

(2008) 04 MAD CK 0021

In the Madras High Court

Case No : C.M.A. No. 258 of 2008 and M.P. No's. 1 and 2 of 2008

Sugavaneswara Spinning Mills Ltd. and Others

APPELLANT

Vs

S. Arunachalam and Others

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152
Companies Act, 1956 — Section 10E(5), 284, 397, 398, 402
Company Law Board Regulations, 1991 — Regulation 44, 45

Citation : (2008) 143 CompCas 676 : (2008) 3 LW 105 : (2008) 5 MLJ 155 :
(2008) 88 SCL 31

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : H. Karthik Seshadri, for the Appellant; S. Parthasarathy, for K. Rajasekaran, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Aggrieved by the order of the Company Law Board, Additional Principal Bench at Chennai, in C.A. No. 82 of 2007 in

C.P. No. 9 of 2005 (S. Arunachalam v. Sugavaneswara Spinning Mills P. Ltd. [2008] 142 Comp Cas 611), this civil miscellaneous appeal has been preferred.

2. It is not in dispute that the respondents herein had originally approached the Company Law Board in C.P. No. 9 of 2005 with allegations of

oppression and mismanagement"" by the appellants Under Sections 397 and 398 of the Companies Act, 1956. As per Sections 397 and 398 of

the Companies Act, 1956, the shareholders are entitled to approach the Company Law Board, complaining of acts of oppression and

mismanagement by the majority shareholders.

3. According to the respondents herein, their rights as shareholders of the company are being affected by the actions of the appellants group. The

Company Law Board, with a view to protecting status quo, pending the company petition, passed an interlocutory order on August 18, 2005,

whereby directed the company not to give effect to any resolution, which might be passed at the annual general body meeting of the company to be

held on August 24, 2005, pertaining to the directorship of the first respondent, until further orders in the company petition.

4. It is also not in dispute that after several hearings and finally on account of the efforts of the Company Law Board and counsel for the parties,

there was understanding between the parties to settle the disputes between them and an order was passed, recording such a compromise entered

into between the parties on September 8, 2006.

5. According to the appellants, the order, dated September 8, 2006, was the final order in the company petition and all prior orders passed by the

Company Law Board, that were interlocutory in nature came to be merged with the final order.

6. Mr. H. Karthik Seshadri, learned Counsel appearing for the appellants submitted that once the final order is a compromise order, as envisaged

between the parties, the said order cannot be modified or altered by the Company Law Board, except with the consent of all the parties to the said

compromise. According to him, the order dated September 8, 2006, passed by the Company Law Board had made the Board ""functus officio

and hence, the Board ought not to have entertained C.A. No. 82 of 2007 filed by the respondents.

7. Mr. S. Parthasarathy, learned Counsel appearing for the respondents relied upon the decision of this Court reported in Shoe Specialities P. Ltd.

v. Standard Distilleries and Breweries P. Ltd. [1997] 90 Comp Cas 1, in support of his contention submitted that the Company Law Board has

not lost seisin over the matter and therefore, was entitled to pass further orders in C.A. No. 82 of 2005.

8. Learned Counsel appearing for the appellants placed his reliance on the decision reported in Manish Mohan Sharma and Others Vs. Ram

Bahadur Thakur Ltd. and Others, . According to him, the decision of this Court reported in Shoe Specialities P. Ltd. v. Standard Distilleries and

Breweries P. Ltd. [1997] 90 Comp Cas 1, is not applicable to the facts of this case. In this regard, he submitted the following reasons:

(a) The Company Law Board in that case was dealing with the situation where one group after having served an order, viz., to conduct a meeting

for election of directors of the company had obstructed the process and did not permit the proper conduct of the meeting. The chairman of the

meeting acted in a biased manner and did not allow the conduct of the meeting not acted in a fair and proper manner. Under the circumstances, the

parties had to once again approach the Company Law Board and seek directions to implement its orders. In the instant case, that is not the case.

