Case Citation: (2017) ibclaw.in 943 HC

Court No. - 10
Case :- COMPANY APPEAL No. - 5 of 2012
Appellant :- Vijay Kumar Tiwari And Others
Respondent :- The Company Law Board And Others
Counsel for Appellant :- A.R. Duabe,R.K. Gautam,S D Singh
Counsel for Respondent :- Chandan Sharma,R.P.Agrawal,Sushmita Mukharjee

Hon'ble Arun Tandon,J.

Heard Shri S.D. Singh, Senior Advocate, assisted by Shri Shri R.K. Gautam learned counsel on behalf of the applicants and Shri R.K. Agarwal, Advocate assisted by Shri Chandan Sharma on behalf of respondents No. 1 and 2.

This Company appeal under Section 10(f) of the Companies Act, 1956 has been filed against the order of the Company Law Board, New Delhi dated 8.5.2012..The Company Law Board under the order impugned has dismissed the petition made by the appellants under Sections 397, 398, 402, 403 and 406 of the Companies Act alleging certain acts of oppression and mismanagement by Ms/ Tiwari Sheet Grah Pvt. Ltd (hereinafter referred to as "Company"). The Company Board in the order impugned has recorded that the grievance of the petitioner was two-fold :-

(a) Company has indiscriminately and disproportionately made allotment of 25227 equity shares thereby creating a situation that Mahaveer Tiwari gets the control over the Company in question. It was the case of the appellants that the allotment of shares as alleged and shown in the meeting of the Board on 1.10.2007 was fabricated inasmuch as Form No.2 relating to the allotment of these equity shares filed on 16.6.2008 and disclosed the holdings otherwise ;

(b) secondly, Arvind Tiwari, Son of Mahaveer Tiwari was wrongly appointed as Additional Director in the Promoters category under the forged signatures of appellant no.1 and fabricated extracts of minutes of Board meeting dated 14.6.2008.

The appellant had therefore, prayed for cancellation of the impugned allotment of 25227 equity shares on 1.10.2007, transfer of 700 equity shares from Mahaveer Tiwari to Arvind Tiwari and ;

(c) appointment of Arvind Tiwari as Additional Director in Board meeting dated 14.6.2008 to be declared as void.

In reply to said pleas a counter affidavit by Mahaveer Tiwari had been filed in which it was stated that a written application was made by the three share holders namely Mahaveer Tiwari, Vijay Tiwari and Gayatri Devi for conversion of the unsecured loan advanced by the aforesaid three Directors of the Company into capital. On the application so made in writing, a meeting of the share-holders of the Company did take place on 1.10.2007 wherein a resolution was passed for conversion of the unsecured loan into equity shares as per their requests. The minutes of this meeting were also duly counter signed by Mahaveer Tiwari, Gayatri Devi along with Vijay Tiwari.

For the purposes of rebutting the said statement of facts made on oath, the appellants were provided two weeks time to file rejoinder affidavit by the Company Law Board vide order dated 25.8.2011. For nearly four months, no rejoinder affidavit was filed and on 3.1.2012, it was stated on behalf of the applicants that they did not propose to file any rejoinder affidavit and the matter be listed for final arguments.

Accordingly, final arguments were heard on 24.4.2012 and 27.4.2012. The averments made by the appellants and the documents filed by them and the averments and documents filed by respondent no. 4 which were un-rebutted were examined. The Company Law Board after considering the application made to the Company on 15.9.2007 by Mahaveer Tiwari, Vijay Tiwari and Gayatri Devi and the resolution of the Board dated 1.10.2007 duly signed by appellant Vijay Tiwari, Mahavir Tiwari and respondent no. 2 held that the case of the company qua making of the application dated 15.9.2007 for conversion of the unsecured loan into the equity shares and consequent resolution had to be accepted as corrected as it has not been controverted. It has specifically been recorded in the order impugned that since the appellants did not rebut the said averments and documents placed on record by the respondents, the authenticity of the application and the Board resolution collectively filed along with affidavit cannot be doubted.

In the opinion of the court, the conclusion so drawn by the Company Law Board on the basis of the facts as noticed above cannot be faulted with. If the appellants for the reasons best known to them did not chose to controvert the statements made on oath by the respondents and did not seek to challenge the correctness or otherwise of the documents brought on record by the respondents in the shape of the application dated 15.9.2007 and the resolution of the Board dated 1.10.2007 which according to the Board did bear signatures of the appellants, this Court finds no reason to interfere.

The conclusion drawn by the Board appears to be justified. The Board has also taken note of the fact that there may have been some discrepancies in submission of Form No. 2 by the Company but as held by the Delhi High Court in the case of S.K. Bhattacharya & Anr vs. Union of India and others 1996 Indian Law. Delhi page 221 (Delhi High Court), the submission and acceptance of Form No.2 by the Registrar of Company is only a Ministerial Act and mere defect in Form-2, is by itself not sufficient to rebut the strong presumption arising from the filing of un-rebutted documents namely the signed application and the signed resolution of the Board referred to above.

This Court may only record that in the present appeal also there is no specific challenge to the finding that the application dated 15.9.2007 did contain signatures of both namely Gayatri Devi and Vijay Tiwari. Similarly, there is no challenge to the finding that the resolution dated 1.10.2007 did bear the signatures of one of the appellants namely Vijay Tiwari along with that of Mahaveer Tiwari.

In these set of circumstances, this Court finds that there is hardly any challenge worth consideration to the findings recorded by the Board on the said issue.

Now coming to the allotment of shares in favour of Shri Arvind Tiwari, and his induction as Additional Director in the Promoters category in the Company. The Company Law Board has recorded that the appellants themselves in para 5.6. had stated that 2000 equity shares of Rs.100/- each were allotted on 31.12.2007 to petitioners No. 1 and 2 and Form -II (Annexure 3 were filed by the petitioner in support of the said allotment). This resolution that the appellants have themselves filed an extract of the Board resolution dated 17.11.2007 which did bear the signatures of Arvind Tiwari as Additional Director. The application is on record of the proceedings before the Board at page 583 was the application of Arvind Tiwari qua his consent for being appointed as Additional Director, Form 32 filed by the Registrar, Companies disclosed the re-appointment of Arvind Tiwari as Additional Director w.e.f. 14.6.2008. The inspection report (Annexure A-12) also substantiate the re-appointment of Arvind Tiwari on the post of Additional Director on the same day.

The Company Law Board has found that there is no material to accept the contention of the appellants that the appointment of Arvind Tiwari on 14.6.2008 was under forged signatures and therefore, the challenge in that regard has also been rejected.

The scope of appellate jurisdiction as conferred under Section 10(f) of the Companies Act, 1956 is on the issues of law which may arise from the order of the Company Law Board.

In my opinion the findings of fact recorded by the Board are based on acquisition of evidence as made available before the Board by the parties. No question of law arises in the present appeal.

Dismissed.

Order Date :- 9.9.2013

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Hon'ble Arun Tandon,J.

Orders on Substitution Application No.188627 of 2013.

Heard.

This substitution application is allowed as no objections have been filed on behalf of the respondents.

Let necessary corrections be carried out in the array of parties during the course of the day.

Order Date :- 9.9.2013
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