(2008) 11 P&H CK 0075

In the Punjab And Haryana At Chandigarh

Vijay Kumar Chopra and Others	APPELLANT
Vs	
Smt. Sudarshan Chopra and Others Smt. Sudarshan Chopra and Others Vs Vijay Kumar Chopra and Others	RESPONDENT

Date of Decision : 04-11-2008

Acts Referred:
COMPANIES ACT, 1956 — Section 10F, 397, 398, 402, 403

Citation : (2009) 147 CompCas 267 : (2009) 153 PLR 149

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—These two appeals arise out of an order dated August 1, 2006 (Vijay Kumar Chopra v. Smt. Sudershan Chopra [2007] 140 Comp Cas 1), passed by the Principal Bench of the Company Law Board at New Delhi. It is relevant to briefly notice the factual background of the case (facts are being noticed from Company Appeal No. 21).

2. The parties to the present appeals are shareholders and directors on the board of the company, namely, "Hind Samachar Ltd.", a closely held company incorporated in August, 1949, under the Indian Companies Act, 1913. The company has its registered office at Hind Samachar Buildings, Civil Lines, Jalandhar and branches at other places. The company is engaged in printing and publishing of newspapers, journals, magazines, books, etc., in Urdu, English, Hindi and Punjabi. One of its famous publications is Urdu daily newspaper "Hind Samachar". The company was initially formed by late Lala Jagat Narain, a renowned journalist of his time who was father of appellant No. 1 in Appeal No. 21 of 2006 along with Ramesh Chander, the other son of Lala Jagat Narain who was the husband of respondent No. 1 and father of respondents Nos. 2 and 3. Appellants Nos. 1 to 4 and respondents Nos. 1 to 4 are the directors on the board of the company whereas appellant No. 1 is holding the post of chairman and managing director.

3. It is alleged that on the basis of certain allegations of oppression and

mismanagement on the part of the respondents in Appeal No. 21 of 2006, a company petition under sections 397, 398, 402 and 403 of the Companies Act came to be filed by the appellants in Appeal No. 21 of 2006 before the Company Law Board being Company Petition No. 76 of 1999. Amongst various prayers, the primary prayer made was division of the company between the two groups comprising the family members of appellant No. 1 Vijay Kumar Chopra (appellants Nos. 1 to 4) and family of respondent No. 1 (respondents Nos. 1 to 4). In the aforementioned petition, the Company Law Board asked the appellant in Company Appeal No. 21 of 2006 to submit the proposal for division. Initially, a proposal dated February 3, 2000, was submitted. However, before the proposal could be accepted, it was sought to be modified and followed by another proposal dated March 7, 2000 (annexure A2 in Company Appeal No. 21 of 2006). The Company Law Board vide its order dated May 17, 2004, decided the company petition with various directions relating to the division of the company amongst the two groups (hereinafter referred to as group B comprising of appellants Nos. 1 to 4 and group A comprising of respondents Nos. 1 to 4) to be apportioned in two shares. Besides the division of various assets, the Company Law Board also directed division of the areas of operation of the company on the basis of operation of its units. At the relevant time and even today, the company has four main units at Jalandhar, Ambala, Delhi and Jaipur. Group B was allowed Jalandhar and Ambala zones and related areas whereas group A was given Delhi and Jaipur units and related areas. This was primarily on the basis of the control of the units with the two warring groups respectively. The Company Law Board also found that besides the assets and properties of the company, the groups were also having some partnership firms comprising of the family members of the two groups engaged in various business activities related and ancillary to the business of the company. The Company Law Board also directed the complete segregation between the two groups including the properties held by the partnership firms.

4. It appears that the respondents were dissatisfied with the order of the Company Law Board dated May 17, 2004. This order came to be challenged before this Court in Company Appeal No. 10 of 2004. During the course of hearing of the aforesaid appeal, the parties arrived at a mutual settlement in respect of the division of the company and various other properties held by partnership firm. The mutual settlement was duly recorded by this Court in the aforesaid appeal and the appeal came to be disposed of vide order dated October 19, 2005, which is reproduced in the later part of this judgment.

5. After recording the settlement, this Court relegated the parties to the Company Law Board for implementation of settlement between the parties. Consequent upon the aforesaid order dated October 19, 2005, the parties again appeared before the Company Law Board. The Company Law Board has passed the order dated August 1, 2006, impugned herein. The Company Law Board issued various directions for division of the assets and properties of the company by interpreting the settlement arrived at and recorded by this Court in its order

dated October 19, 2005. Both the sides have preferred separate appeals against the order of the Company Law Board dated August 1, 2006. Group B has preferred Appeal No. 21 of 2006 challenging some of the directions of the Company Law Board whereas group A has preferred Company Appeal No. 22 of 2006 challenging some of the directions. In sum and substance, both the parties are aggrieved of the order of the Company Law Board. The Company Law Board in its order dated August 1, 2006, issued various directions. The appellants in Company Appeal No. 21 of 2006 (group B) are aggrieved of the following directions of the Company Law Board:

(a) to release Rs. 24 crores in favour of group A ;

(b) to allow the group A to exercise further option under the settlement dated October 19, 2005 ;

(c) to refer the matter to the retired judge of the High Court for implementation of proposal dated March 7, 2000.

6. To the contrary, the appellants in Company Appeal No. 22 of 2006 (group A) are aggrieved of the directions of the Company Law Board to the extent it has fixed March 31, 2000, as the effective date for determining the division of assets and liabilities of the company and settlement of accounts.

7. From the perusal of the order dated October 19, 2005, following settlement has emerged:

(a) Group A.-Entitle to lot No. 2 in terms of the proposal dated March 7, 2000, which, inter alia, includes the territories of Delhi and Jaipur.

(b) Group A.-Exercised the option to accept Rs. 24 crores under paragraph (XX) (I) of proposal letter dated March 7, 2000. This amount was to be deposited before the Company Law Board by way of bank draft to be transmitted to the group A within six weeks.

