

(2010) 02 MAD CK 0003

In the Madras High Court

Case No : Company Appeal No. 4 of 2010 and M.P. No. 1 of 2010

Ramani Ramaswamy and Another

APPELLANT

Vs

Srei Venture Capital Ltd. and Others

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32, 36, 37
Companies Act, 1956 — Section 10, 10F, 2(11), 2(2), 237
Specific Relief Act, 1963 — Section 28, 28(1)

Citation : (2011) 162 CompCas 19

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : Nalini Chidambaram for K. Moorthy, for the Appellant; S. Mookherjee for P.H. Aravind Pandian, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—This company appeal is preferred against the order of the Company Law Board dated January 12, 2010 in C.A.

No. 60 of 2010 in C.P. No. 13 of 2008 (SREI Venture Capital Ltd. v. Ramani Ramaswamy [2011] 162 Comp Cas 1). The present appeal is at

the instance of the petitioners in the company petition preferred before the Company Law Board. The appellants herein were the respondents in

the order passed by this court in Company Appeals Nos. 11 to 15 of 2009 dated August 28, 2009 Probir Kumar Misra Vs. Ramani Ramaswamy

and Others, . Since the parties herein before this court are represented by the respective counsel at the admission stage itself, and arguments are

presented in a full-fledged manner, after hearing both sides and having gone into the merits of the appeal presented before this court, final order is

passed at the admission stage itself. Before considering the contentions of the

parties herein, brief reference to the facts are as follows.

2. The appellants herein presented a petition before the Company Law Board under sections 397, 398 and 402 of the Companies Act, 1956,

read with regulations 13 and 14 of the Company Law Board Regulations, 1991, against the respondents herein. The first respondent is the asset

management company of SREI Venture Capital Trust. The second respondent is a private company principally engaged in developing

infrastructure in the seaport sector in India and overseas. Respondents Nos. 3 to 5 are the nominee directors of the second respondent-company.

Respondent No. 6, SREI Infrastructure Finance Ltd., is in infrastructure financing business and in infrastructure project development.

3. The appellants herein, along with the first respondent-company, are the shareholders of the second respondent-company, having shareholding

pattern at the ratio of 30 : 70.

4. In respect of certain disputes that arose between the parties, namely, the appellants and the first respondent, a memorandum of understanding

was reached on November 14, 2007, pursuant to which, the first respondent, through the third respondent, agreed to part with their stakes in the

second respondent-company for a consideration of Rs. 52.50 crores to any prospective investor to be brought in by the appellants; that the

payment was to be made by February 28, 2008, at a consideration as stated above; the memorandum of understanding was to be in force till

February 28, 2008 and in the event of the transaction not getting completed within the time stipulated, the memorandum of understanding would

become null and void. The memorandum of understanding also covered the concession agreement signed with the Government of Andhra Pradesh

for the Machilipatnam Port Project as well as with the Government of Orissa for the Subamarekha Port Project. It is seen from the narration of the

facts that differences arose between the parties to the memorandum of understanding as to the implementation of the terms of the memorandum of

understanding; that the appellants complained of mismanagement and oppression by the first respondent as regards the affairs of the second

respondent-company. The appellants herein moved a petition before the Company Law Board under sections 397, 398 and 402 of the

Companies Act, 1956, read with regulations 13 and 14 of the Company Law

Board Regulations, 1991. Among the various reliefs sought for before the Company Law Board on the plea of oppression and mismanagement, the appellants herein sought for a direction to the first respondent to transfer its investments and shares in the second respondent-company to the nominee of the appellants either at the price offered in the e-mail dated November 15, 2007, or at such other price not exceeding the price agreed to earlier as the Company Law Board might determine. The appellants also sought for an injunction to restrain the first respondent and respondents Nos. 3 to 6 from obstructing or interfering with the transfer instruments held by the first respondent in the company to the appellants or their nominees for the purpose of implementation of the transfer. The appellants sought for a direction against the respondents other than respondent No. 2, to compensate its company for the loss caused to the company, i.e., the first respondent, due to the act of oppression and mismanagement.

5. The Company Law Board passed an order in C.P. No. 13 of 2008 on May 27, 2009 (2010) 154 CompCas 519 and came to the conclusion that the first respondent should transfer its shares and all other interests in the second respondent-company at a consolidated price of Rs. 52.50 crores, or at a fair value as at March 31, 2008, whichever is higher. The fair value was to be determined by an independent expert valuer to be appointed by the Bench. The second respondent was to exercise either of the options, by filing an appropriate affidavit before the Bench Officer within 30 days of the receipt of the copy of the order, so that there was due completion of the exit formalities of the first respondent from the second respondent-company. The Company Law Board, however, passed orders that respondents Nos. 1 and 3 to 6 shall ensure reimbursement in favour of the company, 30 per cent. of all benefits enjoyed by the first respondent from and out of the Machilipatnam Port Project as at March 31, 2008, which shall be ascertained by the expert valuer. The Bench however, directed that the appellants shall reconstitute the board of directors of the company in exclusion of the nominees of the second respondent, upon which the company is at liberty to carry on its business, in terms of the articles of association. The Company Law Board directed that the appellants shall keep informed the first respondent of any major

developments in the Subarnarekha Port Project every month, within seven days of the following month commencing from June, 2009, till the

completion of the whole of exit formalities of the first respondent from the second respondent-company.

