

(2015) 09 BOM CK 0138

In the Bombay High Court

Case No : Company Appeal No. 5 of 2012 in Company Petition No. 80/397-398/
CLB/MB of 2010

Vidarbha Bottlers Private Limited and Others

APPELLANT

Vs

Devilal Hardeolal Jaiswal and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Citation : (2015) 09 BOM CK 0138

Hon'ble Judges : A.S. Chandurkar, J

Bench : Single Bench

Advocate : A.M. Gordey, Senior Advocate and R.D. Raskar, for the Appellant;
S.P. Dharmadhikari, Senior Advocate and D.V. Chavan, Advocates for the
Respondent

Final Decision : Dismissed

Judgement

A.S. Chandurkar, J—This appeal filed under Section 10F of the Companies Act, 1956 (for short the said Act) takes exception to the order dated 7-8-2012 passed by the learned Member, Company Law Board Mumbai (for short the Board). By said order, the parties to the proceedings were directed to make sealed bids to buy/sell their shareholdings.

2. A brief reference to the relevant facts would be necessary. The appellant No. 1 is a Company registered under provisions of the said Act. One group of shareholders comprises of appellant Nos. 2 to 11 while the other group comprises respondent Nos. 1 to 5. Both the groups had filed proceedings before the Board under provisions of Sections 397 and 398 of the Act. The appellants' group had filed Company Petition No. 76 of 2007 while respondents' group had filed Company Petition No. 46 of 2005. Both these petitions were heard together and by judgment dated 7-5-2008, the Board dismissed Company Petition No. 76/2007 and allowed Company Petition No. 46/2005. The illegal increase and allotment of thirty thousand equity shares in favour of appellant Nos. 2, 3 & 4 was declared as null and void and after setting aside the same, status quo ante

was restored. A further liberty was given to consider appointing of Auditors for carrying out investigative audit. An option was also given to the parties to buy/sell their 50% shareholding at Rs. 2,70,00,999/- or at a value as on 31-3-2008 whichever was higher.

3. After aforesaid order was passed, there was some exchange of communications between the parties and ultimately two company appeals came to be filed by the group representing appellant Nos. 2 to 11. The appeals were accompanied by applications for condoning delay. This Court on 4-2-2011 dismissed both the applications for condonation of delay on the ground that the delay in filing the appeals was more than 60 days and there was no jurisdiction to condone the delay beyond said period. This order was not challenged any further. In the meanwhile, respondents filed Company Petition No. 80/2010 against the Appellants under Sections 397 and 398 of the said Act. It was prayed that the shares of the Company be valued and appellant Nos. 2 to 11 be directed to sell their 50% shareholding in the Company to the respondents' group. The present appellants filed reply to aforesaid Company Petition and took the stand that the proceedings itself were not maintainable and that the petitioners before the Board were trying to execute the earlier order dated 7-5-2008. During pendency of said proceedings, the learned Member of the Board passed an order on 7-8-2012. It was held that with a view to end the matters complained of and to regulate the conduct of the affairs of the Company, it was necessary to direct the parties to make sealed bids and buy/sell their respective holdings. It is this order which is the subject matter of challenge in the present appeal.

4. Shri A.M. Gordey, the learned Senior Counsel for the appellants made the following submissions:

(a) That Company Petition No. 80/2010 filed by the respondents under Sections 397 and 398 of the said Act was not maintainable. It was submitted that by filing said proceedings, the respondents were attempting to execute the order passed in Company Petition No. 46/2005. According to the learned Senior Counsel, it was open for the respondents to execute said order by having recourse to the provisions of Section 634A of the said Act. In fact, there was no cause of action for filing the subsequent Company Petition and there were no pleadings therein as regards any act of oppression or mismanagement warranting invocation of such jurisdiction. It was, therefore, submitted that in such proceedings which were not maintainable, the impugned order could not have been passed.

(b) That in any event, no case was made out by the respondents before the Board under provisions of Sections 397 and 398 of the said Act as a basis for passing the impugned order. In fact, there was no foundation available for exercise of powers by the Board in the present case. It was submitted that by the earlier adjudication, the disputes had been settled and options had already been given in the earlier order dated 7-5-2008. It was, therefore, submitted that in absence of relevant facts for the purposes of invoking jurisdiction by the Board, the impugned order in absence of such foundation could not have been

passed.