(c) Both the parties (groups) to maintain status quo in respect of the properties falling in their respective lots till final implementation of the proposal by the Company Law Board.

(d) Appellant No. 1-Vijay Kumar Chopra in Company Appeal No. 21 of 2006 (respondent No. 1 in CAPP No. 10 of 2004) to execute declaration under the Press and Registration of Books Act, 1876, as and when asked to do so by group A. The declaration to be filed within two weeks from the date of request. Such declaration shall be in respect of territories assigned to group A. He was also authorised to send such a declaration pertaining to the territories falling under the share of group B without reference to group A.

8. Order dated May 17, 2004, passed by the Company Law Board in C. P. No. 76 of 1999 was set aside by this Court in Company Appeal No. 10 of 2004 and matter remitted back to the Company Law Board for implementation of the mutual settlement dated October 19, 2005.

9. With a view to appreciate respective contentions of the parties in the present lis, it is imperative to notice the salient features of the proposal dated March 7, 2000, which is the basis for the settlement recorded by this Court vide order dated October 19, 2005. The parties to the compromise were constituted in two groups:

(1) Group A-represented by the respondents in Appeal No. 21 of 2006 and appellants in Appeal No. 22 of 2006, namely, Smt. Sudarshan Chopra, Shri Ashwani Kumar Chopra, Shri Arvind Chopra, Ramesh Chander and Sons, HUF through Ashwani Chopra, Ashwani Kumar, HUF, Arvind Chopra, HUF.

(2) Group B-represented by the appellants in Appeal No. 21 of 2006 and respondents in Appeal No. 22 of 2006, namely, Vijay Kumar Chopra, Smt. Swadesh Chopra, Shri Avinash Chopra, Amit Chopra, Vijay Kumar Chopra and Sons, HUF through Vijay Kumar Chopra, Karta, The Hind Samachar Ltd.

10. Similarly, the assets and properties to be divided between the two groups were also segregated in two lots with certain proposal of adjustments-lot No. 1 and lot No. 2. Lot No. 1 primarily consists of the following:

Item No. 1

Territories.-(1) Punjab, (2) Haryana (except Bhiwani, Faridabad, Gurgaon, Mahinder Garh and Rewari districts), (3) Himachal Pradesh, (4) Jammu and Kashmir, (5) Chandigarh, (6) Uttar Pradesh (Itawa, Kanpur (rural), Kanpur (urban), Unnao, Barawanki, Gonda, Basti, Gorakhpur, Deoria, Faizabad, Azamgarh, Jaunpur, Ballin, Gazipur, Sultanpur, Mirzapur, Varanasi, Allahabad, Partapgraph, Rai Bareli, Fatehpur, Banda, Hamirpur, Jalaun, Jhansi and Lalitpur).

Future territories.-Bihar, West Bengal, Madhya Pradesh, Maharashtra, Andhra Pradesh and Karnataka.

Note : Certain machineries and other materials indicated in the proposal were to be adjusted between the two lots, as per the details indicated in the proposal.

Item No. 2-Trade Marks/Trade Names.-Daily Hind Samachar, Jallandhar and Ambala, dailies Jagwani and Punjab Kesari, Jalandhar and Ambala Cantt.

Note : Besides the above certain machineries were also required to be shifted to lot No. 2 and some other adjustments as per the proposal. The proposal also includes future territories.

Lot No. 2

Item No. 1-Territoties-Delhi, Haryana (only Bhiwani, Faridabad, Gurgaon, Mohindergarh and Rewari districts), U. P. (except districts named in lot No. 1 above).

Future Territories.-Gujarat, Tamil Nadu, Orissa, Kerala, Madhya Pradesh and the entire country of Nepal.

11. In addition to above, Clause (xx) of the proposals also provide for compensation in lieu of certain equipments, etc., in the following manner:

(xx) The group allotted lot No. 2 shall at its option also either:

(1) be paid compensation of Rs. 24 crores (rupees twenty-four crores only) ; or

(2) be paid compensation of Rs. 17.50 crores (rupees seventeen crores and fifty lakhs only) and, in addition thereto, be allotted by way of transfer, the territories, viz., the districts of Hissar, Jind, Kaithal, Panipat, Rohtak and Sonepat in Haryana, whereupon the said territories will be catered to by the group allotted lot No. 2 and the group allotted lot No. 1 shall not circulate the daily Punjab Kesari in the said territories; or

(3) be paid compensation of Rs. 12.50 crores (rupees twelve crores and fifty lakhs only) on the following terms:

(a) The group allotted lot No. 2 shall exchange its Jaipur, unit with the Ambala Cantt. unit of lot No. 1, along with their respective land, buildings, machineries and equipment''s with accessories.

(b) The entire territory of the State of Haryana, in respect of the daily Punjab Kesari shall stand transferred to lot No. 2.

(c) The copies of Punjab Kesari being distributed from Ambala unit to the Union Territory of Chandigarh and the States of Himachal Pradesh and Punjab shall be discontinued and the said territories shall be catered to by the group allotted lot No. 1.

(d) The territory of Rajasthan and Jaipur unit in respect of the daily Punjab Kesari shall stand transferred to lot No. 1.

(e) The copies of daily Punjab Kesari published from Delhi/lot No. 2 unit/s and being distributed in the State of Rajasthan shall be discontinued and the said territory of Rajasthan shall be catered to by the group allotted lot No. 1.

12. The above compensation referred to in the three alternatives outlined hereinabove shall be paid by Hind Samachar Ltd., to the group allotted lot No. 2 after pre-payment of deposits received by the company from the public and from cash available with the company in its< bank accounts and from its debtors. In the event of there being any shortfall in the amount available with Hind Samachar Ltd., to make payment of such compensation, the balance amount shall be paid by the group allotted lot No. 1.