6. Aggrieved by the said order of the Company Law Board, the respondents before the Company Law Board, other than the company, namely,

the second respondent herein, preferred appeals before this court. By common order dated August 28, 2009, in Company Appeals Nos. 11 to 15

of 2009 (Probir Kumar Misra v. Ramani Ramaswamy [2010] 154 Comp Cas 658), this court modified the order of the Company Law Board and

held that there was no oppression or mismanagement as complained of by the appellants herein as against the first respondent either in relation to

the Machilipatnam Port Project or towards the affairs of the second respondent-company herein. This court further pointed out that the

Subarnarekha Port Project was a project of the second respondent. Further, the memorandum of understanding dated November 14, 2007, as

regards the exit of the first respondent-company from the second respondent-company agreeing to receive a sum of Rs. 52.50 crores is binding on

the both parties. To sum up, this court allowed the appeals partly, (i) confirming the order of the Company Law Board in respect of relief granted

under paragraph 9(i) with a direction to the first respondent herein to transfer its shares and all other interest held in the second respondent-

company (Creative Port Development P. Ltd.) to the appellants either at an agreed consolidated price of Rs. 52.50 crores or any fair value to be

arrived at by an independent expert valuer as at March 31, 2009, whichever is higher. On an application by the first respondent within a period of

thirty days from the date of receipt of a copy of the order, the Company Law Board shall appoint an independent expert valuer and decide about

all other formalities in that regard; (ii) that the relief granted by the Company Law Board under paragraph 9(ii) was set aside, holding that the first

respondent had no obligation to reimburse any benefit accrued by it under Machilipatnam Port Project either to the appellants or the second

respondent-company; (iii) pursuant to the order of the Company Law Board dated May 27, 2009 (2010) 154 CompCas 519 except those vital

acts which require the appellants to act for the purpose of retaining the Subarnarekha Port Project with the Government of Orissa, all further acts

of the appellants were directed to be kept in abeyance, till the formalities in respect of fixing the consideration for exit of the first respondent is fixed

by the Company Law Board, as stated above, and the entire amount is paid to the first respondent; and (iv) the appellants shall continue to

disclose any further developments and communications as to the affairs of the Subamarekha Port Project as from June 25, 2009, by sending

copies to the first respondent periodically once in a month commencing from the end of August, 2009 till the formalities for exit of the first

respondent are completed in full and till such formalities are completed, respondents Nos. 1 and 3 to 5 shall be deemed to continue as the

directors of the second respondent-company. Thus this court directed the first respondent to move an application before the Company Law Board

within a period of 30 days from the date of receipt of a copy of the order of this court for appointment of an independent expert valuer and decide

about all the formalities in that regard. The appellants would perform such vital acts which were required for the retention of the Subamarekha Port

Project with the Government of Orissa, till the formalities as regards fixing the consideration and the entire amount paid thereon to the first

respondent herein are completed for exit of the first respondent from the second respondent. As far as the order passed by this court is concerned,

learned senior counsel appearing for the petitioner submitted that the appellants have gone on appeal before the Supreme Court and the appeal is

yet to be admitted.

7. In terms of the order thus passed, this court confirmed the order of the Company Law Board with a direction to the first respondent to transfer

its shares and all other interest held in the second respondent-company to the appellants herein either at an agreed consolidated price of Rs. 52.50

crores or any fair value to be arrived at by an independent expert valuer as at March 31, 2009, whichever is higher. This court directed the first

respondent to file an application within a period of thirty days from the date of receipt of a copy of this court's order. Thereupon, the Company

Law Board shall appoint an independent expert valuer for valuation and on such valuation, the Tribunal shall decide about all other formalities in

that regard. This court, however, set aside the order of the Company Law Board as regards issue of sharing of profits in the Machilipatnam Port

Project and that there was no oppression as was complained of by the appellants. This court further pointed out that till the exit formalities are completed and the entire amount paid by the first respondent herein, all other acts of the present appellants pursuant to the order of the Company Law Board be kept in abeyance, except for carrying on certain vital acts in keeping the Subamarekha Port Project alive. This court further pointed out that till the formalities for exit of the first respondent are completed in full, respondents Nos. 3 to 5 shall be deemed to continue as the directors of the first respondent-company.

8. In terms of the order passed by this court, the first respondent moved an application before the Company Law Board u/s 634A of the Companies Act, 1956 read with regulation 44 of the Company Law Board Regulations, 1991 and sought for a direction to the appellants herein to make payment of Rs. 52.50 crores to the first respondent herein within a period of seven days; to direct the appellants herein to disclose the particulars of all the assets and properties; for an order of injunction restraining the appellants to deal with, dispose of or encumber in any manner the assets and properties as mentioned in paragraph 11 of the affidavit and the assets and properties to be disclosed by them; an order of injunction restraining the appellants from dealing with, disposing of, encumbering in any manner any of the assets and properties of the appellants; upon default of making payment, a receiver and/or Special Officer be appointed to take possession of the assets and properties of the appellants as mentioned in paragraph 11 in the petition and the assets and properties to be disclosed by the appellants, sell the same by public auction or private treaty and to hand over the sale proceeds thereof to the first respondent herein in pro tanto satisfaction of its consideration to be paid by the appellants herein to the first respondent herein and to make over the sale proceeds thereof to the first respondent in pro tanto satisfaction of consideration liable to be paid by the appellants for acquisition of the shares and all other interests of the first respondent.

9. The appellants herein questioned the maintainability of the above said application on the ground that after the High Court passed the order, except to the extent directed by this court, there was no matter pending before the Company Law Board for the respondents to move any

application. Hence, the application filed u/s 634A of the Companies Act, 1956, was totally misconceived. The jurisdiction of the Company Law

Board is not available for executing the order of the High Court as if it was a money decree. The prayer in the petition, hence, amounted to seeking

a review of the order passed by this court. The respondents further objected to the prayer for injunction against the appellants as regards their

assets, which was not granted by the High Court. Hence, the appellants sought for rejection of the prayer of the respondents. The appellants,

however, pointed out that without prejudice to their rights, they have started the process of arranging the sums for completing the exit formalities of

the first respondent from the second respondent-company. Consequently, they requested the Board to record the appellants' formal confirmation

waiving their right for valuation and the first respondent's exit from the company on payment of Rs. 52.50 crores towards the first respondent's

value of shares in the second respondent-company. The respondents/appellants sought for recording of the fact that the respondents had foregone

their rights towards valuation of the shares and all other interests held in the second respondent-company.

