(2003) 11 MAD CK 0136

In the Madras High Court

Case No : C.M.A. No. 1757 of 1996

S. Bhuvaneswari and Another — APPELLANT

Vs

ACI (Agro Chemical Industries) Ltd. and Others — RESPONDENT

Date of Decision : 27-11-2003

Acts Referred:
Companies Act, 1956 — Section 111, 111(5), 36

Citation : (2004) 122 CompCas 849 : (2003) 4 CTC 690 : (2004) 51 SCL 158

Hon'ble Judges : S. Sardar Zackria Hussain, J;K. Govindarajan, J

Bench : Division Bench

Advocate : T.K. Seshadri, for the Appellant; S. Ramasubramaniam and Associates and Saseedharan, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—The petitioners before the Company Law Board having aggrieved by the latter portion of the order, have filed the above Appeal.

2. The 1st appellant claims that she is the promoter of the 1st respondent-company and the 2nd petitioner is her daughter. Both of them had shares of 42,517 and 7,503 respectively. It is not in dispute that subsequently, the 1st and appellants have transferred 34,500 shares and 6,000 shares respectively to the 2nd respondent. The 1st respondent-company at the instance of the 2nd respondent-company rectified the register of shareholding as if the 2nd respondent transferred all the shares from the appellants to respondents 3 to 6. So the appellants filed Company Petition No. 23/1993, originally praying the Company Law Board to declare that the transfer of 40,500 equity shares bearing distinctive numbers 021 to 34520 and 44021 to 59920 in favour of respondents 3 to 6 by the 2nd respondent-company and the registration of such transfer in the Register of Members by the 1st respondent-company is illegal and contrary to the Articles of Association and without sufficient cause and direct the 1st respondent-company to rectify the Register of Members in relation to 40,500 equity shares by deleting the names of respondents 3 to 6 from the Register and

restore the name of 2nd respondent as the holder of 40,500 equity shares therein with reference to the above said shares. Subsequently, a petition to amend the prayer was filed and there is no dispute that the same was ordered. The said amended prayer reads as follows:-

"The petitioners therefore pray that this Hon''ble Board may be pleased to declare that the transfer of 40500 equity shares bearing distinctive numbers 021 to 334520 and 44021 to 59920 in favour of respondents 3 to 6 by the second respondent-company and the registration of such transfer in the Register of Members by the first respondent-company is illegal and contrary to the Articles of Association and are without sufficient cause and direct the first respondent-company to rectify the Register of Members in relation to 40500 equity shares, by deleting the names of respondents 3 to 6 from the Register and restore the name of second respondent as the holder of 40500 equity shares therein, with reference to distinctive numbers referred to hereinabove, and thereafter substitute the name of the petitioners in the place of the second respondent in terms of Article 7 of the Articles of Association with reference to 40500 equity shares, as shareholders upon payment of the price as may be directed by this Hon''ble Board, and further restraining the respondents 3 to 6 from exercising right as members in relation to 40500 equity shares with reference to aforesaid distinctive numbers and pass such further order or orders, directing the respondents 3 to 6 to pay costs of the proceedings of the petitioners and pass such further order or orders, as this Hon''ble Board deems fit and proper in the circumstances of the case."

4. The Company Law Board, appreciating Article 7 of the Articles of Association of the Company came to the conclusion that the transfer of the impugned shares, which was not in accordance with the provisions of Article 7 on the ground that the shares which were not offered to existing members before transferring to outsiders, has to be set aside. But with respect to the latter part of the prayer requesting for prorata transfer of shares to the appellants, the same, was rejected by the Company Law Board in the order dated 15.4.1996. Questioning the same, the above Appeal is filed.

5. Learned counsel for the appellants submitted that according to Article 7 of the Articles of Association, if a member has an intention to sell the shares, he has to give a notice to the existing members, lathe present case, no such notice was issued. According to him though the Company Law Board has set aside the transfer made by the 2nd respondent-company in favour of respondents 3 to 6, in view of the fact that the 2nd respondent is having an intention to sell the shares, the Company Law Board should have directed to sell the shares in favour of the appellants, who are the existing members, on the price to be fixed by the Board of Directors. The substance of the arguments of the learned counsel was that once the 2nd respondent was having intention to sell the shares, the appellants got the right to purchase the said shares especially when they have offered to purchase the same in the Company Petition itself.

6. Learned counsel for the 1st respondent-company submitted that such a right is not vested right. Only if any offer is made by the 2nd respondent-company to the appellants, the appellants can come forward with the willingness to purchase the said shares. According to him, in this case, though the transfer of such shares is set aside, no such notice was issued to the appellants so as to enable the appellants to claim such pre-emptive right. Learned counsel also relied on Section 111(5)(b) of the Companies Act in support of his submission that the Company Law Board can only direct rectification of the register and also direct the Company to pay the loss if any sustained by any party and the Board is not having power to direct the parties to transfer the shares to other members. According to him, since the Company Law Board has no power to give direction to transfer the shares in favour of a particular party, a portion of the impugned order in this Appeal need not be interfered with.