The parties had consciously entered into a compromise and permitted the final disposal of the petition based on the compromise. It is not the case

of the respondents here that they had approached the Company Law Board again on the ground that the appellants were not implementing the

order. On the contrary, the respondents had admittedly come with a request that was not covered by the terms of the compromise order, and,

therefore, sought modification of the said order.

(b) The judgment in Shoe Specialities P. Ltd. v. Standard Distilleries and Breweries P. Ltd. [1997] 90 Comp Cas 1, was dealing with a situation

wherein an order of the Company Law Board was sought to be obstructed by one party and hence, the provisions of Regulation 44, viz., to

prevent the abuse of process of the court could be invoked. In the instant case, that is not the case. Here parties had with open eyes entered into a

compromise. There can be no case where the court would interfere with a compromise order, unless it is alleged that the order was obtained by

fraud, misrepresentation or by coercion. No such allegation of that kind has been made. There cannot be an afterthought and modification.

Reliance is made on Jayalakshmi Coelho Vs. Oswald Joseph Coelho, . Merely because, it pertains to the power of the family court it does not in

any way dilute the principles of Section 152 of the Code of Civil Procedure, which principle is equally embodied in Regulation 45 of the Company

Law Board Regulations.

9. According to learned Counsel appearing for the appellants, u/s 10E(5) of the Companies Act, 1956, the Company Law Board shall in the

exercise of its power and discharge of its functions under the Act or any other

law be guided by the principles of natural justice, shall act in its discretion and as such, the powers of the Company Law Board are limited.

10. According to Mr. S. Parthasarathy, learned senior counsel, under Regulation 44 of the Company Law Board Regulations, 1991, and in the

light of the decisions of the hon'ble apex court and this court, the Company Law Board, in order to meet the ends of justice and prevent the abuse

of process of law, can exercise jurisdiction and, therefore, there is no error or illegality in the impugned order, dated November 28, 2007, passed

by the Company Law Board.

11. In this civil miscellaneous appeal, the following questions of law arises for consideration:

1. Whether the consent order, dated September 8, 2006, has rendered the Company Law Board "functus officio"?

2. Whether the Company Law Board has exceeded its powers under Regulation 44 of the Company Law Board Regulations, 1991, by issuing the

order, dated November 28, 2007?

3. Whether the civil miscellaneous appeal has to be allowed, on the aforesaid grounds raised by the appellants herein?

12. The Company Law Board has passed the following consent order on September 8, 2006:

Heard learned Counsel representing the petitioners and the respondents. Taking into consideration the facts that (a) the company is a closely held

private limited company ; and (b) the long standing business relationship between the parties, this Bench suggested to them for any amicable

settlement of the disputes. Towards this end, it has been agreed by both the parties as under:

1. The company will allot shares afresh to the extent of shares held in the name of petitioners Nos. 1 and 6 and forfeited by the company, viz.,

9562 equity shares.

2. The parity in shareholding of petitioners Nos. 1 and 6 will be restored back as prevailed prior to April 7, 2005, by allotment of proportional

additional shares, viz., 944 equity shares in their favour at Rs. 260 per share.

3. The company will allot shares in terms of Clauses 1 and 2 on receipt of the consideration for the shares from petitioners Nos. 1 and 6 within

three weeks from the date of receipt of consideration.

4. Petitioners Nos. 1 and 6 will repay the company a sum of Rs. 52 lakhs towards the dues in full and final settlement within 9 months from this

date and simple interest will be charged after 6 months at 12 per cent, on the outstanding balance.

5. The civil suits filed by the sixth petitioner and the company will be withdrawn unconditionally.

6. The allotment of shares on account of forfeiture of shares and the additional shares will be allotted on receipt of consideration from petitioners

Nos. 1 and 6.

7. The petitioners are entitled to exercise their rights as shareholders of the company.

Liberty to apply.