10. After hearing both parties, the Company Law Board passed an order on January 12, 2010 in Company Application No. 60 of 2009 (SREI

Venture Capital Ltd. v. Ramani Ramaswamy [2011] 162 Comp Cas 1), taking the view that the petition filed u/s 634A of the Companies Act is

maintainable and the Company Law Board has every jurisdiction to entertain such an application for executing the order. In so holding, the

Company Law Board rejected the plea of the appellants herein on the question of jurisdiction of the Board u/s 634A of the Companies Act to

receive the application as an executing court. The Company Law Board rejected the plea of the appellants that the first respondent has no locus

standi to approach the Company Law Board, the respondents being in the status of a judgment debtor. The Company Law Board pointed out that

it has jurisdiction to pass an order for payment of money. The Company Law Board pointed out that having regard to the doctrine of merger,

which postulates that there cannot be more than one operative decree governing the same subject-matter at a given point of time, there was no

merit in the plea of the appellants that it has become functus officio. Referring to the decision of the apex court in Chandi Prasad v. Jagdish Prasad

reported in CDJ [2004] SC 1108, the Company Law Board pointed out that as per section 37 of the Civil Procedure Code, it is the court of first instance which has the jurisdiction to execute the decree. Consequently, it has every jurisdiction to execute the orders passed by the High Court, as an appeal is a continuation of the original cause. Referring to sections 634 and 634A of the Companies Act, the Company Law Board held that the jurisdiction of the Company Law Board u/s 634A of the Companies Act is the same as that of an executing court. Pointing out to the inconsistent plea of the appellants on the consideration and the undertaking to make the payment, the Company Law Board pointed out that the appellants had no intention of implementing their undertaking and they were trying to frustrate all efforts to put an end to the litigation; hence, taking note of the conduct of the parties, in terms of regulation 44 of the Company Law Board Regulations, 1991, the Company Law Board granted the prayer of the respondents seeking sequestration of assets. Thus the Company Law Board ordered the payment of consideration of Rs. 52.50 crores by the appellants within 30 days from the date of receipt of the Company Law Board's order; the first respondent would be at liberty to give the status of the implementation of the order and in the event of non-implementation, it directed the sending of the order to the court within the local limits for execution of the decree; till such time, the prayer relating to an injunction to restrain the appellants from dealing with, disposing or encumbering of the assets mentioned in the application shall continue to operate and shall stand vacated on the implementation of the prayer relating to the payment of the sum to the first respondent.

11. Aggrieved by the said order, the present appeal is filed by the appellants.

12. Learned senior counsel appearing for the appellants, challenging the order of the Company Law Board, made submissions on two points, viz., one on the question of jurisdiction of the Company Law Board to act u/s 634A of the Companies Act. Secondly, learned senior counsel pointed out that even assuming that the Company Law Board has jurisdiction to act as an executing court, yet, it overstepped its jurisdiction in reviewing the order of this court and thereby modifying the terms of the order of this court by prescribing the time limit for payment. She pointed out that since this court had not fixed any time limit for payment, the order passed by the

Board went beyond the terms of the order passed by this court.

Hence, the same is liable to be set aside by this court.

13. In the course of the argument, learned senior counsel submits that as against the order passed by this court, the appellants have preferred an appeal before the apex court. In the circumstances, pending the appeal before the Supreme Court in which a claim has been made as regards the payment due to the appellants under the Machilipatnam Port Project, the order now passed by the Company Law Board has to be set aside.

14. In support of her contentions, learned senior counsel submitted that when the order of this court is very specific as regards the valuation to be done to arrive at the value of the shares to be transferred and there being no time limit fixed in the order passed by this court, it is not open to the Company Law Board to fix the time limit for compliance of the payment of Rs. 52.50 crores to the first respondent herein. In the circumstances, when this court has not fixed the time limit within which the transfer of shares had taken place, with the default clause and the interests of the first respondent herein sufficiently safeguarded, even assuming that the Company Law Board is the executing court, it went beyond the terms of the order passed by this court; hence, the order has to be set aside.

15. Learned senior counsel appearing for the appellants pointed out that the Companies Act is a special enactment and it overrides the Civil Procedure Code, it being a general law. Pointing out to the scope of the provisions of sections 634 and 634A of the Companies Act, she pointed out that in the face of section 634 of the Companies Act, section 37 of the CPC has no relevance; that as regards the order passed by the High Court u/s 10F of the Companies Act, an application for execution could be presented only in the High Court and not before the Company Law Board; hence the application u/s 634A of the Companies Act is totally misconceived. In any event, the Company Law Board cannot pass a recovery decree with a default clause, in a petition under sections 397 and 398 of the Companies Act.

16. In sum and substance, learned senior counsel pointed out that the proper forum for execution of the order passed by this court u/s 10F of the Companies Act would be this court alone and not the Company Law Board. Thus on the question of want of jurisdiction and even assuming there

is jurisdiction, the Company Law Board went beyond the terms of the order passed by this court and hence, the order passed by the Company

Law Board is liable to be set aside.

17. Per contra, learned senior counsel appearing for the first respondent/caveator brought to my attention the relief sought for by the appellants

herein in the petition filed under sections 397 and 398 of the Companies Act before the Company Law Board. Taking note of the nature of

disputes raised alleging oppression and mismanagement, the Company Law Board directed the appellants herein to pay the agreed consideration,

or in the alternative, to go for an approved valuer to value the shares, so that there is a smooth exit of the first respondent from the second

respondent-company. Referring to the order passed by this court in Company Appeals Nos. 11 to 15 of 2009 dated August 28, 2009 (Probir

Kumar Misra v. Ramani Ramaswamy [2010] 154 Comp Cas 658), learned senior counsel further pointed out that this court had reversed the

finding of the Company Law Board on the question of oppression; however, in terms of section 402 of the Companies Act, this court directed sale

of the interest of the first respondent in the second respondent-company at an agreed consolidated price of Rs. 52.50 crores or any fair value to be

arrived at by an independent expert valuer as at March 31, 2009, whichever is higher, and a specific time frame was given to the first respondent

herein to make an application before the Company Law Board for appointing a valuer. Hence, rightly the first respondent herein went before the

Company Law Board as an executing court u/s 634A of the Companies Act for necessary relief. Learned senior counsel pointed out that section

634 of the Companies Act only speaks about the manner of enforcement of orders made by a court under the Companies Act as a decree. It does

not say or restrict by prescribing this court as the execution court for the purpose of enforcement of orders made by this court as an appellate court

under the Companies Act.

