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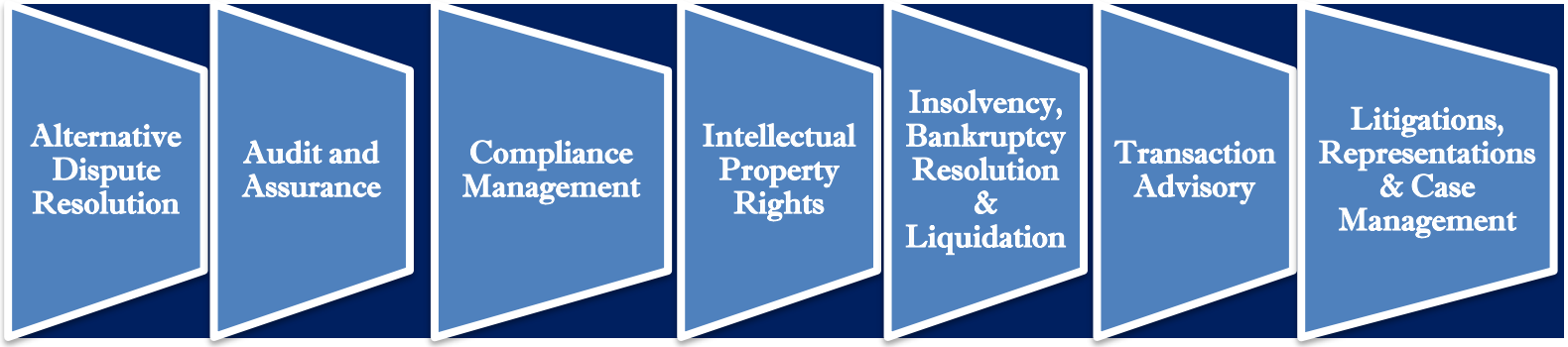

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Tin Plate Dealers Association Pvt. Ltd. & Ors
Vs
Satish Chandra Sanwalka & Ors.
7th October 2016-2016 SCC Online SC 1121

BACKGROUND:

The CLB by its order dated 01.03.2001 disposed of the petition by granting majority of the reliefs to Sanwalka group. Aggrieved by the aforesaid order of the CLB with regard to the maintainability of the company petition, issue of bonus shares and 25,000 ordinary equity shares and also the re-induction of the members of the Sanwalka Group in the Board of Directors, the Gupta Group appealed to the High Court. Challenging the decision of the Board insofar as the issue of 3065 preference shares and the lease in respect of the industrial plot is concerned, the Sanwalka Group also had filed a separate appeal. The High Court, by its impugned order dated 14.9.2005, dismissed both sets of appeal leading to the institution of the present appeals before the Supreme Court.

HELD:

The SC held

(a)bonus shares issued out of revaluation of assets are not allowed in the articles however **Section 205(3) of the Companies Act, 1956 s**pecifically provides for the same. When the Articles of the Company do not confer any such power in the Board exercise thereof on the basis that the Act so provides would be impermissible. Enabling provisions under the Act would require incorporation in the Articles of a company.

(b) The power of the Board of Directors of the Company to issue fresh shares must always be viewed as an adjunct of its extensive powers under the Act and the bona fides of such an exercise cannot be called into question by construing the power to issue fresh shares to be limited by any particular purpose or purposes.

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MACKINTOSH BURN LTD.
Vs.
SARKAR AND CHOWDHURY ENTERPRISES PVT.LTD
27TH MARCH 2018-2018 SCC ONLINE SC 279

Background:

The appellant is a public company with majority of shares held by the Government of West Bengal. The respondent, which is holder of 28.54 per cent of the shares purchased 100 shares, which together would make its holding 39.77 per cent, sought registration of the shares. Since, no orders were passed on the registration, the respondent approached the Company Law Board. It was mainly contended by the appellant that the respondent Company is controlled by a competitor in business, and hence, it would not be in the interest of the Government Company to permit such transfer. The Company Law Board, however, rejected the contentions and directed registration as per order dated 16.09.2015.Thereafter, the appellant appealed to the High Court and also sought review of its order and ultimately the issue reached the Supreme Court.

