

Bombay High Court

Mr. Pratik B. Mehta & Ors vs Uniform Offset Private Limited & ... on 31 October, 2012

Bench: Anoop V.Mohta

Dixit

1/6

COAPP-5-12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY APPEAL NO. 5 OF 2012

IN

CLB COMPANY PETITION NO. 78 OF 2007

Mr. Pratik B. Mehta & Ors.

... Appellants

V/s.

Uniform Offset Private Limited & Ors.

... Respondents

Mr. Cyrus Ardeshir a/w Ms. Faiza Dhanani,
i/by Dhruve Liladhar & Co., for the Appellants.

None for the Respondents.

CORAM : ANOOP V. MOHTA, J.

DATE : 31 OCTOBER, 2012
ST

ORAL JUDGEMENT :

Heard finally.

2. None appeared for the Respondents even at the time of admission of the present Company Appeal u/s. 10F of the Companies Act, 1956, (for short "the Companies Act"), and the interim order was passed by this Court on 3rd August, 2012, in following terms :

"Heard the learned Advocate for the Applicants. None for the Respondent, though served.

The Appeal is placed for hearing and final disposal on 29th August, 2012. In the meantime the Respondents are restrained from selling, alienating, Dixit COAPP-5-12 encumbering, transferring or creating any third party rights and/or interests in respect of the shares held by them in the Respondent No.1 Company to any person other than Appellants. Company Application is accordingly disposed of."

3. The Company Appeal is listed today for final hearing. Even today, none appeared for the contesting Respondents, though served.

4. The Appellants/Original Petitioners are the registered holder and owner of 3,300 shares of Rs.100/- each. The Appellants/Original Petitioners together hold about 30% equity shares, more than 10% of the total shareholding of and in the Company. It appears that the Appellants/Original Petitioners and the contesting Respondents are the family members and a dispute arose amongst them. A Company Petition was filed by invoking provisions of Sections 397 and 398 of the Companies Act.

5. The contesting Respondents in their reply to the Company Petition, in para 6, admitted that the Appellants/Original Petitioners are holding about 30% of equity shares whereas the contesting Respondents are holding about 68% of equity shares and outsiders are holding about 2% equity shares.

6. I am inclined to allow this Company Appeal solely on this ground as the learned Member of the Company Law Board, (for short "the Board"), rightly considered the scope and purpose of the provisions, as referred and dealt with in following rules, but rejected the application solely on this technical ground stating that "not maintainable in view of the above rules".

Dixit COAPP-5-12 "23. The petitioner while applying under sections 397 must hold the requisite number of shares at the time of filing of petition. The nature of provisions of Section 399(1) is not procedural but it is a part of substantive law and, therefore, the requirements

of Section 399(1) should be construed as mandatory. The word shall used therein is considered to be imperative in nature and it has to be interpreted as mandatory having regard to the text and context of the statute irrespective of the fact whether any prejudice is caused. In terms of Section 399 of the Act the members fulfilling the requirements thereof have the right to allege oppression and mismanagement in the affairs of the Company and can file Petition in terms of the said Sections. In view of the aforesaid unambiguous provisions of the Act, Petitioners are required to satisfy the CLB that petitioner(s) individually or together hold the requisite percentage of shares in the Company. It is the requirement of the law that Petition under Sections 397 and 398 has to accompany documentary evidence in proof of eligibility and status of petitioner(s) that the voting power held by each of them is as per provisions of Section 399 of the Act. In other words Petitioner(s) has/have to meet the requirement u/s 399 either in terms of the number/percentage of shares or in terms of number of shareholders. In the present case the petitioners do not have the requisite qualification u/s 399 of the Act to maintain the Company Petition u/s. 397 / 398 of the Act. However, it is noted that the P-2's application for transmission / transfer of his late father's 2385 shares is yet to be refused by the R-1 Company.

Dixit COAPP-5-12

24. Considering the facts and circumstances of this case it is noted that the R-2's other preliminary objections regarding the maintainability of the Company Petition are also correct, in fact, the Petitioners do not have any cause of action in view of the allegations of misuse of the Company's assets, infrastructure and other resources for the Petitioners own businesses, the R-1 Company's profitability in the absence of R-2 has been not only reduced to NIL rather the R-1 Company's losses are increasing year after year. In such facts and circumstances of the case R-2 was constrained and was justified to call an EOGM for voluntary Winding up of the R-1 Company."

7. The learned Counsel appearing for the Appellants/Original Petitioners pointed out that no reason whatsoever given referring to this admitted position on record with respect to the shareholding of the Appellants/Original Petitioners. There is force in the contentions so raised. The Board has not at all dealt with the aspect, which, according to me, goes to the root of the matter while deciding the maintainability of the Company Petition.

8. Another factor, though recorded by the Board, yet failed to consider that Bipin C. Mehta, who admittedly expired after filing of the Company Petition, had transferred his shares to these legal heirs, just cannot be overlooked 30% overall shareholding of the Appellants/Original Petitioners. The situation was totally different on the date of filing of the Company Petition, specially in view of the admitted position so recorded. The Board ought to have considered the date of filing of the Petition, as well as the admissions so given by the contesting Respondents, before rejecting the Company Petition in Dixit COAPP-5-12 such a fashion on the ground of maintainability. The order is contrary to the law and the record. They are awaiting transfer order to be passed by the majority.

9. In my view, this rejection itself goes to the root of the matter as ultimately that resulted into dismissal of the Company Petition even on merits. Therefore, taking overall view of the matter, I am inclined to remand the matter by keeping all points open for all the parties. The Board shall

reconsider the matter by giving opportunity to the parties to put up their case on merits also.

(i) Resultantly, impugned order dated 13th September, 2011 passed by the Board in Company Petition No.78 of 2007 is quashed and set aside. The matter is remanded for rehearing on all points. The Appeal is allowed accordingly.

(ii) The interim order already granted by this Court on 3rd August, 2012 shall continue to operate until further orders. However, liberty is granted to the parties to apply for further reliefs and/or modification of the interim relief already granted.

(iii) No costs.

(ANOOP V. MOHTA, J.) Dixit COAPP-5-12