13. Clause (xxi) of the proposals further gives option to lot No. 2 to relinquish rights and certain plant and machinery, equipments, etc., and/or exchange with assets allotted to lot No. 1 in respect of the items specified therein. The proposal also contains certain restrictions from using each other''s territories for certain/ fresh publication, etc. The proposal also contains arrangement till the final segregation of the assets; etc., and such proposal is contained in Clause (xxiii) of

the modified proposal dated March 7, 2000, which reads as under:

(xxiii). The company, Hind Samachar Ltd., and the four firms, viz., M/s. Hind Press, M/s. Hind Samachar Printing Press, M/s. Hind Press (Gurgaon) and M/s. Lakshmi Enterprises shall not form part of any of the lots. The groups allotted lot No. 1 and lot No. 2 shall form a separate company to which shall be transferred the units and assets comprised in lot No. 1 and lot No. 2 as the case may be. The group-A and group-B shareholders of the company who are to be allotted lot No. 1 and lot No. 2 as the case may be, shall allot to themselves 98.2 per cent. of the shares in their newly formed companies as the case may be and the balance 1.8 per cent. shareholding in the said newly formed companies shall be allotted to outside shareholders of the company, Hind Samachar Ltd. The company, Hind Samachar Ltd., and the said four firms shall continue to receive payments from its debtors and shall continue to make payments to its creditors and also discharge its liabilities under the proposal submitted to the hon''ble Company Law Board on February 3, 2000 and as modified herein and after discharging all its liabilities, including its liabilities to the group allotted lot No. 2, the balance amount remaining, if any, shall be distributed equally between the group A and group B and thereupon shall be voluntarily wound up and/or dissolved, as the case may be. In the event the dues of the group allotted lot No. 2 cannot be met from funds available with the company, the other group shall make the balance payments. The bank accounts of Hind Samachar Ltd., shall continue to be operated jointly till the liquidation of Hind Samachar Ltd., and no accounts with the same/similar names shall be opened or operated by either group and all books of account and vouchers of Hind Samachar Ltd., and the concerned four partnership firms shall be made over to such person as the hon''ble Company Law Board may nominate;- after the audited accounts of Hind Samachar Ltd., and of the said four firms being submitted to the hon''ble Company Law Board up to the date of its liquidation and/or dissolution as the case may be. The employees of the company belonging to and employed at the respective units of the company and/or the four firms shall stand transferred to the concerned newly formed companies formed for taking over the said units on and with effect from the date of passing of a consent order by the hon''ble Company Law Board and fresh letters of appointment will be issued to such employees by the concerned newly formed companies. Such transfer of either employment shall not constitute a break in their service and it will be deemed that there has been no interruption in their services. The terms and conditions of services applicable to the concerned employee after the transfer, shall not in any way be less favourable than those applicable to such employees immediately before their transfer. The concerned new employer shall be legally liable to pay the concerned employee, in the event of termination of his/her services, gratuity, retrenchment, compensation and other severance benefits on the basis that his/her services have been continuous and have not been interrupted by the transfer. The concerned new employer shall be responsible to defend all labour cases pending on the date of the passing of a consent order by the hon''ble Company Law

Board in various courts, tribunals and other authorities or those that may arise hereafter, but relate to the period prior to the date of passing of a consent order by the hon''ble Company Law Board, provided that:

(a) The costs and expenses incurred in connection therewith shall be shared equally by both group-A and group-B ;

(b) Both group-A and group-B would give full and whole hearted co-operation and assistance for the effective conduct of the aforementioned cases ; and

(c) The concerned courts, tribunals and other authorities wherein such cases are pending, would be intimated regarding the change in employer and the concerned new employer shall, thereafter, be liable to defend such cases.

14. Further, the parties were required not to create any encumbrance, etc., for which the provisions have been made under Clause (xxv)(g) which reads as under:

(xxv)(g). Each group shall give an undertaking on affidavit to the other group confirming that no encumbrance has been created by them in any form and no renting-out or sub-letting, assignment/transfer or creation of any third party interest has been effected by them in any manner, directly and/or indirectly, in respect of any assets or properties of the company Hind Samachar Ltd., or the firms, viz., M/s Hind Press, M/s. Hind Samachar Printing Press, M/s. Lakshmi Enterprises and M/s. Hind Press (Gurgaon).

15. There are certain more transitory provisions under Clause (xxv), some of the important and relevant provisions are noticed as under:

(k) A stock-level of 75 to 90 days of newsprint shall be maintained to ensure uninterrupted publications of the newspapers belonging to the company.

(l) During the transition period (not exceeding four months), both the groups would be entitled to visit the head office and all branches and units of the company and the four firms to supervise and assist in the due diligence exercise to be undertaken as indicated herein, handing over of books, making of inventories, removal of personal effects such as personal files, books, documents, journals, etc., of individual members of each group from their concerned offices and units and for this purpose each group may post officers of their choice at any office/unit and as may be deemed necessary . . .

(o) Once an option is exercised in terms of the proposal, parties will enter into a formal agreement and file terms of settlement in accordance therewith before the Company Law Board.

(p) The parties will extend complete co-operation and execute all necessary documents and take all necessary steps to make the settlement and its implementation complete.

(q) Compensation payable under this proposal shall be paid within a period of 90 days from the cut off date and the first instalment of such compensation being the amounts in various bank accounts of the Hind Samachar Ltd., shall be paid on the cut off date. Delay in payment beyond 90 days shall be liable to interest at 15 per cent. per annum and the amount shall be secured against appropriate guarantees.

16. It is admitted case of the parties that when the proceedings were initiated, group A, i.e., the appellants in Appeal No. 22 of 2006 was in charge and control of Delhi and Jaipur offices whereas group B, the appellants in Appeal No. 21 of 2006 was in charge and control of Jalandhar and Ambala offices.