(c) That the impugned order was unreasoned and hence, not sustainable. Neither had any prima facie finding been recorded before passing the impugned order nor was any satisfaction recorded by the learned Member warranting passing of the impugned order. It was, therefore, submitted that absence of reasons in the impugned order vitiates the same rendering it unsustainable. In that regard reliance was placed on the judgments of the Supreme Court in *The Siemens Engineering and Manufacturing Co. of India Ltd. Vs. The Union of India (UOI) and Another*, AIR 1976 SC 1785 : (1976) 2 SCC 981 : (1976) SCR 489 Supp , *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 and *ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others*, (2011) 266 ELT 422 : (2010) 12 JT 35 : (2010) 11 SCALE 554 : (2010) 13 SCC 427 : (2010) 10 UJ 5381 : (2010) AIRSCW 7105 . It was submitted that the impugned order itself was oppressive and it defeated the object sought to be achieved by Sections 397 and 398 of the said Act.

5. The aforesaid submissions were countered by Shri S.P. Dharmadhikari, the learned Senior Counsel on behalf of the respondents by urging that :

(a) There were sufficient pleadings in the Company Petition as regards various events that had occurred after 30-6-2008. It was submitted that the Company Petition was based on various events that had transpired after the earlier proceedings were decided. Reference in that regard was made to various averments in the Company Petition and it was, therefore, submitted that the same was liable to be entertained on merits. It was further submitted that in the earlier order dated 7-5-2008 only the directions issued in para 29 thereof were executable. The observations made in para 30 of said order did not result in passing any executable order. Only an option was given to buy/sell respective shareholdings. It was, therefore, submitted that no attempt was being made to execute the earlier order by filing subsequent Company Petition.

(b) That the Board had sufficient powers to pass such orders as it deemed fit if any act of oppression or mismanagement was brought to its notice. It was submitted that the impugned order was passed with a view to put an end to the deadlock and also with a view to end the matters complained of. It was submitted that these wide powers had been duly recognized by the Division Bench of this Court in *Bennet Coleman and Co. Vs. Union of India and Others*, (1977) 47 CompCas 92 . It was further submitted that even the Supreme Court had recognized the wide amplitudes of such powers in its judgment in *M.S.D.C. Radharamanan Vs. M.S.D. Chandrasekara Raja and Another*, AIR 2008 SC 1738 : (2008) 3 CLT 596 : (2008) 143 CompCas 97 : (2008) 2 CompLJ 496 : (2008) 3 SCALE 650 : (2008) 6 SCC 750 : (2008) 83 SCL 451 : (2008) 1 UJ 583 : (2008) AIRSCW 2402 : (2008) 2 Supreme 502 . Reference was also made to the judgment of learned Single Judge of the Delhi High Court in *Venture India Properties P. Ltd. and Others Vs. Capt. Manmohan Singh Kohli and Others*,

(2011) 164 CompCas 251 : (2011) 123 DRJ 520 .

(c) That the impugned order had been passed after due consideration of the earlier proceedings as well as the facts occurring after the earlier adjudication. It was submitted that the reading of the impugned order as a whole along with the factual background would indicate that the impugned order had been passed after the learned Member of the Board found that the deadlock between the shareholders continued to operate. The impugned order had been passed after hearing the respective parties and after being satisfied that a case for issuing the impugned directions had been made out.

(d) That the appeal under Section 10F of the said Act did not give rise to any question of law and, therefore, there was no reason to interfere in the appeal.

6. I have given due consideration to the respective submissions and I have gone through the various documents filed on record. Before proceeding further, it would be apposite to refer to the legal position with regard to the scope of powers under Sections 397, 398 and Section 402 of the said Act:

(a) In Bennet Coleman and Co. (supra), it was held that "the position is clear that while acting under Section 398 read with Section 402 of the Companies Act the Court has ample jurisdiction and very wide powers to pass such orders and give such directions as it thinks fit to achieve the object and there would be no limitation or restriction on such power that the same should be exercised subject to the other provisions of the Act dealing with normal corporate management or that such orders and directions should be in consonance with such provisions of the Act.

