

Supreme Court of India

Rajinder Kumar Malhotra And Ors. vs Company Law Board And Ors. on 15 July, 1994

Equivalent citations: 1996 85 CompCas 176 SC, 1995 (1) SCALE 210, 1995 Supp (1) SCC 530

Bench: M Venkatachaliah, S Mohan

ORDER

1. We have heard Sri G. Ramaswamy, learned senior Counsel for the petitioners and Sri K.K. Venugopal and Sri Ashok Desai, learned senior Counsel for the respondents. Petitioners claim to be a minority shareholder in the company and respondents are the company and its other directors and shareholders.

2. The petitioners seek special leave to appeal to this Court from the order dated 8th December, 1993 in writ petition No. nil of 1993 of the High Court of Calcutta, which, in turn, partially stayed the operation of an interlocutory order dated 20th October, 1993 of the Company Law Board in a petition under Sections 397 and 398 of the Companies Act brought before it by petitioners-shareholders of the Company, "Harbans Lal Malhotra & Sons Ltd." complaining of suppression of the minority.

3. It was urged before the Board by the petitioners that the collaboration arrangement embarked upon by the said company with M/s. Gillette was illegal and operated as oppression of the minority. The Company Law Board by its order dated 20th October, 1993 noticed the prayers made before it:

(a) Respondent No. 1 company should not approve of any transfer of its shares;

(b) Adequate notice be given to the petitioners for any general meeting of the shareholders;

(c) Respondents 11, 12 and 13 be restrained from changing their management as they had nearly 58% of the share capital of respondent No. 1;

(d) Respondent No. 1 company be restrained from making any fresh issue of shares.

The Company Law Board made an order in terms following:

We direct the company that it shall not proceed further in the matter of collaboration or issue any further shares in the company without the approval of the general meeting and in case of holding of general meeting, the company shall give 25 days clear notice to the petitioners by registered post with a copy to the Secretary, Company Law Board. The Petitioners are at liberty to approach this Bench after giving 7 days notice to the respondents in case they need the intervention of this Bench at any time.

After hearing the respondents, the Bench expressed its displeasure about the respondents' failure to disclose full details of developments with regard to the Gillette Collaboration at the hearing held on 19th and 20th August, 1993. The Bench was distressed to note that though in the sur-rejoinder dated 6th August, 1993, the respondents had divulged certain proposed terms and conditions of

collaboration which were stated to be under negotiation as on that date, the following subsequent developments before the date of hearing were not disclosed....

[Emphasis supplied] The order, then proceeded to specify those developments, which according to the Board, the Respondents had not come forward to disclose.

4. This interlocutory order of the Board was assailed by the respondents in a writ petition before the Calcutta High Court. The High Court made an interlocutory order staying the observations made by the Board that there were some suppressions of material information and also stayed the operation of that part of the order of the Company Law Board by which it said the Company "shall not proceed further in the matter of collaboration...."

The respondents are not aggrieved by the Board's interlocutory direction that shares pursuant to the collaboration should not be issued except upon the approval by the shareholders in a general meeting. The Company Law Board also directed that if such a meeting was convened the respondents should give 25 days' clear notice. On this also there is no grievance expressed by the respondents. But respondents perceived, as implicit in the order of the Board that even preparatory steps in the matter of collaboration were interdicted when the Board said that the company "shall not proceed further in the matter of collaboration...." The respondents, viz., the company and the minority members understood this interdiction only in respect of the culmination of the collaboration agreement by issue of shares which, they recognise, will be dependent upon the approval of the scheme by the shareholders at the general meeting; and, accordingly, seek to interpret this part of the order as not coming in the way of the company taking all antecedent preparatory steps which would enable the Company to place the matter effectively before the members at the general meeting.

5. Sri G. Ramaswamy says that this aspect of the matter mainly, whether even the preparatory steps could be taken or not, is itself the subject matter of litigation in other proceedings between the parties and if this Court gives the company a clean chit in this behalf, the other pending proceedings between the parties in relation to this controversy would be over-shadowed by anything that Court might observe here. But this objection has one fallacy. What then was the purpose of the petitioners' seeking these directions from the Company Law Board? In the ultimate analyses the objection implies that as long as the interlocutory interdiction by the Board goes in favour of the petitioners, it could not be objected to as having effect on the other proceedings and only when it goes against the petitioners, it incurs this criticism.

6. After hearing learned Counsel for the parties it appears to us appropriate to set aside the order of the Calcutta High Court as really being unnecessary having regard to real import of the order of the Company Law Board. The directions of the Board cannot be continued as coming in the way of the respondents' taking all such antecedent, preliminary and preparatory steps, short of issuing shares to the collaborator. So far as the approval of the shareholders for the issue of shares to the collaborating company is concerned the matter will abide decision of the members at the general meeting. We think that this construction of the Board's order makes the proceedings before the Calcutta High Court unnecessary. We may here advert to Sri Ramaswamy's objection as to other

pending proceedings being affected, we might observe that if there are orders made in other proceedings in this behalf, the observations in this order will not have the effect of nullifying them. All that need be said is that the Board has not interdicted such preparatory steps.

7. In view of this clarification, the respondents may find no need to proceed with the writ petition before the Calcutta High Court. That petition is withdrawn to this Court and is disposed of accordingly. A formal order in this behalf shall be made by the High Court.

8. The earlier order of stay of this Court stands vacated. The special leave petition is disposed of accordingly.