

MOOT COURT PROBLEM

Mr. Amruth, Mr. Sharat and 6 others Vs. Union of India and others

A partnership firm was formed by Mr. Amruth and Mr. Bhaskar (A & B) in the year 1990 under the name and style of "A & B Dealers". The Partnership was basically into trading and other incidental business activities and was doing well. With the passage of time, the partners A & B inducted Chiranjeevi, Devegowda, Eashwar, Fathima and Ganesh (D, E, F, G) as Partners by reconstituting the firm and the name of the firm was changed to "A to Z trading services". Since the business was doing well and there was profit, instead of sharing the profits, the partners decided to expand the business by borrowing and pumping in funds into the business of the firm.

In the year 1995 the firm was converted into a company in accordance with Part IX of the Companies Act 1956. The company "A to Z Trading Services Private Limited" (herein after referred to as "the company") thus came into existence having its registered office in state of Karnataka at Bangalore. The seven partners became the seven subscribers to the Memorandum of association and Articles of Association of the company and A, B, C, D and E became the directors of the Company. Though the turnover was increasing, proportionately the cost and expenses were also increasing. With the entry of Multinational companies into the market in trading activity, the competition became fierce and the margin of profit became smaller and to keep pace with fierce competition, the volume of sales had to be increased.

In the year 2000, in order to bring in more funds into the business and also to bring in participation of employees and workmen, shares were allotted to 100 employees and 35 relatives of promoters.

In order to cater to the fierce competition the shareholders decided to bring in professional management into the company. Accordingly three experienced top IIM graduates Himesh, Indu and Jacob (H, I, J) were inducted into the company's board. With induction of professional management, all the existing Directors except A resigned from the directorship of the company. Overall, the company had H, I, J and A as directors on the board of the company. Though the turnover of the company was in excess of Rs.10,000 crores, every year the board refused to declare dividends. In fact, in the Annual General Meetings when the shareholders demanded the declaration of Dividends, the Managing Director Mr. Jacob highlighted the fact that the profits were required to be rotated to keep pace with the fierce competition and that there were many trading companies doing business at breakeven or at loss, and that if the company does not rotate the funds back into the business it would result in the company being thrown out by virtue of competition. In fact, the Company has not declared dividends so far since inception.

With the coming into force of the Companies Act, 2013, it became mandatory for the company to constitute a Corporate Social Responsibility Committee (CSR Committee). As such the company constituted CSR Committee with H, I, J as the members of the committee. In accordance with Section 135 of the Companies Act, 2013, the board by a majority approved spending 5% of its Average net profits made during the 3 immediately preceding financial years for the benefit of the poor school students in the locality by providing them cycles, uniform, books and other educational necessities. Accordingly cheques for Rs. 50,00,000/- (Rupees Fifty Lakhs only) are drawn over the period of 4 months to be spent for the said purpose.

The Shareholders and Workmen of the company want to challenge the decision of the Board in deciding to spend for Corporate Social Responsibility and want the decision to be withdrawn and the cheques cancelled. Also the shareholders and workmen want Section 135 of the Companies Act, 2013 to be quashed. For the above said purposes a Writ Petition is filed before the Supreme Court of India under Article 32 of Constitution of India, on the following among other grounds:-

1. The Company is a form of business being run for the benefit and profit of shareholders and investors, while the shareholders do not even have a say in the matter as to whether CSR is to be undertaken or if to be undertaken, the percentage to be spent on CSR activities.
2. Further, Corporate Social Responsibility has the effect of reducing the profits and dividends that a shareholder could get. In other words, CSR would amount to a charge on the profits of the company.
3. Even when the company is not declaring a dividend it is indirectly compelled to incur expenses on CSR activities, thereby reducing the funds for rotation in the business.
4. Section 135 of the Companies Act, 2013 is so framed to give the Board unrestricted power to decide on the expenditure on CSR Activities and the shareholders are helpless while their funds are being spent.
5. While shareholders have a final say with respect to distribution of Dividend, they do not have any say in CSR spending. This defeats the principle of Corporate Democracy and they have lost their right over the funds which would have been used for declaring the dividends.
6. In fact the Union Leader Mr. Sharat, who is one of the petitioner has contended that the company has been declaring only minimum bonus required to be paid under the Payment of Bonus Act, even though the workers are really responsible for the growth of the Company and as such are eligible for higher bonus. His contention is that the workmen should be given greater incentive before taking up CSR activities.

The matter is listed for final hearing before the bench of the Supreme Court of India.