

(2009) 09 BOM CK 0084

In the Bombay High Court

Case No : Company Appeal No. 45 of 2009 in Company Application No. 138 of 2009 in Company Petition No. 45/397-398/CLB/MB of 2009 and Company Application No. 847 of 2009

Shree Ram Urban Infrastructure Limited

APPELLANT

Vs

Shri R.K. Dhall and Others

RESPONDENT

Date of Decision : 11-09-2009

Acts Referred:

Companies Act, 1956 — Section 10F, 397, 398
Company Law Board Regulations, 1991 — Rule 44

Citation : (2010) 2 BomCR 251 : (2010) 153 CompCas 152 : (2009) 4 CompLJ 624 : (2009) 95 SCL 86

Hon'ble Judges : S.J. Kathawalla, J

Bench : Single Bench

Advocate : Aspi Chinoy, V.R. Dhond, Samsher Garud, Komal Joshi and Lalit Kataria, instructed by Khaitan and Jaykar, for the Appellant; A.Y. Bookwalla, J.S. Bakshi, C.D. Mehta, Darshan Mehta and Faiza Dhanani, instructed by Dhruv Liladhar and Co. for Respondent No. 1 and Raju Subramanian, Rahul Chitnis, instructed by Rajendra Gurjar, for Respondent Nos. 2, 3, 4, 8, 11, 12 and 14, for the Respondent

Final Decision : Allowed

Judgement

S.J. Kathawalla, J.

1 Heard Counsel for the parties. The learned Counsel appearing for the respective contesting respondents waive service. As a short question is involved, the appeal is admitted and finally disposed of.

2. By this appeal the appellant have impugned the judgment and order passed by the Company Law Board dated 27th July, 2009 in Company Application No. 138 of 2009 in Company Petition No. 45/397-398/CLB/MB/2009. The Company Application No. 138 of 2009 was filed under Regulations 44 and 46 of the Company Law Board Regulations 1991 by the original petitioners (Respondent No. 1 herein) seeking to incorporate certain subsequent events in the company

petition by way of amendments. The appellant herein sought a week's time to file their objections. Except for seeking permission to amend the Company Petition no other relief was sought in the said application No. 138 of 2009. However, on an oral application made by the respondent No. 1, the Company Law Board inter alia passed the following order which is impugned herein.

2. ...I allow one week's time to the respondents to file their objection, if any by 3rd August, 2009 with a copy to the petitioner and the petitioner is free to mention the case for necessary orders on amendment on 6th August, 2009 at 2.30 p.m. Till the amendments to the petition are completed and interim prayer is heard the respondents are directed not to precipitate the matter as envisaged by Justice Khanwilkar at Bombay High Court and the said two weeks extension given by the Hon'ble High Court is further extended till the interim relief in this petition is decided by this Bench. This order is issued under Rule 44 of the Company Law Board Regulations 1991.

3. The questions of law arising in this appeal are:

(i) Whether the Company Law Board can grant interim reliefs pertaining to matter/s which is/are not a part or subject matter of the petition, more so, in view of the decision of the Hon'ble Apex Court in Shanti Prasad Jain Vs. Kalinga Tubes Ltd., , and the decision of this Court in appeal No. 35 of 2009 dated 16th July 2009;

(ii) whether the Company Law Board under Regulation 44 of the Company Law Board Regulations, 1991, has the powers to extend time granted by this Court for a specific purpose or grant reliefs without assigning any reason where reliefs are neither prayed for nor any submissions are made in the company application in support of grant of such reliefs.

