

Goodricke Group Ltd. and ors Vs. Unknown

Goodricke Group Ltd. and ors Vs. Unknown

SooperKanoon Citation : sooperkanoon.com/925038

Court : Kolkata

Decided On : Dec-19-2011

Appellant : Goodricke Group Ltd. and ors

Respondent : Unknown

Judgement :

CP No.274 of 2011

CA No. 952 of 2010

CP No. 556 of 2010

IN THE HIGH COURT AT CALCUTTA

ORIGINAL JURISDICTION

IN THE MATTER OF:

GOODRICKE GROUP LTD. and; ORS.

-AND-

THE REGISTRAR OF COMPANIES, WEST BENGAL

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

Date :December 19, 2011.

Appearance:

Mr. S. N. Mookerji, Sr. Adv.

Mr. Ranjan Bachawat, Adv.

Mr. D. N. Sharma, Adv.

Mr. Orijit Chatterjee, Adv.

Mr. Indranil Karfa, Adv.

Mr. P. S. Basu, Sr. Adv.

Mr. Bhaskar Bhasya, Adv.

Mr. Ashis Kr. Roy, Adv.

The Court: In C.P No.274 of 2011 the petitioners, all officers of Goodricke Group Limited, have applied under Section 633(2) of the Companies Act, 1956 in respect of three several notices issued by the Registrar of Companies. Of the three, the Registrar has concentrated primarily on the one notice that alleges violation of the provisions of 295(1)(e) of the Companies Act in respect of transactions between the company and one Stewart Holl India Limited (SHIL). 2

The company is a listed company and its primary business is the manufacture and sale of tea. The company has several sister concerns in the sense that the company and its sister concerns answer to a common holding company. There are employees, particularly managerial staff including tea garden managers, who are on secondment from one company to the other and the accounts between the sister concerns are adjusted by the concerned company reimbursing the other in respect of payments on account of the relevant employees.

The first charge is in a notice dated April 28, 2011 and alleges violation of the provisions of 300(1) of the Companies Act in one or more of the company's directors being present at the time an item of business in which such directors

were personally interested had been taken up for consideration at the board meeting. It is evident from the recording in the minutes that the concerned directors did not participate in course of the business transacted on the item on the agenda. It is also a matter of record that the presence of such interested directors was not taken into account for the purpose of ascertaining the quorum of the meeting for such resolution. In view of the aforesaid, there does not appear to be any degree of seriousness in the charge levelled by the Registrar for the alleged violation by the petitioners of the provisions of 300(1) of the Companies Act and the show-cause notice is directed to be dropped. 3

A further charge has been brought by the Registrar under Section 269 read with Section 309 of the Companies Act relating to the disclosure omitted to be made by the company relating to the wife of the managing director of the company accompanying the managing director in course of a company-paid foreign visit. The petitioners say that the board of directors of the company approved the expenses that were incurred for the travel of the wife. The petitioners say that it is not the case that managing director and his wife used separate accommodation during their stay abroad. The petitioners also say that the amount expended on account of the travel of the managing director's wife, even if it were added as a perquisite to the managing director, the limit in Schedule XIII to the Act would still not have been breached.

The petitioners have also offered to disclose in the next annual accounts of the company, the information that the wife of the managing director of the company accompanied the managing director in course of a foreign visit which, according to the company, was necessary for the purpose of promoting the company's business overseas. In view of such offer made by the petitioners on behalf of the company, the charge levelled under Sections 269 and 309 of the Companies Act against the petitioners is required to be dropped and the Registrar is directed not to launch any criminal proceedings in such regard. It also such a matter of significance that the income-tax authorities have assessed and accepted the company's 4

accounts, disclosing the expenses on account of the foreign travel of the wife of the managing director, for the relevant assessment year. The company has carried the assessment order for the relevant assessment year to Court.

The charge levelled in respect of the transactions between the company and SHIL is that the company, in the guise of trade advances, made loans available to SHIL from time to time and there was a violation of Section 295 thereby. To begin with, the relevant provision must be seen. There are several situations where a public company may not grant a loan to another body corporate or a firm as enumerated in the several clauses under Section 295(1) of the Act. The Registrar believes that in the company having made available substantial advance to SHIL during the year 2005, there was a breach of clause (e) of sub-Section (1) of Section 295 since, according to the Registrar, the board of directors of the company was in a position to control the decision of SHIL by virtue of four directors of the company also being directors on the board of SHIL. It appears that such first presumption may be slightly flawed. The Registrar has not charged the directors of the company of influencing the course of action in SHIL; the Registrar's charge is that by virtue of the composition of board of directors of the two companies, the board of directors of the company could cause the board of directors of SHIL to act in a particular manner. It is evident from the copies of the annual accounts 5

and other records of the company that its board of directors consisted of eight directors. Admittedly, during the relevant period four of the eight directors of the company were also directors of SHIL. SHIL had six directors in all at the material time. It does not stand to reason that the board of directors of the company could have caused, through the four members of it on the board of SHIL, to take any decision according to its wishes or dictates. For that to happen, a majority of the directors on the board of the company ought to have been majority directors on the board of SHIL, which was not the case. The petitioners have admitted that the company and the SHIL are sister concerns in the sense that the ultimate holding company of both companies are the same.