17. While the matter was pending before the Company Law Board before the passing of the order dated May 17, 2004, in April, 2000, a new company under the name and style of Punjab Kesari P. Ltd., was formed by group A. During the pendency of the proceedings before the Company Law Board, group A filed C. A. No. 341 of 2005, C. A. No. 10 of 2006 and C. A. No. 134 of 2006, these applications have been disposed of along with the impugned order. C. W. P. No. 3095 of 2002 also came to be filed by group A in this Court which also resulted in dismissal. Group A after the passing of the consent order sent a communication dated November 11, 2005, to the group B (Vijay Kumar Chopra and Others) exercising their option of accepting Rs. 24 crores as contained in paragraph (xxi) of the modified proposal dated March 7, 2000 and also requested for fixing the cut off date for implementation of the proposal dated March 7, 2000. Group B filed C. A. No. 318 of 2005 before the Company Law Board for deposit of Rs. 24 crores in terms of the order dated October 19, 2005, passed by this Court and prayed for keeping this amount in an interest bearing deposit. It was further prayed for issuance of appropriate directions for working out the settlement in accordance with the order dated October 19, 2005, of the High Court of Punjab and Haryana. A further prayer was made to permit to utilise the credit facility sanctioned by the Vijaya Bank. In this application, it was mentioned that the company does not have requisite funds to pay Rs. 24 crores and reference was made to some of the amounts lying in the bank accounts of the company at Mumbai, Rs. 5.13 crores and also certain refunds from Income Tax, provident fund, etc. It may also be noticed that during the pendency of the proceedings, the group B also raised financial facilities from the Vijaya Bank against the assets of the company, i.e., lot No. 1 to the tune of Rs. 1,250 lakhs against the hypothecation of stock in trade in terms of sanction memo dated November 23, 2005 (annexure D1) in CAPP No. 21 of 2006. It appears that in response to the aforesaid application, group A filed C. A. No. 341 of 2005 before the Company Law Board seeking a restraint order against the group B from utilising or dealing with the amount reflected in the balance-sheet ending March 31, 2004 and March 31, 2005 and also from altering the status of the deposits, etc. These aforesaid applications have also been disposed of in terms of the impugned order.

18. The Company Law Board vide the impugned order gave specific findings on the following issues:

(i) That the entire settlement between the parties will have to be in terms of the proposal contained in the letter of group B dated March 7, 2000;

(ii) After the High Court recorded the settlement between the two groups, group B could not have borrowed money in the name of the company, notwithstanding the fact that the assets forming security to fall with that group only. However, a direction has been issued that since the group B has already availed of the credit facilities, it will in accordance with Clause XXIII to register a new company and the facilities availed of should be transferred in that company.

(iii) The Hind Samachar Ltd., shall be wound up in accordance with the terms of the proposal dated March 7, 2000 ;

(iv) Group A would be entitled to lot No. 2. If there are options exercisable under lot No. 2, they are entitled to exercise the said option. While exercising the option of accepting Rs. 24 crores which was one of the options provided under lot No. 2, it has not waived right of exercising options in respect of other clauses. Group A had rightly exercised options by letter dated November 11, 2005, which group B is bound to honour.

(v) The effective date to determine the shareable assets and liabilities should be the date on which both the groups started managing the affairs of the units under their control independently. Since the proposal was given on March 7, 2000, it is appropriate that the effective date in so far as shareable assets and liabilities in terms of the proposal should be March 31, 2000. The assets created and liability incurred after the said date by either of the parties in the affairs of the company pertaining to the units under their control shall be with that group only.

19. Challenge in the Appeal No. 21 of 2006 filed by group B is to the findings recorded by the Company Law Board on the issues Nos. (ii) and (iv). Further, grievance is raised regarding the last observations of the impugned order wherein the Company Law Board made following observations (page 16 of 140 Comp Cas):

19. If the parties desire that to oversee the timely implementation of the proposal dated March 7, 2000, an independent person should be appointed, I shall do so on filing of an application to that effect. Such a person shall be, preferably, a retired High Court judge.

20. I have heard learned Counsel for the parties.

21. Both the sides have addressed arguments on the question of maintainability of the appeals. Section 10F of the Companies Act, 1956, permits filing of an appeal on question of law arising out of the order passed by the Company Law Board. It is contended on behalf of Mr. Tikku, learned senior advocate that no question of law arises in Company Appeal No. 21 of 2006 and thus, the appeal itself is not maintainable. Similar argument is attempted to be made by Mr. Kathapalia in respect of Appeal No. 22 of 2006. To substantiate their arguments,

reference is made to a Constitution Bench judgment of the hon''ble Supreme Court in the cases of Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd., and SREE MEENAKSHI MILLS LIMITED Vs. COMMISSIONER OF Income Tax, MADRAS., , to argue as to what is substantial question of law.

22. I have gone through the questions of law framed in both the appeals. Without going into the intricacies of so many questions framed by both the sides, suffice it to say that both the sides have argued on the interpretation of the order dated October 19, 2005, passed by this Court and various conditions/ stipulations contained in the proposal dated March 7, 2000, which is integral part of the aforesaid order and form the basis for settlement/resolution of dispute between the parties. Interpretation of settlement, document or a decree itself constitutes a question of law. I need not dwell into this question in detail.

23. Mr. Arun Kathapalia, learned Counsel appearing on behalf of the appellants in Appeal No. 21 of 2006 and respondents in Appeal No. 22 of 2006 has seriously contended that the findings of the Company Law Board regarding the inability of the group B to raise credit facilities is not sustainable in law. According to him from the sanction memo, it is evident that the financial assistance was secured by group B only without imposing any liability upon group A. On this issue, Mr. Tikku, learned Counsel for respondents in Appeal No. 21 of 2006 and appellants in Appeal No. 22 of 2006 has responded by making a statement that though raising of financial assistance is in contravention of the settlement dated October 19, 2005, as also the undertaking contained in Sub-clause (g) of Clause (35) of the proposal dated March 7, 2000, but since the assets and liabilities of the company are yet to be finally settled, this should not be an issue between the parties. Mr. Kathapalia has also accepted this proposition. Hence no necessity to deal with this issue.