4. The facts as the record shows are as under:

i) The Respondent No. 1 filed the present company petition on 14th May 2009 which was served on the appellant on 16th May, 2009. The appellant were also put to notice that the respondent would be making an application for urgent reliefs in terms of the company petition on 21st May, 2009. In the meantime on 18th May 2009 at the Board meeting of the Appellant a decision in relation to the issue of convertible warrants for 25 million equity shares of Rs. 10/-each was taken. The company petition dated 14th May 2009, was heard on 21st May, 2009 when respondent No. 1, who were to seek urgent reliefs in terms of the Company Petition sought reliefs in terms of company application No. 95 of 2009 which was not served on the Appellant earlier. In the said company application No. 95 of 2009, respondent No. 1 had, till disposal of the petition, sought reliefs in relation to the decision taken by the Board of Directors of Appellant on 18th May 2009 pertaining to the issue of convertible warrants, which decision/issue was admittedly not the subject matter of the company petition dated 14th May 2009. The Company Law Board by its order dated 22nd May 2009, inter alia passed the following order:

5. After considering the arguments and pleadings I restrain the respondents Company and its Board of Directors in implementing the decisions made in the Board of Directors meeting held on 18th May 2009 in relation to the issue of convertible warrants of 25 million equity shares of Rs. 10/-each till disposal of this petition. I also direct the respondent company to give necessary information prayed for by the petitioners in the interim prayer in the petition.

iii) Being aggrieved by the said judgment/order dated 22nd May, 2009 passed by the Company Law Board the appellant preferred an appeal therefrom before this Court u/s 10F of the Companies Act, 1956 being Appeal No. 35 of 2009. This Court by its order dated 1st June, 2009 modified the order passed by the Company Law Board dated 22nd May 2009 and directed the appellant to issue notice to the effect that the Board Resolution dated 18th May 2009 would be considered and put to vote in the Annual General Meeting to be held on 24th June, 2009 but the said decision would be subject to the order that may be passed in Company Application No. 95 of 2009. Being aggrieved by the order dated 1st June, 2009 passed by this Court, respondent No. 1 filed SLP in the Hon"ble Supreme Court being SLP No. 14584 of 2009. The Hon"ble Supreme Court by its order dated 23rd June 2009 stayed the consideration of the Resolution for allotment of preferential allotment in the Annual General Meeting of the appellant to be held on 24th June, 2009 and requested this Court to dispose of the Company Appeal No. 35 of 2009 expeditiously.

iv) Appeal No. 35 of 2009 was heard and disposed of by this Court by its order dated 16th July, 2009. In its said decision, this Court has recorded that the Hon"ble Supreme Court in the case of Shanti Prasad Jain Vs. Kalinga Tubes Ltd., has observed that matters which were not part of the petition cannot be taken into account, for considering interim application. This Court after recording the submission of the appellant that the decision taken by the Board of Directors of the appellant in its meeting held on 18th May 2009 has not been challenged in the main petition observed that the Board has not examined this aspect at all. This Court was further pleased to observe that the Company Law Board has not recorded any reason which necessitated the issuance of injunction against the appellant and its Board of Directors. The Court has further observed that it would be a different matter if the Company Law Board were to consider all relevant aspects for grant or non grant of interim relief such as prima facie case, balance of convenience and irreparable loss and record its opinion one way or the other on the contentious issue. This Court, therefore, in paragraph 6 of its order dated 16th July 2009, inter-alia held as under:

6. In my opinion, the impugned decision is manifestly wrong and untenable. The appropriate Course is to set aside the impugned decision and instead relegate the parties before the Board for reconsideration of Application No. 95 of 2009 which will have to be considered on its own merits in accordance with law after giving fair opportunity to both sides to file affidavits and/or to amend the pleadings, as may be advised if permissible by law.

v) When the aforesaid order dated 16th July, 2009 by this Court was passed the Counsel appearing for the respondents submitted before this Court that since the respondents may consider taking the matter in appeal, this Court may direct the appellant to maintain status quo for a period of two weeks. This Court, therefore, ordered that the appellant shall not precipitate the matter with regard to preferential issue for a period of two weeks from the date of order.

vi) Thereafter, respondent No. 1 filed an SLP before the Hon"ble Supreme Court of India impugning the order passed by this Court dated 16th July, 2009.

vii) Respondent No. 1 also moved the Company Law Board by way of Company Application No. 138 of 2009 seeking amendment of the company petition. The said company application was served on the appellant on 23rd July, 2009 and was circulated for urgent reliefs on 27th July 2009. On 27th July 2009 the Counsel for the appellant sought an adjournment to file affidavit in reply to the said company application. According to the appellant towards the end of the arguments the Counsel for respondent No. 1 orally sought protection till the time the amendments were completed. The Company Law Board considered the oral prayer and passed the order as set out in paragraph 2 above, effectively restraining the appellant from implementing any decision of the Board of Directors of the appellant in relation to the issue of the said meeting held on 18th May 2009 till the interim reliefs in the petition are decided by the Company Law Board i.e. application No. 95 of 2009.