Held:

The SC held the refusal to register the transfer of shares can be permitted only if the transfer is otherwise illegal or impermissible under any law. Going by the expression “without sufficient cause” used in **Section 58(4),** it is difficult to appreciate that view. Refusal can be on the ground of violation of law or any other sufficient cause. Conflict of interest in a given situation can also be a cause. Whether the same is sufficient in the facts and circumstances of a given case for refusal of registration, is for the Company Law Board to decide since the aggrieved party is given the right to appeal. The contention of the appellant before the Company Law Board that the whole transfer is deceptive and mala fide in the background of the respondent company, should have been considered and remitted back to NCLT.

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CHERAN PROPERTIES LTD
Vs.
KASTURI AND SONS LTD & ORS
24TH APRIL 2018-2018 SCC ONLINE SC 431

BACKGROUND:

An arbitral award was passed against the Appellant directing him to transfer the shares to Respondent No.1, pursuant to which Respondent No.1 filed an application for rectification of members register before the NCLT which was allowed. The appeal preferred by the appellant against this judgment and order before the NCLAT was dismissed. Hence the present appeal before the Supreme Court.

HELD:

The SC held that the arbitral award required the shares to be transmitted to the claimants. The arbitral award attained finality. The award could be enforced in accordance with the provisions of the Code of Civil Procedure, in the same manner as if it were a decree of the Court. The award postulates a transmission of shares to the claimant. The directions contained in the award can be enforced only by moving the Tribunal for rectification in the manner contemplated by law. In the present case, the arbitral award, in essence, postulates the transmission of shares from the appellant to the claimant. The only remedy available for effectuating the transmission is that which was provided in Section 111 for seeking a rectification of the register. There is, therefore, no merit in the challenge addressed by the appellant.

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ADESH KAUR VS EICHER MOTORS LTD
(2018) 7 Supreme Court cases 709
3rd July 2018

BACKGROUND:

Eicher Motors, the listed parent company of Royal Enfield, through its share transfer agent MCS Ltd, had issued duplicate shares to a fraudster on the basis of forged and fabricated documents without exercising due diligence. NCLT ruled in her favour saying it was not an isolated case and there was no diligence exercise by the company at the time of issuance of duplicate shares. Eicher Motors challenged the NCLT order before the NCLAT (National Company Law Appellate Tribunal), which set aside the tribunal's order saying it was not correct for it to exercise powers to rectify the register.

HELD:

Against the NCLAT order, KAUR appealed to SC and it was held that the Tribunal was absolutely correct in not relegating the appellant to any further proceedings in as much as this is an open and shut case of fraud in which the KAUR has been the victim and directed the company to rectify its register.

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SFIO V. RAHUL MODI
2019 5 Supreme Court Cases 266
27th March 2019

The Hon'ble Supreme court held that Section 212(3) of 2013 Act by itself does not lay down any fixed period within which the report has to be submitted. Even under sub-Section (12) which is regarding "investigation report", again there is no stipulation of any period. In fact, such a report under sub-Section (12) is to be submitted "on completion of the investigation". There is no stipulation of any fixed period for completion of investigation which is consistent with normal principles under the general law. Even if it is presumed to be mandatory the very purpose of enacting Section 212 of the Act would get defeated and will become nugatory. Indeed, when we apply the well-known principle of purposive interpretation while interpreting the relevant provisions in juxtaposition and hold that sub-section (3) of Section 212 of the Act is directory in nature, it serves the legislative intent for which Chapter XXIX is enacted."

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HARI SANKARAN VS UNION OF INDIA & OTHERS (2019) 6 Supreme Court cases 584 4th June 2019

BACKGROUND

The central government had filed an application with the NCLAT, under sections 241 and 242 of the act, for reopening and recasting of the accounts on the grounds of mismanagement by the board of IL&FS, alleging that the affairs of the company were being run in a manner prejudicial to public interest.

The issue involved in this matter is with respect to IL & FS case wherein the order passed by NCLT allowing the application under Section 130 was illegal and contrary to the provisions of Section 130 of the Companies Act, 2013?

Held:

On ingredients required to be shown for an order Section 130:

The Supreme Court observed that the tribunal may, under section 130 of the act, pass an order for reopening of accounts if it is of opinion that, 1) the earlier accounts were prepared in a fraudulent manner, or 2) the affairs of the company were mismanaged during the period casting a doubt on the reliability of the financial statements. Thus, the tribunal would be justified in passing the order under section 130 of the act upon fulfillment of either of the said two conditions.

