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Court : Jharkhand

Decided On : Feb-13-2003

Reported in : [2003(1)JCR613(Jhr)]; [2004]50SCL729(Jhar)

Judge : S.J. Mukhopadhaya, J.

Acts : [Companies Act, 1956](#) - Sections 10F, 169 and 186

Appeal No. : Company Appeal No. 5 of 1999(R)

Appellant : Devendra Kumar Budhia

Respondent : Bihar Foundry and Casting Ltd. and ors.

Advocate for Def. : Jishnu Saha,; Devyani Asura and; Ajoy Poddar, Advs.

Advocate for Pet/Ap. : M.M. Banerjee and; T. Kabiraj, Advs.

Disposition : Appeal dismissed

Judgement :

S.J. Mukhopadhaya, J.

1. This appeal under Section 10F of the [Companies Act, 1956](#) has been preferred by appellant-Devendra Kumar Budhia against the judgment and order dated 3rd September, 1999 passed by the Company Law Board, Calcutta (C.L.B. for short), under Section 186 of the [Companies Act, 1956](#) in Company Application No.

16(186)/ERB/99, communicated vide letter dated 30th September, 1999.

2. The 2nd respondent, Dr. Hari Krishan Budhia was the applicant, who filed a petition under Section 186 of the [Companies Act, 1956](#) seeking directions against 1st respondent, M/s. Bihar Foundry & Castings Limited (hereinafter referred to as 'the Company') to convene an extra-ordinary General Meeting for the purpose of proposed resolution dated 12th March, 1999. Other consequential directions, such as appointment of a Chairman for the purpose of holding and conducting meeting was also sought for.

3. The case of the applicant (2nd respondent) before C.L.B. was that the Company was incorporated on 11th November, 1971 and registered with the Registrar of Companies, Bihar, having authorised capital of Rs. 50,00,000/- divided into 5,00,000 equity shares of Rs. 10/- each. Its issued subscribed and paid-up Capital of the Company was Rs. 45,00,000/- divided into 4,50,000 equity shares of Rs. 10/-each. It is engaged in the business of manufacturing steel, ingots and M/s. Rounds Ferro-alloys and the Directors of the Company are Dr. Hari Krishan Budhia (2nd respondent), Smt. Aruna Budhia (3rd respondent), Shri Sanwormal Lath (4th respondent) and Shri Devendra Kumar Budhia (appellant herein).

After incorporation, the company was filing its balance-sheet and profit & loss account regularly with the Registrar of Companies, Bihar. The applicant (2nd respondent) was Director of the Company since 1971. The other respondents herein are jointly registered holders and absolute owners of 2,44,350 fully paid-up equity shares of the Company which represents 54.30% of the issues, subscribed and paid-up capital of the Company. The applicant (2nd respondent) also claimed to have purchased 72,550 equity shares of the Company from the appellant, Devendra Kumar Budhia and his family members, namely, S/Shri R.P. Budhia, Hemendra Kumar Budhia, Smt. Bhagirathi Devi Budhia and Smt. Bela Budhia by paying the entire consideration of Rs. 7,25,500/- and he became the full and absolute beneficiary of 72,550 equity shares of appellant, Devendra Kumar Budhia and his family members.

Further case of the applicant (2nd respondent) was that in spite of the fact that the appellant, Devendra Kumar Budhia sold his and his family members' shares, he

continued to be a Director of the Company and started acting wrongfully and illegally to the prejudice and detriment of the Company. While on the one hand he failed or neglected to handover the share certificates and to execute the transfer deeds in respect of 72,550 equity shares in favour of applicant (2nd respondent), started making and publishing false statements with regard to the applicant (2nd respondent) and other Directors of the Company and its management to various authorities including the bankers of the Company with mala fide intention and object of injuring the Company and its business as also the Directors of the Company.

