

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : WINDING UP

Co. A(SB). No.7/2007

Date of decision: 3rd November, 2008

M/s Subhash Projects and Marketing Ltd. Appellants
Through: Mr. Ashish Makhija and Ms. Sanjana
Sharma, Adv.

VERSUS

M/s Tirupati Trade Comm Pvt. Ltd. Respondents
Through: Mr. Joydip Bhattacharya, Adv.

GITA MITTAL, J(Oral)

1. By this appeal, the appellant has assailed the order dated 8th March, 2007 passed by the Company Law Board in a petition under section 111A of the Companies Act, 1956.

2. Both the parties in the instant case are companies incorporated under the provisions of Companies Act, 1956. The respondent company claimed to be owner of 7500 equity shares of the appellant company purchased in 1994, bearing the following certificate numbers :- 2794, 5134, 6752, 2044, 12683, 8075, 3422, 8070, 8069, 8068, 8071, 8067, 7537, 12760, 12507, 12844, 6292, 2572, 2146, 2811, 11990, 3105, 2029, 2728, 8546, 3945, 6369, 5362, 5361, 20530, 6198, 8086, 12494, 17168, 2281, 2092, 5984, 2033, 3609, 8214, 2422, 2819, 2796, 2788, 2169, 6209, 17601, 12597, 2252, 3420, 2251, 2225, 3420, 2251, 2225, 2458, 6126, 8757, 8205, 6066, 6067, 534, 2299, 6394, 2658, 6070, 2714, 7477, 7478, 7512, 10249, 10250, 10251 By a registered letter dated 5th December, 1994, the respondent informed the appellant that these share certificates were either lost/mislodged and therefore the respondent was initiating court proceedings for stay. A request was made to the appellant not to transfer the share certificates.

3. Shortly thereafter, the respondent filed a suit bearing Suit No. 3540/1995 in the Ahmedabad City Civil Court praying for a prohibitory injunction against the appellant not to transfer 7500 equity shares in the name of any third person. It appears that by an ex-parte order made on 30th June, 1995, the Ahmedabad City Civil Court prohibited the appellant company from transferring the aforementioned 7500 equity shares to any third party. It is the appellant's contention that it has strictly abided by the order which was passed.

4. The respondent is stated to have thereafter initiated proceedings under section 111A of the Companies Act, 1956 against the respondent sometime in July, 2005 which were registered before the Company Law Board as Company Petition No. 7/111/05-CLB seeking the following reliefs :- (a) That a decree for the declaration may be passed in favour of the petitioner and against the defendant and it may be declared that the petitioner is rightful owner of the 7,500 equity shares of Subhash Projects and Marketing Limited bearing Certificate Nos. 2794, 5134, 6752, 2044, 12683, 8075, 3422, 8070, 8069, 8068, 8071, 8067, 7537, 12760, 12507, 12844, 6292, 2572, 2146, 2811, 11990, 3105, 2029, 2728, 8546, 3945, 6369, 5362, 5361, 20530, 6198, 8086, 12494, 17168, 2281, 2092, 5984, 2033, 3609, 8214, 2422, 2819, 2796, 2788, 2169, 6209, 17601, 12597, 2252, 3420, 2251, 2225, 3420, 2251, 2225, 2458, 6126, 8757, 8205, 6066, 6067, 534, 2299, 6394, 2658, 6070, 2714, 7477, 7478, 7512, 10249, 10250, 10251 and the Register of Members be rectified under section 111A of the Act and the name of the petitioner be entered in the Register of Members in respect of the aforesaid 7,500 equity shares and the name of any other person appearing therein may be deleted. (b) It may be further declared that the defendant no. 1 is liable to pay severally the damages in respect of the aforesaid shares alongwith all benefits including rights bonus, dividends and other benefits thereon w.e.f. 05.12.1994 to the petitioner. (c) That a decree for damages for Rs.7,50,000/- (Rs. Seven lacs fifty thousand only) may be passed in favour of the petitioner and against the defendant no. 1 (d) That interest on the amount of declaration @ 18% p.a. may be awarded in favour of the petitioner and against the defendant. (e) That the entire costs of the suit may be awarded in favour of the petitioner and against the defendant. 5. The appellant contested this petition inter alia taking an objection that the petition was barred by limitation as well as that the same was liable to be rejected on grounds of misjoinder of parties and non-joinder of necessary party. The appellant had taken a specific objection that the shares were presently registered in the name of various shareholders who had not been made a party in the petition.