On merits:

In addition to the reports of the Serious Fraud Investigation Office, which was investigating the affairs of the company, and the ICAI, and the observations made by the tribunal, the Supreme Court observed that it cannot be said that the conditions precedent are not satisfied.

Result:

The Order directing the reopening of the Accounts was justified and decision of NCLAT was upheld.

Question not considered:

The question who would come within the description “other person concerned” has not been answered in this case

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Usha Ananthasubramanian Vs. Union Of India
12TH FEBRUARY 2020-2020 SCC online SC 221

The Supreme Court set aside the order of the National Company Law Appellate Tribunal (NCLAT) which directed freezing of assets of former MD of PNB, Usha Ananthasubramanian. The SC said that it is clear that powers under these sections (invoked against the appellant) cannot possibly be utilised in order that a person who may be the head of some other organization be roped in, and his or her assets be attached. It further observed that Section 337 refers to penalty for frauds by an officer of the company in which mis-management has taken place. Likewise, Section 339 refers to any business of the company which has been carried on with intent to defraud creditors of that company. “Obviously, the persons referred to in Section 339(1) as persons who are other than the parties to ‘the carrying on of the business in the manner aforesaid’ which again refers to the business of the company which is being mismanaged and not to the business of another company or other persons.

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ARUNA OSWAL
Vs.
PANKAJ OSWAL & ORS.

6th July 2020- 2020 SCC Online SC 557

BACKGROUND:

The late Mr Abhey Oswal held controlling shareholding in a listed company – viz. 39.88% (Shares) in Oswal Agro Mills Ltd (Company). Prior to his demise in March 2016, Mr Abhey Oswal had made a nomination under section 72 of the Companies Act appointing his wife Mrs Aruna Oswal (Nominee) as the nominee for his shares in the Company. Pursuant to this nomination and post her husband's demise, in April 2016, the Nominee was registered as the holder of the Shares. Mr Pankaj Oswal (Mr Pankaj), the eldest son of Mr Abhey Oswal, challenged the registration of the Shares by the Company in the name of the Nominee and contended that he was entitled to a one-fourth portion of the Shares, i.e. 9.97%, as legal heir of the deceased.

HELD:

The Supreme Court set aside the NCLT and NCLAT orders with liberty to Mr Pankaj to file the oppression and mismanagement petition afresh. Further, it held that the decision regarding nomination and inheritance of the shares would have to be decided by the pending civil court litigation in Delhi High Court and that the NCLT or NCLAT were not the appropriate forum for deciding matters of inheritance.

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Neera Saggi Vs. Union of India and Others
2021 SCC OnLine SC 239
15th February 2021

BACKGROUND:

NCLT allowed to implead independent directors in the matter of IL&FS. NCLAT also took only the main ground in the appeal and this matter was not discussed.

HELD:

The SC held that the ends of justice would be met if an order of remand is passed requiring the NCLT to apply its mind to the issue as to whether the appellants should be impleaded.

Important Proposition

Undoubtedly, Independent Directors have a vital role, as is indicated by the provisions of the Companies Act 2013. While Independent Directors are intended to be independent, they cannot remain indifferent to the position of the company.

The order:

Since, however, the NCLT and NCLAT have not devoted due consideration to the role, position and allegations against the appellants, we have decided to remand the proceedings only in relation to them.

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Surender Kumar Gupta and Others Vs. J.M. Housing Limited and Others
2021 SCC OnLine SC 558
26th February 2021

BACKGROUND:

An ex-parte order was passed by NCLT. NCLAT on appeal set aside the order of the NCLT on the ground that it was passed in violation of the principles of natural justice.