(b) The Court is not bound by provisions of Section 402 of the said Act if in a particular fact situation the further relief is warranting even without a finding of oppression and the Board may grant such relief to do substantial justice - Sangramsinh P. Gaekwad and Others Vs. Shantadevi P. Gaekwad (Dead) thr. Lrs. and Others, AIR 2005 SC 809 : (2005) 123 CompCas 566 : (2005) 3 CompLJ 385 : (2005) 1 JT 581 : (2005) 11 SCC 314 : (2005) 57 SCL 476 : (2005) 2 SCR 624 : (2005) 1 UJ 284 .

(c) The powers under Section 402 of the said Act are residuary in nature and in addition to the powers available under Sections 397(2) and 398(2) of the said Act to enable the Board to make such order as it thinks fit with a view to bring to an end or to prevent the matters complained of or apprehended under Section 398(1) of the said Act - Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, AIR 2006 SC 1690 : (2006) 131 CompCas 149 : (2006) 4 CompLJ 289 : (2006) 3 JT 620 : (2006) 3 SCALE 275 : (2006) 4 SCC 416 : (2006) 67 SCL 91 : (2006) AIRSCW 1621 : (2006) 3 Supreme 339 .

7. The facts on record indicate that the appellant No. 1 Company was incorporated on 13-3-1987 with a share capital of Rs. 15,00,000/-. The authorized share capital was increased to Rs. 25,00,000/- on 19-9-1991. Both

groups had ten thousand shares each while five thousand shares remained unsubscribed. The Board of Directors comprised of six directors, three belonging to each group. According to the respondents, on 31-3-2005, the appellants group without due notice held an Annual General Meeting and increased the share capital from Rs. 25,00,000/- to Rs. 50,00,000/-. As a result of said shares being allotted to the group of the appellants, their shareholding became 80% while that of the respondents was 20%. The respondents had, therefore, filed Company Petition No. 46/2005 to question the allotment of shares effected on 31-3-2005. According to the respondents, they were willing to sell/buy shares at a value of Rs. 2,70,00,999/- but this offer was refused by the appellants who, in turn, filed Company Petition No. 76/2007. As stated above, both these petitions were decided by the Board on 7-5-2008 and the illegal increase and allotment of 30,000/- equity shares was set aside. The Board in said order had given an option to the parties to buy/sell their 50% shareholdings at a particular value. This order setting aside the illegal increase and allotment of thirty thousand shares with further liberty to consider appointing auditors to carry out the investigative audit for preceding five years has attained the finality.

8. It would be necessary to briefly notice the averments made in Company Petition No. 80/2010 filed by the respondents. In para 6.10 it is averred that the present appellants did not take any steps to give effect to the judgment dated 7-5-2008 in Company Petition No. 46/2005. It is also stated that the statutory records of the Company had not been amended/corrected in terms of said judgment. In para 6.11, it is averred that despite requests by the respondents, the appellants did not convene any Board meeting between 11-8-2008 and 15-8-2008 nor had the investigative audit being conducted. In para 6.21, it is averred that after the earlier proceedings were decided, the respondents had been kept away from the affairs of the Company and were not informed about its matters. No notices were received either of any Board meetings or the Annual General Meeting. In para 6.23, it is averred that the appellant No. 1 Company had not filed statutory reports under the said Act for the years from 2005-2006 onwards. In para 6.42, there is a reference made to letters received from certain Cooperative Banks where the Appellant No. 1 - Company had its accounts and it was informed that the credit balance available was nil. In para 6.45, there is a reference to a notice of default dated 12-8-2010 received from the Registrar of Companies calling upon the respondents to show cause why action should not be taken for contravention of various provisions of the said Act. In para 6.47 and 6.51, it is averred that aforesaid aspects have caused serious prejudice to the respondents as well as their interests in the Company. It is on the basis of aforesaid pleadings that it was urged that the subsequent Company Petition was tenable in law.