viii) The SLP filed by respondent No. 1 impugning the order passed by this Court dated 16th July 2009 came up for admission before the Hon"ble Supreme Court of India on 7th August, 2009 when respondent No. 1 herein through his Advocates sought to withdraw the SLP. The Advocates for the appellant opposed the application for withdrawal and pointed out to the Hon"ble Supreme Court that respondent No. 1 took a protective order from this Court for a period of two weeks to enable him to appeal to the Supreme Court from the order passed by this Court dated 16th July 2009. Respondent No. 1 after filing an SLP before the Hon"ble Supreme Court, later approached the Company Law Board seeking amendments to the petition. Respondent No. 1 also sought and obtained from the Company Law Board protective orders dated 27th July 2009 in terms of the order passed by this Court for two weeks to enable respondent No. 1 to approach the Hon"ble Supreme Court. The Hon"ble Supreme Court by its order dated 7th August, 2009 after quoting paragraph 2 of the order of Company Law Board dated 27th July, 2009, impugned herein, dismissed the SLP inter alia with the following observations:

Since the respondents herein have moved the High Court against the interim order dated 27th July 2009, we do not wish to make any observations with regard to the above quoted paragraph from the order of the Company Law Board. However, one point needs to be highlighted. The petitioner ought to have informed this Court that he was simultaneously moving the Company Law Board. An additional affidavit is proposed to be filed by the petitioners stating that in

view of the interim order passed by the Company Law Board the petitioner would like to withdraw this SLP. In other words the petitioner has tried to pre-empt this Court from passing orders by moving the Company Law Board, without permission and after obtaining orders from Company Law Board petitioner seeks withdrawal which practice we deprecate.

In the circumstances the SLP is dismissed. We express no opinion on merits of the case. The question of law is expressly kept open.

5. Mr. Chinoy, the learned Senior Advocate appearing for the appellant has submitted that the order passed by the Company Law Board dated 27th July, 2009 is passed without jurisdiction. He has submitted that as held by the Hon"ble Supreme Court in the case of Shantiprasad Jain (supra) the matters which are not part of the petition cannot be taken into account for considering the interim application. Mr. Chinoy has submitted that on 27th July 2009 when the Company Law Board passed an order effectively restraining the appellant from implementing the decisions taken by the Board of Directors in the said meeting held on 18th May, 2009 the said decision of the Board of Directors was not forming the subject matter of the petition. In fact, on 27th July, 2007, respondent No. 1 by a company application sought to bring on record the subsequent events i.e. the decision of the Board of Directors dated 18th May, 2009 by way of an amendment. The amendment application at the request of the appellant was adjourned for a period of about ten days i.e. on 6th August, 2009. Until such amendments are allowed and subsequent events brought on record, the Company Law Board ought not to have passed any interim orders because passing of such interim order is directly contrary to the decision of the Hon"ble Supreme Court in the case of Shantiprasad Jain (supra). Mr. Chinoy has further submitted that though the earlier interim order passed by the Company Law Board dated 22nd May, 2009 was set aside by this Court by its order dated 16th July, 2009 relying upon the aforesaid decision of the Hon"ble Supreme Court in Shantiprasad Jain (supra), the Company Law Board despite being aware of the said order, chose to ignore the said order passed by this Court and once again on an oral application of respondent No. 1, passed the same interim order pertaining to a matter not forming part of the petition. The order is passed without giving any reasons for grant of interim relief such as prima facie case, balance of convenience and irreparable loss. It is further submitted by Mr. Chinoy that this Court by its order dated 16th July, 2009 had directed the appellant not to precipitate the matter for a period of two weeks only because the respondent No. 1 had informed this Court that they may consider taking the matter in appeal i.e. only to enable respondent No. 1 to move the Hon"ble Supreme Court against the order passed by this Court. The Company Law Board is not empowered to extend the order passed by this Court to enable the respondent No. 1 to approach the Hon"ble Supreme Court. The said order could never have been extended by the Company Law Board under Regulation 44 of the Company Law Board Regulations, 1991 or under any provisions of law. It is submitted that in any event the order directing the appellant not to precipitate the matter pertaining to

