

(2002) 05 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : Company Appeal No. 3 of 2002

Raja Ram Corn Products (Punjab) Ltd.	APPELLANT
Vs	
Company Law Board	RESPONDENT

Date of Decision : 07-05-2002

Acts Referred:

Companies Act, 1956 — Section 36, 80A, 80A(1)

Citation : (2003) 113 CompCas 33 : (2003) 45 SCL 190

Hon'ble Judges : G.S. Singhvi, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : L.M. Suri, assisted by Radhika Suri, for the Appellant;

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—This appeal is directed against order dated October 30, 2000, vide which the Company Law Board, Northern Bench, New Delhi (hereinafter described as respondent No. 1) granted consent to the proposal of the appellant for issuing further 4 per cent. cumulative redeemable preference shares in lieu of 10,891 existing shares of that category subject to certain conditions including the one for payment of dividend at the rate of 15 per cent. per annum.

The facts:

2. The appellant-company had issued 10,891, 4 per cent. redeemable preference shares of Rs. 100 each on December 25, 1985, with a maturity period of 12 years. Ten days before the maturity of the shares, the appellant convened a meeting of the shareholders including preference shareholders on December 15, 1997, and succeeded in getting a resolution passed for issuance of further 4 per cent. cumulative redeemable preference shares in lieu of 10,891 existing 4 per cent. cumulative redeemable preference shares. Thereafter, it submitted an application u/s 80A of the Companies Act, 1956 (for short "the Act"), before respondent No. 1 for grant of consent. Some of the preference shareholders (respondents Nos. 2 to 13) filed objections to contest the application of the

appellant. They pleaded that the application was liable to be dismissed because the appellant's claim about unanimity in the meeting of the shareholders was incorrect. They also urged that the application of the appellant may be heard along with the complaints filed by them under Sections 397 and 398 of the Act. In the end, they claimed that the rate of dividend be increased from 4 per cent. to 15 per cent. per annum.

3. Respondent No. 1 allowed the application of the appellant, vide order dated October 30, 2000, and gave consent to its proposal subject to the following conditions :

"(a) The company shall issue further preference shares to the extent of the amount due including the dividend up to the date of redemption, i.e., December 24, 1997.

(b) The further redeemable cumulative preference shares shall carry a dividend at the rate of 15 per cent. per annum and shall be redeemable on or before the expiry of ten years from December 24, 1997.

(c) The company shall make the above issue within 90 days of the receipt of a copy of this order and shall comply with the relevant provision of the Act consequent to the above allotment.

(d) Any fractional entitlement shall be suitably dealt with at the discretion of the board of directors."

4. Shri L.M. Suri, senior advocate, argued that the conditions imposed by respondent No. 1 may be declared illegal, arbitrary and unjust and quashed because while doing so, respondent No. 1 overlooked the provisions of Section 36 of the Act and Article 3(a) of the articles of association of the company. He further argued that in view of Section 36 of the Act, the appellant cannot be compelled to issue redeemable cumulative preference shares which shall carry a dividend at the rate of 15 per cent. per annum. Learned counsel also criticised the directions given by respondent No. 1 for issuance of cumulative preference shares by including the amount of dividend payable up to the redemption by arguing that such a condition is totally unwarranted. He relied on the judgment of the Constitution Bench of the Supreme Court in *Dr. A. Lakshmanaswami Mudaliar and Others Vs. Life Insurance Corporation of India and Another*, and argued that the direction given by respondent No. 1 for adding the amount of dividend to the fresh cumulative preference shares should be declared ultra vires Article 3(a) of the articles of association of the company.