In any event, the petitioners submit that they do not wish to succeed on a technicality in respect of such charge. The petitioners say that it is also a matter of

some significance that the charge levelled pertains to the accounting year 2005-06 and the accounts of the company were a matter of public record by the end of September, 2006. The point that the petitioners seek to make is that despite the company's accounts being in the public domain for nearly four years, the Registrar chose to issue the relevant show-cause notice only in the year 2011 based on an inspection conducted at the behest of the Registrar in the year 2010. The petitioners say that any criminal action in respect of what should have been included in the accounts of the company for the financial year ended 6

March 31, 2006 could not have been instituted as at the date of the show- cause notice of April 29, 2011 in view of the laws of limitation. In such context, the petitioners refer to an unreported judgment of November 13, 1992 rendered in CA No.232 of 1992, CP No.380 of 1992 (Hindusthan Development Corporation Limited v. The Registrar of Companies) where it was recognised that in view of Section 468(2)(a) of the Criminal Procedure Code which prescribes a period of limitation, even if it were assumed that the offence was committed no criminal proceedings in respect of the matter complained of by the Registrar in such case could have been instituted. Again, there is substantial force in the petitioners' assertion in such regard.

The petitioners have used a supplementary affidavit following leave being granted by an order dated November 16, 2011. Such order permitted the petitioners to rely on the accounts of the company to substantiate their statements that teas of SHIL were regularly purchased by the company and teas of the company were also regularly sold to SHIL. The petitioners have referred to the company's books of accounts and vouchers and prepared an abstract from the books and ledgers maintained by the company in course of the relevant and proximate years. The appropriate journals of the company have been produced in original. The Registrar was permitted to inspect all records of the company that had been relied upon by the petitioners in the supplementary affidavit. The 7

Registrar did not avail of the opportunity but has filed an affidavit dealing with the supplementary affidavit.

The petitioners seek to demonstrate that for several years the company has had regular transactions with SHIL. The petitioners have given a summary of the accounts between the company and the SHIL beginning the year 2003. The petitioners say that it would be evident from the books maintained by the company that at the end of each financial year, upto the year 2010, SHIL was a creditor of the company in the sense that upon accounts being taken between the two parties, money would have been payable by the company to SHIL. The petitioners seek to contend on the basis of such records that the assessment by the Registrar was erroneous in view of the fact that there was no loan which was made available by the company to SHIL. The petitioners show, with the original journals being opened for the Court, that there were only two cash transactions in course of the relevant year. Such transactions reflected the refund of amounts by SHIL to the company by cheques. The petitioners say that all other transactions related to purchase of tea from SHIL by the company or the sale of the company's tea to SHIL with meticulous accounts being maintained therefor.

The petitioners suggest that the mischief that Section 295 seeks to arrest is that unnecessary largesse is not made available by a public company to any of its directors or any concern with which it directors are 8

directly connected. The petitioners say that transactions conducted at arm's length between corporate entities cannot be assumed to be in breach of Section 295 of the Act unless specifics pertaining to the transaction are demonstrated. In the present case, the petitioners say, there can be no doubt that teas of the one company were sold to the other and accounts maintained between the parties. This, according to the petitioners, was enough rebuttal of the presumption by the Registrar of Companies that monies were made available by the company to SHIL as loans in the guise of trade advances.

The Registrar has made a solitary point in support of the show-cause notice issued under Section 295(1)(e) of the Act. The Registrar refers to the reply issued by the company following the Registrar's contemporaneous complaint immediately upon inspection under Section 295(1) being completed in the year 2010. The Registrar also refers to the more recent reply furnished by the company to the

show-cause notice issued in April, 2011. The Registrar says nothing in either response of the company referred to the company having both sale and purchase transactions with SHIL.

The Registrar is somewhat justified in the assertion. However, merely because the company did not refer to the totality of the transactions between the company and SHIL would not amount to the company being precluded from later disclosing the entire range of its business with SHIL. 9

The company has carried its books of accounts and journals to Court. The company has used a supplementary affidavit and the particulars mentioned in the supplementary affidavit are said to be based on its books of accounts. The Registrar was given the opportunity to inspect the relevant books and question the company's summary thereof. The Registrar chose to not look into the books.