13. In C.A. No. 82 of 2007 in C.P. No. 9 of 2005, the Company Law Board 13 has passed the impugned order. The operative portion of the

impugned order reads as follows (page 625 of 142 Comp Cas):

In view of my foregoing conclusions and in exercise of the powers under Regulation 44, it is hereby ordered as under:

(a) The removal of the first applicant from the office of director of the company, at the annual general meeting held on August 24, 2005, is declared

as invalid and the company shall file appropriate form in this behalf with the Registrar of Companies, Tamil Nadu, Chennai;

(b) The respondents shall pay all the dividend declared, if any, and deliver gold coins to applicants Nos. 2 to 5 in terms of this order, in the event

of any default on their part;

(c) The respondents shall pay the dividend as declared, if any, to applicants Nos. 1 and 6 for the period between the year 2003 and March, 2005

;

(d) The company will re-issue proper receipts in the name of the firms/controlled by applicants Nos. 1 and 6 for having discharged the liabilities

due to the company, in cancellation of the receipts already issued in favour of applicants Nos. 1 and 6 ; and

(e) All other contentious issues raised by the applicants are rejected for want of any merits.

14. As per the impugned order, the Company Law Board has considered 14 whether the respondents herein are entitled to the reliefs claimed by them, in the light of the consent order, dated September 8, 2006. According to learned Counsel for the appellants herein, no consent order could be modified or recalled or reviewed, save on the ground of fraud, mutual mistake or similar other grounds.

15. It is not disputed by both learned Counsel that after elaborate discussion 15 between the parties and their counsel, the parties had voluntarily agreed to end the dispute, which resulted in the consent order, dated September 8, 2006, being passed, which reads thus:

1. The company will allot shares afresh to the extent of shares held in the name of petitioners Nos. 1 and 6 and forfeited by the company, viz.,

9562 equity shares.

2. The parity in shareholding of petitioners Nos. 1 and 6 will be restored back as prevailed prior to April 7, 2005, by allotment of proportional

additional shares, viz., 944 equity shares in their favour at Rs. 260 per share.

3. The company will allot shares in terms of Clauses 1 and 2 on receipt of the consideration for the shares from petitioners Nos. 1 and 6 within

three weeks from the date of receipt of consideration.

4. Petitioners Nos. 1 and 6 will repay the company a sum of Rs. 52 lakhs towards the dues in full and final settlement within 9 months from this

date and simple interest will be charged after 6 months at 12 per cent, on the outstanding balance.

5. The civil suits filed by the sixth petitioner and the company will be withdrawn unconditionally.

6. The allotment of shares on account of forfeiture of shares and the additional shares will be allotted on receipt of consideration from petitioners

Nos. 1 and 6.

7. The petitioners are entitled to exercise their rights as shareholders of the company.

Liberty to apply.

16. Mr. S. Parthasarathy, learned senior Counsel appearing for the respondents drew the attention of this Court to Regulation 44 of the Company

Law Board Regulations, 1991, and submitted that the impugned order, dated November 28, 2007, passed by the Company Law Board is legally

sustainable, since the Board is vested with the inherent power to make such order as may be necessary for the ends of justice and to prevent the abuse of process of the Bench.

17. Regulation 44 of the Company Law Board Regulations, 1991 reads as follows:

44. Saving of inherent power of the Bench.½Nothing 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.

18. It is not in dispute that Regulation 44 of the Company Law Board Regulations, 1991, is more or less similar to that of the inherent powers available to any civil court, u/s 151 of the Code of Civil Procedure.

19. Learned Counsel appearing for the appellants contended that once the final order is a compromise order between the parties, the said order

can not be modified or altered by the court, regarding the compromise, except with the consent of all the parties to the said compromise. In

support of his contention, he placed reliance on the decision, Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, .

20. As per the ruling of the hon"ble apex court in Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, , the Company

Law Board, when it deals with an application u/s 634A, sits as an executing court, it is subject to all the limitations to which a court executing a

decree. It is well-settled that a executing court cannot go beyond the decree, unless the decree is sought to be executed is a nullity for lack of

inherent jurisdiction. However, as per Regulation 44 of the Company Law Board Regulations, 1991, the Board is having inherent power to make

such orders, as may be necessary for the ends of justice. Therefore, only on the facts and circumstances of the case, the Company Law Board can

be ""functus officio"" and while passing orders, to meet the ends of justice or to prevent abuse of process of the Bench, it is vested with the power

under Regulation 44 of the Company Law Board Regulations, 1991.

