

Raymon Engineering Works Vs. the Union of India Through Ministry of Industrial Development and Companies Affairs, New Delhi and anr.

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Court : Delhi

Decided On : Apr-24-1969

Reported in : ILR1969Delhi564

Judge : S. Rangarajan, J.

Acts : [Companies Act, 1956](#) - Sections 269

Appeal No. : Civil Writ Appeal No. 357 of 1968

Appellant : Raymon Engineering Works

Respondent : The Union of India Through Ministry of Industrial Development and Companies Affairs, New Delhi and a

Advocate for Pet/Ap. : B. Dutt,; D.K. Kapur,; B.N. Sen,;

Judgement :

S. Rangarajan, J.

(1) A very interesting question with reference to the scope of section 269 and section 637A of the Indian Companies Act (as amended by Act 65 of 1960) arises for consideration, as a case of first impression, in this civil writ petition.

(2) A few salient facts alone may be sufficient to notice for deciding this question. The petitioner, called the Raymon Engineering Works Limited, is a public limited company which was incorporated on 30th November, 1954 with an authorised capital of rupees three crores. It was, therefore, an existing company within the meaning of section 3(2) of the Act.

(3) Raymon & Company (India) Private Limited, incorporated in 1951, consisting only of two shareholders (Mrs. and Mr. M.C. Ray) were appointed on 7th February, 1956 as Managing Agents of the petitioner-company for a period of ten years. The Managing Agents negotiated, on 5th September 1955, for the purchase of a Bone Mill from Messrs David Curlenders for Rs. 3,25,000.00 out of which Rs. 15,000.00 had been paid as earnest money. There was a conveyance dated the 25th June, 1957, whereby the balance of Rs. 3,10,000.00 was paid. The negotiations for the purchase of this Mill are stated to have commenced in the year 1953-54 but completed on the 25th June, 1957. Shri M. C. Ray, the director and shareholder of the Raymon & Company (India) Limited was also one of the promoters of the company.

(4) Some time in 1957, Rayon & Company (India) Private Limited offered to sell the entire land comprised in the Bone Mill along with the structures and machinery to the petitioner-company in order to enable the petitioner-company to erect and start their factory for the manufacture of wagons, for which they had obtained a license under the Industries (Development & Regulation) Act, 1951. In pursuance of the said offer a meeting of the Board of Directors of the petitioner-company was held on 12th June, 1957 in which two independent valuers had valued the assets of the Bone Mill at Rs. 10,80,000.00 and Rs. 9,60,000.00 respectively. The Board of Directors of the petitioner-company accepted the offer of Raymon & Company (India) Private Limited for the sale of the said Bone Mill unanimously resolving to purchase the said Bone Mill land and machinery for Rs. 10 lakhs, if necessary, by issuing fully paid-up ordinary shares for the said Rs. 10 Lakhs. The resolution, copy of which is Annexure 1 to the return filed by the first respondent states that the Bone Mill had been purchased by the Managing Agents for and on behalf of the petitioner-company.

(5) In July, 1957, the petitioner-company applied to the Controller of Capital Issues, Government of India, seeking his consent for the issue of one Lakh equity shares, of Rs. 10.00 each, to the Managing Agents. But the Controller suggested payment of only rupees five Lakhs as sale consideration for the said Bone Mill. Raymon & Company (India) Private Limited did not agree to this; finally the Controller of Capital Issues agreed, by his letter dated the 5th January, 1959, to the issue by the petitioner-company of ordinary shares worth rupees 6' Lakhs to Raymon & Company (India) Private Limited in respect of said Bone Mill. The sale deed, which was completed earlier, was not finalised till 17th January, 1959.

(6) In August, 1960, the petitioner-company issued Rs.3,99,400.00 ordinary shares of rupees ten each and two thousand preference shares of Rs. 100.00 each. In the prospectus, the fact of the purchase of Bone Mill from the Managing Agents-company for Rs. 6 1/2 Lakhs was disclosed, but not the fact of the same having been purchased for 3 1/2 Lakhs by the Managing Agents-company.