In the circumstances, it does not appear that there was any violation of the provisions of Section 295(1)(e) by the petitioners as directors of the company in course of the company's transactions with SHIL.

In such view of the matter, all the three show-cause notices that form the subject-matter of the later petition are quashed and the Registrar is directed not to proceed in such regard any further. The petitioners will, however, pay costs to the Registrar assessed at 500 GM. C.P. No. 274 of 2011 is disposed of as above.

C.P. No.556 of 2010 is the earlier petition under Section 633(2) of the Act and involves 12 show-cause notices. Some of the show-cause notices issued by the Registrar of Companies carry multiple charges. The stand taken by the petitioners is that most of these charges relate to subjective matters and it would not be evident from the show cause notices that either the petitioners benefited personally in doing the 10

things complained of or that any prejudice was occasioned to any person thereby.

The several charges levelled by the Registrar range from the manner in which the books of accounts and other statutory documents were maintained by the company to the treatment of several matters in the company's accounts. The first

charge relates to the violation of Section 372A(3) of the Act in the Registrar finding that the company had granted a loan to a body corporate at an interest lower than the prevailing bank rate of interest. Such charge is connected with the charge under Section 295 relating to the other petition where the petitioners have already succeeded. In view of the order passed on CP No.274 of 2011, no further action need be taken in respect of the show-cause notice pertaining to the perceived violation of Section 372A(3) of the Act since it has been found that the transaction between the company and SHIL, which is a sister concern, did not attract the provisions of Section 295(1) of the Act. The second charge levelled is one under Section 297(1)(a) of the Act for the company not obtaining the approval of the Central Government before entering into certain sale/purchase transactions. The company says that though the transactions were entered into with one Koomber Tea Company Pvt. Ltd., where three of the directors in the company were also directors, all the transactions should not be clubbed and seen as part of one agreement exceeding the value of Rs.1 crore. The petitioners say that 11

there were individual transactions relating to the purchase and sale of tea with Koomber or the secondment of one or more employees of the one to the other. In any event, the petitioners submit that neither the share- holders nor any other person has been prejudiced by the acts complained of and if there was any default on the part of the petitioners it was by oversight and not intended to cause any loss to any person. In view of the nature of relationship between the company and Koomber and the several transactions by and between them going back a number of years, it cannot be said that the petitioners acted mala fide for which they are liable to be prosecuted. Accordingly, the petitioners are excused of the charge levelled under Section 297(1)(a) of the Companies Act, 1956. The third charge brought is under Section 211(3A) of the Act. There are several heads under such charge in the show-cause notice. The Registrar is of the opinion that the company had acted in derogation of the tenets recognised in Accounting Standard-6, AS-10, AS-18 and AS-19. One of the charges levelled by the Registrar is that the company did not segregate the value of the land from the value of the buildings and provide for depreciation. The company owns several tea gardens and the parcels of land thereat are obtained on lease from the State against payment of periodical amounts by way of rent. The petitioners say that the valuation of the

land cannot be done by the company, and, in any event, such valuation would be meaningless since the company is not the owner of the 12

several pieces of land where it has its tea estates. The petitioners also contend that the matters complained of in the relevant show-cause notice, at the highest, amount to the Registrar interpreting the Accounting Standards otherwise than had been done by the company, its directors and its auditors. The petitioners refer to a judgment reported at 141 Comp. Cas 101 for the proposition that the Accounting Standards involve the subjective assessment of matters pertaining to accounts and if it is possible to see that a plausible interpretation was given to any particular provision by a company or its officers, that such interpretation falls foul of the Registrar's understanding of the same provision, may not, by itself, amount to a violation of the provisions of Section 211 of the Act that ought to result in the prosecution of the officers of the company who are deemed to be in default. There is substantial basis to the petitioners referring to the reported judgment in the present context. Matters pertaining to accounts depend on how the treatment is made. There is considerable divergence of opinion among chartered accountants as to how certain matters ought to be treated. Accounting journals are replete with opposing opinions on the matter of treatment of certain heads in particular cases. The fourth charge levelled is, again, under Section 211 of the Companies Act read with Schedule VI thereto. The Registrar says that development expenses on account of the company having spent money at its tea estates have been reflected as part of the company's assets though 13

some of the relevant leases may not have been renewed at the material point of time. The Registrar is of the view that the values of the leasehold lands were to be ascertained and shown separately; that there ought to have been a difference between trade investments and other investments shown in the accounts; that the profit and loss accounts of the company should have revealed the amounts paid by way of income-tax and the amount paid by way of other taxes; that the company should not have charged depreciation on the lands comprised in its tea estates; that the values of the lands and buildings should have been segregated in its accounts; and, that the payments made to sister concerns on account of salaries, wages, bonus etc. should have been bunched under different heads.