18. He made a specific reference to the scope of appeal before the High Court u/s 10F of the Act and in particular, the definition to section 2(11)

as to "courts" and section 10 of the Companies Act on the "jurisdiction of the courts" and pointed out that having regard to the law declared by the

apex court in the decision Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur

Simbhaoli Beverages (P) Ltd., , that the original jurisdiction of the High Court in respect of matters under sections 397 and 398 of the Companies Act having stood transferred to the Company Law Board, the decree of the appellate court, namely, the High Court, has to be necessarily executed only before the Company Law Board, In this connection, he also referred to the decision Ramankutty Vs. Avara, as to the effect of an order passed by the appellate court and the execution of the same by the court of first instance.

19. Referring to rules 6 and 2(4) of the Companies (Court) Rules, 1959 defining ""court"", learned senior counsel pointed out that given the jurisdiction of the High Court as that of an appellate court in respect of orders passed by the Company Law Board, the execution of the orders of this court under its appellate jurisdiction has to necessarily look upon to the provisions of the Civil Procedure Code. In the circumstances, the Company Law Board is the proper court to be approached for execution of the order passed by this court in exercise of its appellate jurisdiction u/s 10F of the Companies Act.

20. Tracing the transfer of jurisdiction of this court to the Company Law Board under the Companies (Amendment) Act, 1988, to consider applications under sections 397 and 398 of the Companies Act, learned senior counsel submitted that the Company Law Board has the jurisdiction as an originating court for the purposes of executing an order passed by this court u/s 10F of the Companies Act. Rightly the respondents had invoked the jurisdiction of the Company Law Board u/s 634A of the Companies Act. He pointed out that the decision of the Supreme Court in Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, read with Ramankutty Vs. Avara, , would clearly support the contention of the respondents. He made particular reference to paragraph 8 of the said judgment and contended that going by section 37 of the Civil Procedure Code, the decree of the appellate court would be construed to be the decree passed by the court of the first instance. In the face of the uncontroverted fact and as evident from the appellants' counter before the Company Law Board in the application agreeing to the value or the consideration as Rs. 52.50 crores, it is not open to the appellants to ignore the said undertaking to contend that the

Company Law Board has no jurisdiction. He pointed out that "any order" referred to in section 634A of the Companies Act has been held to

include all orders passed by the Company Law Board under sections 397 and 398 of the Companies Act, enforceable like decrees without any

limit on the nature of the order passed by the Company Law Board. In the context of this court directing the first respondent to move the

Company Law Board within a period of 30 days from the date of receipt of the order for appointment of an expert valuer for the purpose of fixing

the share value, the application u/s 634A of the Companies Act is well maintainable legally as well as factually too.

21. When the first respondent had expressed its desire to accept the value of Rs. 52.50 crores as the value of the shares to be transferred; further

in the light of the appellants' offer as to the value and taking note of this court's order in paragraph 20 clauses (iii) and (iv), rightly the Company

Law Board passed the order in terms of Order 21, rule 32 of the Code of Civil Procedure, 1908. The offer to accept the price at Rs. 52.50

crores and the appellants not disputing the same, it being in the nature of a case of specific performance of sale of shares on receipt of money, the

Company Law Board rightly ordered the application, including the default clause.

22. In substance, he defended the action of the respondents taking recourse to section 634A of the Companies Act and the jurisdiction of the

Company Law Board in passing the order in terms of the directions issued by the High Court to complete the formalities on exit. He further

submitted that the mere filing of the SLP before the apex court, per se, does not block the proceedings before the Company Law Board.

23. Touching on the directions given by this court particularly, learned senior counsel pointed out that the directions in sub-clause (iii) to paragraph

20 as regards performing of vital acts by the petitioners for the purpose of retaining the Subarnarekha Port Project with the Government of Orissa

till the formalities are completed for exit of the first respondent, is only a protective clause and not a default clause. In the circumstances, there is no

gain saying in the submission of the appellants that this court had not fixed any time for action and the Company Law Board misread the order to

introduce the time frame in the order passed by the High Court. In the circumstances, learned senior counsel submits that going by the decision in

Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, and read with the decision in Ramankutty Vs. Avara, the

appellants" case has to be rejected and the order of the Tribunal confirmed. Referring to the decision in Shree Ram Urban Infrastructure Ltd. Vs.

R.K. Dhall and Others (No. 1), referred to by learned senior counsel appearing for the appellants, learned senior counsel appearing for the first

respondent submits that this case is distinguishable on facts and it has no relevance for the decision to be rendered by this court.

24. In reply to the contentions made by learned senior counsel appearing for the first respondent, reiterating the submission as to the maintainability

of the petition u/s 634A of the Companies Act, learned senior counsel appearing for the appellants submitted that the Companies Act, being a

special enactment, overrides the provisions of the Civil Procedure Code. Hence, no assistance could be drawn from the provisions of the Civil

Procedure Code. She also made reference to section 634 of the Companies Act only to insist that once this court has passed an order u/s 10F of

the Companies Act, the proper court to implement the order would be this court alone and not any other court. The Company Law Board is

conferred with only a limited jurisdiction u/s 634A of the Companies Act to deal with its orders. Consequently, the order passed by this court is

not amenable to section 634A of the Companies Act. Hence, for want of jurisdiction as well as on the question that it exceeded its jurisdiction, the

order of the Company Law Board is liable to be set aside.

25. Heard learned senior counsel appearing for the appellants and learned senior counsel appearing for the first respondent. Except for the issue on

the sale of shares, there are no other issues raised in the application before the Company Law Board for its consideration. Hence, the present

appeal is only on the above subject.

26. A perusal of the order dated August 28, 2009, passed by this court in Company Appeals Nos. 11 to 15 of 2009 Probir Kumar Misra Vs.

