

Company Law Board

Mukund Maheswari vs Perfect Pottery Co. Ltd. And Anr. on 17 November, 1997

Equivalent citations: 1998 92 CompCas 132 CLB

Bench: P Majumdar, S Balasubramanian

ORDER

1. This petition filed under Section 397/398 of the Companies Act, on February 12, 1993, alleging acts of oppression and mismanagement in the operation of Perfect Pottery Company Limited, has raised an interesting question of law, as to whether it is possible to grant any relief, when during the pendency of the petition before us, the company's name has been struck off from the Register of Companies by the Registrar of Companies and thus has been dissolved.

2. This petition was filed on February 12, 1993. Only the company was made a respondent. In spite of repeated notices, the respondent-company did not file any reply to the petition. One Shri Rajesh Maheswari, an ex-director has filed the reply only on July 10, 1997. The delay in filing the petition is attributed to the fact that the registered office of the company had already been shifted and as such the company was not in receipt of the notices issued earlier. At this point, it is relevant to note, that there had been some disputes between the shareholders of the company and they jointly filed a memo of compromise in the High Court of Madhya Pradesh at Jabalpur, by which different companies under the same management had been divided among the shareholders and one of the terms of that compromise was that on the working out of the terms of compromise the parties were at liberty to apply for the name of the company being struck off from the Register of Companies. The High Court disposed of the petition filed therein in terms of the compromise on February 21, 1992. The petitioner himself has stated in the petition that since April 1, 1992, the company was in the process of dissolution and that there was no permanent asset in the ownership of the company.

3. The allegations in the petition relate to the annual general meeting on February 5, 1993, the appointment of two additional directors in the board meeting held on May 23, 1992, the statement in the notice for the annual general meeting that the petitioner had ceased to be the managing director with effect from April 1, 1992, due to the scheme of compromise etc. According to the petition, the appointment of the two additional directors was done fraudulently and their appointment was prejudicial to the interest of the company. It is further stated that, without the approval of the petitioner managing director, the annual accounts for the year ending March 31, 1992, were passed by the board. Certain allegations have also been made regarding the proceedings that took place in the meeting of the board on October 19, 1992, and the recording of the minutes thereof. According to the petitioner, all these acts are oppressive and prejudicial to the shareholders including the petitioner. Another allegation relates to failure of the respondent in releasing stock worth Rs. 48 lakhs belonging to Perfect Ceramics Limited, a company belonging to the petitioner which was stocked in the campus of Perfect Stoneware Pipe Company Limited, a company belonging to the respondent. In the later affidavits certain other allegations have been made relating to the alleged board meeting on March 22, 1994, and also about the dissolution of the company when the present proceedings are pending before the Company Law Board. He has sought for restoration of the company in terms of Section 560(6) of the Companies Act as still certain liabilities are yet to be settled.

4. From the belated reply filed on behalf of the respondent-company, it is seen, that the company's name was struck off by the Registrar of Companies on an application made to him in pursuance of the compromise order passed by the M. P. High Court at Jabalpur. A report has also been received by us from the Registrar of Companies, Gwalior, that the company's name was struck off on November 18, 1995, in pursuance of the High Court's order and that now the company stands dissolved with effect from November 18, 1995.

5. When the matter was heard, the petitioner vehemently argued that the company should not have moved the Registrar for striking off its name when the petition was pending and that the Registrar was also in error to have acted upon the application, especially when all the affairs of the company have not been settled. In the normal circumstances, when a petition is pending before us, if the company had applied for striking off its name and if the Registrar had acted on such an application, we would have taken a serious view. However, in the present case, we find, that the petitioner was a party to the terms of compromise before the High Court and that clause 28 of the terms of compromise reads as follows :

"In view of the terms contained in this scheme regarding transfer of assets and liabilities of Perfect Pottery Company Limited, the company will be defunct, the liberty is given to the parties to apply to the Registrar of Companies, Madhya Pradesh, Gwalior for striking out the name of Perfect Pottery Company Limited".

6. In pursuance of this, the company had applied to the Registrar, who has acted on the application, as he is bound by the order of the High court. In view of this, we do not find anything irregular on the part of the Registrar in striking off the name of the company. If the petitioner is aggrieved by this action, he has to only move the High Court which passed the compromise order for appropriate remedy. His suggestion that we should restore the company in terms of Section 560(6) cannot be considered by us, as the powers under that Section are vested in the High Court.

7. At present the company is not in existence. Even assuming that the allegations of the petitioner merit consideration and warrant grant of the relief sought for, it is to be borne in mind that the provisions of Sections 397, 398 are alternative to winding up, in cases where the petitioner feels that it would be unfairly prejudicial to the petitioner to seek winding up of the company even though the facts may justify such winding up. In the present case, the company having been already dissolved, the question of grant of any relief under Section 397/398 would not arise as orders of ours could not be implemented against a non-existing company. Therefore, without going into the merits of the case, we dismiss this petition as infructuous and vacate all interim orders. However, the petitioner is given the liberty to apply again in case he gets the company's name restored in terms of Section 560(6).