

(1995) 01 AHC CK 0098

In the Allahabad High Court

Case No : First Appeal From Order No. 37 of 1994

Prakash Timbers Pvt. Ltd. and others,	APPELLANT
Vs	
Smt. Sushma Shingla and another	RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Companies Act, 1956 — Section 153

Citation : AIR 1995 All 320

Hon'ble Judges : M.C. Agarwal, J

Bench : Single Bench

Advocate : Sri R.P. Singh, Sri A.N. Pandey and Murlidhar, for the Appellant; Sri Tarun Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellants who were respondents Nos. 1 and 3 to 6 before the Company Law Board have preferred this appeal u/s 10-F of the Companies Act against an order dated 15th September, 1994, passed by the Company Law Board, Principal Bench, New Delhi, whereby it disposed of a petition preferred by Smt. Sushma Shingla and Smt. Sandhya Sharan, now respondents Nos. 1 and 2, under Sections 397 and 398 of the Companies Act. Their case was that Prakash Timbers Private Limited (now appellant No. 1) was incorporated as a Company in the year 1961 with an authorised capital of Rs. 5,00,000/- divided into 500 shares of Rs. 1,000/- each. The paid up capital of this Company was Rs.3,71,000/-. The said petitioners held 154 shares in the said company having a face value of Rupees 1,54,000/ -. The said company was formed by the joint family of Hirday Narain Goel, who was the grand-father of the petitioners. Various properties owned by the said joint family, including property No. 165, Civil Lines, Station Road, Bareilly, was transferred to the said Company. Sri Y.P.Goel, the son of Hirday Narain Goel, was the managing director of the aforesaid company. During the lifetime of Y.P. Goel, it was decided to bring into existence another wholly owned subsidiary company and consequently, Hirday

Narain Yogendra Prakash Properties Private Limited was incorporated as a wholly-owned subsidiary of Prakash Timbers Private Limited. This company had a nominal capital of Rs.2,00,000/- and a paid up capital of Rs. 30,000/- consisting of 30 shares of Rs. 1,000.- each. Y.P. Goel is said to have died on 28th April, 1986, leaving behind three daughters, i.e. the petitioners and respondent No. 5 before the Company Law Board. It was alleged that on 19th March, 1990, the respondent No. 5 became ambitious and wanted to take away the rights of the petitioners since they were living out of Bareilly where the said company and its properties were situated. The respondent No. 5 wanted to deprive the petitioners of their rightful shares in the management of the company. She joined with S.P. Goel group and the two groups holding a majority of shares removed the petitioners from the Board of Directors. The petitioners approached them and, consequently, an agreement dated 15th September, 1991, was executed between the parties. In spite of the said agreement, the respondents removed the petitioners from the directorship of the parent company and informed the Registrar accordingly.

2. In August, 1991, the petitioners had requested that a meeting of the Board of Directors be called to discuss the mismanagement in the company, but no such meeting was called. Regarding the subsidiary company, it was alleged that the three sisters who were daughters of Y.P. Goel were its directors during the lifetime of Y.P. Goel.

3. In the third week of March, 1992, the petitioners received a letter from the Assistant Registrar of Companies that it had come to their notice that the petitioners had sold their shares to one Sri Shonit Tendon, their nephew. This bogus information was given to the Registrar of Companies by Smt. Gita Tandon, respondent No. 5. In this way, the petitioners alleged that the affairs of the companies were being conducted in a manner oppressive to them. They, therefore, prayed :

(a) that the petitioners be appointed on the Board of Directors of Prakash Timbers Private Limited;

(b) that the alleged transfer executed by the parent company on 20th April, 1992, pertaining to the roof of the building situate at 165, Civil Lines, Bareilly, to Bareilly Corporation Bank be set aside;

(c) that respondents be ordered to transfer the company's properties at 165, Civil Lines, Bareilly, to three different independent companies formed as per agreement dated 15th September, 1991;

(d) that the Registrar of Companies, U. P. be restrained from registering the Annual General Meeting proceedings and annual returns etc. for the period ending 31st March, 1991, of both the parent and the subsidiary companies; and

(e) that the accounts of both the companies for the period ending 31st March, 1991, and thereafter be approved by the petitioners.