Ramani Ramaswamy and Others,), in the earlier round clearly shows that even though the question of oppression was found against the appellants,

the said order was passed in terms of section 402 of the Companies Act. While considering the claim of sale of the shares at a price and the

interim arrangement to be maintained till the consideration and other formalities

for the exit of the first respondent are completed, this court passed the following order:

For the foregoing reasons, the appeals are partly allowed in the following terms:

(i) the order of the Company Law Board in respect of relief granted under paragraph 9(i) is confirmed with a direction to the second respondent to

transfer its shares and all other interest held in the first respondent-company (Creative Port Development P. Ltd.) to the petitioners either at an

agreed consolidated price of Rs. 52.50 crores or any fair value to be arrived at by an independent expert valuer as at March 31, 2009, whichever

is higher. The Company Law Board shall appoint, on an application by the second respondent within a period of thirty days from the date of

receipt of a copy of this order, an independent expert valuer and decide about all other formalities in that regard;

(ii) the relief granted by the Company Law Board under paragraph 9(ii) stands set aside, holding that the second respondent shall not have any

obligation to reimburse any benefit accrued by it under Machilipatnam Port Project either to the petitioners or the first respondent-company;

(iii) all further acts of the petitioners pursuant to the order of the Company Law Board dated May 27, 2009, are directed to be kept in abeyance,

except those vital acts which require the petitioners to act for the purpose of retaining the Subamarekha Port Project with the Government of

Orissa, till the formalities in respect of fixing the consideration for exit of the second respondent is fixed by the Company Law Board, as stated

above, and the entire amount is paid to the second respondent; and

(iv) the petitioners who have disclosed the affairs of the Subarnarekha Port Project as on June 25, 2009, shall continue to disclose any further

developments and communications by sending copies to the second respondent periodically once in a month commencing from the end of August,

2009 till the formalities for exit of the second respondent are completed in full and till such formalities are completed respondents Nos. 2 to 5 shall

be deemed to continue as the directors of the first respondent-Company.

27. Admittedly, there is no dispute raised by the appellants as regards the amount of consideration as per clause (i) in paragraph 20 of the order.

The principal dispute is only as regards the jurisdiction of the Company Law Board u/s 634A of the Companies Act to pass an order on an

application filed by the first respondent herein as regards the payment of Rs. 52.50 crores as well as to the time frame prescribed therein and the

protection clause. Learned senior counsel appearing for the appellants pointed out that they are not disputing the amount as such. On the other

hand, her persistent argument is that given the fact that this court had not fixed any time limit for making the payment, even assuming that the

Company Law Board has the jurisdiction, it cannot fix the time limit within which the amount has to be paid. In the circumstances, learned senior

counsel appearing for the appellants submits that the order of the Company Law Board has to be set aside.

28. I am in entire agreement with the submissions of learned senior counsel appearing for the first respondent on the maintainability of the

application by the respondents as to the jurisdiction of the Company Law Board u/s 634A of the Companies Act.

29. A reading of section 634 of the Companies Act shows that the said provision is concerned as regards the mode of enforcement of orders of

courts passed under the Companies Act. Before considering the contentions in this regard, it is necessary to extract sections 634 and 634A of the

Companies Act:

634. Enforcement of orders of courts.--Any order made by a court under this Act may be enforced in the same manner as a decree made by the court in a suit pending therein.

634A. Enforcement of orders of Company Law Board.--Any order made by the Company Law Board may be enforced by that Board in the

same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability

to execute such order, to the court within the local limits of whose jurisdiction,--

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain:

Provided that the provisions of this section shall not apply on and after the commencement of the Companies (Second Amendment) Act, 2002.

30. A reading of section 634 of the Companies Act shows that except for speaking about the enforceability of orders of courts under the

Companies Act in a like manner as a decree passed by the court in a suit pending therein, the section speaks nothing about the court before which the execution has to go. In short, section 634 of the Companies Act merely speaks about the modality of enforcement of the orders passed under the Companies Act by the courts. Section 634A of the Companies Act speaks about the enforcement of orders of the Company Law Board in the same manner as if it were a decree made by a court in a suit pending therein. Thus the legal fiction in the matter of enforcement of the orders passed by the Company Law Board has a limited purpose, that the orders of the Company Law Board shall be enforced in the same manner as in the case of a decree made by a court in a suit proceeding. The submission of the appellants herein is that the orders passed by this court under its appellate jurisdiction u/s 10F of the Companies Act must go for execution only before this court by virtue of section 634 and not before the Company Law Board u/s 634A of the Companies Act. The said submission has to be straight away rejected, given the scope of this court's jurisdiction u/s 10F of the Companies Act being one on pure question of law. The scope of the jurisdiction of this court and the contention made herein have to be seen in the light of the other provisions of the Companies Act.

31. u/s 10F of the Companies Act, the High Court sits as an appellate court as against any decision or order of the Company Law Board. Section 2(11) of the Companies Act defines "court" in two parts. The relevant sub-clause for our purpose is sub-clause (a). It defines "court" to mean the court having jurisdiction under the Act with respect to any matter relating to the company as provided in section 10 (other than matters relating to any offence against the Act). Section 10 of the Companies Act provides for the jurisdiction of courts as (i) the High Court, court having jurisdiction in relation to the place at which the registered office of the company is situate except to the extent to which jurisdiction is conferred on any District Court by virtue of any notification of the Central Government empowering any District Court to exercise all jurisdiction or any of the jurisdiction conferred upon the court by the Act. The conferment of jurisdiction under the notification shall not include matters falling under sections 237, 391, 394, 395 and 397 to 407 of the Companies Act, both inclusive and in respect of companies with a paid-up capital of not less than one lakh of

rupees, by Part VII (sections 425 to 560) and other provisions of the Act relating to the winding up of the companies. Section 10F of the

Companies Act is a specific provision dealing with the right of appeal as against the orders of the Company Law Board. Section 10F of the

Companies Act confers jurisdiction on the High Court as an appellate court on the orders passed by the Company Law Board on any question of

law arising out of such order. Thus a reading of section 10 and section 10F of the Companies Act indicates that the nature of the jurisdiction of this

court u/s 10 and section 10F of the Companies Act are not the same and that even in respect of its original jurisdiction u/s 10 of the Companies

Act, it cannot be construed to mean that the High Court has jurisdiction u/s 10 of the Companies Act to deal with all matters falling under every

provision of the Companies Act. With the constitution of the Company Law Board empowered to deal with issues provided for under the Act, the

orders passed by the Company Law Board go for appeal u/s 10F of the Companies Act. Even here, the jurisdiction of the High Court is not akin

to a normal appellate court to deal with the facts, but limited to interfere only on questions of law arising from the orders of the Company Law

Board. By virtue of section 643(1) and (2) of the Companies Act, the apex court has formulated the Companies (Court) Rules, 1959, consistent

with the provisions of the CPC providing for matters specified under the above section before the High Court as well as before the courts and in

general for all applications to be made to the court under the provisions of the Companies Act. Sub-rule (4) of rule 2 defines "Code" to mean the

Code of Civil Procedure, 1908. Rule 2(5) of the Companies (Court) Rules, 1959, defines "court" to mean the court having jurisdiction under the

Act. Rule 6 deals with "practice and procedure of the court and the code to apply". As per rule 6, except as provided under the Act or by the

Rules, the provisions of the CPC applies to all proceedings under the Act. As far as the proceedings before the Company Law Board are

concerned, the Company Law Board Regulations govern the procedure as regards the matters filed therein.

