

Dispute Resolution Hotline

July 06, 2015

PLEA OF RES JUDICATA BASED ON CIVIL COURT ACTION REJECTED IN OPPRESSION AND MIS-MANAGEMENT CASES

- The principles of Res Judicata are not applicable in cases where the reliefs sought are different in nature based on statutory rights and could not have been granted by an earlier court.
- Removal and appointment of Directors and fraudulent increase in the authorized share capital of the company by forging documents amount to oppression.

INTRODUCTION

The Company Law Board, New Delhi Bench ("CLB") recently in the case of *Shri Narottam Singh ("Petitioner") v. M/s Notam India Private Limited & Ors.*¹ held that parties to a dispute need not withdraw a civil suit before they approach CLB (under Section 397 & 398 of the Companies Act, 1956), as CLB can grant remedies that a civil court cannot. This judgment clarifies the scope and application of res judicata principle in the cases of Oppression and Mis-management.

BACKGROUND FACTS

M/s Notam India Private Limited ("**Respondent No. 1**") is a company incorporated by the Petitioner and Respondent No. 2 to carry real estate business. Both the brothers were Directors in Respondent No. 1. According to the Petitioner, the Respondent No. 2 without notice to the Petitioner increased the share capital based on forged documents as well manipulated the company records. The Respondent No. 2 also got his wife, Respondent No. 3 fraudulently appointed as the Director on the Board of Respondent No. 1. The Petitioner realizing the fraud committed by Respondents filed a company petition under Sections 397 & 398 read with Section 402 against them alleging oppression and mis-management and conducting the affairs of the company in a prejudicial manner. Prior to the filing of the company petition, the Petitioner had filed a civil suit on the same cause of action in Ghaziabad. The chronology of events leading to the present company petition is provided below:-

Sr. No.	Date	Particulars
1	09.04.2009	O.S. 818 of 2009 Civil Suit was filed in Ghaziabad civil court
2	21.07.2009	Interlocutory application seeking temporary injunction to restrain Respondent Nos. 2-3 in relation to business of Respondent No. 1 was dismissed.
3	21.08.2009	Application filed for withdrawal of Civil Suit
4	11.08.2009	Company Petition was filed
5	18.08.2009	Company Petition was mentioned stating that civil suit has already been withdrawn and CLB passed an order directing Respondent No. 1 to provide fortnightly bank statements.
6	24.08.2009	Civil Suit was dismissed without giving any liberty to initiate new proceedings.

The civil suit was dismissed at a later point after company petition was filed and it was submitted that dismissal of civil suit did not come in the way of filing the company petition as jurisdiction of CLB under Sections 397 and 398 is unique and enabling in nature and orders are passed on equity.

ISSUES

- Whether the present company petition is maintainable before CLB?
- Whether following acts of Respondents are oppressive in nature:-
 - Appointment of Respondent No. 3 as a Director of Respondent No. 1;
 - Petitioner was seized of Directorship on an alleged letter of resignation;
 - Fraudulent increase in authorized share capital.

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Arguments of the Petitioner

The Petitioner had filed its withdrawal application before the civil court prior to initiating proceedings before CLB. The Petitioner relying on the case of *M/s SVT Spinning Mills Pvt. & Ors v. M Palanisami*² argued that company petition cannot be dismissed on the sole ground that earlier proceeding was disposed of without liberty to initiate proceedings on the same cause of action as the reliefs sought in a company petition under Sections 397 & 398 proceedings are unique and cannot be granted by any court other than CLB. The decision in the civil court was not a final order and no decision was taken on the issues which formed the subject matter of the present company petition.

In addition to the issue on maintainability of the company petition, the Petitioner further submitted that Respondent No. 2 had forged his signatures on the alleged resignation letter and the board resolution allowing appointment of Respondent No. 3 as the new director of the company. The Petitioner submitted that Respondent No. 3 was never appointed as a director of the company in any of the Board meetings that he attended. The Petitioner alleged that Respondent No.2 committed fraud and forged Petitioner's signatures to change signatories of bank accounts and manipulated with the company records along with Respondent No. 3 against the interest of Petitioner.

Arguments of the Respondent

The Respondents submitted that the company petition was not maintainable as same reliefs were sought in a civil suit earlier, where the interlocutory application had already been dismissed. The Respondents submitted that due to an apprehension of not getting any interim reliefs the Petitioner had filed the company petition and had approached CLB with unclean hands. The Respondents denied the allegations on forgery and held that plea of forgery required substantial evidence and therefore to be adjudicated by a civil court.

