondents to make payment in terms of the impugned order never arose since the Appellants challenged it in this Court and the appeal was pending ever since. The Appellants never demanded enforcement of the impugned order. It is submitted that the limited prayer of the Appellants having been granted by the CLB, there was no room for any grievance on that score and the impugned order called for no interference.

Scope of the proceedings u/s 10F of the Act

26. One of the first issues to be considered concerns the scope of the proceedings u/s 10F of the Act. While the Respondents are right in their contention that the Court will in its appellate jurisdiction examine only questions of law, it was explained by the Supreme Court in Dale & Carrington Invt. (P) Ltd. v. P.K. Prathapan as under:

36. Section 10F refers to an appeal being filed on a question of law. The learned counsel for the appellant argued that the High Court could not disturb the findings of fact arrived at by the Company Law Board. It was further argued that the High Court has recorded its own finding on certain issues which the High Court could not go into and therefore the judgment of the High Court is liable to be set aside. We do not agree with the submission made by the learned counsel for the appellants. It is settled law that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only on the question of law. The perversity of the finding itself becomes a question of law. In the present case we have demonstrated that the judgment of the Company Law Board was given in a very cursory and cavalier manner.

(emphasis supplied)

27. Consequently, the question whether, as contended by the Appellants, the CLB has in the present case passed a perverse order has to be determined by the Court even for the purposes of maintainability.

Relief granted by the CLB not legally tenable

28. Learned counsel for the Appellants is justified in the criticism of the impugned order of the CLB that despite the finding that there was no defence to the charge of oppression or mismanagement, the CLB did not pass a proper consequential order to bring to an end the matters complained of.

29. In Dale & Carrington Invt. (P) Ltd. the Supreme Court explained that it was settled law "that if a finding of fact is perverse and is based on no evidence, it can be set aside in appeal even though the appeal is permissible only on the question of law. The perversity of the finding itself becomes a question of law." The reasoning given by the CLB in more than two places in the impugned order appears to indicate that the Respondents had no defence to the charge of their having committed acts of oppression and mismanagement. Further even the Appellants' contentions regarding the depletion of reserves of NHEL remained uncontroverted.

30. However, the Court finds no ground to interfere with the CLB's rejection of the Appellants' prayer for a higher percentage of shareholding. The question whether on the death of Mrs. Suhag Rani, who died in 2000 leaving behind a will, the Appellants would be entitled to any share therein or in the 22,600 equity shares held by Respondent 2 as Karta of the HUF could not have been examined by the CLB.

31. On the question of relief, while the Appellants did restrict their prayers to determine their shareholding as 27.106% instead of 20.47%, the CLB failed to explain how it arrived at the fair market value of the shares held by the Appellants as Rs. 706.73 per share. The consequence of the payment not being made by the Respondents was also not spelt out. Thirdly, without a factual determination that the Appellants were in actual physical possession of the assets of NHEL, an order directing them to restore to NHEL possession of such property could not have been issued.

32. The Appellants are justified in contending that the Respondents cannot now insist the impugned order being implemented. The Respondents have not made the slightest effort to comply with the directions in the impugned order. There was no stay of the impugned order by this Court. There is nothing to show that the Respondents offered to pay for the Appellants' shares in terms of the impugned order of the CLB and the Appellants thereupon refused such payment. Even assuming that the Appellants may have refused nothing prevented the Respondents from offering to deposit the amount in the Court. The Respondents have not done that till date and there is no satisfactory explanation for this failure. The Respondents have at no point in time applied to the Court for extension of time to make payment.

33. As regards the submission of the Appellants that they never approved the balance sheet of NHEL as on 31st March 2006, the Respondents have not produced any balance sheet of NHEL as of that date signed by Appellant 1. In matters of this nature, there is no question of estoppel. A company is statutorily required to maintain its accounts. A shareholder has the right to insist upon this. The fact that the Appellant 1 may have attended the board meetings held on 1st September 2004 and 1st September 2005 and approved the annual accounts for those respective years does not answer the submission that the accounts as on 31st March 2006 were not approved by Appellant 1.

