IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

APPEAL FROM ORDER (ST.) NO.19663 OF 2013
ALONGWITH
CIVIL APPLICATION (ST.) NO.19666 OF 2013

Man Industries (I) Ltd. -- Appellant
V/s.
Jagdish Chandra Jhamaklal Mansukhani -- Respondent

Mr. Snehal Shah, Adv. a/w. Anurag Gokhale, Adv. i/b. Munir Mechant Adv. for the Appellant.
Mr. Navroz Seervai, Sr. Counsel a/w. Zal Andhyarujinah, Adv., Jayesh Ashar, Ms. Pratiksha Mody and Ajit Anekar, Adv. i/b. K. Ashar & Co. for the Respondents.

CORAM : MRS. ROSHAN DALVI, J.

Date of Reserving the Judgment : 22nd July, 2013
Date of Pronouncing the Judgment : 24th July, 2013

JUDGMENT

1. Rule. Made returnable forthwith.

2. The Appellant is a Limited company of which the Respondent is one of the Directors. The Appellant sued in the City Civil Court, Mumbai restraining the Respondent from holding an Extraordinary General Meeting (EGM) on 25th July, 2013 pursuant to notice dated 24th June, 2013 and for declaration that the requisition to convene that meeting dated 15th January, 2013 was invalid and also that if the EGM is held it be declared null and void. He took out the Notice of Motion restraining Respondent from holding the meeting. Its application for ad-interim injunction in the Notice of Motion has come to be refused on 15th July, 2013 which order of the learned Judge City Civil Court, Goregaon, Dindoshi, Mumbai is challenged in this Appeal.

3. The Appellant has prayed for stay of the holding of the EGM on 25th July, 2013 or on any other subsequent date pursuant to the notice dated 24th June, 2013 based upon the requisition dated 15th January, 2013.

4. The Appellant / Plaintiff company is essentially represented by its Director, one Ramesh Mansukhani who is the brother of the Respondent / Defendant. There have been number of disputes between the two brothers who essentially represent two groups in the Company. There have been two Company Petitions filed by the Respondent alleging oppression and mismanagement of the Company U/s.397 – 398 of the Companies Act, 1956.

5. The Respondent initially requisitioned an EGM by his notice dated 15th January, 2013 served on company on 16th January, 2013. At that time the Petition against oppression and mismanagement was pending before the Company Law Board (CLB) on 24th January, 2013. The holding of the meeting under the requisition came to be stayed. The Petition came to be disposed off by CLB on 30th May, 2013. Under its final order the CLB allowed the Respondent to proceed with the EGM and directed the Appellant to hold it in accordance with law and vacated its interim stay.

6. The Respondent has contended that Appellant company did not convene the meeting as it was enjoined to do by 12th June, 2013 and hence he issued notice on 24th June, 2013 to convene meeting on 25th July, 2013. Needless to state this would have to be in accordance with law.

7. The law is the provision contained in Section 169 of the Companies Act, I of 1956 which is the complete code with regard to calling of EGM on requisitions. Under the said section :

Upon a requisition of the requisite number of members the

Board of Directors of the Company has to call an EGM.

The member calling the meeting has to give notice of 21 clear days to the board of any special resolution which to be passed as per Section 189 (2) of the Act.

The Board has to call the meeting within 45 days from the date of the deposit of the requisition.

The requisitioned meeting shall not be held after expiration of three months from the date of deposit of requisition.

8. The Respondent has been allowed to convene a meeting complying with these mandatory legal requirements which would be in accordance with the said law.