9. In the reply filed on behalf of the appellants, it has been stated that the respondents had themselves prohibited the audit of the Company from being carried out and that the respondents had also prevented holding of any Board meeting due to their non-cooperation. It is also stated that the appellants were

entitled to receive various amounts from the respondents and it was denied that any amounts had been siphoned of.

The learned Member while passing the impugned order has referred to the facts and circumstances of the case and has taken into consideration the earlier order passed by the Board. It has then observed with a view to end the matters complained of and to regulate the conduct of its affairs that the impugned order directing parties to make sealed bids was passed.

10. From the aforesaid, it is clear that the respondents had sought to make out a case of oppression and mismanagement by relying upon the various events that had occurred after the earlier proceedings were decided. It was stated that no Board meetings were held and show cause notices were being issued by the Registrar of Companies on account of noncompliance with various provisions of the said Act. Reference was also made to the financial affairs of the Company after the earlier proceedings were decided. It, therefore, cannot be said that Company Petition No. 80/2010 filed by the respondents was not maintainable. Merely because reference was made to the earlier proceedings decided on 7-5-2008, that by itself would not render the present proceedings untenable. The earlier adjudication could be referred to demonstrate the conduct of the appellants while making out a case of oppression and mismanagement. That the earlier order dated 7-5-2008 could be executed under provisions of Section 634-A of the said Act would not mean that the earlier adjudication had to be altogether ignored when it is the case of the respondents that despite earlier orders, the deadlock in the management of the affairs of the Company continued. The submission made on behalf of the appellants that the subsequent Company Petition was not tenable, therefore, cannot be accepted.

11. The nature and scope of powers available under Sections 402 and 403 of the said Act have been held to be wide enough to enable passing of appropriate orders with a view to achieve the object as contemplated by Sections 397 and 398 of the said Act. As held by the Supreme Court in *M.S.D.C. Radharamanan* (supra), the Board has sufficient power to pass an order to protect the interests of the Company. It was observed that on noticing a deadlock in the conduct of the affairs of the Company, the Board can pass an order keeping the interests of the Company in mind. The observations in aforesaid decision as well as judgment in *Venture India Properties* (supra) support the case of the respondents. Hence, considering the true purport of Sections 397, 398 and 402 of the said Act, it cannot be said that the learned Member of the Board fell into error in passing the impugned order.

12. Perusal of the impugned order does not indicate that the same is unreasoned as canvassed on behalf of the appellants. The same indicates that it has been passed after considering the facts and circumstances of the case and after considering the earlier orders passed. By observing that it intended to end the matters complained of and with a view to regulate the conduct of the affairs of the Company in future, it is clear that due consideration of relevant aspects has

been taken after which the impugned directions have been issued. It is well settled that the length of an order is not always decisive. If there is due reflection and consideration of relevant aspects, the order even if brief can be sustained. As observed by the Supreme Court in Board of Trustees of Martyrs Memorial Trust and Another Vs. Union of India (UOI) and Others, (2012) 10 JT 498 : (2012) 10 SCALE 122 : (2012) 10 SCC 734 , all long judgments or orders are not great nor are brief orders always bad.

The proposition of law as laid down in Siemens Engineering and Manufacturing Company Limited (supra), Mohindersingh Gill (supra) and Oryx Fisheries (supra) can hardly admit of any doubt. However, in the present case, it has been found that the impugned order has been passed after considering all relevant aspects and hence, the same cannot be termed as unreasoned for it to be set aside on said count. Hence, said submission also cannot be accepted.

13. In view of aforesaid discussion, it is clear that the appeal does not give rise to any question of law as contemplated by provisions of Section 10F of the said Act to warrant interference. The learned Member of the Board has rightly applied the settled legal position as regards the powers under Sections 397 and 398 of the said Act to the facts arising before it and has proceeded to issue necessary directions. The same are aimed with a view to regulate the smooth conduct of the affairs of the Company and to end the matters complained of. Thus, in absence of the appeal giving rise to any question of law, the impugned order does not deserve to be interfered with. The appeal, therefore, fails. The same is accordingly dismissed with no order as to costs.

14. At this stage, request is made for continuing the interim order granted by this Court for a period of four weeks. The request is opposed by the learned Counsel for the respondents. However, as the interim order is operating since long, it is continued for a period of four weeks from today.