

(2009) 07 BOM CK 0014

In the Bombay High Court

Case No : Company Appeal No. 35 of 2009 in Company Application No. 95 of 2009 in Company Petition No's. 45/397-398/CLB/MB of 2009 and Company Application No. 699 of 2009

Shree Ram Urban Infrastructure Ltd.

APPELLANT

Vs

R.K. Dhall and Others (No. 1)

RESPONDENT

Date of Decision : 16-07-2009

Acts Referred:

Companies Act, 1956 — Section 163, 397, 398

Citation : (2010) 153 CompCas 146 : (2010) 100 SCL 335

Hon'ble Judges : A.M. Khanwilkar, J

Bench : Single Bench

Advocate : Aspi Chinoy, Venkatesh Dhond, Samshaq Garud and Komal Joshi, instructed by, Khaitan and Jayakar, for the Appellant; D.D. Madon, R.N. Narula, J.S. Bakshi and A. Dasgupta, instructed by Jhangiani, Narulla and D. Asso. for Respondent No. 1, Raju Subramaniam and Rahul Chitnis, instructed by Rajendra Gurjar, for Respondent Nos. 2, 4, 8, 10 and 12, for the Respondent

Judgement

A.M. Khanwilkar, J.—Heard counsel for the parties. Counsel appearing for the respective contesting respondents waive notice. As short question is involved, appeal is admitted and finally disposed of forthwith.

2. This appeal takes exception to the judgment and order passed by the Company Law Board dated May 22, 2009, on Application No. 95 of 2009. The said application was filed in Company Petition No. 45 of 2009 which in turn is filed under Sections 397 and 398 of the Companies Act, 1956, by 106 individual shareholders of Shree Ram Urban Infrastructure Ltd., the appellant herein. By the impugned decision the Board has in the first place restrained the appellant-company and its board of directors in implementing the decision taken in the board of directors' meeting held on May 18, 2009, in relation to the issue of convertible warrants of 25 million equity shares of Rs. 10 each till disposal of the main petition. Besides, the Board has directed the appellants to give necessary information prayed for by the petitioner in the interim prayer in the petition.

3. The question of law that arises in this appeal and on which question alone the impugned decision deserves to be reversed, amongst other, is : whether the interim relief granted by the Board during the pendency of the main petition without recording any tangible reason and more so objectively analysing the objection raised by the opposite party, can stand the test of judicial scrutiny and be said to be an order suffering from the vice of material irregularity.

4. In so far as the first direction is concerned, except issuing such direction no reason whatsoever has been recorded by the Company Law Board, which necessitated issuance of such direction. Besides this criticism, counsel appearing for the appellants has also invited my attention to the decision of the apex court in the case of Shanti Prasad Jain Vs. Kalinga Tubes Ltd., . In paragraph 35 of the said decision, the apex court has observed that matters which were not part of the petition cannot be taken into account for considering the interim application. According to the appellants, the decision taken by the board of directors in its meeting held on May 18, 2009, has not been challenged in the main petition at all, except however, a general prayer Clause 23.1.10 in respect of which no basis has been spelt out in the petition as filed. For the time being, suffice it to observe that the Board has not examined this aspect at all. Moreover, as aforesaid, no reason has been recorded by the Board, which necessitated issuance of injunction as is ordered against the appellants 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 relief such as prima facie case, balance of convenience and irreparable loss and record its opinion one way or the other on the contentious issues. In the circumstances, the only option available to this Court is to set aside the impugned order and to relegate the parties for reconsideration of the application on its own merits in accordance with law.

5. In so far as the second direction issued by the Board in the impugned decision directing the appellants to give necessary information prayed for by the petitioner in the interim prayer. The grievance of the appellants before this Court is that even with regard to this direction no reason whatsoever is recorded by the Board to justify the said direction. According to the appellants, the information sought by the petitioner is in no way covered within the scope of Section 163 of the Companies Act, 1956. For that reason the petitioner may not be entitled for the said relief at all. Besides, the appellants contend that the grievance of the appellants that the information has been pressed by the petitioners so as to misuse the same as they have been set up by the competitor builders, has been lightly brushed aside without examining the same on its own merits. Even this direction will have to be reconsidered by the Board and record a clear opinion as to the justification for issuing such direction against the appellant-company.

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 the 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.

7. The appeal as well as company application are disposed of on the above terms.

8. At this stage, counsel for the respondents submits that since the respondents may consider taking the matter in appeal, this Court may direct the appellants to maintain status quo as of today for a period of two weeks from today. Although this request is opposed by counsel for the appellants and it is submitted that the appellants may not be in a position to implement the decision of the board of directors without calling a general body meeting, which may take at least three weeks, even so, it is ordered that the appellants shall not precipitate the matter with regard to the preferential issue of board of directors for a period of two weeks from today.

9. It is made clear that this order will not preclude the Company Law Board to proceed with the hearing of the main petition to comply with the directions issued by the apex court for early disposal thereof.