21. It is not in dispute that as per order, dated September 8, 2006, the 21 respondents herein as petitioners Nos. 1 and 6 had to repay the

company a sum of Rs. 52 lakhs towards the due in full and final settlement within nine months with 12 per cent, simple interest after six months and

the same was complied with. It has not been disputed that the sixth petitioner

herein withdrew the civil suits filed by the sixth petitioner therein, pursuant to the compromise order, dated September 8, 2006. It is not in dispute that the respondents herein who were petitioners to the consent order were entitled to exercise their rights as shareholders of the company, as per the said consent order.

22. In the impugned order passed in C.A. No. 82 of 2007 in C.P. No. 9 of 22 2005, it has been made clear that the right of a shareholder would include the right to participate in the management. The first applicant claims to be a director for the past 24 years and according to him, which remain un-contravened by the respondents, who are the appellants herein. As per the impugned order, the company had convened on August 24, 2005, its annual general body meeting, during the pendency of the company petition. The applicants expressed their concern on the possible removal of the directors, belonging to the petitioners group (the respondents herein) and, therefore, the Bench, by an order, dated August 18, 2005, while permitting the company to go ahead with the annual general body meeting on August 24, 2005, directed that "...the directors belonging to the petitioner group will continue to be the directors, irrespective of the decision that may be taken at the said meeting until further orders".

23. As per the impugned order, dated November 28, 2007, it has been brought to light that the consent order, dated September 8, 2006, had been passed, subject to the earlier order of the Board, dated August 18, 2005, however, it was ignored by the appellants by giving scope to modify the consent order. For passing the impugned order, the Company Law Board has also relied on the decisions, Smt. Neelu Kohli v. Nikhil Rubbers P. Ltd. [2007] 137 Comp Cas 374, and I.T.C. Limited Vs. George Joseph Fernandes and Another, . The Company Law Board has relied on the decisions to pass the impugned order in favour of the applicants, who are the respondents herein, in order to protect the rights of the shareholders.

24. The reasons stated in the impugned order, dated November 28, 2007, by the Board is that the appellants herein, taking advantage of the consent order, dated September 8, 2006, ignoring the earlier order of the Board, dated August 18, 2005, successfully have excluded the first applicant (the first respondent herein) from the office of the director of the

company, which is unjustified, as per the impugned order. It has further opined that by applying the same yardstick, the appellants herein can exclude the remaining directors belonging to the applicants group (the respondents herein) from the post of directors, under the guise of the consent order, dated September 8, 2006.

25. The exclusion of the first applicant (the first respondent herein) from the office of the director, ignoring the order, dated August 18, 2005, is contrary to the consent order. As per the impugned order, the first respondent herein cannot be deprived of his directorship in the company. The criminal complaints lodged by the first respondent against the appellants herein will not in any way disentitle him to be in the board of the company and the respective parties are to workout their remedies before the competent authorities. The Company Law Board has also found that it cannot conclusively be asserted that the first respondent herein had acted against the interest of the company by merely filing of the complaints against the appellants, more so, when there is no material to show that the shareholders removed the first respondent from the office of the director for having acted against the interest of the company, by filing any false complaint.

26. The Division Bench of this Court in *Shoe Specialities P. Ltd. v. Standard Distilleries and Breweries P. Ltd.* [1997] 90 Comp Cas 1, has held that when a case of oppression is made out u/s 397 of the Companies Act, 1956, it is only within the power of the Company Law Board to end the matter complained of and to make such orders as it thinks fit. The Board is empowered to remove the board of directors so that the affairs of the company can be set right. It is only under the authority of the Company Law Board and also under its supervision, that the board of directors are being removed. The scope of Section 284 of the Companies Act is entirely different. For cases coming under that section, there must be some charge against the individual director and it is the company that seeks the removal of that director in such circumstances. Only in such cases, notice contemplated u/s 284 of the Companies Act, 1956, is called for. When the petition u/s 397 itself is for removal of directors, no special notice is required as contemplated u/s 284 of the Companies Act.