5. We have given serious thought to the arguments of learned counsel, but have not felt persuaded to agree with him that the conditions imposed by respondent No. 1 are arbitrary or ultra vires the provisions of the Act. A careful reading of the order under challenge shows that respondent No. 1 rejected the objections raised on behalf of respondents Nos. 2 to 13 to the validity of the resolution passed in the meeting of the shareholders held on December 15, 1997, by

observing that even if the resolution had not been passed unanimously, the appellant's right to allot fresh cumulative preference shares cannot be questioned. It further held that shareholders do not have a right to seek redemption at the end of the maturity period. The prayer of the objectors for hearing of the application along with the complaints filed by them under Sections 397 and 398 of the Act was rejected by respondent No. 1 with the observation that pendency of complaints has no bearing on the decision of the application filed by the appellant. Respondent No. 1 also rejected the appellant's plea that nothing was payable to the holders of cumulative preference redeemable shares. While doing so, respondent No. 1 made reference to order dated February 21, 2000, passed by this court in C. A. No. 27 of 1997 filed by the appellant and observed as under :

"This Board has to satisfy that company is not in a position to redeem preference shares and pay the dividend, if any, due thereon before according its consent u/s 80 of the Companies Act for issue of further shares for this purpose. As per the company's balance-sheet as on March 31, 1997, as against the paid up capital and reserves and surplus of the company of Rs. 337.46 lakhs its accumulated losses were of the order of Rs. 311.35 lakhs. Further as per the company's latest audited balance sheet as on March 31, 2000, accumulated losses have increased to the extent of Rs. 389.31 lakhs, in addition the company has contingent liabilities on account of non-provision of full depreciation, etc. Under the circumstances the company can neither create capital redemption reserve out of profits nor is it in a position to issue further additional shares for the purpose of redemption of preference shares. I am satisfied that the company is not in a position to redeem existing 10,891, 4 per cent cumulative preference shares due for redemption on December 24, 1997."

6. Respondent No. 1 then passed the conditional order of consent. In our opinion, the reasons assigned by respondent No. 1 for granting conditional consent do not suffer from any legal infirmity requiring interference by this court.

7. In *Raja Ram Corn Products (Punjab) Ltd. v. Company Law Board* [2001] 106 C C 563), this court considered a somewhat similar issue and upheld the order passed by respondent No. 1. In that case, the appellant had applied for consent to the issue of further preference shares in lieu of 19,000 preference shares. While granting consent, respondent No. 1 imposed the following conditions :

"(1) The company shall issue further preference shares to the extent of the amount due including the dividend up to the date of redemption i.e., October 7, 1996.

(2) The further redeemable cumulative preference shares shall carry a dividend at the rate of 15 per cent. per annum and shall be redeemable at par on or before the expiry of ten years from October 7, 1996.

(3) The company shall make the above issue within 90 days of the receipt of a copy of this order and shall comply with the relevant provisions of the Act

consequent to the above allotment.

(4) Any fractional entitlement shall be suitably dealt with at the discretion of the board of directors."

8. The appellant challenged the aforementioned conditions on various grounds including the one that u/s 80A of the Act, respondent No. 1 cannot grant the conditional consent and in the absence of a statutory provision, it cannot direct issuance of redeemable cumulative preference shares with a dividend of 15 per cent. per annum. This court referred to the provisions of Sections 80 and 80A of the Act and held as under :

"An analysis of the provisions quoted above shows that Section 80 of the Act empowers the company limited by shares to issue redeemable preference shares but, at the same time, it imposes certain restrictions on redemption of shares. Sub-section (5A) of Section 80 which begins with a non obstante clause declares that no company limited by shares shall after the commencement of the Companies (Amendment) Act, 1996, issue any preference share which is irredeemable or is redeemable after 20 years from the date of its issue. Sub-section (6) contains punitive provisions to deal with the cases of non-compliance with the provisions contained in other sub-sections of Section 80. Section 80A was inserted in the Act with effect from June 15, 1998, by the Companies (Amendment) Act, 1988. Sub-section (1) of Section 80A also begins with a non obstante clause. Clause (a) thereof provides for redemption of the irredeemable preference shares issued before the commencement of the Companies (Amendment) Act, 1988, and Clause (b) provides for redemption of those preference shares which were not redeemable before the expiry of ten years from the date of issue in accordance with the terms of the issue and which had not been redeemed before June 15, 1988. The proviso to Section 80A(1) also contains a non obstante clause. It provides for issuance of further redeemable preference shares by the company which is not in a position to redeem the preference shares within the period stipulated in Sub-section (1). This is subject to the condition that the company concerned obtains consent of the Company Law Board. The proviso to Section 80A also contains a deeming provision, inasmuch as it declares that on the issue of further redeemable preference shares, the unredeemed shares shall be deemed to have been redeemed. Sub-section (2) of Section 80A empowers the Central Government to vary or modify the provisions of Section 80A and Sub-section (3) provides for dealing with the cases of default in complying with the provisions of Section 80A.