24. On the question of exercise of option, the contention raised on behalf of Mr. Kathapalia is that certain clauses of the proposal dated March 7, 2000, are rendered redundant with the passage of time. According to him, since the warring groups are holding their respective territories and units independently, without any interference from each other, it is deemed to be the settlement between the parties for all intents and purposes. Group A has already registered another company with the name of "Punjab Kesri P. Ltd." There has been no board meeting of the shareholders for the last so many years. The group A having exercised the option and received Rs. 24 crores cannot further exercise any other option. He has referred to paragraph (o) of Clause (xxv) of the proposal dated March 7, 2000, which is reproduced hereinabove.

25. Based upon the aforesaid submissions, it is stated that the option having been exercised by accepting Rs. 24 crores, no further option can be exercised by group A and thus, the findings of the Company Law Board are contrary to the very proposal of settlement and these findings are liable to be set aside. His further argument is that the proposal does not prescribe any time limit for

exercising the option and since the option having already been exercised coupled with receipt of Rs. 24 crores by the group A, it is not entitled to any further option or benefit and is estopped from claiming any further assets and properties from the group B. He has also referred to the order dated October 19, 2005 and submitted that the consent order passed by this Court is the final word and it does not contemplate any further options. It has also been urged that by entering into the settlement in terms of the order dated October 19, 2005, the clear intention of the parties was not to jointly continue thereafter. According to Mr. Kathapalia, the lot stands frozen on March 7, 2000, as all subsequent expansion and acts are done independently. According to him, since both the parties started independent operations in regard to their respective territories and units without any interference from each other, there is de facto severance of the status. He has referred to the observations of the Company Law Board in the order dated May 17, 2004, in paragraphs 21 and 22 wherein reference is made to the writ petition filed by group A and based upon certain averments made in the pleadings of the parties, the Company Law Board observed that both the parties are in de facto control of their respective units, though no formal division has taken place. To support his contention, he has further argued that since after 2000, both the parties have expanded their business interest either in the name of new companies or in their individual names or other entities and there has been no common payment of salaries, no board meetings since 1998 and thus all these acts clearly indicate that there has been division in reality without formal recording of the division. His further contention is that some of the clauses of the proposal dated March 7, 2000, stands superseded in view of the consent order dated October 19, 2005. Mr. Kathapalia referred to schedule of implementation annexed with the proposal dated February 3, 2000 and March 7, 2000, wherein the parties have agreed for separation being the cut off date on recording of the settlement by the Company Law Board. His contention is that since the compromise dated October 19, 2005, stands recorded, the Company Law Board has rightly accepted March 31, 2000, being the close of financial year as the cut off date between the parties and hence there is no question of any further option thereafter.

26. The appellant in Appeal No. 22 of 2006 is aggrieved of findings recorded 26 on issue No. (v) whereby the Company Law Board has fixed the cut off date between the parties as March 31, 2000. Mr. Tikku, learned senior counsel has contended that these findings and directions of the Company Law board are totally unwarranted, illegal and in contravention to the proposal dated March 7, 2000, as also the order dated October 19, 2005, passed by this Court.

27. Both the sides have attempted to interpret the order dated October 19, 27 2005, passed in Company Appeal No. 10 of 2004 in their own respective perceptions. It is, thus, necessary to understand the true import and purport and intention of order dated October 19, 2005. The aforesaid order reads as under (page 5 of 140 Comp Cas):

The appellants, as well as the respondents have decided to settle the matter amicably. It has been agreed that the appellants will be entitled to lot No. 2, in terms of the enclosures accompanying the letter dated March 7, 2000, constituting proposals formulated by the respondents (herein) and available on the record of the Company Law Board. It goes without saying that lot No. 1, as determined by the enclosures to the aforesaid letter dated March 7, 2000, shall be retained by the respondents. The aforesaid arrangement shall entail that the assets and liabilities of the company and the firms under lot No. 2 located in the territories of Delhi and Jaipur shall fall to the share of the appellants ; and the assets and the liabilities of the company and the firms under lot No. 1 in the territories of Jalandhar and Ambala shall fall to the share of the respondent. Additionally, the appellants have exercised their option to accept Rs. 24 crores under paragraph (XX) (1) of the modified proposal. This amount has been agreed to be deposited by the respondents with the Company Law Board, by way of bank draft, for onward transmission to the appellants, within six weeks from today.

In order to implement the settlement agreed to by the parties described in the foregoing paragraph, we consider it just and appropriate to relegate the parries to the Company Law Board, which will enforce the implementation of the aforesaid settlement. The Company Law Board is expected to complete the exercise, as expeditiously as possible, but certainly within a period of three months from today. The parties in person or through their representatives, to appear before the Company Law Board on October 27, 2005, during its afternoon session.

The parties shall maintain status quo in respect of the lot which falls to the share of the rival parries, till final implementation at the hands of the Company Law Board.

Respondent No. 1 has also agreed to execute declarations under the Press and Registration of Books Act, 1867, as and when requested to do so by the appellants. Such declarations shall be furnished by respondent No. 1 within two weeks of the said request. Needless to mention that the aforesaid request shall pertain to territories exclusively assigned to the appellants. Likewise, respondent No. 1 shall be entitled to execute such declarations on behalf of the respondents, without reference to the appellants within the territories assigned to the respondents.

The instant settlement has been recorded at the instance of learned Counsel for the rival parties, who have obtained the consent of their clients.

In view of the above, the impugned order passed by the Company Law Board is set aside and stands modified as above.

Disposed of accordingly.

Order dasti on payment of usual charges.