27. In *M.S.D.C. Radharamanan Vs. M.S.D. Chandrasekara Raja and Another*, , the hon''ble apex court has held that the Company Law Board,

in exercise of his jurisdiction under Sections 397 and 398 read with Section 402 of the Companies Act, as per the requisite jurisdiction, direct

shareholder to sell his shares to the other, although no case for winding up of the company has been made out or no actual oppression on the part

of the director has been proved. It has been further ruled by the hon"ble apex court that in case where a case of oppression has been made out a

ground for the purpose of invoking the jurisdiction of the Board in terms of Sections 397 and 398 of the Act, a finding of fact to that effect would

be necessary to be arrived at. But, the jurisdiction of the Company Law Board to pass any other or further order in the interest of the company, if

it is of the opinion that the same would protect the interest of the company, the Board would not be powerless. The jurisdiction of the Company

Law Board in that regard must be held to be existing, having regard to the aforementioned provisions. Similarly, the Company Law Board may not

shut its doors on sheer technicality, even if it is found as of fact that unless the jurisdiction u/s 402 of the Act is exercised, there will be a complete

mismanagement in regard to the affairs of the company. Sections 397 and 398 of the Act empower the Company Law Board, to remove

oppression and mismanagement. If the consequences or refusal to exercise jurisdiction would lead to a total chaos or mismanagement of the

company, the Company Law Board would not be powerless to pass appropriate orders. The interest of the shareholders of the company, as a

whole is more vital and important.

28. In the instant case, learned Counsel appearing for the appellants contended that after passing the consent final order, dated September 8,

2006, the Company Law Board became ""functus officio"". The plain reading of the impugned order, dated November 28, 2007, would show that

there was an earlier order between the parties on August 18, 2005, whereby the company was permitted to go ahead with the annual general body

meeting on August 24, 2005. However, there was a specific direction that the directors belonging to the respondents group would continue to be

the directors, irrespective of the decision that may be taken at the said meeting until further orders. This condition was not complied with during the

annual general body meeting on August 24, 2005.

29. As per the impugned order, the consent order, dated September 8, 2006, is

subjected to the aforesaid earlier order, dated August 18, 2005, however, the appellants herein taking advantage of the order, dated September 8, 2006, excluded the first respondent herein from the office of the director of the company in an unjustifiable manner and by using similar yardstick, there is a possibility of removing other directors belonging to the respondents group from the post of directors under the guise of the consent order, dated September 8, 2006. The impugned order is clear that the Company Law Board has passed the order with the intention only to prevent the abuse of the process of the Bench and to meet the ends of justice. I am of the considered view that the Company Law Board is empowered with the inherent power under Regulation 44 of the Company Law Board Regulations, 1991, to make such order as may be necessary for the ends of justice ought to prevent abuse of process of the Bench.

30. On the above facts and circumstances, it is clear that the consent order, dated September 8, 2006, has direct nexus with the earlier order, dated August 18, 2005, whereby the directors belonging to the respondents group were given proper protection. However, under the guise of the order, dated September 8, 2006, cleverly bypassing the direction given by the Board on August 18, 2005, the annual general body meeting ""has been conducted on August 24, 2005. From the impugned order, it is clear that the intention of the Company Law Board is only to prevent the said abuse of process of the Bench and to meet the ends of justice and therefore, considering the facts and circumstances, I answer all the substantial questions of law raised by learned Counsel for the appellants against the appellants, holding that there is no error or infirmity in the impugned order passed by the Company Law Board, so as to exercise its power under Regulation 44 of the Company Law Board Regulations, 1991.

31. In the result, confirming the order passed by the Company Law Board, Additional Principal Bench, Chennai in C.A. No. 82 of 2007 in C.P.

No. 9 of 2005, dated November 28, 2007, (S. Arunachalam v. Sugavanewara Spinning Mills P. Ltd. [2008] 142 Comp Cas 611 this civil

miscellaneous appeal is dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.