32. Applying rule 6 of the Companies (Court) Rules, 1959, to the orders passed by the High Court u/s 10F of the Companies Act, in the context

of section 634 of the Companies Act, one will note the relevancy of section 37 of the CPC, defining the court which passed the decree, which

reads as follows:

37. Definition of court which passed a decree.--The expression "court which passed a decree", or words to that effect, shall, in relation to the

execution of decrees, unless there is anything repugnant in the subject or context, be deemed to include,--

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance, and

(b) where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was

passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

Explanation.--The court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the

suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that court to the

jurisdiction of any other court, but, in every such case, such other court shall also have jurisdiction to execute the decree, if at the time of making

the application for execution of the decree it would have jurisdiction to try the said suit.

33. In the decision Chandi Prasad and Others Vs. Jagdish Prasad and Others, the apex court pointed out that when an appeal is prescribed under

a statute and the appellate forum is invoked and entertained, for all intent and purport, the suit continued. It pointed out: ""The doctrine of merger is

based on the principles of propriety in the hierarchy of the justice delivery system.

34. In the background of the said provision and in the context of the order passed by this court u/s 10F of the Companies Act, the jurisdiction of

the Company Law Board has to be seen in the background of the decisions reported in Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur

Simbhaoli Beverages (P) Ltd., Ramankutty Vs. Avara, and Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, .

35. The brief facts in the decision reported in the case of Ramankutty Vs. Avara, are that the judgment debtor therein filed a petition before the

executing court and sought for rescinding the contract that the decree holder committed default in depositing the balance consideration within one

month from January 27, 1982, made under the appellate decree. Although the executing court dismissed the application on merits, it held that the application on the execution side was maintainable. On revision, the High Court took the view that the application was not maintainable on the execution side.

36. On further appeal by the judgment debtor, the apex court rejected the contention of the decree holder/intending purchaser that an application

for extension of time or for rescinding the contract would lie only in the appellate court and not before the trial court, that too on the execution side

and that the phrase "same court" occurring in section 28 of the Specific Relief Act would not mean the original court. Referring to section 37 of the

CPC, particularly with reference to the expression "court which passed the decree" and section 28 of the Specific Relief Act, the Supreme Court

held that the decree of the appellate court would have to be construed as the decree passed by the court of first instance. The Supreme Court

pointed out (page 645 of [1994] 2 SCC): "Therefore, when a decree for specific performance has been dismissed by the trial court, but decreed

by the appellate court, it should be construed to be in the same suit". In dealing with the question as to whether it should be on the original side or

execution side, the Supreme Court pointed out to section 28 of the Specific Relief Act that it should be "in the same suit" which means "in the suit

itself and not in the execution proceedings". The apex court pointed out that after passing the decree for specific performance, the court does not

cease to have any jurisdiction. The court retains control over the decree even after the decree had been passed. It was open to the court to

exercise the power u/s 28(1) of the Specific Relief Act either for extension of time or for rescinding the contract as claimed for. Since the execution

application has been filed in the same court in which the original suit was filed, namely, the court of first instance, instead of treating the application

on the execution side, it should have as well been numbered as an interlocutory application on the original side and disposed of according to law.

37. In so holding, the Supreme Court upheld the view of the Bombay High Court in Maruti Vishnu Kshirsagar Vs. Bapu Keshav Jadhav, that the

application, though made on the execution side, could be transferred to the original side or treated as an application made on the original side and

time could be extended u/s 28 of the Specific Relief Act.

38. The second decision that we need to consider is the one *Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P)*

Ltd., wherein the apex court pointed out that with the introduction of the Companies (Amendment) Act, 1988, inserting section 10F and the

establishment of independent Company Law Board to exercise judicial functions exercised earlier by the courts or the Central Government, the

original jurisdiction of the High Court in respect of matters under sections 397 and 398 of the Companies Act stood transferred to the Company

Law Board. As to the effect of the orders passed by the Company Law Board under sections 397 and 398 in the context of section 634A of the

Companies Act, in the decision *Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others*, the apex court pointed out that

section 634A provides for enforcement of the orders of the Company Law Board. It further pointed out (page 158 of 131 Comp Cas):

The words "any order" used in the opening of the section, indicate that all orders made by the Company Law Board on an application under

sections 397 and 398 are enforceable like decrees without any limit on the nature of the order passed by the Company Law Board.

39. Referring to the definition of "decree" u/s 2(2) of the CPC and section 36 of the CPC, the Supreme Court held: "all decrees whether

preliminary or final are susceptible to execution". The Company Law Board dealing with section 634 as an executing court is subject to all

limitations to which a court executing the decree is subject to.