JUDGMENT AND ANALYSIS

CLB while passing the order in favour of the petitioner dealt with the following issues.

a) Maintainability of the Company Petition for Oppression and Mismanagement

Section 11 of the Code of Civil Procedure, 1908 restricts a person from filing a fresh suit in which the matter in issue was either directly and substantially an issue in a former suit between the same parties.³ The CLB held that it is true and undisputable that when a proceeding is withdrawn unconditionally, there shall not be any later proceeding on the same cause of action, however when the reliefs sought are different and cannot be granted by the civil court in an earlier proceeding, then withdrawal of such earlier suit without liberty to initiate fresh proceedings on the same cause of action shall not render the company petition non-maintainable. The CLB held that the right provided under Sections 397 and 398 are statutory in nature and vested with parties to prevent oppression and mis-management against member or company. Such reliefs cannot be granted by civil court and therefore the principles of *res judicata* are not applicable in the present case and no liberty was required while withdrawing earlier proceedings.

It is also important to note that CLB while dealing with this issue to understand the chronology of events observed that application for withdrawal was made prior to filing the company petition and the civil suit was actually dismissed after filing of the company petition. The CLB held that dismissal of civil suit post filing of the petition did not constitute approaching CLB with unclean hands as Petitioner had filed the withdrawal application prior in time and not due to objections being raised on maintainability of the company petition and distinguished it from other cases.⁴

b) Removal of the Petitioner from directorship of Respondent No. 1 and appointment of Respondent No. 3 were oppressive

Any change in the directorship of the company is required to be notified to the Registrar of Companies ("RoC"), whereas in the present case no such information was filed with RoC showing either the removal or appointment of a new director. Based on the evidence produced, CLB held that considering Petitioner was the majority shareholder it could not be assumed that he would resign leaving his shareholding and guarantees. The alleged resignation letter used by the Respondent No. 2 to show that Petitioner ceased to be director was held invalid in the circumstances without considering the opinion of experts and dealing with the issue of forgery.

Further the Board Resolution passed reflecting the appointment of Respondent No. 3 as the new director of Respondent No. 1 was also held to be invalid considering there was no record on her appointment for two years from the date of alleged appointment, Form 32 was not filled and all this was highlighted only when Petitioner sought to change the mode of operation of bank accounts. CLB held that all these acts together amounted to oppression against the Petitioner and Respondent No. 3 could not continue as Director on the board of Respondent No. 1.

c) Fraudulent increase of authorized capital amounted to Oppression

Increase in the authorized share capital of a company requires board's approval subject to provisions of the company's articles of association. Such resolution can be passed in a board meeting provided the notice was duly issued to all the members and directors of the company in this regard. In the present case, no such notice was given to the Petitioner rendering the increase in the authorized capital invalid. The CLB held that considering the strained relationship between the parties it does not seem that the Petitioner would have agreed to allow a change in the shareholding pattern prejudicial to his interest and therefore held the allotment invalid and oppressive to the Petitioner.

CLB directed an independent audit to be conducted to ascertain whether siphoning of funds had taken place based on the allegations raised. The CLB appointed a chartered accountant firm to submit their report within 30 days and disposed of the company petition.

CONCLUSION

This ruling sets an important footstep towards defining the scope and application of *res judicata* principle in the cases of Oppression and Mismanagement and distinguishes the same with respect to any other civil suits which is generally barred by virtue of the application of the said principle. However, pointing out this exception, CLB said that parties to a dispute are under no obligation to obtain liberty before withdrawal of suit from civil court to approach CLB under Section 397 & 398 as it offers unique and exclusive remedies under the statute that cannot be availed through

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any other forum/civil court. Adjudication under Sections 397 and 398 is different and tested on the anvil of equity and not on the legality of an act.

– Prashant Prakhar, Payel Chatterjee & Vyapak Desai
You can direct your queries or comments to the authors

¹ C.P. No. 74(ND)/2009
² (2009) 95 SCL 112 Madras
³ Section 11 Res Judicata
No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
Explanation I- The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.
Explanation II.- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.
Explanation III.- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
Explanation IV.- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.
Explanation V.- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.
Explanation VI- Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.
[Explanation VII.- The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.
Explanation VIII.-An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in as subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]
⁴ K.R. S Mani & Ors. v. Anugraha Jewellers Limited & Ors. [Comp Cas Vol 126 page 878 (Madras High Court)]

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