It is necessary to set out the relevant part of the order of the CLB allowing the said meeting which is contend in clause 3 of its operative order and which runs thus :

> ***The Petitioners are free to act upon their notice thereby calling upon the EOGM. The R6 Company is directed to take necessary steps in accordance with law. The interim stay, if any, is hereby vacated.***

9. The initial requisition was of 15th January, 2013. It would expire on 14th April, 2013. The meeting "shall not be held" after the expiration of three months from the date of the deposit of the requisition. Hence it could not be held after 14th April, 2013 under Section 169(7) (b) of the Companies Act. The Appellant company is directed to take steps in accordance with law. The only step it can take in accordance with law is not to call a meeting which is imperatively not to be called after the expiration of three months from the date of the deposit of the requisition.

10. About 9 days after the requisition was deposited, on 24th January, 2013, the CLB had stayed the holding of the EGM pending the hearing of the Petition. That order was not challenged. That order remained as an interim order pending the Petition and until its disposal on 30th May, 2013 when the order in that behalf under clause 'c' above came to be passed. It is contended on behalf of the Respondent that the time taken by the Court between 24th January, 2013 and 30th May, 2013 whilst the interim order of injunction remained operative has to be excluded from the period of three months specified under Section 169(7) (b) of the Companies Act.

11. Counsel on behalf of the Respondent has not been able to show the Court under what provision of law the exclusion is claimed. He only argued that it would be under the Limitation Act.

Under Section 12 of the Limitation Act exclusion of time in legal proceedings is granted. This is for computing the period of limitation for any suit, appeal or application. The exclusion of time does not apply in respect of a notice of requisition as it is not a legal proceeding. Similarly, under other provisions being Sections 13,14 and 15 of the Limitation Act exclusion of time are with regard to extraneous matters but not for exclusion of time relating to any requisitioned meeting.

12. The purpose and import of specific mandatory requirement of not holding such a meeting after the specified statutory period has to be understood. The Board of Directors is in the general management of the affairs of the company. They are agents as also the trustees of and for the company. If the board does not manage the company to the satisfaction of its members, the members would be entitled to hold a meeting to pass any resolution, thus ensuring a democratic process between the capital and management. It is to that

end that a member may requisition a meeting. Such a meeting is an EGM. It is, therefore, necessary that an EGM is to transact a specified business which has not been transacted otherwise by the board. It is a General Meeting of the members. It would transact the business by way of special resolution or special resolutions. The purpose of passing such a resolution is, therefore, deemed to be sufficiently important to be transacted soon after the notice to requisition a meeting is issued. Such a resolution cannot be transacted months or years thereafter. The law has considered three months the outer limit for passing the resolution in such an EGM upon such requisition. The limit which is laid down U/s.169 (7) (b) is very clear and explicit. It admits of no interpretation other than a plain reading precisely as per its wording when the requisitionist is not allowed to call such meeting. It is with the rider that such meeting shall not be held three months after the requisition is deposited. This is because the requisitionist may be entitled to deposit yet another requisition with the company to call an EGM to transact the business by following the other provisions of Section 169. The right of the requisitionist, therefore does not come to an end irretrievably if the meeting is not held upon the three months period having expired.

13. The order of the CLB has not directed the meeting to be held. The order has only allowed the Respondent herein (Petitioners therein) to act upon their notice calling the EGM by the words. "The Petitioners are free to act ….". The order has directed the company to take steps only in accordance with law and not against any provision of law.

14. The Appellant company in its plaint has set out inter-alia the reason that the three months time has expired for not calling EGM under clause (i) of the grounds in paragraph 17 of the plaint.

15. Mr. Seervai on behalf of the Respondent argued that no Court has any power to stay or injunct a meeting of a company as held in the case of ***Life Insurance Corporation of India Vs. Escorts Ltd. & Ors., AIR 1986 Supreme Court 1370*** in paragraph 95.

16. Whilst that argument as a general proposition may be accepted to uphold the democratic functioning of a company with which the Court must not interfere, allowing a meeting which is shown to be illegal in view of all the provisions of Company Law would not fall under the general principle. It would tantamount to a court ignoring the provisions of law or not considering provisions of law to allow the meeting to be held which would be later held to be invalid and illegal. The Appellant company has applied for declaration in this suit itself that the requisition dated 15th January, 2013 is invalid, illegal and inoperative and that the EGM sought to be held is null and void so that they asked for the injunction restraining its holding.