(7) On 23rd September, 1963 an application was made, in accordance with section 269 of the Companies Act, for permission to appoint Shri Ray as a Managing Director of the petitioner-company, supported by a resolution of the petitioner-company to that effect. Annexure A to the petition is the copy of notice of the Annual General Meeting of the Members of petitioner-company to be held on 23rd September, 1963 containing the above draft resolution. The Company Law Board required the petitioner company to give various particulars from time to time and ultimately rejected the request of the petitioner-company to appoint Shri Ray as the Managing Director (vide Annexure A-1, dated the 5th December, 1964 to the return). The petitioner-company was informed by the Under Secretary of the Company Law Board (Shri Balbir Singh) that the proposal of the company for the appointment of Shri M. C. Ray as the Managing Director of the Company for a period of five years with effect from 23rd September, 1963 on a remuneration of Rs. 6,500.00 per month plus certain perquisites had been considered very carefully but having regard to the facts and circumstances of the case, the Company Law Board regretted its inability to approve the same.

(8) In reply there to (Annexure A-2 to the return) another opportunity for making representation was sought. As a result of further representations and discussions the Company Law Board finally agreed, by their letter, dated the 31st December, 1964 (Annexure W) approved, under section 269 of the Companies Act read with the Department of Revenue Notification No. Gsr 178 dated the 1st February, 1964, the appointment of Shri M.C. Ray as the Managing Director of the Company for a period not exceeding three years with effect from 13th September, 1963 on a remuneration, as stated therein, but subject to the further conditions stated in paragraph 4 therein, which are as follows:-

(I) That Shri M.C. Ray secures in five yearly Installment, the first one to be paid within a fortnight of the receipt of this letter, the refund by Raymon & Co. (India) Private Ltd. to the company (Raymon Engineering Works Ltd) the sum of Rs. 2,75,000.00 being the difference between the actual price paid by the former for the purchase of the property known as the 'Bone Mill' from Messrs David Curlender and others, and the price at which the said property was sold by the said Raymon & Co. (India) Private Ltd. to Raymon Engineering Works Ltd., as reduced by Rs. 50,000.00 being the estimated expenditure, etc. incurred by Raymon & Co. (India) Private Ltd.,

(II) That the Company Law Board shall have the right to rescind or withdraw the aforesaid approvals at any time during the tenure of three years if the Board is of the opinion that the conduct of the Management of the affairs of the company by the Managing Director is not satisfactory; and

(III) That the re-appointment of Shri M. C. Ray, if any, as the Managing Director of the Company on the expiry of his tenure of three years; as mentioned in paras 1 and 3 above, shall require fresh approval of the Company Law Board under Section 269 of the Act after compliance with all the legal requirements.'

(9) This letter was merely acknowledged by the petitioner-company in its communication dated the 7th January, 1965 (Annexure D A-3 to the return).

(10) In March, 1962 the Company Law Board received an anonymous letter containing allegations against Shri M. C. Ray. In September, 1966 we find the

Company making a representation to the Hon'ble Minister for Law mentioning for the first time that it had been subjected to coercion by the Ex-Finance Minister, whereas Shri Ray had made very substantial contribution to the petitioner-company by his obtaining American and German financial participation (obtaining a loan from the- U.S. Aid Coolie Funds), that he had paid Rs. 55,000.00 as directed by the Company Law Board in the hope that the merits of the case would be duly considered by Government in due course and asking for the conditions imposed by the said order of the Company Law Board, dated the 31st December, 1964, to be withdrawn. The advice of the Company Law Advisory Commission was also taken but the Company Law Board refused to withdraw the conditions imposed on 15th December. It is contended in the return that the Chairman of the Board had discussed the matter with the Finance Minister and that he had agreed to Shri Ray being appointed as the Managing Director, if suitable conditions were drafted to ensure that the Company was well managed and that the difference between the actual price paid by the Raymon & Company (India) Private Limited and the price for which it was sold to the petitioner-company was refunded. In this regard, a sum of Rs. 50,000.00 was allowed to Shri Ray, representing the value of the improvements he is said to have made in respect of that property. On the expiry of the period of three years the Company Law Board, by its order dated the 28th February, 1968, informed the petitioner-company (vide Annexure J dated the 28th February, 1967) that it regretted its inability to approve of the proposal of the petitioners company to appoint Shri Ray for a further term of five years with effect from 23rd March, 1956.