The applicant (2nd respondent) served upon the Company a requisition under Section 169 of the Act on 12th March, 1999 to pass a resolution for removal of appellant, Devendra Kumar Budhia from the Directorship of the Company with immediate effect. Notice was served by Company on the appellant, Devendra Kumar Budhia and other Directors for a meeting proposed to be held on 20th March, 1999. At the meeting of the Board of Directors held on 20th March, 1999, the appellant, Devendra Kumar Budhia represented and asked the Board of Directors of the Company not to hold extraordinary general meeting but when the Board of Directors of the Company proceeded to hold such extra-ordinary meeting, the appellant, Devendra Kumar Budhia proposed to adjourn the meeting at least for 15 days and asked to hand over the Minutes Book of the Board.

Further case of the applicant (2nd respondent) before the C.L.B. was that the appellant, Devendra Kumar Budhia threatened to disturb the extra-ordinary general meeting, if necessary, with the help of outsiders by using physical force and threatened to physically prevent the members of the Company from voting at such extra-ordinary general meeting. The facts were recorded in the minutes of the meeting of the Board of Directors held on 20th March, 1999 but the appellant, Devendra Kumar Budhia refused to sign the minutes. It was alleged by applicant (2nd respondent) that because of such threat of appellant, Devendra Kumar Budhia, no subsequent date of meeting was fixed, nor held.

4. The appellant. Devendra Kumar Budhia was the 4th respondent before C.L.B. He controverted all the allegations. According to him, there were three Directors of

the Company till 27th September, 1996, namely, Shri Pyarelal Chopra, Dr. Hari Krishan Budhia and Shri Devendra Kumar Budhia. After resignation of Shri Pyarelal Chopra, there was no Board duly constituted. The appellant, Devendra Kumar Budhia had been pursuing the matter with the applicant (2nd respondent) and had written letters to him but no response was received. From the records of Registrar of the Companies, Bihar, the appellant, Devendra Kumar Budhia could understand that Smt. Aruna Budhia and Shri Sanwar-mal Lath were inducted as Directors of the Company on 30th July, 1996 though no Board meeting was held by the Company and no notice was given to any of the Directors.

The appellant, Devendra Kumar Budhia further took plea before C.L.B. that the consideration amount of Rs. 7,25,500/- was not paid for acquisition of 72,550 shares. For the said reason, the share certificates were not handed over to the applicant (2nd respondent). Other allegations were also made.

5. It is not necessary to discuss all the other facts as were pleaded before C.L.B. as no such issue is required to be determined in this appeal.

It is a settled law that the Court ordinarily do not interfere with the domestic management of the Company, if it is conducted in accordance with articles. The discretion granted to the C.L.B. under Section 186 of the Companies Act is used sparingly with caution so that it do not become a party either a share-holder or the Director of the Company but it is supposed to act as a prudent man of the business.

The only question to determine in a petition under Section 186 of the Companies Act is whether the Director or the member, who has moved the application is bona fide and is in the larger interest of the Company or not. If the deadlock is not removed, then it will go against the interest of the Company. Such decisions are to be given upon consideration of all the relevant facts and circumstances of a case and there is no strait jacket formula

6. In the present case, the C.L.B. took into consideration the maintainability of the application. The application having been preferred by one of the Director of the Company, it was accepted. Taking into consideration the other relevant facts and

circumstances of the case that the applicant (2nd respondent) was a registered share-holder having holding 1,90,050 fully paid-up equity shares represents 42.23% of the paid-up share capital; said Director had served the Company requisition notice dated 12th March, 1999 under Section 169 of the Act for convening the extra-ordinary general meeting for the purpose of considering and passing a resolution to remove the appellant, Devendra Kumar Budhia from the Directorship of the Company; the Board of Directors convened meeting on 20th March, 1999 but because of opposition made by appellant, Devendra Kumar Budhia for passing such resolution or holding extra-ordinary general meeting with threat to disturb the meeting, otherwise, if the C.L.B. by impugned order dated 3rd September, 1999 directed to convene a Board meeting and to fix a date for such extra-ordinary general meeting to transact the business as per special notice and has passed other consequential order, it cannot be held to be illegal. It is well within the jurisdiction of the C.L.B., who has passed order on an application preferred by a Director, who had locus standi to prefer such application under Section 186 of the [Companies Act, 1956](#).

7. There being no merit, this appeal is, accordingly, dismissed.

However, in the facts and circumstances of the case, there shall be no order, as to costs.

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