The above analysis of Sections 80 and 80A shows that the latter provision was enacted by Parliament to bail out those companies which were facing financial crunch and were not in a position to redeem the preference shares. For achieving this object, respondent No. 1 was invested with the power to give consent to the company's proposal for issuance of further redeemable preference shares equal to the amount due (including the dividend thereof) in respect of the unredeemed preference shares. By obtaining such consent, the concerned company could

postpone its liability towards the holders of redeemable preference shares and thereby get breathing time. In our opinion, the nature of power vested in respondent No. 1 u/s 80A to give consent for issuance of redeemable preference shares is very wide and pervasive and is not hedged in with any restriction. This implies that respondent No. 1 could give consent with or without conditions and the court can interfere with the discretion exercised by it only if the conditions are arbitrary, unreasonable or capricious. Therefore, we are unable to agree with Shri Suri that while giving consent to the petitioner to issue further redeemable preference shares in lieu of the unredeemed preference shares, respondent No. 1 could not have imposed a condition regarding payment of dividend at the particular rate."

9. Learned counsel for the appellant tried to distinguish the order passed in C. A. No. 27 of 1997, by arguing that in the earlier case, the company's representative had given consent before respondent No. 1 for issuance of redeemable preference shares with dividend of 15 per cent. per annum, but no such consent was given in this case. In our opinion, the distinction sought to be made by learned counsel between the case in hand and the previous appeal is illusory because the consent given by the appellant's representative was not the factor which had weighed with the court for declining interference with the order passed by respondent No. 1. Rather, the ratio of this court's decision was based on the interpretation of Sections 80 and 80A of the Act.

10. Therefore, by applying the ratio of order passed in Company Appeal No. 27 of 1997, we hold that the order under challenge does not suffer from any legal infirmity warranting modification by this court.

11. The argument of learned counsel that the direction given by respondent No. 1 should be declared ultra vires Article 3(a) of the articles of association of the company is meritless and deserves to be rejected because by virtue of the non obstante clause contained in proviso to Section 80A(1)(b) of the Act, provision contained in that Section will override the articles of association of the company.

12. The decision of the Supreme Court in Dr. A. Lakshmanaswami Mudaliar and Others Vs. Life Insurance Corporation of India and Another, does not have any bearing on the issue raised in the present appeal. In that case, the trustees nominated under the deed of trust of M. Ct. M. Chidambaram Chettiar Memorial Trust had challenged the decision of the Life Insurance Corporation of India to call upon the trust to refund Rs. 2 lakhs received by it from the United India Life Assurance Company by way of donation. The Life Insurance Tribunal directed the appellant to pay the amount of Rs. 2 lakhs. While upholding the order of the Tribunal, their Lordships of the Supreme Court observed as under (headnote of AIR) :

"A company was competent to carry out its objects specified in the memorandum of association and could not travel beyond the objects. The memorandum of association must like any other document be construed according to accepted

principles applicable to the interpretation of all legal documents and no rigid canon of construction was to be applied to such a document. Like any other judgment, it must be read fairly and its import derived from a reasonable interpretation of the language which it employed. Power to carry out an object, undoubtedly included power to carry out what was incidental or conducive to the attainment of that object, for such extension merely permitted something to be done which was connected with the objects to be attained, as being naturally conducive thereto. Undoubtedly, the memorandum of association had to be read together with articles of association, where the terms were ambiguous or silent. The articles might explain the memorandum, but could not extend its scope.

Where a company did an act which was ultra vires, no legal relationship or effect ensued therefrom. Such an act was absolutely void and could not be ratified even if all the shareholders agreed. The payment made pursuant to the resolution was therefore unauthorised and the trustees acquired no right to the amount paid by the directors to the trust."

13. In the aforementioned case, the Supreme Court was not called upon to consider a provision, like the non obstante clause contained in Section 80A. Therefore, the said decision cannot be applied for entertaining the appellant's prayer for modification of the order under challenge.

14. For the reasons mentioned above, the appeal is dismissed.