28. The beginning line of the order indicates that the parties have decided to settle their dispute amicably. Lot No. 2 has fallen to the share of group A along with the territories of Delhi and Jaipur whereas lot No. 1 along with territories of Jalandhar and Ambala to the share of group B. It has been further provided that group A (the appellants in Appeal No. 10 of 2004) would be entitled to lot No. 2 in terms of the enclosures accompanying the letter dated March 7, 2000, constituting proposals formulated by the respondent (group B) and the group B has been allowed to retain lot No. 1 as per the enclosures to the aforesaid letter dated March 7, 2000. This clearly means that the entitlement or the right of the parties shall be as delineated in the enclosure with letter dated March 7, 2000. I have already discussed certain conditions in the enclosures accompanying the letter dated March 7, 2000. The significant expression used in the letter dated March 7, 2000, is as under:

The proposal sent by our clients under cover of their letter of February 3, 2000 and the abovementioned modification constitute a composite proposal and the same is not severable in any manner. The said modifications seek to take care of omissions and anomalies contained in the earlier proposal and clarify the same by providing adequate details. The modifications incorporate the necessary modalities for division of the assets and business in an equitable manner and also make provision for the healthy growth of both the groups after division.

The said composite proposal is required to be implemented in the manner indicated in a schedule enclosed herewith (enclosure 4).

29. Further, from the reading of the proposal dated February 3, 2000 and modified proposal dated March 7, 2000, it is apparent that there are mutual obligations to be discharged by the parties to give effect to the proposal of settlement which, inter alia, includes surrender of certain properties, tenancy rights, transfer of machinery, division of certain properties, allocation of the employees distribution of the vehicles and payment of compensation for which reference can be made to various clauses of the proposal. As a matter of fact, from the modified proposal right from Clause I to XXXIII, it appears that the proposal provides the basis for segregation of the properties and assets of the company and other firms and properties belonging to the two groups jointly. It will not be out of context to say that each clause of the proposal requires implementation. Paragraph O of Clause XXV quoted hereinabove also provides execution of a formal agreement for settlement before the Company Law Board. Similarly, Clause XXVI requires winding up of the company and dissolution of the firms and settlement of accounts between the parties. In the above back-drop, the argument of Mr. Kathapalia that the order dated October 19, 2005, itself provides complete settlement is not only without substance but is fallacious. Order passed by this Court is in the nature of an agreement to divide the assets and properties amongst groups A and B in lots Nos. 2 and 1, respectively, and for which the actual division was to be effected by the Company Law Board. The order, dated October 19, 2005, per se is not a complete settlement between the

parties, without distribution of the assets, though this order read with order dated March 7, 2000, provides complete basis for mutual division of the property. As a matter of fact, the order dated October 19, 2005, read with proposal dated March 7, 2000, is a declaration of assets and properties and can be construed to be a decree defining the shares for which the execution is to be carried out by the Company Law Board. Therefore, the function of the Company Law Board was only to execute the order dated October 19,2005, in accordance with the conditions and stipulations contained in the proposal dated March 7, 2000. Sections 634 and 634A of the Companies Act, 1956, deal with the enforcement of the order of the court/Company Law Board which read as under:

634. Enforcement of orders of courts.-Any order made by a court under this Act may be enforced in the same manner as a decree made by the court in a suit pending therein.

634A. Enforcement of orders of Company Law Board.-Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the court within the local limits of whose jurisdiction,:

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.

30. The order dated October 19, 2005, is thus in the nature of a decree of civil court and the Company Law Board was required only to implement the order, i.e., to execute the decree without altering its terms. It is in this context that the impugned order is to be examined.

31. The question as to what is the nature and status of a compromise or a settlement has been considered by the hon''ble apex court in various judgments. In the case of Hansa Industries Pvt. Ltd. and Others Vs. Kidarsons Industries Pvt. Ltd., , while considering the enforceability of conditions of settlement between the parties, the hon''ble apex court observed as under (page 12 of 134 Comp Cas):

17. Clause 14 of the settlement being unambiguous, clear and categoric, it must be given effect to because one cannot term the said Clause 14 as vitiated by fraud or illegal being in breach of any statutory provision, or against public policy, or hit by the principle of impossibility of performance. The settlement was made bona fide by the parties to resolve all their disputes and all facts were known to the parties when they reached the settlement. With their eyes open and fully aware of their experiences of the past, they agreed to share the golf links property. The relevant clause in the settlement is not vitiated by any consideration which may impel the court not to give effect to that clause in the

settlement ...

32. Similar view has been expressed by the hon''ble apex court in the case of Salkia Businessmen''s Association and Others Vs. Howrah, Municipal Corporation and Others, , wherein it has been observed as under [2001] 6 SCC 691):

8. . . when the real and only question to be considered was as to whether the respondent authorities are bound by the orders passed by the court on the basis of the compromise memorandum and whether the proposed move on their part did not constitute flagrant violation of the orders of the court-very much binding on both the parties. The High Court failed to do justice to its own orders. If courts are not to honour and implement their own orders, and encourage party litigants-be they public authorities to invent methods of their own to short-circuit and give a go-by to the obligations and liabilities incurred by them under orders of the court-the rule of law will certainly become a casualty in the process-a costly consequence to be zealously averted by all and at any rate by the highest courts in the States in the country. It does not, in our view, required any extraordinary exercise to hold that the memorandum and terms of the compromise in this case became part of the orders of the High Court itself when the earlier writ petition was, finally disposed of on February 13, 1991, in the terms noticed supra, notwithstanding that there was no verbatim reproduction of the same in the order. The orders passed in this regard admit of no doubt or give any scope for controversy. While so, it is beyond one''s comprehension as to how it could have been viewed as a matter of mere contract between the parties and under that pretext absolve itself of the responsibility to enforce it, except by doing violence to the terms thereof in letter and spirit. As long as the earlier order dated February 13, 1991, stood, it was not permissible to go behind the same to ascertain the substance of it or nature of compliance when the manner, mode and place of compliance had already been stipulated with meticulous care and detail in the order itself. The said decision was also not made to depend upon any contingencies beyond the control of parties in the earlier proceedings.