7. Learned counsel for the 2nd respondent-company also adopted the above said argument advanced by the learned counsel for 1st respondent-company.

8. The question that arises for consideration in this case is whether the appellants are having any right to compel the 2nd respondent-company to transfer the shares in their favour in view of the fact that the Company Law Board has set aside the transfer of shares in favour of respondents 3 to 6 in view of clause 7(c) of the Articles of Association of the 1st respondent-company.

9. To appreciate the above said arguments, it is beneficial to extract the relevant portion of Article 7 of the Articles of Association of the 1st respondent-company, which reads as follows:-

"TRANSFER OF SHARES:

7(a) The Directors may in their discretion, refuse to register any transfer of shares to a transferee of whom they do not approve. But the Directors may before the transfer is effected give permission in advance for a contemplated transfer and such permission shall be binding on the company.

(b) A Share may be transferred by a member or other person entitled to transfer to any member selected by the transferor but save as aforesaid and save as provided by these presents no share shall be transferred to any person who is not a member unless such person is approved of by the Directors as one whom it is desirable in the interests of the company to admit to membership.

(c) A member wishing to transfer must give notice of his intention to the Board who upon receipt of such notice will offer the same to the existing members in prorata and if any member is not willing to buy his shares it shall be offered to the other member or members. If no response is received from the board within 60 days from the date of receipt of notice of intention the transferor can transfer to anyone of his choice.

(d) Shares shall be transferred under the foregoing clause upon the value fixed by the Board of Directors or by the auditor or the auditors of the Company if the

Board so desires.

(e) The Directors may refuse to register any transfer of a share;

(i) Where the company has lien on a share, or

(ii) In the case of shares not fully paid up where it is not proved to their satisfaction that the proposed transferee is responsible person, or

(iii) Where the Directors are of the opinion that the proposed transferee (not being already a member) is not a desirable person to admit to membership, or

(iv) where the result of such registration would be to make the number of persons exceed the limit prescribed under the Act".

10. The 1st respondent-company is a Private Company within the meaning of Section 3(1))(iii) of the Companies Act According to Article 3 of the Articles of Association, the right to transfer the shares of a Company shall be restricted in the manner and to the extent mentioned under the Articles of Association. As contemplated u/s 36 of the Companies Act, the memorandum and articles, when registered, shall bind the Company and the members thereof to the same extent as if they respectively had been signed by the Company and each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and the Articles. In view of the above said provision, the restrictions made in Article 7 of the Articles of Association shall bind on the members, namely, the appellants and the 2nd respondent and they have to follow the procedure as contemplated under the said Article to transfer the shares.

11. Learned counsel for the appellants, mainly relied on Article 7(c) of the Articles of Association, which is reproduced as above. According to the said provision, a member wishing to transfer must give of his intention to the Board, which upon receipt of such notice will offer the same to the existing members in prorata. Since the said procedure was not followed by the 1st and 2nd respondents, the Company Law Board has rightly set aside the transfer and directed to rectify the register of members.

12. Now we have to decide, on the basis of the above said portion of the order of the Company Law Board, whether the appellants got their right to compel the 2nd respondent to sell the shares to them.

13. As rightly found by the Board, the appellants cannot have any vested right to purchase the shares of the 2nd respondent until the notice is issued by the Board offering such transfer. Merely because the 2nd respondent violated the procedure contemplated under Article 7 of the Articles of Association, it cannot be said that such shares should be sold to the appellants, but only if notice is issued by the 2nd respondent to the Board, regarding its intention to transfer the shares, the Board has to otter the same to the existing members in prorata. Only on receipt of such otter from the Board, the appellants will get a right to purchase the said

shares on the value fixed by the Board of Directors or the auditor or the auditors of the Company if the Board so desires, Merely because the 2nd respondent sold the shares to respondents 3 to 6, it cannot be said that the appellants can straight away offer to purchase the shares. The procedure contemplated under Article 7(c) of the Articles of Association is binding on the appellants and they can make otter only if the procedure contemplated under Article 7(c) is followed and so the appellants cannot compel the 2nd respondent to sell the shares dehors the procedure contemplated under Article 7(c) of the Articles of Association.

14. Moreover as rightly submitted by the learned counsel for the 1st and 2nd respondents, the Company Law Board can only direct the Company to register the transfer or transmission and direct rectification of the registers and to pay the damages, if any, sustained by the parry aggrieved. No specific power is given u/s 111(5)(b) of the Companies Act to direct a member to transfer his shares to other member. When no such power is given under the provisions of the Companies Act the Company Law Board is correct in refusing to give such a direction as prayed for by the appellants.

15. In view of the above discussion, we do not find any merits in this Appeal. Hence this Appeal is dismissed. No costs.

