

(2014) 05 AHC CK 0352
In the Allahabad High Court
Case No : Company Appeal No. 5 of 2009

Shree Jagdish Cement Pvt. Ltd.	Vs	APPELLANT
Chairman, Company Law Board		RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Companies Act, 1956 — Section 10F, 397, 398, 400

Citation : (2014) 5 ADJ 380 : (2015) 1 AWC 297

Hon'ble Judges : Pankaj Mithal, J

Bench : Single Bench

Advocate : Vinod Kumar Rastogi, Advocate for the Appellant; Amit Saxena, Madan Singh and Shahid Kazmi, Advocate for the Respondent

Final Decision : Allowed

Judgement

Pankaj Mithal, J.—Heard Sri Vinod Kumar Rastogi, learned counsel for the appellants. The appellants have preferred this appeal u/s 10F of the Companies Act, 1956 (hereinafter referred to as the Act) against the order dated 20.3.2009 of the Company Law Board, Principal Bench, New Delhi passed in Company Petition No. 5 of 2006, Suresh Chandra Rastogi and others v. M/s. Shree Jagdish Cement Pvt. Ltd. and others.

2. The petition before the Company Law Board was filed under Sections 397 and 398 of the Act complaining about the oppression and mismanagement of the company M/s. Shree Jagdish Cement Pvt. Ltd. The company petition was allowed with certain directions.

3. In challenging the above order apart from merits it has been argued that the impugned order passed by the Company Law Board stand vitiated in law for want of notice u/s 400 of the Act to the Central Government.

4. The appellants have taken specific ground to this effect in the second supplementary memo of appeal to which the respondents have replied contending that no such objection was taken by the appellants before the

Company Law Board and that non-issuance of the notice to the Central Government does not cause any prejudice to the appellants.

5. Section 400 of the Act reads as under:

400. Notice to be given to Central Government of applications under Sections 397 and 398.--The Tribunal shall give notice of every application made to it u/s 397 or 398 to the Central Government, and shall take into consideration the representation, if any, made to it by that Government before passing a final order under that section.

6. A bare reading of the aforesaid provision reveals that the tribunal/the Company Law Board shall give notice on every application filed u/s 397 or 398 to the Central Government and shall pass final orders on it after considering the objections/representation of the Central Government, if any.

7. The use of the word shall in the aforesaid provision indicates that the issuance of notice to the Central Government is mandatory.

8. A Division Bench of the Bombay High Court in *Bilasrai Joharmal and Others Vs. Akola Electric Supply Co. Private Ltd.*, considering the nature of Section 400 of the Act elaborated that the proper practice in dealing with petitions u/s 397 or 398 of the Act is to either dismiss it summarily or to admit it or to keep it for consideration. If it is not dismissed and is kept for hearing the company then the Court will direct that not only a notice should be given to the company but also to the Central Government so that all difficulties with regard to Section 400 of the Act are obviated. The Division Bench clarified that if the Court does not summarily dismissed the petition and admits it or accepts it otherwise than the office will immediately issue notice to the Central Government and the petition will come up for hearing after the central Government has been served.

9. The aforesaid decision reveals that ordinarily the practice is to effect service of notice upon central Government in dealing with a petition u/s 397 or 398 of the Act once it is entertained.

10. In *Cosmosteels Private Ltd. and Others Vs. Jairam Das Gupta and Others*, three Judges Bench of the Supreme Court in paragraph 14 clearly laid down that it is obligatory upon the Court to give notice of the petition under Sections 397 or 398 to the Central Government and if any representation is made by the Central Government, the Court is obliged to take it into the consideration before passing any final order. The relevant extract of paragraph 14 of the above citation is quoted below:

Undoubtedly, when a petition is made to the Court under Sections 397 or 398 it is obligatory upon the Court to give notice of the petition to the Central Government and it would be open to the Central Government to make a representation and if any such representation is made, the Court would have to take it into consideration before passing the final order in the proceeding.

11. In view of the language used in Section 400 and the aforesaid two decisions, it can safely be held that the provisions of Section 400 of the Act are mandatory in nature and the Company Law Board/Tribunal is obliged to issue notice to the Central Government as and when a petition u/s 397 or 398 of the Act is entertained and it is only after considering the representation of the Central Government, if any, that a final order can be passed.

12. It is important to keep in mind that a statute of a mandatory nature if provides for doing a particular thing in a particular manner than that thing should be done in the manner provided or not at all. Therefore, it is not open for the Company Law Board/tribunal to pass a final order on a petition u/s 397 or 398 of the Act except for its summary dismissal, without giving notice to the Central Government as contemplated vide Section 400 of the Act.

13. The decision of the learned single Judge of the Madhya Pradesh High Court in the case of Marble City Hospital and Research Centre P. Ltd. and Others Vs. Sarabjeet Singh Mokha, that the non issuance of notice u/s 400 of the Act would not be fatal to vitiate the proceedings as there is no provision which provides for the effect of non issuance of the notice to the Central Government would not be of any help to the petitioners as it fails to take into account the ratio of the decision of the Supreme Court in Cosmosteels Private Ltd. (Supra).

14. In the instant case there is nothing in the impugned order which could reflect or indicate that the Company Law Board had issued any notice as envisaged u/s 400 of the Act to the Central Government before proceeding to decide the petition u/s 397 or 398 of the Act.

15. There is no material to show that any notice was issued to the Central Government before passing the impugned order.

16. In view of the aforesaid facts and circumstances, in the absence of notice u/s 400 of the Act, the impugned order dated 20th March, 2009 cannot be sustained in law and is hereby set aside. The matter is remanded to the Company Law Board to proceed afresh after notice to the Central Government and to pass appropriate order in accordance with law. The appeal is allowed with no order as to costs.