17. Besides, the CLB has also directed the Appellant company to hold the meeting in accordance with law which would imply that it would not hold the meeting because the provisions of law for the holding of meeting upon the requisition dated 15th January, 2013 after 14th April, 2013 would be against the plain law laid down under Section 169 (7) (b) of the Companies Act which the Appellant company is not directed to do and the Court is enjoined not to allow to be done.

18. Mr. Seervai argued that in a Petition against oppression and mismanagement U/s.397 – 398 read with Section 402 under which then the Court, and now the CLB, after the Amendment of the Companies Act of 1988, has been given specific powers to pass any order even against the provisions of the Companies Act as held in the

case of ***Bennet Coleman & Co. Vs. Union of India & Ors. & Mauli Chand Sharma & Anr. Vs. Union of India & Ors., 1977 Company Cases Vol. 47***.

19. Amongst the powers specified in Section 402 Mr. Seervai would contend that in this case the Company Law Board has passed the order directing EGM to be held upon the earlier requisition dated 15th January, 2013 U/s.402 (a) which is for regulation and conduct of the Companies affairs in future. Though it is true that in the case of ***Bennet Coleman (Supra)*** it has been held that Section 402 cannot be read as being subject to the other provisions contained in sections dealing with the usual corporate management of the company in normal circumstances, the order U/s.402 would relate to the Company's business affairs after the Petition is disposed off which would be "in future". Even if it would mean and include direction with regard to holding of a particular meeting, it would have to be seen whether in this case such a power has been exercised.

20. The Petition against oppression and mismanagement was on various grounds. It dealt with the management essentially between two brothers making allegations of manipulation, siphoning of funds, sale of scrap, withholding of records, non execution of admittedly executed agreement etc. It challenged the allotment of certain fully paid up equity shares to certain employees under Employees Stock Options Scheme (ESOS) / (ESOPS). The Respondent in that Petition denied the allegations of Petitioners and in fact sought removal of Petitioner No.1 therein (Respondent herein) as its vice Chairman – Managing Director. Upon considering the case of the parties only the allotment of ESOPS was held illegal as it was made pending the Petition and despite an interim order. That was cancelled. Rather than grant any relief prayed by the Petitioner, it

was held that the parties being brothers needed to resolve their differences by the "buy off / sell of option" which would bring to an end their never ending disputes, so that upon directions with regard to the sale of the shareholding of the parties within 90 days of offer being made and failing which the purchase of the shareholding was directed. Whereas the Petitioners were held free to act upon their requisition, in respect of the EGM, the Respondent company, including the other Directors, were granted liberty to act upon the resolution terminating / removing Petitioner No.1 (Respondent herein) as its Vice Chairman – Managing Director. The remaining reliefs sought by the Petitioners were declined.

21. The spirit of the order in the case of ***Bennet Coleman (supra)*** is sought to be applied. The spirit of that order is that when the Petitioners make out a clear case of oppression and mismanagement and an order in their favour is passed, the Court then, and the CLB now, would have further powers U/s.402 which are unrestrained and which may even be against the provisions of the Companies Act. When the main reliefs of the Petitioners in the Petition against oppression and mismanagement are declined except for the above and when the main Petitioner is allowed to be removed as the Vice Chairman – Managing Director of the Company as per the earlier resolution passed by the Company, the CLB has not and would not exercise further powers U/s.402 of the Companies Act. The only leeway granted to the Petitioner (Respondent herein) was to purchase or sell its shareholding for the ultimate peace between the warring brothers and to be free to act upon his requisition. This was also with a rider that the Company would take steps only in accordance with law and not against the Companies Act. It was for the CLB to pass an order for holding the requisitioned meeting even against the Company

law U/s.402 of the Companies Act in that Petition. This the CLB has not done. Instead the CLB has declined the remaining reliefs prayed for by the Petitioners except the above two reliefs and even allowed him to be removed as the Vice Chairman – Managing Director of the Company.