(11) In this writ petition the petitioner challenges nto only the said impugned order (Annexure J) but also the Company Law Board having imposed the above conditions on 13th December, 1964.

(12) It may also be noticed in this context that despite the order of the Company Law Board (Copy of which is Annexure J) the petitioner-company had passed a resolution (copy of which is Annexure 0) on 29th October, 1966 re-appointing Shri Ray as Managing Director for five years with effect from 23rd September 1966 on the terms of the draft agreement placed before the Meeting of the said date; with reference to this matter, however, the Company Law Board has nto yet taken any

penal action.

(13) Before I deal with the rival contentions in this case it is necessary to clear the ground of the misconception which seemed to have entertained, even by the Company Law Board, regarding the actual scope of sub-sections (1) and (2) of section 269 and of section 637A of the Companies Act. Shri B. Sen has cleared up much of the confusion by the approach which he made before me to this question. He made it quite clear that he was seeking to bring this case nto under section 269(2) but only under section 269(1) read with section 637A of the Act. he also relied upon the acceptance by the petitioner-company of the conditions which had been imposed on 31st December, 1964 (as set out supra) one of which was that at the end of three years' period the petitioner-company had to apply afresh for further continuance of Shri Ray as Managing Director. Shri Sen contended that these conditions were validly imposed and they having been accepted by the petitioner company (as seen from the copy of its letter Annexure J dated 6th January, 1965) the petitioner-company could nto have any valid grievance in this writ-petition. His third contention was that since Shri Ray was continuing as Managing Director in pursuance of the resolution which had been passed (copy of which is Annexure 0) and this nto having been interfered with yet by the Company Law Board the present writ petition was premature.

(14) The question, in this case, however, is whether the present case would fall within section 269(1) read with section 637A of the Companies Act. Since sub-section (2) of section 269 has also to be understood, a misunderstanding of which, at least in the earlier stages, caused some confusion, it is necessary to set out fully both sub-sections (1) and (2) of section 269 as well as section 637A :-

'269(1)In the case of a public company or a private company which is a subsidiary of a public company, whether such public company or private company is an existing company or not, the appointment of a person for the first time as a managing or whole-time director shall nto have any effect unless approved by the Central Government : Provided that in the case of a public company, or a private company which is a subsidiary of a public company, incorporated after the commencement of the companies (Amendment) Act 1960 (65 of 1960), the

appointment of a person as a managing or whole-time director for the first time after such incorporation may be made without the approval of the Central Government but such appointment shall cease to have effect after the expiry of three months from the date of such incorporation unless the appointment has been approved by that Government.

(2)Where a public company or a private company which is a subsidiary of a public company, is an existing company, the re-appointment of a person as a managing or whole-time director for the first time after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960), shall not have any effect unless approved by the Central Government.'

(15) '637 A Where the Central Government is required or authorised by any provision of this Act-

(A)to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter;

(B)to give any direction in relation to any matter; or

(C)to grant any exemption in relation to any matter, then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction, or exemption subject to such conditions, limitation or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2)Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government under any provision of this Act-

(A)in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government to, or in relation to, any matter; or

(B)in respect of any direction or exemption to be given or granted by that Government in relation to any matter; or

(C)in respect of any other matter, shall be accompanied by such fee nto exceeding one hundred rupees as may be prescribed; Provided that different fees may be prescribed for applications in respect of different matters or in case of applications by Companies, for applications, by different classes of companies.'