4. In the proceedings ensuing before the Company Law Board, New Delhi, the parties came to a compromise. The Company Law Board, therefore, made an order in terms of the said compromise as under :

"A company petition No. 68/92 was filed u/s 397/ 398 of the Companies Act, 1956, by Smt. Sushma Shingla and Smt. Sandhya Sharan against Prakash Timbers Private Limited and 5 others. During the hearing held on 26-5-1994 both the parties submitted that they would like to settle the dispute in terms of the compromise scheme dated 7-2-94 which was filed with the Bench. Both parties desired separation of the subsidiary company M/s. Hriday Narain Yogendra Prakash Properties Private Limited (hereinafter referred to as HNP) from the parent company, namely, Prakash Timbers Private Limited (hereinafter referred to as PTP).

As per the terms of compromise, one of the properties of PTP situated at 165, Civil Lines, Bareilly shall be divided into three blocks, A, B and C. Blocks B and C are desired to constitute as an asset of HNP and Block A to remain in PTP.

In order to settle and dispose of the petition we direct, in terms of the compromise, that :--

i) The paid up capital of PTP be reduced by Rs. 1,54,000 (being the book value of 87 shares held by Smt. Sushma Shingla and 67 shares held by Smt. Sandhya Sharan). The share certificates of 154 shares held by the petitioners in PTP be treated as cancelled.

ii) 30 shares of Rs. 1000/- each in the paid up capital of HNP owned by the following No. :

Late Shri Y. P. Goel 10 shares. Smt. Gecta Tandon 5 shares. Shn Shailendra Tandon 5 shares. Smt. Sushma Shingla 5 shares. Smt. Sandhya Sharan 5 shares.

as nominees of PTP stand transferred to the individual ownership of the petitioners (15 shares to be held by Smt. Sushma Shingla and 15 shares to be held by Smt. Sandhya Sharan). The share certificates of 30 shares held by nominees of PTP be treated as cancelled and fresh share certificates be issued by HNP to the petitioners as referred above.

iii) Block B & C together now stand transferred to and vest in HNP as its properties for all intents and purposes along with tenants of the said blocks. HNP now cease to be a subsidiary of PTP and shall have rights and responsibilities of collection of rents, litigations and payment of taxes for its properties comprising of blocks B & C of 165 Civil Lines, Bareilly, w.e.f. the date of this order.

iv) HNP as well as PTP will file revised information as referred to above in form No. 32 with the ROC, Kanpur within 30 days of receipt of this order.

The petition is disposed of in terms of the compromise scheme which is filed by petitioner No. 1 on 24-2-94 and petitioner No. 2 on 24-2-94 and the respondents on 7-3-94 the text of which is annexed and be read as a part of the order. Liberty

given to both the parties to approach us in case there is any difficulty in implementing any of the terms of the compromise."

5. Respondents Nos. 1 and 3 to 6 before the Company Law Board have filed the present appeal against the Company Law Board's order dated 15th September, 1994, and their grievance is restricted to clause (iii) of the order, as reproduced above, which provides that Blocks B & C together stand transferred to and vest in HNP (Hriday Narain Yogendra Prakash Properties Private Limited) as its properties for all intents and purposes along with tenants of the said blocks and the ground of objection is that in a proceeding under Sections 397 and 398 of the Companies Act, the Company Law Board has no powers to order the transfer of property and the same could be done only by execution by the company concerned of a proper deed of conveyance and its registration according to law.

6. I have heard Sri Murlidhar, the learned counsel for the appellants, and Sri Tarun Agarwal, the learned counsel for the respondents.

7. On behalf of the respondents, a preliminary objection was raised that the order passed by the Company Law Board being a consent order, as contained in the written compromise scheme filed on behalf of the parties, no appeal lies against it. Reliance was placed on Byram Pestonji Gariwala Vs. Union Bank of India and others, . That case dealt with the question as to whether a counsel had the authority to compromise on behalf of the client. It does not lay down that, in no circumstances, an appeal against an order passed on consent can lie. In the case before me, the appellants challenge the jurisdiction of the Company Law Board in making an order by which the properties stand transferred as soon as the order was passed and the appellants' contention is that such an order could not be passed in exercise of powers u/s 397/398 of the Companies Act. Therefore, the jurisdiction of the authority concerned being under challenge, the appeal, in my view, is maintainable.