33. In the case of Rama Narang Vs. Ramesh Narang and Another, , the hon''ble apex court has even gone to the extent of saying that wilful violation of terms of consent decree tantamounts to contempt. In the case of Gupta Steel Industries Vs. Jolly Steel Industries Pvt. Ltd. and Another, , the hon''ble apex court clearly laid down that compromise decree cannot be interfered with or modified by the court unless the parties agreed to the same.

34. In view of the ratio of the aforesaid judgments, it is settled proposition of law that a compromise or a settlement is as good and valid decree as passed by the court on adjudication of the issue and is enforceable.

35. It is equally a settled proposition of law that the executing court cannot be go behind the decree unless the decree is a nullity. In the case of Manish Mohan Sharma and Others Vs. Ram Bahadur Thakur Ltd. and Others, , the hon''ble apex court observed as under (page 159 of 131 Comp Cas):

28. Since 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 is subject. It is well-settled that an executing court cannot go behind the decree unless decree sought to be executed is a nullity for a lack of inherent jurisdiction ...

36. In the instant case, none of the parties have thrown any challenge to the terms of settlement as regarded in the order dated October 19, 2005, rather both the parties have placed reliance on the said order and have based their claims thereon. Thus, the terms of the consent order dated October 19, 2005, have to be enforced by the courts/authorities entrusted with the obligation of implementing the same.

37. The contention of Mr. Kathapalia that some of the clauses of proposal dated March 7, 2000, have been rendered redundant with the passage of time and stands superseded vide order dated October 19, 2005, cannot be accepted. From the order dated October 19, 2005, quoted hereinabove it is evident that it is a consent order. It goes without saying that this Court has only bound down the parties on the basis of their consent to carry out the proposal dated March 7, 2000, in its letter and spirit. The Clause (20) gives three options to the party allotted lot No. 2. Group A having been allotted lot No. 2 has exercised the option (1) for compensation of Rs. 24 crores and thus, the other two options are not available to it. But this does not prevent group A from exercising other options contained in other clauses of the proposal, e.g., Clause XXI gives option to the group A allotted lot No. 2 to relinquish certain plant and machinery allotted to it and opt for exchanging the same with the assets allotted to lot No. 1 in the manner provided therein. Similarly, there are various other options in the proposal dated March 7, 2000, that can be exercised by group A allotted lot No. 2. Thus, the contention of Mr. Kathapalia that after October 19, 2005, no further option is exercisable by group A under lot No. 2 is a self defeating argument and is in contravention to the order dated October 19, 2005, read with proposal dated March 7, 2000. The findings and directions of the Company Law Board permitting group A with lot No. 2 to exercise options is perfectly in consonance with the spirit of the order dated October 19, 2005 and needs no interference. The other grouse of the appellant in Appeal No. 21 of 2006 is against the observations of the Company Law Board to the effect that the financial assistance obtained from the Vijaya Bank contravenes, the undertaking. However, the order impugned in this regard needs no further directions, in view of the statement of Mr. Tikku that it will remain subject to the final settlement of accounts between the parties. The last complaint of Mr. Kathapalia is against the observations of the Company Law Board for appointment of an independent person, preferably High Court judge, also carries no weight. From the proposal dated March 7, 2000, it is evident that a large number of properties are to be divided, machineries to be transferred, accounts to be settled. This definitely needs the appointment of a commission to complete the necessary formalities for actual division of the assets. Thus, the observation of the Company Law Board

that the implementation be entrusted to an independent person, preferably the High Court judge is not only desirable but necessary. However, in paragraph 19, the Company Law Board has left it to the parties to make such arrangement, if they desire. A commission needs to be appointed to make actual division of the properties and assets amongst the two groups. The parties may suggest a common name or can give their own panels leaving it to the Company Law Board to nominate one person from each panel for actual implementation of its order, segregation of the properties/assets and settlement of accounts amongst the two groups.

38. In view of the above, I find no merit in Company Appeal No. 21 of 2006 which is accordingly dismissed.

39. As discussed hereinabove in Company Appeal No. 22 of 2006, the only grievance projected is fixation of a cut off date for division of the assets and liabilities as March 31, 2000. It is argued by Mr. Tikku, learned senior advocate that this cut off date has been arbitrarily determined without any basis. It is contended that the proposal was made on March 7, 2000, during the pendency of the proceedings before the Company Law Board. Its acceptance was conveyed on November 11, 2005, as the dispute reached this Court in Company Appeal No. 10 of 2004 against certain directions issued by the Company Law Board and it was only on October 19, 2005, that both the parties agreed for division of the assets and liabilities in accordance with proposal dated March 7, 2000. Till the company is wound up and the firms dissolved, members of both the groups continue to be shareholders/partners therein. It is further argued that there are so many mutual obligations which were required to be performed by each group and without the performance of such obligations, there cannot be division of the assets and liabilities. The cut off date has been arbitrarily fixed by the Company Law Board, even though the group B did not comply with its own proposal and even Rs. 24 crores being one of the options exercised by group A was not paid within six weeks from the date of the passing of the order dated October 19, 2005, as per the directions contained therein. Mr. Kathapalia has vehemently argued that there is no concept of cut off date in the proposal dated March 7, 2000 and thus, the proposal was required to be accepted to within two days as per the communication dated March 7, 2000 and thus, the Company Law Board has rightly determined the cut off date as March 31, 2000, which is the closing of the financial year.