(16) The language of section 269(1) is perfectly simple and does nto cause any difficulty; it applies when the following conditions are present:-

(I)When the company is a public company or a private company;

(II)Whether it is an existing company or not;

(III)A person is appointed as a Managing Director for the first time for that company after the coming into force of the Act of 1960.

(17) In such a case such appointment as Managing Director shall nto take any effect unless approved by the Central Government. When the petitioner-company applied to the Central Government for permission to appoint Shri Ray as a Managing Director, for a period of five years, this was undoubtedly an occasion when the Central Government could exercise the power under section 637A, its approval being required under section 269(1) in relation thereto. In such situation, in the absence of anything to the contrary contained in such or any other provision of the Act, the Central Government may accord, give or grant such approval, subject to such conditions, limitations or restrictions, as it may think fit to impose, and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval.

(18) What happened in this case, as already noticed, was that when the petitioner wanted Shri Ray to be appointed as Managing Director, the Central Government had declined to appoint him; one important reason was that in the matter of buying and selling the Bone Mill, which transaction had been entered into by him as Managing Director of the said Company, he had made an 'unconscionable profit' to the extent of Rs. 2,75,000.00 even after allowing a sum of Rs. 50,000.00 said to

have been spent by him in the matter of improving the said property.

(19) The question is not whether Shri Ray was legally entitled to make a profit in the manner he did. Shri Datta, learned counsel for the petitioner-Company argued that it was a profit which Shri Ray could have legally made for himself. Shri Sen cut this argument short by conceding that it was open to Shri Ray, legally, to make such a profit; but in granting or refusing to accord permission to be appointed as a Managing Director of the Company the Central Government had, when its approval was sought under section 637A to impose conditions, limitations or restrictions in this regard. This it was perfectly competent for the Central Government to do; these were the conditions to which the petitioner-company had agreed when it wanted the previous decision of the Central Government refusing to give approval to his appointment as Managing Director was sought to be reviewed. It is also worth recalling that when the conditions were ultimately imposed and communicated to the petitioner company it had acknowledged the said communication without any protest whatever. It is easy to imagine how the petitioner company should have then reacted to the imposition of these conditions because the petitioner-company wanted Shri Ray to be appointed as Managing Director; when permission to appoint him as Managing Director had been refused they were only too happy to get him appointed as Managing Director and agreed to the conditions imposed by the Central Government, one of which was that the said sum of Rs. 2,75,000.00 should be repaid in five Installments. In fact, Shri Ray himself had subsequently paid the first of those Installments.

(20) It is also important to notice that one of the conditions imposed then was that the petitioner-company could have Shri Ray as its Managing Director only for a period of three years, not five years as requested; the petitioner-company had to seek the approval of the Central Government for continuing Shri Ray as Managing Director beyond the period of three years. Such a condition had necessarily to be imposed if the conditions imposed were really to be implemented for only in this way the Central Government could make sure that Shri Ray would refund the amount of gain made by him, as agreed to by the petitioner's company, in Installments. Obviously, if he did not refund those amounts, as directed, the Central Government had no doubt the power to even terminate his appointment as

Managing Director within the period of three years; the mere fact that the Central Government did not do so could not lead to the inference that the Central Government had waived the fulfillment of the conditions imposed by it earlier in this regard.

(21) When I asked Shri Datta as to how he would get out of section 269 sub-section (1) and 637A read along with it, he was unable to even mention a single circumstance which would help take this case out of the ambit of section 269(1) read with section 637A. Shri Datta could only reply that section 637A would only apply in the absence of 'anything to the contrary contained in such or any other provision of this Act' and that section 269(2) was such a provision. I am afraid whatever confusion there was earlier on the question, whether it was a case of Shri Ray being 're-appointed' as Managing Director or not, there is no scope at all for such a confusion now when it is seen, as explained by Shri B. Sen, that section 269(2) could only apply to the case of a 're-appointment' of a person as a Managing Director, in the case of an existing company, such re-appointment being made for the first time after the commencement of the Companies (Amendment) Act, 1960. In other words, an existing company may already have a Managing Director; such Managing Director would continue to hold office despite the coming into force of the Companies (Amendment) Act 1960, and the question of the approval of the Central Government in such a case would arise only when that Managing Director of the existing Company, who had been appointed as Managing Director prior to the Act of 1960, was sought to be re-appointed' for the first time after the coming into force of the Companies (Amendment) Act 1960. Once this is understood the scope of section 269(2) becomes clear; it also becomes clear that section 269 does not cover the case of 'reappointment of a Managing Director, in the case of one, who had been appointed (with the Central Government's approval) after the coming into force of the Companies (Amendment) Act, 1960.