8. The contention of the appellants is that in order to bring into effect the compromise, it was necessary that a proper deed of conveyance be executed and registered and without that, the transfer would not be effective. The learned counsel for the appellants referred to clause 3.2 of the proposed compromise scheme which forms part of the order passed by the Company Law Board. The said clause states that the petitioners and respondent No. 2 shall be at liberty to get orders of the Hon'ble Bench approving and sanctioning the compromise scheme registered with the concerned Sub-Registrar, Bareilly, at their own expense and costs for the purpose of obtaining registration of Blocks B & C transferred in the name of respondent No. 2. It was contended that execution and registration of a proper deed of conveyance was contemplated in the aforesaid clause. This contention is not correct. The aforesaid clause merely stated that the parties are at liberty to get the order of the Company Law Board registered under the Registration Act. It does not at all say that the transfer would be effective only on the execution of a deed of conveyance by Prakash Timbers Private Limited in favour of Hriday Narain Yogendra Prakash Properties

Private Limited. It may be mentioned that it is not the case of the petitioners that the order passed by the Company Law Board is not in terms of the compromise arrived at between the parties.

9. As stated above, the petition moved by the respondents Nos. 1 and 2 before the Company Law Board was under Sections 397/398 of the Companies Act. Sections 397, 398 and 402 of the Companies Act contain the grounds on which an application to the Company Law Board can be made in cases of oppression and mismanagement and the powers of the Company Law Board to make orders. The said sections are reproduced below :

"397. (1) Any member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members including any one or more of themselves may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of Section 399.

(2) If, on any application under sub-section (1), the Company Law Board is of opinion-

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up;

the Company Law Board may, with a view to bringing to an end the matters complained of, make such order as it thinks fit."

"398. (1) Any member of a company who complains-

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors, or of its managing agent or secretaries and treasurers or manager, or in the constitution or control of the firm or body corporate acting as its managing agent or secretaries and treasurers or in the ownership of the Company's shares, or it has no share capital, in its membership or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; may apply to the Company Law Board for an order under this section, provided such members have a right so to apply in virtue of Section 399.

(2) If, on any application under sub-section (1), the Company Law Board is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Company Law Board may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit."

"402. Without prejudice to the generality of the powers of the Company Law Board u/s 397 or 398, any order under either section may provide for-

- (a) the regulation of the conduct of the company's affairs in future;
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;
- (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
- (d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely :--
 - (i) the managing director,
 - (ii) any other director,
 - (iii) the managing agent,
 - (iv) the secretaries and treasurers, and
 - (v) the manager,

upon such terms and conditions as may, in the opinion of the Company Law Board, be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application u/s 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(g) any other matter for which in the opinion of the Company Law Board it is just and equitable that provision should be made."

As is evident, u/s 397 of the Companies Act, the Company Law Board has the

authority to make such orders, as it thinks fit with a view to bring to an end the matters complained of. u/s 398 also, a similar power is given and Section 402, without prejudice to the generality of the powers under Sections 397 and 398 of the Companies Act, specifies the areas in which the power of the Company Law Board can be exercised. It also contains the residuary powers in clause (g) in respect of any other matter for which in the opinion of the Company Law Board, it is just and equitable that provision should be made. Formerly, these powers were exercisable by a High Court, but with effect from 31st May, 1991, these powers have been vested in the Company Law Board. The High Court still has certain powers u/s 394 of the Companies Act for facilitating reconstruction and amalgamation of companies. The said section reads as under :

"394. (1) Where an application is made to the Court u/s 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Court-

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor Company") is to be transferred to another company (in this section referred to- as "the transferee company");

the Court may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters;

(i) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company;

(ii) the allotment or appropriation by the transferee company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person;

(iii) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company;

(iv) the dissolution, without winding up, of any transferor company;

(v) the provision to be made for any persons who, within such time and in such manner as the Court directs, dissent from the compromise or arrangement; and

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out :

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being

wound up, with any other company or companies, shall be sanctioned by the Court unless the Court has received a report from the Company Law Board or the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest :

Provided further that no order for the dissolution of any transferor company under clause (iv) shall be made by the Court unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the Court that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee company; and in the case of any property, if the order so directs, free from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration. If default is made in complying with this sub-section, the company, and every officer of the company, who is in default, shall be punishable with fine which may extend to fifty rupees.