22. Hence applying the general law laid down in the case of ***Bennet Coleman (supra)*** to this case is rather misconceived. The facts did not call for its application. The CLB has not applied that law. No order is passed by the CLB U/s.402. None can be implied. The Civil Court cannot, upon misconstruing the order, allow any act not in accordance with law being the Company law to be done as the Court has no such powers.

23. Though the aforesaid ground relating to the lapsing of requisition has been taken by the Plaintiff in Paragraph 17(i) of the plaint, the learned Judge has not dealt with that. However, upon this Court noticing the glaring lapse of the requisition by efflux of time , it cannot put its imprimatur upon an act in holding a meeting which would clearly be illegal U/s.169(7) (b) of the Companies Act.

24. It is argued on behalf of the Appellant Company also that in view of the requisition requiring removal of certain directions and appointment of new Directors, a deposit of Rs.500/- per head had to be made in cash or cheque U/s.257 (1) of the Companies Act which cheques given along with the requisition also lapsed as per the RBI guidelines after three months and the resolutions for appointment of any other Directors without such deposit could not be made and hence meeting for passing those resolutions should not be convened. That of course, is not a mandatory requirement for requisitioning a meeting U/s.169 of the Companies Act. That is only procedural requirement for deposit. It is to be made 14 days before the holding

of the meeting along with a notice signifying his candidature. Upon the Respondent being informed and having learnt that the cheques has lapsed, he has issued fresh chequs on 09/07/2013 which would be within 14 days of period specified U/s.257(1) of the Companies Act. Exception taken by the Appellant Company in that behalf, therefore, would not hold much water. In any event, that would not invalidate the requisitioned meeting. Any other special business to be transacted thereon may be transacted even if new Directors could not be appointed for want of deposit of Rs.500/-.

25. There has been a lot of agitation about the minutes of the certain board meeting held by the Company. The board meeting was held on 30/05/2013. It was attended by both the brothers including Respondent herein. It is contended that certain three paragraphs have been interpolated in the minutes of the meeting which were not discussed thereat. They relate to the Secretary informing the board about the passing of the order of the CLB. The order of the CLB is dated 30/05/2013. Its certified copy was issued on 31/05/2013. Mr. Seervai has argued that it was impossible that it could have been made known to the Secretary and accordingly to the board in the meeting held on 30/05/2013. Mr. Shah would argue that the operative part was informed on telephone; the certified copy followed later. The operative part of the order would mean and include not only the order with regard to the holding of the meeting. It would also be with regard to the declaration of invalidity of the allotment of paid up equity shares by way of ESOP, buy over or sell over option, the removal of Respondent herein as the Chairman -- Managing Director of the Company and the rejection of all other reliefs. Mr. Seervai would be right in contending that resolution No.9 which related to audited financial statement of the Company would

require amendment if the first clause of the operative part of the order was made known to the board. No amendment in that behalf is made. It may be also be mentioned that the buy over / sell over option and the effect of termination / removal of the Respondent herein as Chairman -- Managing Director would also be a very material factor to be considered by the Board, had the operative part been made known whilst the board meeting was in progress. Consequently there may be force in the contention of the Respondent that the minutes of the board meeting dated 30/05/2013 have been fabricated. In any event, these minutes would have to be confirmed in the next board meeting to be held on 04/07/2013 by Notice given on 02/07/2013 and hence would not be conclusive.