the issuance of convertible warrants cannot be passed under Rule 44 of the Company Law Board Regulations 1991 on the basis of an oral application. It is submitted that the Company Law Board could have considered the prayer for interim relief as regards the decision taken by the Board of Directors of the appellant in its meeting held on 18th May, 2009, only after the amendment application was allowed. It is submitted that the impugned order passed without jurisdiction, is in violation of the law laid down by the Hon''ble Supreme Court in Shanti Prasad Jain (supra) and is also in violation of the decision of this Court dated 16th July, 2009, and has occasioned a serious miscarriage of justice. It is, therefore, submitted that the impugned order be set aside.

6. Mr. Bookwala, learned Senior Advocate appearing for respondent No. 1 has submitted that the appellant by the present appeal is unnecessarily making a hue and cry as regards the order passed by the Company Law Board dated 27th July, 2009, because according to respondent No. 1 it appears that the appellant company has abandoned its decision taken by the Board of Directors of the appellant in its meeting held on 18th May, 2009 in relation to issue of convertible warrants and have instead in its Board meeting held on 25th July, 2009 approved the right issue of equity shares in proportion of 1:1 at the price of Rs. 150/- per equity share including the premium of Rs. 140/- per equity share on terms and conditions decided by the company. It is further submitted by Mr. Bookwala that since the appellant opposed the amendment application made by respondent No. 1 before the Company Law Board on 27th July, 2009 and sought time to file their reply the Company Law Board was justified in granting interim relief in favour of respondent No. 1 and against the appellant pending hearing of the amendment application and until the Company Application filed by respondent No. 1 for interim reliefs is decided. Mr. Bookwala has relied on the decision of the Hon''ble Division Bench of this Court in the case of Dr. Bais Surgical and Medical Institute Pvt. Ltd. and Ors. v. Dhananjay Pande and Ors. reported in 2005(128) Comp Cas 273 wherein the Hon''ble Division Bench of this Court, dismissing the appeal filed from the order of Company Law Board in a petition under Sections 397 and 398 and directing the parties to maintain status quo as regards the property and shares has inter-alia held that where an order serving the nature of a short-lived and almost ex-parte and adhoc arrangement is passed, the challenge ought to be based on such ground that the order could be seen to be such that by no stretch of interpretation of pleadings such order could be wholly sustained. Mr. Bookwalla relying on the said decision has further submitted that no prejudice whatsoever is seen to have been caused to the appellant due to the impugned order and, therefore, it would be proper to leave the parties to avail of the option of approaching the Company Law Board and on completing their pleadings to move the Company Law Board for disposal of the application for interim relief.

7. I have considered the submissions advanced on behalf of the senior Advocates appearing for the appellant as well as respondent No. 1. Admittedly, the company petition was filed on 14th may, 2009 and served on the appellant on 16th May, 2009. An application for interim reliefs was to be made by the

petitioners on 21st May, 2009. In the meantime at the meeting of the Board of Directors held on 18th May 2009, a decision in relation to the issue of convertible warrants of equity shares on preferential basis was taken. Since the said decision was taken subsequent to the filing of the petition, admittedly it did not form the subject matter of the petition. However, on 21st May, 2009 respondent No. 1 tendered Company Application No. 95 of 2009 before the Company Law Board and inter alia sought to restrain the appellant from giving effect to the decision in relation to the issue of convertible warrants, taken at the Board meeting of the appellant held on 18th May, 2009. This relief sought by respondent No. 1 was granted by the Company Law Board by its order dated 22nd May, 2009. The said order dated 22nd May, 2009, passed by the Company Law Board was set aside by this Court by its order dated 16th July, 2009 in Appeal No. 35 of 2009 which was also filed by the present appellant. This Court in its said order dated 16th July, 2009 whilst setting aside the order of the Company Law Board dated 22nd May, 2009, inter-alia held/observed/ directed as follows:

i) The Decision taken by the Board of Directors in its meeting held on 18th May, 2009 had not been challenged in the main petition. In paragraph 35 of the decision of the Hon''ble Apex Court in the case of Shantiprasad Jain (supra) the Hon''ble Apex Court has observed that the matters which were not part of the petition cannot be taken into account for considering the interim application.

