

**(2002) 09 MAD CK 0159**

**In the Madras High Court**

**Case No :** C.M.A. No. 1751 of 2002 and C.M.P. No. 13425 of 2002

S. Mohan

APPELLANT

Vs

The Commissioner and Management of the Muthialpet benefit  
Fund Ltd., Sankar Raj and N. Veeraraghavan

RESPONDENT

**Date of Decision :** 26-09-2002

**Acts Referred:**

Companies Act, 1882 — Section 166, 167, 168, 186

**Citation :** (2002) 4 LW 365 : (2002) 3 MLJ 723 : (2003) 41 SCL 91

**Hon'ble Judges :** N.V. Balasubramanian, J;C. Nagappan, J

**Bench :** Division Bench

**Advocate :** T.R. Rajagopalan for V. Venkadasalam, for the Appellant;

**Final Decision :** Dismissed

## Judgement

N.V. Balasubramanian, J.—This appeal is preferred against the order of the Company Law Board, Southern Region Bench, Chennai made in C.A.No.75 of 2002 dated 6.9.2002. The Company Law Board has passed the above order in the application filed u/s 167 of the Companies Act, 1956, hereinafter referred to as "the Act" by one Veeraraghavan seeking a direction against M/s. Muthialpet Benefit Fund Limited, hereinafter referred to as "the company" to convene and hold Annual General meetings for the years 2000, 2001 and 2002.

2. The appeal is filed by the second respondent in the company application, viz., Mohan. We are of the opinion that it is necessary to refer to certain facts for the disposal of the appeal. M/s. Muthialpet Benefit Fund Limited is a Mutual Benefit Fund and it is stated that the company was started in the year 1895 and incorporated under the provisions of the Indian Companies Act, 1882 and the company has been functioning for more than 107 years. The company is a Nidhi company and its main business is lending loans on jewels and landed property and accepting fixed deposits from the public. It is stated that the last Annual General meeting of the company was held in the year 1999 and after 1999, the Annual General Meeting has not been held. It is needless to mention that Annual

General meeting is required to be held every year. It is seen from the copies of the papers placed before us that there were disputes between the Directors of the company resulting in the filing of the suit in C.S.No.1025 of 1999 on the file of this Court and this Court, by order dated 20.1.2000 held that it would be appropriate to appoint a Commissioner to manage the affairs of the company in the interests of the shareholders and the public and accordingly, this Court appointed Mr. Justice S. Padmanabhan, a retired Judge of this Court as Commissioner and he has been functioning as Commissioner since then.

3. The above said order was challenged by way of appeal and a Division bench of this Court in O.S.A.Nos.23 to 25 of 2000, has issued certain directions periodically, and on 11.4.2002, taking note of the fact that the last Annual General Meeting was held in the year 1999, gave the following directions:-

" We have been informed that the last Annual General Meeting of the company was held in the year 1999, at which meeting, five Directors were elected. Annual General Meetings for the subsequent years have not been held. The time for holding those Annual General Meetings was over long ago. The reconstitution of the Board of Directors can only be made by electing the Directors at the Annual General Meeting which are required to be held for each year.

2. It is rightly pointed out by counsel that u/s 167 of the Companies Act, the power to convene the Annual General meetings, notwithstanding what is contained in the Act or Articles, is vested in the Company Law Board. Anyone of the members of the Company who are parties to this proceeding, or any other member may approach the Company Law Board and seek appropriate directions with regard to the convening and holding of the Annual General Meetings for the years 2000 and 2001. The directions from the Company Law Board can also be sought with regard to the holding of Annual General Meetings for the year 2002.

3. It is advisable that these Annual General Meetings are held expeditiously. In order to save expenditure, it is also admissible that the Annual General Meetings for all the three years viz., 2000, 2001 and 2002 are held on the same day. In order to do so, the accounts for the year 2001-02 will have to be audited for being placed before the Annual General Meetings. Counsel for the Administrator says that the Administrator will need about three months time to have the audit completed and the balance sheet as also the profit and loss account finalised after due audit.