6. The respondent herein had responded to this objection contending that it was not possessed of the requisite information for impleading these third parties. It was further stated that the respondent had repeatedly requested the appellant and their registered and transfer agent (RTA) to provide the status of the shareholding pertaining to the shares in question including the details of shareholders which the defendant/RTA had not furnished to the petitioner till date. The respondent had also taken a stand that it was the responsibility and duty of the appellant to verify and check the beneficial interest/ownership of the impugned shares and to intimate the petitioner in case of any personal request by the company in respect of those shares which they failed to do. On these averments, the respondent denied that its petition suffered from legal infirmities.

7. The appellant has made a vehement grievance that the petitioner is still maintaining the suit filed by it before the Ahmedabad City Court. It has further been urged that after completion of pleadings, by an order passed on 12th May, 2006, the Company Law Board reserved final order on the petition after hearing arguments. The appellant is stated to have thereafter received a notice dated 2nd February, 2007 informing the appellant that the petition was fixed for hearing on 21st February, 2007. On this date, the appellant learnt that the matter had been directed to be fixed for hearing suo

moto by the Board for the reason that some clarification in dates was necessary. There is no dispute that on 21st February, 2007, the matter was adjourned on the respondent's request to 8th March, 2007 for hearing.

8. The appellant is aggrieved by the order recorded on 8th March, 2007 by the Company Law Board. It is urged that the respondent had not filed any application making a prayer for grant of any interim order. Despite the matter having been heard and reserved as back as on 12th May, 2006, the Company Law Board has passed the following order on 8th of March, 2007 assailed in the present proceedings:- Respondents are required to provide the requisite details to the petitioner within three weeks' time. Adjourned to 04.06.2007 at 2.30 p.m. Respondent's counsel objects after the hearing in the matter.

9. Learned counsel appearing for the appellant has contended before this court that the appellant is not really aggrieved by the nature of the order but by the manner in which the same has been passed primarily because there was no application before the Board and that the matter having been reserved once, it was not open to the Company Law Board to pass directions of this nature.

10. Learned counsel for the respondent on the other hand has vehemently opposed the appeal. It has been contended that so far as the civil suit before the Ahmedabad City Court is concerned, the respondent has given a clear undertaking in its petition before the Company Law Board that the same would be withdrawn. It is further contended that it was because of the objection relating to misjoinder of parties, taken by the respondent that the order was passed and that such order was the appropriate order to be passed to ensure ends of justice.

11. Learned counsel appearing for the appellant has contended that this order was recorded without giving a hearing to him. It is further submitted that he was taken by surprise inasmuch as there was no application by the respondent herein nor any oral request for furnishing any details. According to learned counsel, the order does not even set out what were the requisite details which were to be furnished by the respondent to the petitioner.

12. Learned counsel for the respondent has contended that the direction relates to furnishing details with regard to the particulars of the persons to whom the shares over which the respondent is claiming right, title and interest have been transacted.

13. I have heard learned counsel for the parties.

14. Perusal of the order which has been recorded on 8th March, 2007 appears to support the grievance made by the appellant. The order does not set out what would constitute 'requisite details' which the appellant herein is required to furnish to the petitioner. Learned counsel appearing for the appellant has contended that this order was made known to the respondent only after it had been recorded and consequently he was able to object to the order for the first time after a direction had been recorded without hearing the appellant. He has submitted that there was no hearing on any such issue.

15. There can be no dispute that the respondent had specifically taken an objection that parties in whose favour the shares in question stood transferred had not been impleaded as a party. Learned counsel for the appellant has drawn my attention to certain communications addressed by his client and by the register and transfer agent ('RTA') to the proposed transferees, copies whereof were purportedly also sent to the respondent. The submission is that the respondent opted not to implead these persons despite full knowledge of their particulars. The respondent has however disputed receipt of any such communication.