ii) No reason has been recorded by the Company Law Board which necessitated issuance of an injunction as is ordered against the appellant and its Board of Directors. It would be a different matter if the Board were to consider all relevant aspects for grant or non grant of interim reliefs such as prima facie case, balance of convenience and irreparable loss and record its opinion one way or the other on the contentious issue.

iii) In the circumstances the only option available to the Court is to set aside the impugned order and to relegate the parties for reconsideration of application on its own merits in accordance with law.

iv) The impugned decision is manifestly wrong and untenable. The appropriate course is to set aside the impugned decision and instead relegate the parties before the Board for reconsideration of the application No. 95 of 2009, which will have to be considered on its own merits and in accordance with law after giving fair opportunity to both sides to file the affidavit and/or to amend the pleadings, as may be advised if permissible by law.

v) Upon submission of the Counsel for the respondents, that the respondents may consider taking the matter in appeal an order directing the appellant to maintain status quo for a period of two weeks, is ordered directing the appellant not to precipitate the matter with regard to preferential issue for a period of two weeks.

7. After the aforesaid order was passed by this Court on 16th July, 2009, respondent No. 1 admittedly preferred an SLP before the Hon''ble Supreme Court

of India being SLP (Civil) No(s) 177715-17716/09 impugning the order passed by this Court dated 16th July, 2009.

8. Respondent No. 1 also moved the Company Law Board by way of Company Application No. 138 of 2009 seeking amendments of the Company Petition. Respondent No. 1 by the said amendment application sought to add to the petition the facts pertaining to the decision of the Board of Directors of the appellant dated 18th May 2009 and also seek reliefs against the said decision. The said Company Application was served on the appellant on 23rd July, 2009 and was circulated for urgent reliefs on 27th July, 2009. At the request of the appellant, the Company Law Board by its order dated 27th July, 2009, placed the amendment application on 6th August, 2009, for hearing i.e. after 10 days. The learned Member of Company Law Board inter alia also passed the following order on the oral application of respondent No. 1.

Till the amendments to the petition are completed and interim prayer is heard the respondents are directed not to precipitate the matter as envisaged by Justice Khanwilkar at Bombay High Court and the said two weeks extension given by the Hon'ble High Court is further extended till interim relief in this petition is decided by this Bench. This order is issued under Rule 44 of the Company Law Board Regulations, 1991.

9. When the aforesaid order dated 27th July, 2009, was passed by the Company Law Board, the order passed by this Court dated 16th July, 2009, setting aside a similar order passed by the Company Law Board on 22nd May, 2009, was admittedly before the Company Law Board. However, the Company Law Board has clearly disregarded the order passed by this Court dated 16th July 2009 and in effect passed the same order on 27th July 2009 which becomes clear from the following:

i) Though the amendment application pertaining to the decision of the Board of Directors of the appellant dated 18th May 2009 was not allowed on 27th July 2009 and, therefore, was not part of the petition on 27th July 2009 the Company Law Board disregarded the decision of the Hon'ble Apex Court in Shanti Prasad Jain (supra), observing that the matters which were not part of the petition cannot be taken into account for considering the interim application and the decision of this Court dated 16th July, 2009, setting aside a similar earlier order of the Company Law Board and once again passed the same interim order, pertaining to the decision of the Board of Directors of the Appellant dated 18th May, 2009.