HELD:

The SC stated that" *The appropriate course of action for the respondents, faced with an ex-parte order of the NCLT would have been to apply to the NCLT for vacating or modifying the ad-interim order. The NCLAT was not correct in coming to the conclusion that the order of the NCLT has to be set aside on the ground that it was passed without furnishing to the respondent an opportunity of being heard. The essence of an ex-parte order is that it is passed without hearing the other side, in a situation where the adjudicating authority is satisfied that a case involving a grave urgency is made out. The adjudicating authority, before issuing an ex-parte ad-interim order, must be satisfied of the irretrievable injury which may be caused to the applicant if a protective order is not passed. A prima facie case and the balance of convenience must also be weighed in.* ***The NCLAT has not dealt with the fundamental issue of whether the respondents had established an urgent case for the grant of exparte relief. The principle which has been propounded by the NCLAT is rather novel to civil jurisprudence and betrays a lack of comprehension of basic legal principles. SC granted liberty to apply afresh before the NCLT for interim relief on the basis of the same application on which the NCLT passed its order.***

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TATA CONSULTANCY SERVICES LIMITED
Vs.
CYRUS INVESTMENTS PVT. LTD. AND ORS.
26TH MARCH 2021-2021 SCC ONLINE SC 272

BACKGROUND:

Cyrus Mistry was removed from his position as Executive Chairman of Tata Sons Limited on October 24, 2016, because the company's Majority Shareholders and Board of Directors lost faith in him as Chairman. Cyrus Mistry was terminated from the board of directors of Tata Sons by a vote of the shareholders at a general meeting. Following that, Cyrus Mistry lodges a complaint with the National Company Law Tribunal (NCLT) in Mumbai, alleging persecution of minority shareholder rights and operational mismanagement by Tata Sons under Sections 241, 242 and 244 of the Companies Act, 2013.

HELD:

The Supreme Court observed that unless the removal of a person as a chairman of a company is oppressive or mismanaged or done in a prejudicial manner damaging the interests of the company, its members or the public at large, the Company Law Tribunal cannot interfere with the removal of a person as a Chairman of a Company in a petition under Section 241 of the Companies Act, 2013.

Important Proposition:

In an appeal against an order under Section 242, SC is concerned only with Questions of law.

The question that the Tribunal should ask itself is as to whether the order to be passed will bring an end to the matters complained of. The validity of and justification for the removal of a person can never be the primary focus of a Tribunal under Section 242 unless the same is in furtherance of a conduct oppressive or prejudicial to some of the members.

A person who willingly became a shareholder and thereby subscribed to the articles of association and who was willing and consenting party to the amendments cannot later on turn around and challenge those Articles.

History of evolution of the corporate world shows that it has moved from the (a) familial to (b) contractual and managerial to (c) a regime of social accountanbioity and reponsisibility.

It is common knowledge that industries which take good care of its shareholders and employees also run polluting industries.

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TATA CONSULTANCY SERVICES LIMITED
Vs.
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26TH MARCH 2021-2021 SCC ONLINE SC 272

Other Propositions

The question as to (i) what is in the interest of the company, (ii) what is in the best interest of the members of the company as a whole and (iii) what is in the interest of a nominator, all lie in locations whose borders and dividing lines are always blurred. If philosophical rhetoric is kept aside for a moment, it will be clear that success and profit making are at the core of business enterprises. Therefore, the best interest of the majority shareholders need not necessarily be in conflict with the interest of the minority or best interest of the members of the company as a whole, unless there is siphoning off or diversion. Such a question does not arise when the majority shareholders happen to be charitable trusts engaged in philanthropic activities. It is good to wish that the creation gets liberated from the creator, so long as the creator does not have any control or ability to manipulate. In the corporate world, democracy cannot be seen as an ugly expression, after using the very same democratic process for the appointment of Directors.

Much ado was made about pre-consultation and pre-clearance by the trustees, even before the Board took a call. But it was actually about nothing. Whenever an institution happens to be a shareholder and a notice of a meeting either of the Board or of the general body is issued, it is but normal for the institution to have an idea about the stand to be taken by them in the forthcoming meeting.

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Ashutosh Ashok Parasrampuriya
Vs
M/S. Gharrkul Industries Pvt.
8TH OCTOBER 2021-2021 SCC OnLine SC 915

Issue for Determination:

Whether the role of the appellants in the capacity of the Director of the defaulter company makes them vicariously liable for the activities of the defaulter Company as defined under Section 141 of the NI Act? In that perception, whether the appellant had committed the offence chargeable under Section 138 of the NI Act?