16. In the above background, especially having regard to the nature of disputes, there can be no dispute that the appellant before this court was in power and possession of the best position that the appellant had received the communication dated 5th December, 1994 from the respondent informing about the shares having been misplaced/lost. All records and information relating to receipt of requests of transfer of shares as well as the transfers which were actually effectuated from those stood interdicted because of the communication of the respondent or by the order of the court and were available with the appellant company.

17. It is an admitted position that the communications from the RTA's relied upon by the respondent also only refers to about 800 shares and nothing more.

18. In view of the stand taken by the respondent, certainly this information with regard to the manner in which the shares claimed by the respondent have been dealt with, was available with only with the appellant. Such information has admittedly neither been placed before the City Civil Court at Ahmedabad in the suit filed by the respondent nor was it placed in the reply before the Company Law Board.

19. It cannot be disputed that such persons who are claiming right, title and interest in the shares would be necessary and proper parties for the purposes of complete and effective adjudication on the rights claimed by the respondent.

20. As per Rule 10 of Order 1 of the Code of Civil Procedure, it is open to a civil court to act to implead any person as a party at any stage of the proceedings. Suo moto power is given to the court to add or delete any of the parties at any stage of the proceedings with or without an application of either party on such terms as may appear to the court to be just. The statutory provision mandates that a person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle all questions involved in the suit is required to be added as a party. Similarly, the name of any party improperly joined whether as a plaintiff or as a defendant, is required to be struck out.

21. I find that sub-section 6 of section 10E of the Companies Act, 1956, provides that the manner in which the Company Law Board would be constituted and its jurisdiction, specifically empowers the Company Law Board to regulate its own procedure. Furthermore sub-section 5 of Section 10E mandates that in exercise of its powers and

discharge of its functions in the said Act or any other law, the Company Law Board would be guided by the principles of natural justice and shall act in its discretion. 22. In the event that the Company Law Board was to arrive at a finding that the respondent herein was entitled to relief in the petition, certainly the rights of third parties would be impacted without their having been made a party or having been given an opportunity of contesting the respondent's claim.

23. It is well settled that an order with regard to impleading or deletion of parties deserves to be made at the earliest stage in the proceedings. In the instant case, the matter was heard at length and reserved for hearing also. It is an admitted position that the appellant made no request for any details. Yet the Board has directed that certain details are required to be furnished by the appellant herein to the respondent. What would constitute the details is left to the realm of surmise and conjecture by the impugned order.

24. It also cannot be disputed that any request for particulars of third parties or a direction to furnish the same would require to be considered in the background of the time which has lapsed and the manner in which the respondent has proceeded. However there can be no dispute with regard to the relevancy of the factual details relating to those who claim a right to shares in question or the jurisdiction of the Company Law Board to make such a direction in the light of the above discussion. Consideration of such a request be only after giving an opportunity to the other side i.e. the present appellant to object to the same. The Company Law Board has to consider whether such order can be legally passed. The rights of the third parties would require to be considered. Certainly details of information sought to be produced has to be furnished to the appellant and he is legally entitled to be heard before an order of production can be passed on the issue.

25. In view of the above discussion, it has to be held that the order dated 8th March, 2007 has been passed in violation of the right of the appellant to be heard with regard to the directions which have been made. Accordingly, the order dated 8th March, 2007 is set aside and the matter is remanded for fresh consideration to the Company Law Board. The parties shall appear before the Company Law Board on 24th November, 2008 at 3 p.m. for further directions.

26. The respondent shall remain bound by the undertaking given and shall take immediate steps for withdrawal of the civil suit which has been filed at the City Civil Court. He shall file an application for withdrawal of the suit within a period of four weeks from today. Needless to say the same would not preclude the respondent herein from seeking appropriate interim protection before the Company Law Board in respect of the third party transactions relating to the shares in question.

27. Learned counsel for the appellant submits that so far as the further transactions with regard to the shares in question are concerned, the appellant shall not transact with the same till the hearing of the application which may be filed for appropriate interim relief before the Company Law Board, irrespective of whether the order of the Civil Court is in operation or not. 28. The appellant shall remain bound by the statement only if

the application is filed and heard before the Company Law Board within a period of four weeks from today. Dasti

Sd./-
GITA MITTAL, J

November 03, 2008