(4) In this section-

(a) "property" includes property, rights and powers of every description; and "liabilities" include duties of every description; and

(b) "transferee company" does not include any company other than a company within the meaning of this Act; but "transferor company" includes any body corporate, whether a company within the meaning of this Act or not."

The learned counsel for the appellants con-tended that in sub-section (2) of Section 394 of the Companies Act, a specific provision has been made that the property shall stand transferred by virtue of the order of the High Court and that no such provision has been made in Section 397, 398 or 402 of the Companies Act and, therefore, the power given to the High Court cannot be attributed to the Company Law Board.

10. It is true that a specific provision has been made in Section 394(2) of the Companies Act, but that does not mean that the absence of such a provision would mean that the Company Law Board's order will not have any such effect. The Company Law Board has been given powers to make any orders with a view to end matters complained of and when such wide and absolute power has been given to the Board, it cannot be imagined that the effectiveness of the orders of the Company Law Board would depend on its compliance by the parties particularly those against whom allegations of oppression and mismanagement were made. Section 394 of the Companies Act deals with reconstruction and

amalgamation of companies and it was probably for this reason that a specific provision had to be made in sub-section (2) that the properties shall stand transferred by virtue of the order itself. As already noted, the Company Law Board has wide powers for bringing to an end incidents, of oppression and mismanagement and can make any order that it considers just and equitable.

11. In the present case, the dispute was between two groups of share holders of the parent company Prakash Timbers Private Limited, that had a subsidiary as well. Therefore, the parties thought that in order to end the grievance of the petitioners regarding mismanagement and oppression, the subsidiary company should be made an independent company and a part of the aforesaid property be transferred to the said company and the capital of the two companies be also restructured accordingly. As a result of the scheme of compromise, the respondents Nos. 1 and 2 ceased to have any interest in the so-called parent company and acquired a larger interest in the so-called subsidiary company, which, in its turn, surrendered the amounts due to it by the parent company and became owner of a portion of the aforesaid property. Neither the terms of the compromise provided that any deed of conveyance was necessary to bring into effect the aforesaid provisions nor does the law seem to require the execution of any instrument or deed of conveyance. There is no provision under the Registration Act or the Stamp Act providing that an order made by the Company Law Board under any of the powers is required to be stamped or registered.

12. In some cases arising under the old provisions of Section 153-A of the Companies Act, it was held that as a result of an order of the Court u/s 153-A, the title of the transferee company to the property and assets transferred is derived from and by the force of the order itself (See Sahayanidhi (Virudhunagar) Limited v. A. R. S. Subrahmanya Nadar, 1950 20 Comp Case 214 : AIR 1951 Mad 209 , United India Life Assurance Company Ltd. Vs. Commissioner of Income Tax, Madras., . The provision which is akin to such Section 153-A is Section 394 of the Companies Act, 1956 and, therefore, these authorities are relevant only to the extent they help in the interpretation of Section 394(2) of the Companies Act. There is no authority on the point in so far as an order of the Company Law Board u/s 397 read with Sections 398 and 402 of the Act is concerned. Having regard to the nature of the grievance intended to be redressed by the Board and the nature of the powers conferred by the Act on the Board in that regard, I am of the opinion that the power to transfer properties is implicit in the exercise of that power and an order passed by the Company Law Board can effectively transfer property without the execution of a deed of conveyance or its registration under the Registration Act. I, therefore, hold that the Board had the jurisdiction to pass an order as it did and the same did not require any execution of document or registration thereof to make the same effective.

13. For the above reasons, I do not find any force in this appeal and the same is hereby dismissed with costs.

14. Appeal dismissed.