4. While seeking directions from the Company Law Board, the parties may suggest that the Annual General Meetings for these three years be held some time by mid September, 2002. The Administrator shall ensure that the accounts for the year 2001-02 are duly audited and kept ready for being placed before the Annual General Meetings well before the period, as the accounts will have to be circulated to the members after giving the statutory period of notice.

5. The parties shall report to us after the Annual General Meetings are so held, so that further directions can be given with regard to the discharge of the

Administrator and allowing the reconstituted Board to take charge of the affairs of the company."

4. The third respondent in the appeal, by name, Veeraraghavan has filed an application before the Company Law Board stating that he was one of the directors of the company and there were disputes in the management due to some misunderstanding between the directors and, after referring to the civil suit and the appointment of the Commissioner to administer the company, he has stated that he along with other directors filed an appeal before this Court in O.S.A.Nos.23 to 25 of 2000. He also referred to the order of the Division Bench dated 11.4.2002 and according to him, the Division Bench has directed for the holding of Annual General Meeting. Accordingly, he prayed the Company Law Board to fix the time for election in September, 2002.

5. The Commissioner has filed a counter stating that he has no objection for passing orders for convening Annual General Meetings for the years 2000, 2001 and 2002. The Commissioner has also stated that directions are required for the convening and conduct of the Annual General Meetings since the Board of Directors of the Nidhi Company are in a state of "suspended animation" and he has also required time for finalisation of accounts of the company up to the end of August, 2002. He has also stated that Annual General Meetings may be fixed on any date thereafter providing for adequate time to comply with the statutory provisions.

6. The appellant/second respondent also filed a counter affidavit. The Company Law Board, after hearing the arguments of the counsel for the petitioner, counsel appearing for the Commissioner and the counsel appearing for the second respondent and the third respondent, held that Annual General Meetings should be held each year and the failure to hold Annual General Meetings would attract penal proceedings. After noticing the order passed by the Division Bench in O.S.A.Nos.23 to 25 of 2000 dated 11.4.2002, the Company Law Board held that the company has defaulted to hold Annual General Meetings for the years 2000 and 2001 and the financial year of the company is from 1st April to 31st March every year and Annual General Meeting for the year ending 31.3.2002 should also be convened before 30.9.2002. In exercise of powers u/s 167 of the Act, the Company Law Board directed the calling of Annual General Meetings of the company for the years 2000, 2001 and 2002 and also gave certain directions. It is against that order, the present appeal has been filed.

7. Mr. T.R. Rajagopalan, learned senior counsel representing Mr. V. Venkadasalam, learned counsel for the appellant submitted that the order of the Company Law Board is not sustainable in law and according to him, the Company Law Board has not properly exercised its discretion u/s 167 of the Act, as the convening of Annual General Meetings would not be appropriate. According to the learned senior counsel, before the Commissioner convenes Annual General Meetings, he has to finalise accounts of the company for three years and the accounts are required to be advertised and since the financial condition of the

company, a Nidhi company, is not sound, there will be a rush by all depositors for getting back their money resulting in the closure of the company itself.

8. Though Mr. T.R. Rajagopalan, learned senior counsel submitted that it is not the intention of the appellant that the Commissioner should continue for ever, but according to him, the impugned order calling for Annual General Meetings should be rescinded and Annual General Meetings should be convened only after the financial stability of the company is restored. Learned senior counsel referred to the achievements made by the Administrator and the steps taken by him to realise the loans and disbursement of money to some of the depositors. Learned senior counsel submitted that the Company Law Board has not exercised its discretion properly and has not considered the various points raised by the learned counsel for the appellant before it. Learned senior counsel, in support of his submissions, referred to the decision of the Calcutta High Court in the matter of Ruttonjee & Co. Ltd. (40 Comp. Cases 491)