40. Thus applying the law declared in the decisions reported in *Stridewell Leathers (P) Ltd. and others Vs. Bhankerpur Simbhaoli Beverages (P)*

Ltd., *Ramankutty Vs. Avara*, and *Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others*, to the provisions of the

Companies Act, particularly with reference to the proceedings under sections 397 and 398, this court's jurisdiction u/s 10F and as to the

jurisdiction of the Company Law Board u/s 634A, one may note that when the Company Law Board passed an order on a petition filed under

sections 397 and 398 of the Companies Act and the same was tested before this court u/s 10F of the Companies Act, this court gave certain

directions to the parties herein, particularly to the first respondent, to move the

Company Law Board within 30 days of the receipt of the order for the purpose of appointing a valuer to fix the sale consideration for the shares to be sold by the first respondent. In the context of the order thus passed under sections 397 and 398 and this court u/s 10F of the Companies Act, considering rule 6 of the Companies (Court) Rules, 1959, for all purposes and intent, u/s 634A of the Companies Act, the Company Law Board has the jurisdiction to act as an executing court. Therefore, the Company Law Board, seisin of the matter, has the jurisdiction to act on the application filed u/s 634A of the Companies Act, so that the exit formalities as ordered by this court get completed. If one is to accept the submission of the petitioner that the High Court is the only court to execute the order passed by this court and hence, the application u/s 634A of the Companies Act has to be rejected, it would amount to mix up of the jurisdiction of this court to construe the order passed as one u/s 10 and not u/s 10F and that the directions issued by this court u/s 10F of the Companies Act under paragraph 20 are of no consequence to anybody. As already pointed out, the jurisdiction of this court as an appeal court and the executability of the orders of this court have to be necessarily read in the context of the Companies (Court) Rules, 1959, particularly rule 6, prescribing that the CPC would apply to all proceedings under the Act except as provided under the Act or by the Rules. Hence, going by the said rule and applying section 37 of the CPC, and the scope of section 10F of the Companies Act, I have no hesitation in accepting the plea of the first respondent as to the jurisdiction of the Company Law Board u/s 634A of the Companies Act.

41. It is no doubt true that the decision Ramankutty Vs. Avara, deals with a case falling u/s 28 of the Specific Relief Act. Nevertheless the law declared cannot be lost sight of in considering the purport and the width of jurisdiction of the Company Law Board u/s 634A of the Companies Act.

42. As already seen, this court directed the first respondent to make an application before the Company Law Board within a period of 30 days from the date of receipt of this court's order for appointment of an expert valuer for fixing the value of the shares. Thereupon, the Company Law Board was directed to decide on the application as well as about all other

formalities in that regard. Read in the context of clauses (iii) and (iv) of paragraph 20 of this court's order, the direction to file the application before the Company Law Board for the appointment of a valuer and fixing the sale consideration do not stand independent of the other clauses. On the other hand, the formalities on the exit by the first respondent form a chain and have a close link with the fixation of the price for the sale of the shares to take these inter-connected activities to a logical end as contemplated in the order passed under sections 397 and 398 read with section 402 of the Companies Act.

43. The contention that this court had not contemplated any time limit for making a payment has to be rejected straight away. This court directed the first respondent to move the Company Law Board within 30 days of the receipt of this court's order for appointment of a valuer for fixing the sale consideration. Going by the appellants' admitted offer at Rs. 52.50 crores as the price payable for the transfer of shares, the respondents restricting their claim to this price, the relief u/s 402 of the Companies Act being a just and equitable relief, I do not find any justification in the submission of learned senior counsel appearing for the petitioner that the Company Law Board read more into the order of the High Court by fixing the time frame for payment and ordering sequestration of the assets. Apart from regulation 44 of the Company Law Board Regulations, 1991, the Company Law Board, as an executing court, has every jurisdiction to enforce compliance of the order which is practically in the nature of a consent order at least as regards the price for the shares to be paid by the appellants. The admitted price for the shares offered by the appellants and the acceptance by the first respondent thereby restricting its claim to Rs. 52.50 crores, practically makes the order more in the nature of a specific performance of the offer made by the appellants.

44. Considering the various clauses in the judgment of this court which are interconnected and interwoven, with the payment of Rs. 52.50 crores on the shares to be transferred to the appellants, the exit formalities to be completed, the need for maintaining the Subarnarekha Port Project and the Board consisting of respondents Nos. 3 to 5 to continue as directors, the Company Law Board took note of the various aspects for fixing the time frame for compliance and hence, no exception could be taken to the order

passed by the Company Law Board.

45. It is no doubt true that an executing court cannot go beyond the decree. However, with the admitted value on the shares to be transferred and

that the payment of consideration and transfer of shares happen to be the first step in working out the exit formalities, the effort of the Company

Law Board in seeing that the parties are given the fruits of the decree, justifies fully the order passed by the Company Law Board. It is relevant to

point out herein that the appellants have no grievance whatsoever on the consideration reached nor had they expressed their anxiety to come out of

their offer to purchase the shares of the first respondent-company. Thus, once the appellants have expressed their willingness to purchase the

shares before this court as well as before the Company Law Board even by quoting the price for the shares at Rs. 52.50 crores, and even to this

date the appellants have not withdrawn the offer at the price quoted, I do not find any justification in the submission of the appellants that the

Company Law Board overreached its jurisdiction and re-wrote the order of this court by imposing the conditions therein. Going by the scope of

sections 397, 398 and 402 of the Companies Act and the jurisdiction of the Company Law Board u/s 634A of the Companies Act, the Company

Law Board is well justified in passing this order in tune with the directions of this court in paragraph 20 which directed the Company Law Board to

decide about all the formalities as regards the sale. The Company Law Board has every authority to impose such conditions to see that there is

compliance of the order of the Company Law Board ordering payment of the admitted amount.

46. The contention of the appellants that the order passed by this court u/s 10F of the Companies Act has to be executed only by this court, is

devoid of any merits, considering the fact that the order passed by this court u/s 10F of the Companies Act is by virtue of the Companies Act

conferring a right of appeal to an aggrieved party as against the order of the Company Law Board. Hence, the jurisdiction of this court u/s 10F of

the Companies Act is not to be confused as that of an original jurisdiction that this court has under the other provisions of the Companies Act.

47. The decision Coastal Roadways Ltd. Vs. Kanoi Plantation (P) Ltd., , relates to a petition under sections 433, 434 and 439 of the Companies

Act and is not of any relevance to the case on hand. The Calcutta High Court, in the said decision, referred to the exclusive jurisdiction of the

company court and the executability of the order by the company court alone. Hence, the said decision has to be read in the scheme of sections

433, 434 and 439 of the Companies Act.