ii) Though in the order of this Court dated 16th July 2009 whilst setting aside the earlier order of the Company Law Board dated 22nd May, 2009, it was categorically observed that no reason has been recorded by the Company Law Board which necessitated issuance of the injunction order dated 22nd May, 2009 and that it would be a different matter if the Board were to consider all the relevant aspects for grant or non grant of interim relief such as prima facie case,

balance of convenience and irreparable loss and record its opinion one way or the other on the contentious issue, the Company Law Board in its impugned order once again passed an interim order having the same effect as that of its earlier interim order dated 22nd May, 2009, without giving any reasons and without considering all the relevant aspects.

iii) The earlier order of injunction dated 22nd May, 2009, passed by the Company Law Board against the appellant in application No. 95 of 2009, was set aside by this Court as being manifestly wrong and untenable and it was categorically observed by this Court that the said application No. 95 of 2009 will have to be considered on its own merits in accordance with law after giving fair opportunity to both sides to file the affidavit/s and/or to amend the pleadings, as may be advised if permissible by law. Despite the said order of this Court, an oral application was made for the same reliefs prayed for in application No. 95 of 2009 and orders having effect of the reliefs sought in application No. 95 of 2009 were passed without giving fair opportunity to both sides to file the affidavits and/or to amend the pleadings pending hearing and final disposal of application No. 95 of 2009.

10. Respondent No. 1 was well aware that the order of status quo granted against the appellant for a period of two weeks by an order of this Court dated 16th July, 2009, was only to enable the respondent No. 1 to prefer an appeal from the said order dated 16th July, 2009 pursuant to which an SLP was in fact filed before the Hon"ble Supreme Court impugning the order of this Court dated 16th July 2009. The Company Law Board wrongly proceeded to extend the said order, that too on an oral application of respondent No. 1 and without giving any reasons in support thereof. The Company Law Board has in the impugned order recorded that the order is issued under Rule 44 of the Company Law Board Regulations 1991. Rule 44 of the Company Law Board Regulations reads as under:

44. Saving of inherent power of the Bench: Nothing in these Rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.. Apart from the fact that the Company Law Board cannot use its inherent power to extend the time granted by this Court to the first respondent No. 1 for a specific purpose, the Company Law Board cannot exercise its inherent powers to pass orders without jurisdiction or in utter disregard to the orders passed by the Hon"ble Apex Court or the High Court.

11. The submission advanced by Mr. Bookwala, Senior Advocate on behalf of respondent No. 1 that the appellant company has abandoned its decision taken at the meeting of the Board of Directors on 18th May 2009 is not admitted by the appellant. The submission of Mr. Bookwala that the impugned order was passed because the appellant asked for time to file an affidavit, needs to be forthwith rejected. An interim order passed by the Company Law Board without jurisdiction and without giving reasons and in utter disregard to the orders passed by the

Hon"ble Supreme Court and this Court, cannot be sustained on the ground submitted by Mr. Bookwala. For the very same reasons, the decision in the case of Dr. Bais Surgical and Medical Institute Private Limited (supra) will be of no assistance to respondent No. 1.

12. Before I part with this order, I am inclined to observe that one of the main pillars on which the legal system in any society rests, is Judicial discipline. If judicial discipline is not adhered to the legal system would fail. One of the cardinal principles of judicial discipline is that every judicial officer, be it a member of a Tribunal or the Judge of any Court has to respect and follow the directions/decisions of a Court which is above it in the hierarchy, even if his view differs on a particular issue. No order of any judicial officer/Judge is expected to even remotely give an impression that it is trying to overreach the order of a higher court. Unfortunately, the impugned order falls short of such expectation.

13. In view of the aforesaid, I pass the following order :

i) Both the questions of law raised in paragraph three above are answered in the negative.

ii) The impugned order dated 27th July 2009 passed by the Company Law Board is set aside.

iii) The Company Law Board shall hear application No. 95 of 2009 latest by 16th September, 2009 and pass its reasoned order. Parties shall appear before the Company Law Board on 14th September, 2009 at 11.00 a.m. for fixing the date and time of hearing.

iv) The Company Law Board shall dispose of the company petition within six weeks from today.

v) Parties are at liberty to move the Company Law Board on an ordinary copy of this order duly authenticated by the P.A. of this Court.

14. The above appeal is accordingly allowed with costs. Company application No. 847 of 2009 also stands disposed of.