None of these matters, even if there were some violation in the odd case, merit any protracted prosecution being launched against the petitioners. First, nothing in the Registrar's show-cause notice in such regard demonstrates that the petitioners or the company benefited from the alleged violation of the relevant provisions or that any person stood to be prejudiced thereby. Secondly, all the matters referred to in the relevant show-cause notice pertain to matters of opinion on the treatment of accounts. In some cases it is evident that the Registrar is mistaken since the Registrar has either failed to take into account the disclosures already made or it is the Registrar's understanding that the lands comprised in the tea estates of the company should have been valued when there was no 14

question of the company valuing the same since the lands belonged to the State and not to the company. The charges levelled in the relevant show- cause notice under Section 211 (1) and (2) of the Act should, accordingly, not be proceeded with by the Registrar.

The further charge under Section 211(1) of the Act is on account of the company using the word "equipment" in its accounts. The Registrar says that such word is not included in Schedule XIV to the Act and the use of such word was inappropriate and rendered the officers of the company liable to prosecution. The Registrar is right in that the word "equipment" is not mentioned in the relevant schedule. However, Schedules VI and XIV to the Companies Act, 1956 refer to "goodwill, vehicles etc." and the petitioners are justified in being aggrieved that though the company should have clubbed all equipment under the omnibus "etc.", the petitioners have been sought to be taken to task for having been more specific. The charge is of no seriousness or consequence and should not be proceeded with.

The sixth charge is for the company having failed to maintain a register of charges relating to the properties of the company affected by any charge. The company or the petitioners on behalf of the company duly replied to the show-cause notice and drew the Registrar's attention to the fact that the transaction complained of was duly reflected in the register and the agreement number had been detailed though the name of the 15

creditor had not been mentioned. Again, the transgression, if any, is clerical in nature and does not require any prosecution to be launched in such regard.

The seventh charge covers a perceived violation of the provisions of Section 193(1) and 193(1A) of the Act in the directors' and shareholders' minutes books not being signed on every page and the blank pages at the end not being scored out. The company says that the company will ensure that such matter is attended to with more care than before. In view of such submission, the petitioners are excused of the charge.

The eighth and ninth charges relate to the breach of the provisions of Section 301(1) and 301(3) of the Act in the register of contracts of the company not specifying certain matters. The violation of Section 301 of the Act is in connection with the charge levelled under Section 297(1)(a) of the Act and since the petitioners have been excused of such charge, the incidental charge under Section 301(1) and 301(3) of the Companies Act need not be proceeded with against the petitioners. The tenth charge is for the company having apparently failed to maintain a proper register of directors' shareholding and for certain matters recorded in the register having been struck out without any authentication. In view of the company's response to the Registrar on 16

such score, nothing remains of the charge and the petitioners ought fairly to be excused in such regard if there has been any violation at all. The eleventh charge is for the company failing to properly maintain its register of investments. The answer to such charge is that for the years considered, the company had made no investment and, accordingly, there was no question of the register of investments being maintained. The company and the petitioners may be better advised to have a register of investments but indicate therein that there are no investments rather than dispense with the register of investments for the company not having made any investment. Since the petitioners and the company, through these petitioners, undertake to maintain a register of investments notwithstanding the company not making any investment, the petitioners stand absolved of the charge levelled by the Registrar under Section 372A(5) of the Act.

The last of the 12 charges against the petitioners is for the alleged violation of the provisions of Section 176(2) of the Act in the company notices for general meetings not showing with sufficient clarity that the shareholders were entitled to attend the meetings and appoint proxies. The company's reply to the show-cause notice was that such matter was mentioned in the relevant notices. In such circumstances, there does not appear to have been any violation of the provisions of Section 176(2) of the Act.

17

In the light of the view taken in respect of the 12 several show-cause that form the subject-matter of the earlier petition, the Registrar is directed not to institute any criminal proceedings in respect of any of the matters covered thereby. The petitioners and the company, through the petitioners, are directed to ensure that the matters pertaining to the company's accounts and statutory books are better attended to in future. The petitioners will also pay costs assessed at 1000 GM to the Registrar of Companies.

C.P.No.556 of 2010 and C.A.No.952 of 2010 stand disposed of on the above basis.

The petitioners should also cause a reference to be made to this order in the notes on accounts relating to the next annual accounts of the company. This order should also be made available for inspection to the auditors and all shareholders of the company.

Urgent certified photocopies of this order, if applied for, be given to the parties subject to compliance with all requisite formalities. (Sanjib Banerjee, J.)

bp./As./AKGoswami/sg

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com