48. Read in the background of the aforesaid provisions and the decisions referred to above, I agree with the submission of the respondents as to

the jurisdiction of the Company Law Board to pass the order u/s 634A of the Companies Act. Section 634 of the Companies Act does not, in any

manner, curtail the scope of section 634A of the Companies Act. As already pointed out, section 634 of the Companies Act prescribes the

procedure for enforcement of orders made by the court under the Companies Act as a decree made by the court in a suit pending therein. There is

no scope for bringing in the orders passed u/s 10F of the Companies Act by the High Court as an appellate court u/s 634 of the Companies Act to

act as an executing court.

49. As rightly pointed out by learned senior counsel appearing for the first respondent by way of analogy that the decree passed by an appellate

civil court confirming, modifying or reversing the decision of the originating court has to necessarily get back to the original court for execution,

so too in the case of an order passed on appeal u/s 10F of the Companies Act, in a matter relating to an order passed by the Company Law

Board under sections 397 and 398 of the Companies Act and in the nature of the order passed, the parties to the proceedings must get back to

the Company Law Board u/s 634A of the Companies Act for execution of the order passed under the provisions of the Companies Act. In so

executing the order, the Company Law Board rightly took note of Order 21, rule 32 of the Code of Civil Procedure, 1908, to protect the interest

of the first respondent herein. In adopting such a course, there is no re-writing of the order passed by this court u/s 10F of the Companies Act,

implementing the directions given by this court. The directions given by the Company Law Board are only for effectuating the order passed by this

court. Hence, I reject the plea of the appellants that the Company Law Board exceeded its jurisdiction in going beyond the terms of this court's

order.

50. This only leaves one aspect of the matter with reference to the directions given by this court, particularly in paragraph 20. According to the appellants, with clause (iii) of paragraph 20 acting as a default clause, it is not open to the Company Law Board to impose conditions in its order for complying with the payment directions. Learned senior counsel pointed out that the Company Law Board has no jurisdiction to fix the time frame, when this court had not chosen to prescribe any time frame within which the payment should be made.

51. I do not think that sub-clause (iii) to paragraph 20 could be read as a default clause. On the other hand, it is only a protective clause made by this court, considering the nature of disputes and the allegations made against each other in this case. The appellants' offer to purchase the shares as well as the finding of this court that there is no oppression as alleged by the appellants and the requirement for maintaining the Subarnarekha Port Project by performing the very vital acts alone are also important circumstances, which must be kept in mind while understanding the nature and the effect of clauses (iii) and (iv) in paragraph 20 of the judgment. Thus the retention of the Subarnarekha Port Project by the appellants and the continuance of respondents Nos. 3 to 6 in the second respondent-company as directors have to look upon the compliance of sub-clause (i) of paragraph 20 of the judgment, namely, fixing the value and the payment. Once that process is complete, thereby leading to the exit of the first respondent from the second respondent, sub-clauses (iii) and (iv) of paragraph 20 of the judgment also cease to have any enforceability at all.

Taking note of the inconsistency in the submission of the appellants as noted in the Company Law Board's order in paragraph 15, the Company Law Board thought it fit that it should grant the respondents' prayer seeking sequestration of assets as a justifiable one. Hence, I do not find any justification to read clause (iii) of paragraph 20 of the judgment as a default clause.

52. Considering the fact that the appellants had approached the Company Law Board under sections 397 and 398 of the Companies Act and one of the reliefs sought for before the Company Law Board (ground No. 2 in paragraph 8 of the petition presented by the appellants before the Company Law Board in C.P. No. 13 of 2008) was to direct the first respondent to transfer the investments and shares in the first respondent

company to the nominee of the appellants, either at the price offered in the e-mail dated November 15, 2007, or at such other price not exceeding

the price agreed to earlier, with the admitted offer of the consideration as Rs. 52.50 crores as stated in the counter before the Company Law

Board, rightly, the Company Law Board directed the appellants to pay the said amount with the default clause. In that process, the nature of the

relief to be granted in the execution in terms of this court's order being one in tune with the prayer in the petition filed by the appellants and in the

nature of specific performance, the prayer of the first respondent seeking sequestration of assets cannot be called as unjustified. Apart from that,

regulation 44 of the Company Law Board Regulations, 1991, supports the order of the Company Law Board in granting the prayer of the first

respondent on the sequestration of assets.

53. Learned senior counsel appearing for the appellants submitted that having regard to the pendency of the appeal before the Supreme Court on

the Machilipatnam Fort Project and since according to the appellants, the first respondent is liable to make payment with reference to the said

project, their interests have to be safeguarded and hence, the question of payment of Rs. 52.50 crores does not arise. I do not agree with the said

submission. Whatever be the merits of the contentions of the appellants in the appeal before the apex court which is yet to be admitted, as of

today, there is no denial of the fact that the appellants admitted the value of the shares held by the first respondent-company in the second

respondent-company at Rs. 52.50 crores. The appellants had expressed in paragraph 6 of the counter affidavit that without prejudice to their legal

rights and in line with their consistent stand of fulfilling their commitments towards completing the exit formalities as per the orders of the High

Court, they have started the process of arranging the sums required for the same. The appellants stated as follows:

In this regard, this hon''ble Board may please record that the applicant's formal confirmation to this hon''ble Board waiving their right for valuation

and accepting for their exit from the company on payment of Rs. 52.50 crores towards their value of shares and interests in the company.

54. With such expression, the contention as to the claim that the respondents have to make a payment which may go for an adjustment in the

consideration, can only be taken as an after thought submission. Taking note of the statement in the counter before the Company Law Board, I

have no hesitation in rejecting this plea.

55. In the course of the arguments, this court suggested, to the issue raised seeking protection pending the decision on the SLP filed by the

appellants, that to prove the bona fides of the claim, the appellants should deposit the agreed consideration of Rs. 52.50 crores to be kept in a

fixed deposit in any one of the nationalised banks till the disposal of the appeal before the apex court and the receipt deposited with this court that

depending on the outcome of the appeal of the appellants before the apex court, it is always possible for the parties to have the adjustment or

otherwise. Learned senior counsel appearing for the appellants, however, rejected the said suggestion too. In the light of the view I have taken and

expressed in the preceding paragraphs, I have no hesitation in rejecting the appeal of the appellants. Accordingly, the order of the Company Law

Board is confirmed and the company appeal stands dismissed. No costs. Consequently, M.P. No. 1 of 2010 is also dismissed.