40. To further substantiate his argument to support the direction of the Company Law Board regarding cut off date, it has been contended by Mr. Kathapalia that the lots stand frozen as on March 7, 2000, as all subsequent expansions and acts were performed by the respective groups independently and without any interference from each other. According to learned Counsel, this itself is sufficient to indicate the intention of the parties to severe their relations and part with the company of each other. He has also referred to the registration of a separate company under the name of "Punjab Kesri P. Ltd." by group A. He has further

referred to the various items from lot No. 2 which are in the possession and control of group A and also referred to some of the clauses contained in the proposal dated March 7, 2000, which, according to him, have become redundant with the passage of time and the acts of the parties.

41. To rebut the arguments of Mr. Kathapalia, Mr. Tikku has taken me to the proposal dated March 7, 2000 and pointed out that all the obligations under the proposal were to be discharged by group B who opted for lot No. 1 and there was hardly any reciprocal obligation upon group A to whom lot No. 2 was allocated. Regarding registration of the new company under the name of "Punjab Kesari P. Ltd.", it is argued that there was no prohibition in the proposal for registration of any such company. The only prohibition was fresh publications and no such fresh publication was taken out by group A. It is further contended that the cut off date fixed by the Company Law Board is illusory. He has also taken me to the pleadings of the group B filed before the Company Law Board to argue that no issue regarding cut off date was raised which has been decided by the Company Law Board.

42. Mr. Kathapalia has referred to and relied upon a judgment of the Principal Bench of the Company Law Board in the case of Prakash Nath v. Achal Nath [2002] 111 Comp Cas 711, wherein it has been observed as under (page 723 of 111 Comp Cas):

In the present case, the parties themselves had divided the company and each group has been managing the affairs of a particular division independent of the other for over ten years, but without formal division into two separate companies. It is the reason why the respondents are complaining that the liabilities of Division B would fall on the company to be taken care of by Division A. In view of this, the respondents have sought for allowing them to take decisions regarding Division B while the petitioners desire for formal division after pooling of the assets of the three companies. We have already held that the pooling of the three companies is beyond the scope of the consent order dated December 9, 1997. Since the company had already been divided and that the two groups are managing the affairs of the divisions independently for nearly ten years, it would be more appropriate to formalise the division of the company especially when we find that both the divisions are independently maintaining separate accounts which are consolidated for the purpose of preparation of the annual accounts of the company. Therefore, in exercise of our powers u/s 402 of the Act, we direct as follows : The petitioners will incorporate a new company in respect of Division B within a period of three months. All assets and liabilities of Division B as on date shall be taken over by the new company. The existing company will consist of Division A along with its assets and liabilities. All the assets acquired and liabilities incurred by or attributable to Division B with effect from November 30,1992, shall be with the new company and the assets acquired and liabilities incurred by or attributable to Division A shall be with the company.

43. Based upon the aforesaid observations, it is argued that the severance of the

relationship and independent working by the two groups is the only course to determine the cut off date. Thus, the directions of the Company Law Board in this regard are not only justified but the appropriate course. Mr. Kathapalia has also referred to the case of Cumana Ltd., In re [1986] BCLC 430, wherein the date of complaint of oppression is said to have been considered as the cut off date.

44. The aforesaid judgments have no application to the facts and the circumstances of the present case, in view of the concept of cut off date incorporated in the proposal dated March 7, 2000, between the parties.

45. From the schedule of implementation appended to the proposal dated March 7, 2000, it appears that there is concept of cut off date for division of the assets and liabilities amongst the parties. Clauses 2 and 3 of the schedule for implementation of the composite proposal reads as under:

2. One week after completion of four months from the date of the passing of the consent order by the hon''ble Company Law Board the parties shall have recorded by the hon''ble Company Law Board in compliance of the above clauses. The date of recording of such compliance by the Company Law Board shall be the cut off date.

3. On the cut off date, the group allotted lot No. 2 will be paid compensation payable to it. To the extent available with Hind Samachar Ltd., in its various bank accounts for this purpose and the group allotted lot No. 1 shall thereafter pay the balance, if any, within 90 days to the group allotted lot No. 2 failing which the group allotted lot No. 1 will be liable to pay interest at 15 per cent. per annum on the balance outstanding till such time full payment is made to the group allotted lot No. 2.

46. In terms of the aforesaid two clauses, the cut off date for separation and segregation of the two groups is one week on completion of four months from the date of recording of the consent order by the Company Law Board and with the compliance of the clauses of the proposal dated March 7, 2000. It is admitted case of the parries that proposal dated March 7, 2000, is yet to be complied with. Without going into the details of reasons and attributing causes of delay to one or the other party, suffice it to say that the proposals dated March 7, 2000, has not been complied with, despite lapse of almost three years from the passing of the consent order by this Court in Company Appeal No. 10 of 2004. Each party has tried to blame each other for delay/lapses. Be that as it may the fact remains that delay has been caused. The clauses contained in the proposal dated March 7, 2000, are yet to be complied with. It is also a fact which cannot be lost sight of that, both the parties are in control of their respective units and territories and carrying on their business to the exclusion of each other. It would be in all fairness and in the fitness of the circumstances that the cut off date may be fixed four months and one week after the passing of the consent order dated October 19, 2005 and thus, the cut off date would be February 25, 2006. It would be

convenient that if March 31, 2006, is fixed as the cut off date being the end of the financial year as on the said date, the parties shall be deemed to have severed their ties and acquired independent status. This is subject to compliance of all other clauses of proposals dated March 7, 2000. However, after this date, the parties shall have their separate obligations and any assets acquired by any of the parties after March 31, 2006, shall be construed to be their separate properties/assets and any liabilities incurred thereafter will also be the separate liabilities of the two groups. Appeal No. 22 of 2006 is accordingly allowed in the above manner and order of the Company Law Board to the extent it has fixed the cut off date as March 31, 2000, is hereby set aside. The Company Law Board shall forthwith implement this order in the light of the observations made hereinabove.

47. All ancillary applications shall stand disposed of.

No order as to costs.