HELD:

The SC held it is clear that the allegations in the complaint are that at the time at which the cheques were issued by the Company and dishonoured by the Bank, the appellants were the Directors of the Company and were responsible for its business and all the appellants were involved in the business of the Company and were responsible for all the affairs of the Company. It may not be proper to split while reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to fulfil the requirement of Section 141 of the NI Act. The complaint specifically refers to the point of time when the cheques were issued, their presentment, dishonour and failure to pay in spite of notice of dishonour. In the given circumstances, we have no hesitation in overruling the argument made by the learned counsel for the appellants.

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Devas Multimedia Private Ltd Vs. Antrix Corporation Ltd. and Another 2022 SCC OnLine SC 46 17th January 2022

BACKGROUND:

Antrix and Devas entered into a written agreement where Devas promised to use satellites and spectrum to offer multimedia broadband services across India. The Agreement was terminated in accordance with the force majeure clause by Antrix due to certain disputes and revised policy decisions of the Central Government. Aggrieved by the termination, Devas invoked the arbitration clause contained in the Agreement. Ultimately, the International Chamber of Commerce (ICC) on 14 September 2015 awarded Devas USD 562.5 million with interest for the damages caused by Antrix's wrongful repudiation of the Agreement. Devas was suspected of committing various fraudulent activities and CBI initiated investigation discovered that Devas was indeed involved in various illegal activities. Therefore, Antrix made a request to the Ministry of Corporate Affairs, Government of India seeking authorization to initiate proceedings for winding up of Devas. While the investigations into the nature of frauds committed by Devas and other litigation were pending, Antrix arrived before the National Company Law Tribunal, Bengaluru Bench (NCLT) praying for Devas to be wound up on account of committing fraud under Section 271(e) of the Companies Act, 2013. NCLT admitted the petition and NCLAT also dismissed the appeal.

HELD:

The SC dismissing all the grounds of arguments of Devas such as Breach of the mandatory requirement of advertisement before ordering winding up, barred by limitation, Antrix being estopped from pleading fraud and Erroneous conclusions regarding the consequences of fraud and upheld the order of winding up.

Important Propositions

If as a matter of fact, fraud as projected by Antrix, stands established, the motive behind the victim of fraud, coming up with a petition for winding up, is of no relevance. If the seeds of the commercial relationship between Antrix and Devas were a product of fraud perpetrated by Devas, every part of the plant that grew out of those seeds, such as the Agreement, the disputes, arbitral awards etc., are all infected with the poison of fraud. A product of fraud is in conflict with the public policy of any country including India. The basic notions of morality and justice are always in conflict with fraud and hence the motive behind the action brought by the victim of fraud can never stand as an impediment.

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Mahima Datla
Vs.
Dr. Renuka Datla and Others
6th April 2022-2022 SCC OnLine SC 580

BACKGROUND:

The family tussle between Mother and three daughter over the inheritance of shares of the deceased father who was the founder of the company. The wife has filed the Section 397 petition against the daughter who have inherited and transmitted her father's shares as per will.

HELD:

The following propositions were held;

- The thrust of the Duomatic Principle is that strict adherence to a statutory requirement may be dispensed with if it is demonstrated otherwise on facts, if the same is consented by all members.
- The High Court should not have dwelled into the issue of inheritance and reiterated "*A dispute as regards right of inheritance between the parties is eminently a civil dispute and cannot be said to be a dispute as regards oppression of minority shareholders by the majority shareholders and/or mismanagement*"

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R.T. Agro Private Limited & Others
vs.
SEBI & Others
25TH APRIL 2022

BACKGROUND:

The company R. T. Exports Limited proposed to enter into a transaction with one Neelkanth Realtors Private Limited for purchase of 40,000 sq. ft. of residential space. This proposal was treated as a related party transaction and was required to be approved by the shareholders of the Company. Accordingly, a special resolution was approved by R. T. Exports Limited on 15.07.2014. In terms of Section 188 of the Companies Act, 2013, the related parties abstained from voting on this special resolution. But thereafter an EGM held to rescinding the contract where the related parties voted which was found to be a violation by SEBI of Regulation 23 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. The Adjudicating officer penalized but SAT has not approved this order. Against the said order this appeal.

HELD:

The SC held that The view, as taken by the Appellate Tribunal, in the given set of facts and circumstances of the present case, appears to be a plausible view of the matter. In fact, nothing of ill-intent on the part of the respondents has been established in the present case. The hyper-technical stance of the appellant could have only been, and has rightly been, disapproved on the given set of facts and circumstances.


Thank
You