26. The argument of Mr. Shah that the minutes as shown by the Appellant Company would be conclusive evidence of what transpired at the board meeting as recorded in the minutes U/s.194 of the Companies Act is incorrect. Only such minutes which is kept in accordance with Section 193 would be evidence of the proceedings recorded at such board meeting U/s.194 of the Companies Act. U/s.193 the minutes are to be kept in a minute book. The entries are to be made in the book within 30 days of the conclusion of the meeting. It is to be signed by the Chairman of the meeting or the Chairman of the next succeeding meeting. It should contain a fair and correct summary of the proceedings thereat. U/s.195 of the Companies Act when the minutes are so kept in accordance with Section 193 there would be a presumption of their correctness until contrary was proved. Though there was a presumption, it was a rebuttable presumption. It may be rebutted by the person seeking to show that the minutes were not kept in accordance with the provisions of Section 193. The Respondent has sought to do that.

The absence of stating anything other than relating to the requisitioned meeting in the three paragraphs, which are stated to be interpolated, may be a circumstantial evidence to show the procedure contrary to Section 193 being complied to rebut the presumption U/s.195 of the Companies Act.

27. The argument of Mr. Shah that the corporate announcement made by the Appellant Company to Bombay Stock Exchange (BSE) and Department of Corporate Services does not show this fact would lend credence to the fact that the three paragraphs have been incorporated as they transpired is also incorrect. The corporate announcements have been made as late as on 04/06/2013 by which time the certified copy of the entire judgment of the CLB was sent and received by the Company on 31/05/2013 and the company itself has made the announcements.

28. It may be mentioned that the three disputed paragraphs form a part of resolution to consider and review the future business plans of the Company which had been reviewed and not under the head of the discussing “any other matter not on the agenda” which matter on the agenda as been left has no business transacted.

29. Be that as it may, the interpolation, if at all, would reflect that the brothers are capable of getting even, that the disputes have not ceased and would, therefore, even more, require the buy over / sell over option directed by the CLB as the most opportune order in the interest of all the parties including company.

30. This would have no bearing upon whether or not to allow the requisitioned meeting to be convened and the business to be transacted thereat as per the requisition. That meeting would certainly be allowed to be convened as per the requisition. If it is in accordance with law under Section 169 of the Companies Act being

complete code in that regard, no court would restrain such a meeting. However, if it is seen by the Court that the meeting would be illegal in that the requisition has expired by the efflux of time, the meeting cannot be allowed to be convened. The Respondent would be free to requisition a fresh meeting.

31. Consequently the impugned order holding that the cheques which had lapsed could be reissued and the meeting itself would not lapse because it was directed by an order of the Court and the period would stand excluded would show that the learned Judge has fallen in error. The reliance upon the judgment in the case of ***Sen & Pandit Electronics (P) Ltd. & Ors. Vs. Union of India & Ors., AIR 1999 Calcutta 289 Bennet Coleman (Supra)*** is also erroneous. It deals with the completely different circumstances under an application made to the relevant authority for rectification of the name of the Company U/s.22 of the Companies Act. The stay of the operation of an order passed by the authority and the time excluded in that judgment is wholly extraneous to the exclusion of time for holding the requisitioned EGM U/s.169 (7) (b). The exclusion of time would apply to a proceeding taken before a judicial or quasi judicial authority performing judicial or quasi judicial functions only as observed in paragraphs 20 the judgment as it would be an application contemplated under the Limitation Act, 1963 enjoining the exclusion of time granted by the said Act.

32. The fact that the learned Judge has not considered the provisions of Section 169 (7) (b) is indeed fundamental error.

33. Consequently the impugned order deserves to be and is set aside. Ad-interim order prayed for by the Plaintiff in the suit (the Appellant herein) deserves to be and is granted. The Respondent herein (the Defendant in the suit) his servants, agents and proxies are

restrained from convening and holding an EGM of the members of the Appellant / Plaintiff Company on 25/07/2013 or any subsequent date in pursuance of the notice dated 24/06/2013 calling for the EGM upon the requisition dated 15/01/2013 which has expired.

34. Appeal from Order and Civil Application are disposed off accordingly.

(ROSHAN DALVI, J.)