(22) When I have stated so far regarding the relative scope of sub-section (1) and sub-section (2) of section 269 would become even clearer if the proviso to sub-section (1) of section 269 is studied. It provides for the appointment of a person as a Managing Director for the first time after such incorporation, even without the

approval of the Central Government, if the Company was incorporated after the commencement of the Companies (Amendment) Act, 1960; in such cases even though the first appointment of a Managing Director could be made without the approval of the Central Government it shall cease to have effect after the expiry of three months from the date of such incorporation unless the appointment has been approved by the Central Government. This provision was obviously necessary in order to help a company incorporated after the amending Act 1960 to have a Managing Director of its own even without the approval of the Central Government for a limited period of three months within which time the approval of the Central Government should be had.

(23) After hearing both sides elaborately on this question and after having given the above provisions my most anxious consideration it seems to me that the construction adopted by me, accepting the argument of Shri Sen for the-Central Government, is one which harmonises every part of the relative provisions without excluding any portion. On the other hand, any other construction would lead to several difficulties in the matter of interpretation.

(24) It is seen from the Statements of Objects and Reasons of that the Amending Act 65 of 1960 was enacted mainly as a result of the recommendations of the Vishwanatha Shastri Commission.

(25) In some particulars, no doubt, the recommendations were modified in the light of the experience of the working of the Act gained since the submission of the report and partly by the views expressed on these recommendations by the Chambers of Commerce and others; a Bill incorporating the above objects was referred to a Joint Committee which presented a Report to the Lok Sabha on the 16th August, 1960 (Gazette of India Part 2, Section 2 dated the 16th August, 1960). The Bill was then passed into Act and received the assent of the President of India coming into force on the 20th December, 1960.

SECTION 269 of the Act of 1956 reads as follows:-

'APPOINTMENT of managing or whole-time director to require Government approval: In the case of a public company or a private company which is a

subsidiary of a public company, the appointment of a managing or whole time director for the first time after the commencement of this Act in the case of an existing company, and after the expiry of three months from the date of its incorporation in the case of any other company, shall not have any effect unless approved by the Central Government; and shall become void, if, and in so far as it is disapproved by that Government.'

(26) The Section, as it stands amended by Act 65 of 1960, has been already read; it is with the effect of sub-sections (1) and (2) we are now concerned. Not only during the time that the petitioner's representations were considered by the Government but also in the return filed to this writ petition there was an attempt to justify the refusal of the petitioner's request to appoint Shri Ray as the Managing Agent for a further period of five years as one coming under section 269(2) of the Act. If, as already stated, the case falls within section 269(1) read with section 637A (As amended in 1960) and does not come under section 269(2) for the reason that sub-section (2) only governs a case of person who had previously been appointed as Managing Director being reappointed in an existing company but after the coming into force of Act 65 of 1960, then it becomes fairly clear that in granting permission to the petitioner to have Shri Ray as Managing Director only for three years (not for five years) as applied for, subject to the two important conditions, inter alia, that Shri Ray should return the sum of Rs. 2,75,000.00 in the manner stated and the Petitioner-company should further seek for continuance of Shri Ray as Managing Director beyond the period of three years, the Central Government was imposing conditions, which it was open to it to impose. Once there was necessity for the petitioner to apply for appointing Shri Ray as Managing Director, for the first time, after the coming into force of the amending Act of 1960 and it was open, in this context, for the Central Government to impose conditions on such permission being granted under section 637A no further question can really arise for decision in this writ petition.

