

SUPREME COURT OF INDIA

Vinod Kumar

Vs.

Singmalon Equipment Pvt. Ltd.

C.A.No.5729 of 2008

(R.V. Raveendran and Lokeshwar Singh Panta JJ.)

17.09.2008

ORDER

1. Delay condoned. Leave granted. Heard learned counsel for the parties. For convenience, we will refer to the parties by their rank in the first matter. Application for deleting the name of the deceased second respondent in CA No.5729/2008 is allowed as his LRs (respondents 3 to 5) are already on record.

2. These appeals relate to a dispute between the appellant (a shareholder and director who holds 40% of shares in the first respondent company) and the other share holders (respondents 2 to 5 - appellant's brother and his family) and directors of the said company who hold 60% of the shares. In the year 1998, the appellant filed a petition under section 397 and 398 of the Companies Act, 1956, alleging oppression, and mismanagement. By orders dated 20.8.1999, 3.11.1999 and 1.5.2000, the Company Law Board ('Board' for short) gave an option to the appellant to sell his shares to respondents 2 to 5 Group at a price fixed by an independent valuer. On exercise of the option by the appellant, M/s Price Waterhouse Coopers were appointed as the valuer for determining the fair value of shares, based on the balance-sheet as on 31.3.1998. The valuer submitted a Report on 13.12.2001 valuing the shares at Rs.2044/- per share. On objections by both, the Board directed fresh valuation. The valuer reiterated its earlier valuation. Thereafter, the Board by its order dated 05.05.2003, accepted the valuation and held that the second respondent group will purchase the shares held by the appellant-Vinod Kumar at Rs.2044/- per share. As the appellant held 7,420 equity shares of Rs.100 each the Board arrived at the amount payable for the shares as Rs.1,51,66,480/-. It also directed that the payment should be made to the appellant positively by 31.7.2003. The Board directed the first respondent company to pay the arrears of salary/perquisites to the appellant for the period upto 31.3.2002. That order of the Board was challenged by both the parties before the High Court. The appellant did not receive any payment either towards value of shares or towards salary and perquisites.

3. The High Court disposed of the appeals by common order dated 16.06.2005. It set aside the valuation on the ground of bias. It directed the revaluation as on 31.3.2005. It held that

appellant is entitled to remuneration and perquisites till date of valuation of shares and payment thereof.

4. Not being satisfied with the said order dated 16.6.2005 of the High Court, both sides have filed these appeals by special leave. When the matter came up today learned counsel for the appellant submitted that there has been complete change in the circumstances after the appeals were filed as the respondents 2 to 5 Group in control of the first respondent company had virtually sold all the movable assets. He therefore submitted that the grounds that were urged by the appellant in support of his appeal to contend that the date of valuation should not have been shifted from 31.3.1998 to 31.3.2005 no longer survived and it is therefore necessary that relief should be moulded by taking note of all the subsequent events and the situation as it exists today. He submitted that all acts of the respondents 2 to 5 group, which was referred to by him as acts of oppression and mismanagement and all acts subsequent to his petition should be considered in the correct perspective for grant of relief. The appellant has also filed an application (IA No.2/2007) to change the date of valuation to the current date, for release of salary and perquisites and for declaration of certain Board resolutions as null and void.

5. The fact that there is a change in circumstances is not disputed by the respondents. The learned counsel for the respondents (majority group holding 60% shares) however submits that any change in circumstances is due to passage of time, natural course of events and the decisions taken by the Board of Directors in the usual course of business and the appellant can have no grievance in the matter. He however stated that the respondents have no objection for re-examination of the entire matter by the Board.

6. In view of the changed circumstances and in view of the submission of the appellant that the grounds urged by him for challenging the alteration of date of valuation as 31.3.2005 no longer exists, and the challenge to the order of the Board and the order of the High Court by both parties, we consider it appropriate to set aside the order of the Company Law Board dated 5.5.2003 and the order of the High Court dated 16.6.2005 and remand the matter to the Board for reconsideration and fresh appropriate decision by taking note of all events which have taken place till now and the facts and circumstances as they exist today, in accordance with law. The appeals of both sides are allowed in part accordingly, leaving open all contentions. All pending applications stand disposed of.

7. The appellant is at liberty to raise the issue of salary and perquisites payable to the appellant from 1.10.1999, also before the Board. As the matter has been pending for a considerable time and the very pendency has led to the change of the circumstances, we request the Company Law Board to dispose of the matter expeditiously.

Both the parties agree to appear before the Company Law Board without further notice on 13.10.2008 and take further order from the Board.