34. As regards the fair market value of the shares, there ought to have been a proper valuation thereof by an approved valuer. As explained by this Court in *Hemant Kumar Rohatgi v. South Delhi Maternity & Nursing Home P. Ltd.*, a fair market value had to be determined. The assets of NHEL had to be valued, as contended by the Appellants, as on 31st March 2006. This Court is not satisfied with the manner of arriving at the value of the shares by the CLB on the basis of purported admissions. This does not appear to be the correct approach.

35. It was observed by the CLB that if the Appellants failed to cooperate with NHEL for the determination of the value of the occupied premises, including land, plant and machinery and do not accept the fair value of the assets determined, the petition shall be deemed to have been dismissed. The impugned order thus makes it impossible for the Appellants to even question the valuation. Having succeeded in demonstrating oppression by the Respondents, the Appellants cannot be compelled to accept an arbitrary and unilateral determination of the fair value by the Respondents not based on any sound financial and accounting

principles. The remedy provided by the CLB has thus been rendered illusory.

36. As pointed out by the Bombay High Court in *Vinod Kumar v. Sigmalon Equipment Pvt. Ltd.*, the valuation report has to be prepared in a just and fair manner by an independent valuer. This exercise should have been ordered by the CLB. The decisions relied upon by the Respondents i.e., in *Cosmosteels Pvt. Ltd. v. Jai Ram Das Gupta*; *Scottish Cooperative Wholesale Society Ltd. v. Meyer and A. Mysamy v. Sri Gajendra Paper and Boards Pvt. Ltd.*, are distinguishable on facts. In none of the said cases was oppression alleged and found on facts. In the present case the CLB has effectively ruled that acts of oppression were committed by the Respondent. In the circumstances, given the limited prayer sought by the Appellants, the CLB ought to have required the Respondents to pay the fair market value for the shares held by the Appellants. This had to be done by a proper examination of the value of the assets of the company. Given the manner in which the operative portion of the impugned order has been framed by the CLB, it is no longer just, equitable or legally valid to require it to be implemented as such.

37. In their written submissions, the Appellants have now sought three prayers (i) for debarring the Respondents 2 to 4 from being Directors of NHEL (ii) Reconstituting the Board with Appellants as part of the Board and (iii) permitting the Appellants to leave NHEL by disposing of their shares in the manner indicated therein.

38. Again, considering that the Appellants have limited their reliefs before the CLB, this Court is not inclined to permit the Appellants to expand the scope of the reliefs sought for. At the same time, the Appellants cannot be deprived of the relief of being compensated for the shares held by them in NHEL. This will require valuation of shares to be carried out by a Chartered Accountant appointed by the Court.

Conclusions and directions

39. For the aforementioned reasons, this Court sets aside the impugned order to the extent that it directs that the Appellants will be paid a sum of Rs. 706.73 per equity share as well as restore to NHEL possession of the premises, plant and machinery and building.

40. The matter is accordingly remanded back to the CLB with the following directions:

(i) The CLB will appoint a Local Commissioner to ascertain, in a time bound manner, as to who is in possession of the properties of NHEL and submit a comprehensive report with maps, sketches, plans and photographs;

(ii) The fee of the Local Commissioner will be shared equally by the Appellants and Respondents 2 to 4

(iii) The CLB will appoint an accredited valuer to value the shares of NHEL with

reference to the current market value of the assets.

(iv) The valuer so appointed will submit a valuation report within the time stipulated by the CLB and in any event not later than three months from the date on which the CLB resumes hearing of the matter.

(v) On the basis of the valuation report, the CLB will proceed to issue further directions for payments by Respondents 2 to 4 for the shareholding of the Appellants.

(vi) Based on the report of the Local Commissioner to be submitted before the CLB in a time bound manner, the CLB will issue further directions as regards the possession of the property and assets of NHEL.

The appeal is disposed of in the above terms with costs of Rs. 10,000 which shall be paid by Respondents 2 to 4 to the Appellants within a period of four weeks.