(27) I fail to see how the petitioner-company can seek to derive any assistance from anything that was stated by a Bench of the High Court of Mysore in *Canara Workshops Ltd. v. Union of India* (1). In discussing the nature of the conditions that were imposed under section 637A, it was observed by his Lordship Mr. Justice M.

Sadasivayya as follows-

'IT will be noticed that the power under section 637A(1) is really an incidental power, in the sense that the Central Government can exercise this power only when it is required under any provision of the Act, to accord approval sanction, consent, confirmation or recognition to or in relation to, any matter. thereforee, when the Central Government has the competence under some other provisions of the Act to accord its approval, sanction, consent, confirmation or recognition, then, while granting the same, the Central Government may attach such limitations or restrictions as it may think fit. This does nto mean that - the competence of the Central Government to impose such conditions, limitations or restrictions is either arbitrary or unlimited. Being an incidental power, it is necessary that the limitations or restrictions should be relevant to, or bear relation, to the matter in respect of which the Central Government has been given the competence to accord approval, sanction, consent, confirmation or recognition. In that way, the purpose for which the approval, sanction, consent, confirmation or recognition is necessary under any concerned provision of the Act, will be a relevant consideration while imposing the conditions, limitations or restrictions under section 637A(1), because the incidental power to impose the latter cantto travel beyond the said purpose. In the present case, it is nto stated before us that the competence of the Central Government to grant approval to the two resolutions arises under any provision of the Act other than sections 309 and 310.'

(28) His Lordship Mr. Justice Gopivallabha Iyenger agreed with the above observations but differed only regarding the scope of section 309, which is nto relevant for our present purpose. It is nto disputed by Shri Sen that the jurisdiction to impose conditions, restrictions, etc. under section 637A is really confined to cases where the permission under the Central Government is required. In other words, if no permission is necessary in respect of any matter, no conditions, etc. could be imposed with reference to such matters by the Central Government. The sine qua non for the exercise of the powers under section 637A thereforee, is the need to apply to the Central Government for permission in respect of the concerned matter; this is nto disputed by Shri Sen. There can be no difficulty in understanding what was meant by the expression 'incidental power' in the Mysore

decision because his Lordship Mr. Justice Sadasivayya has himself explained the sense in which the said expression has been used, namely, 'that the Central Government can exercise this power only when it is required under any provision of the Act to accord approval, sanction', etc. A look into any standard dictionary, like the Shorter Oxford, shows that the expression 'incidental' connotes the idea of something being subordinate or fortuitous. There is nothing fortuitous in the exercise of the powers under section 637A because these powers could be exercised only where the permission of the the Central Government is necessary. If no such permission is necessary there will be no occasion whatever for the exercise of the powers under section 637A and the consequent imposition of conditions, limitations, etc. There is probably nothing subordinate, in my view, in such a situation because the power, to impose conditions, etc. under section 637A as in this case, arises directly by reason of the requirement of the Central Government's permission. The expression 'incidental' also seems to have retained its earlier meaning of 'resulting from'. The terminology 'incidental' employed by his Lordship Mr. Justice Sadasivayya need not, however, detain us, because his Lordship has made it abundantly clear, what he meant by referring to the power under section 637A as being 'incidental'. Be this as it may, the matter, as one of substance, does not admit of any doubt that the power under section 637A , to impose conditions, etc. can only arise where any provision of the Act requires such approval, etc. of the Central Government. It is in this context that it becomes necessary to find the need for the approval of the Central Government by reason of section 269(1) in the instant case. Once section 269(1) is understood, in the way in which I understand it, it follows, for that very reason, the occasion for the exercise of the power under section 637A arises.

