

Palanisamy and anr. Vs. Milka Nutrients P. Ltd. and ors.

Palanisamy and anr. Vs. Milka Nutrients P. Ltd. and ors.

SooperKanoon Citation : sooperkanoon.com/825921

Court : Chennai

Decided On : Jan-28-2008

Reported in : [2008]144CompCas619(Mad); (2008)6MLJ1081

Judge : R. Banumathi, J.

Acts : [Companies Act, 1956](#) - Sections 10F, 397, 398 and 403

Appeal No. : C.M.A. No. 293 of 2008

Appellant : Palanisamy and anr.

Respondent : Milka Nutrients P. Ltd. and ors.

Advocate for Def. : H. Karthick Seshadri, Adv.

Advocate for Pet/Ap. : R. Murari, Adv.

Disposition : Appeal dismissed

Judgement :

R. Banumathi, J.

1. Challenge in this appeal is to the order/interim order dated January 11, 2008, passed by the Additional Principal Bench, Company Law Board, Chennai, in C.P. No. 5 of 2008.

2. The dispute is in respect of 'Milka Nutrients' incorporated as a company under the name and style of M/s. New Hope Food Industries P. Ltd., which is engaged in the business of manufacturing and supplying of cakes under the brand name 'Milka Wonder Cake'. Alleging acts of mismanagement and oppression, the appellants, who are also the directors of the company has preferred C.P. No. 5 of 2008. In the said company petition, the appellants sought to restrain the respondents from conducting and holding the proposed extraordinary general meeting of the company scheduled to be held on January 12, 2008. The Company Law Board ('CLB') by its order dated January 11, 2008, had granted the liberty to the first respondent-company to convene the extraordinary general meeting after serving notice to the appellants by registered post with acknowledgment due. The Company Law Board further observed that the first respondent-company cannot implement any of the resolutions without leave of the Board, save and except the bank operation by the second respondent. The grievance of the appellants in respect of Clause (ii) of the impugned order, which reads as under:

(ii) Any resolution which may be passed at the meeting which may be convened in terms of this order, will not be implemented without leave of this Bench, save in the matter of operation of the bank account by the managing director, in the light of his authority as envisaged in Clause 41 of the articles of association of the company. In the event of the managing director is authorized to operate the bank account solely, he shall furnish to the petitioners, a statement of the bank account every fortnight.

3. The main grievance of the appellants is that the direction of the Company Law Board in the matter of operation of the bank account by the managing director. The contention of the appellant is that hitherto they have been operating the bank account jointly and once resolution is passed authorizing the second respondent-managing director to solely operate the bank account, it would tantamount to permitting him to take complete control of the affairs of the company.

4. Learned Counsel for the appellants Mr. R. Murari has submitted that when serious mismanagement and oppression is alleged against the second respondent, he cannot be allowed to operate the bank account and the practice so

far hitherto in vogue, viz., joint operation of the bank account has to be continued.

5. Learned Counsel for the appellants has further submitted that Clause 41 of the articles of association was neither invoked nor put in vogue till the appellants have filed the company petition and that the second respondent for the first time seeks to rely upon Clause 41 of the articles of association and the Company Law Board having found a prima facie case for intervention ought not to have been circumscribed by the articles in the exercise of such power. Learned Counsel has further urged that if the second respondent is allowed to operate the bank account, the respondents would in such an event manipulating invoice in such manner to secret the profits to themselves. Learned Counsel has drawn the attention of this Court to the cheques jointly signed by the appellant and the second respondent.

6. Heard Mr. H. Karthick Seshadri, learned Counsel for the respondents. Learned Counsel for the respondents has submitted that the interim order was passed in the best interest of the company as envisaged by the provisions of Section 403 of the Companies Act and in an appeal filed under Section 10F of the Companies Act, no question of law is involved to interfere with the orders of the Company Law Board. Learned Counsel has further submitted that the Company Law Board had permitted the operations of the bank account in terms of Clause 41 of the articles of association, to which the appellants are also a party and the appellants cannot now take a different stand contrary to the existing articles of association.

7. Under Section 10F of the Companies Act, 'an appeal lies to the High Court on any question of law arising from any decision or order of the Company Law Board'. Finding of fact recorded by the Company Law Board is final and is therefore not appealable. The jurisdiction of the High Court in appeal is expressly confined to the determination of question of law. The mere fact that the High Court would have come to a different conclusion on the facts also does not make the matter appealable.

8. As per Clause 41 of the articles of association, 'subject to the direction and control of the board of directors, the general management of the business of the company shall be carried on by the managing director. He shall by himself have absolute powers to operate the bank accounts of the company. Of course hitherto

the managing director and the appellant were jointly operating the bank account as is seen from the cheques issued by the company. In the proposed extraordinary general meeting resolution is sought to be passed in terms of Clause 41 of the articles of association authorising managing director to solely operate the bank accounts of the company and authorising to sign cheques, instruments and necessary documents. Having regard to Clause 41 of the articles of association, the Company Law Board has passed the order that any resolution will not be implemented without leave of the Company Law Board, save in the matter of operation of the bank account by the managing director in the light of the his authority envisaged in Clause 41 of the articles of association. During the pendency of the company petition under Sections 397 and 398, the Company Law Board has wide powers under Section 403 to make any interim order, which it thinks fit for regulating the conduct of the company's affairs, on such terms as appears to the Company Law Board as just and equitable. When the Company Law Board has passed the interim order for regulating the company's affairs in the best manner, such discretionary order cannot be interfered with.

9. Learned Counsel for the appellants has produced the cheques to show hitherto that the second respondent and the appellant were jointly signing the cheques and to authorise the managing director to operate the bank accounts would tantamount to authorising the managing director to take control of the affairs of the company by manipulating invoice. This contention does not merit acceptance. The impugned order was passed by the Company Law Board exercising its discretionary power to regulate the affairs of the company. It is also relevant to note that the impugned order contains a safeguard directing the second respondent to furnish statement of the bank accounts to the appellants.

10. No question of law, much less, substantial question of law is involved in this appeal. No substantial question of law is involved to entertain the C.M.A.

11. In the result, this C.M.A. is dismissed. Consequently, M.P. No. 1 of 2008 is also dismissed. There shall be no order as to costs.