9. We have carefully considered the submissions made by the learned senior counsel for the appellant. We find that the Company Law Board has properly exercised its discretion. The Company Law Board noticed the provisions of section 166 of the Act and found that it is the mandatory requirement on the part of the company to hold Annual General Meeting every year within the period stipulated or the extended period and the failure of the company to hold meeting would enable the Company Law Board to exercise the power u/s 167 of the Act. Section 168 of the Act provides for penalty in the case of default of the company to hold Annual General Meeting or to comply with the directions of the Company Law Board to hold Annual General Meeting. We are of the view that the Company Law Board was correct in its finding that the holding of Annual General Meeting is a mandatory requirement on the part of the company and the Company Law Board was justified in calling for Annual General Meetings of the company.

10. We also find that the Company Law Board is not solely guided by the directions of this Court in O.S.A.Nos.23 to 25 of 2000. The Company Law Board has referred to the observations made by the Division Bench of this Court, but we find that the observations have not influenced the Company Law Board in directing holding of Annual General Meetings. The Company Law Board is an independent judicial authority and it has the power u/s 167 of the Act to call for Annual General Meeting. The Company Law Board is also vested with necessary powers to give directions which are consequential in relation to the holding of Annual General Meeting. We find that the successive failure on the part of the company to hold Annual General Meetings from 1999 was taken note of by the Company Law Board while directing the convening of Annual General Meetings of the company.

11. As far as the submissions made by the learned senior counsel for the appellant are concerned, we find that it is imperative on the part of the company to hold Annual General Meeting. The mere fact that audited accounts may show the company's unstable financial position is not a ground to hold that the

Company Law Board should not exercise its discretion in calling for the Annual General Meetings. We are of the view that the shareholders are entitled to know the financial strength or weakness of the company as they have invested their money in the company, and therefore the submission of the learned senior counsel that accounts of the company would be exhibited if Annual General Meetings are allowed to be convened is not acceptable. As we have already observed, every shareholder of the company is entitled to know the financial strength of the company and its relative weakness and therefore the fact that accounts would be displayed or disclosed is not a ground to hold that Annual General Meetings need not be held. We are also unable to accept the submission that there will be a rush by the shareholders for the return of deposits knowing the financial instability of the company. We are of the view that it is merely speculative and even assuming that the shareholders may approach for the return of the deposits, it is always open to the company to regulate the return of the deposits in the best manner possible.

12. The submission made by the learned senior counsel regarding the conduct of previous management is not acceptable, because by holding Annual General Meeting it is not expected that the persons who were in previous management of the company would be re-elected, nor we can assume that the persons to be elected to the Board may not be competent persons. Further, there are sufficient inbuilt safeguards in the Companies Act against the misdeeds, if any, done by the erring directors. We find that the Commissioner, in his fairness, has brought to the attention of the Company Law Board that he required time up to August, 2002 to finalise the accounts of the company and hence, the convening of Annual General Meetings should be fixed thereafter, and considering the request made by the Commissioner, the Company Law Board has directed the Annual General Meetings of the company to be held on or before 10th October, 2002.

13. As far as the decision of the Calcutta High Court in Ruttonjee & Co. case (40 Comp. Cases 491) is concerned, the decision was rendered under the provisions of section 186 of the Act and we are of the view that the decision of the Calcutta High Court is not applicable to the facts of the case. In the present case, it was found that the company did not hold Annual General Meeting for three years in succession and its accounts were also not audited and we are of the view that the prolonged delay in holding and convening annual General Meetings will not be either in the interest of the company or of the member/shareholders.

14. We find that the Company Law Board has properly exercised its discretion and accordingly, we do not find any question of law that arises out of the order of the Company Law Board. We find that there are no grounds made to interfere. Accordingly, the appeal fails and the same is dismissed, in limine, at the admission stage itself. Consequently, C.M.P.No.13425 of 2002 is dismissed.