(29) It will be a different question, whether the said power is exercised properly or arbitrarily, a question to which I shall address myself presently. Before I do so, however, it is necessary to refer to yet another decision of the Madras High Court in *A.R. Hussain Khan v. Registrar of Companies*.) That case arose under section 269, as it stood before the amendment in the year 1960, in a criminal matter; there was a prosecution in respect of the accused having described himself as a Managing Director without having taken the express approval of the Central Government to his being appointed as Managing Director. The accused had so

described himself in three returns which he submitted on 31st December, 1957, the balance-sheet of the company dated the 24th July, 1959, the annual return dated the 24th November, and the return concerning the allotment of shares of the company. Subsequently, he was re-elected for five years as Managing director on 10th June, 1961. He had applied under section 269 of the Amended Act and his appointment was approved by the Government in December, 1962. In these circumstances his Lordship Mr. Justice Kailasam construed section 269, as it stood before the Act of 1960, reading the amended section also, and held that the petitioner was not bound to apply to the Central Government under section 269 of the Old Act for approval, such approval being necessary, according to Mr. Justice Kailasam, only in the case of the provision, as amended. Not being a case arising under the new Act, what the provision, as amended, meant, is not one which actually fell for decision in that case. thereforee this case has been argued before me as one of first impression.

(30) In the light of the above discussion, I find that section 269(1) read with section 637A empowered the Central Government to impose the conditions it did declining to appoint Shri Ray as the Managing Director for any further period after the expiry of the initial three year period if the conditions imposed by it was not fulfilled.

(31) The Second question, which arises for consideration is whether the conditions imposed in this case were reasonable or were made capriciously. On this aspect of the matter a contention was advanced, as already noticed, that it was perfectly legal for Shri Ray to have made a profit by the sale of the Mill to the petitioner company and that the Central Government was not empowered to require Shri Ray to impose the condition that Shri Ray should return the profit he had thus made. A few necessary facts alone bearing on this matter may have to be recounted.

(32) The special resolution passed at the Annual General Meeting on 4th January, 1965 -was to the following effect.-

'RESOLVED that the purchase in 1957 of the property consisting of land, buildings, plant and machinery including Generating Plant and Railway Siding (all that pieces and parcel of property commonly called the Bone Mill) by the Company

from Messrs Raymon and Co. (India). Private Ltd., the Managing Agents of the Company for the price of Rs. 6,50,000.00 paid in the form of fully paid up equity shares of the Company of that value, with the consent of Controller of Capital Issues and which purchase was made with the consent and approval of the shareholders accorded at an Extraordinary General Meeting held on 7th July, 1957, be and is hereby approved, ratified and confirmed notwithstanding any technical defects or omissions in the previous resolutions, prospectus and statements and it is further confirmed that the said purchase was under all the circumstances then prevailing made for a very reasonable and proper price.'

(33) This shows that the purchase had been made only by Messrs. Raymon & Company (India) Private Limited, the Managing Agents of the petitioner-company. But there was a subsequent attempt to resile from this admission, namely, that the purchase was by the Managing Agents of the petitioner-company by trying to show that that was a mistake. This is an admission which was permissible for the Central Government to take into account along with the other fact that the agreement to purchase the Bone Mill had been entered into by Shri Ray who was Managing Director of the petitioner-company. It being admitted that only 3' Lakhs was paid for the said transaction Shri Ray had made profit of over Rs. 3 Lakhs and this had nto even been expressly disclosed in the prospectus. The relevancy of this circumstance is that in Form 25A, prescribed for an application under section 269B the prospectus is also one of those directed to be enclosed with the application for grant of permission. It is admitted that it was nto disclosed in the prospectus that the Bone Mill had been purchased for Rs. 3,25,000.00 but sold to the petitioner company for Rs. 3,75,000.00. In this context, the proper approach is nto whether it was open to make a profit by the transaction bat whether the profit had been made by him in his capacity as a Managing Director of the Company but whether having regard to the total financial condition of the company and the way in which it was faring; the Company Law Board had authority to require the petitioner-company to collect from Shri Ray the amount of profit thus made if the petitioner-company wanted him to be appointed as a whole time Managing Director. On this question, thereforee the petitioner does nto advance his case further by seeking to justify the profit which Shri Ray made for himself, characterising it as a profit which he was entitled to make by relying on Osmium

Electric Palaces Limited v. Baines. On the other hand, Shri Sen, for the Central Government, made it quite clear that he was not seeking to justify the conditions imposed by the Central Government on the ground that Shri Ray had made an 'illegal' profit. The Government was entitled none-the-less to think that it was 'unconscionable' profit made by Shri Ray utilising his position as Managing Agent, director, and promoter, though made legally; it was well within their power, therefore, especially in the context of financial condition of the company and the way in which it was faring, to insist on the amount being refunded by Shri Ray (the petitioner-company collecting it back from him) in the event of his having been appointed as Managing Director. It is in this light that the petitioner-company consenting to the conditions imposed in this regard by the Central Government becomes significant. The Central Government having refused such permission already was willing to reconsider the refusal only when the petitioner-company agreed to Shri Ray re-imbruing to the extent of the gain made by him at the expense of the Company, the gain which was 'unconscionable' in the view of the Central Government. Having agreed to get reimbursement of the said amount from Shri Ray the petitioner-company cannot turn round and question the validity of the imposition itself. I have said enough to show that the imposition of the conditions were quite valid; they were not capricious. The reasonableness of the conditions is reinforced by the petitioner-company not having demurred to it but, on the other hand, having accepted those conditions and allowed Shri Ray to function as Managing Director subject to these conditions.

(34) It is also significant that it was not until the far end of the term of three years for which the appointment of Shri Ray was permitted, in the first instance (subject to the conditions imposed), that the petitioner-company began to make representations concerning the conditions imposed.

(35) There is no force in the contention that the Company Law Board had no power to impose the conditions once the Controller of Capital Issues, after considering the value of the Bone Mill, had agreed to the issue of necessary capital. The questions that arise for consideration by the Company Law Board under section 269(1) read with section 637A are different from what had to be considered by the Controller of Capital Issues.

(36) I am least impressed by the argument of mala fides which has been advanced. Any attack of personal dishonesty leading to malafides against certain officials, including the former Finance Minister, could not even be listened to unless these persons are made parties to the petition and thus given an opportunity to rebut this allegation. The whole question in this case, as I understand it, is one of the Central Government having the necessary power to impose those conditions. Once the Central Government had the power then the question of mala fides itself is not very relevant, especially in the context of the conditions being seen to be quite just and proper and also having been agreed to by the petitioner-company itself.

(37) Reference was made to the unreported decision of this High Court in Rampur Distillery and Chemical Co. Ltd. V. The Company Law Board by their Lordships Mr. Justice Kapur and Mr. Justice Tatachari. This decision has no direct bearing on this case except to this extent, viz., that the decision of the Central Government in such matters was held to be justiciable. To nearly the same effect is the decision of the Supreme Court in Rohtas Industries v. S. D. Agarwal and others. It was held by the Supreme Court that a discretion conferred upon by the Central Government under section 235, 237B of the Indian Companies Act 1956 should be exercised honestly and not for corrupt or ulterior purposes. The Authority must form the requisite opinion honestly and after applying its mind to the relevant material before it.

(38) There is also a third aspect which Shri Sen brought to my notice, but there is no need to discuss it in the view I have taken. It was already noticed that despite the refusal of the Central Government to approve the resolution of the petitioner-company to grant permission to the petitioner-company to have Shri Ray beyond the three years' period originally approved subject to conditions the petitioner-company none-the-less passed the resolution stating that Shri Ray would be their Managing Director for a period of five years. With reference to this matter the Central Government did not choose to take any action against the petitioner. Shri Sen contended, and not altogether without justification, that the petitioner-company could not in the face of such a resolution come to this Court for redress against the conditions imposed in the absence of any further action taken by the

Central Government against the petitioner for continuing Shri Ray as Managing Director. Since I hold that the conditions were legal, properly imposed and also agreed to by the petitioner- company, this aspect need not detain us.

(39) In the result the petition fails and is dismissed with costs.

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