

62. It is admitted case of respondents that a special meeting of majority group of shareholders was held on 13.12.2011. A perusal of Ex.-10 attached to reply show that nine members holding total 10.375 shares attended the meeting. Second respondent chaired this meeting. In the said meeting it was resolved that, Oriental Bank of Commerce, Jash Market Branch, Ring road, Surat be asked to allow operation in the account of the company with the bank bearing account No. 01021010012300. According to the respondents, the said meeting was held to overcome the situation of freezing of the bank account of the first respondent company with Oriental Bank of Commerce on the basis of the false Board Resolution given by the petitioner. According to the petitioner he called a board Meeting on 09.12.2011 where respondents 2 and 6 were also present and there was a serious dispute amongst themselves regarding business of the first respondent company. then petitioner wrote a letter dated 09.02.2011 to Oriental Bank of Commerce, Jash Market Branch, Ring road, Surat asking the said bank to freeze bank account of the first respondent company attaching the resolution passed in the Board meeting dated 09.12.2011. In response to the said letter, Oriental Bank of Commerce wrote a letter dated

10.12.2011 freezing the operations of the bank account of first respondent company. Thereafter, according to the respondents, on 13.12.2011, a special meeting of majority group of shareholders was held. Petitioner pleaded that there is no provision in the Companies Act which enables the respondents to call a special meeting of majority of shareholders other than General meeting or Extra Ordinary General Meeting by giving due notice to all the shareholders. A perusal of Ex. R-10 and R-11 and the pleadings of the respondents in the reply conclusively goes to show that respondents without giving notice to all the shareholders convened special meeting of group of shareholders and passed resolution and placed the same resolution before the bank authorities. The said meeting is neither in accordance with the provisions of the Companies Act, 1956 to conduct majority shareholders meeting. It is not even the case of the respondents that a notice of the meeting dated 13.12.2011 was given to the petitioner and his group members. Therefore, calling a meeting of the majority shareholders of the first respondent company is nothing but an act of oppression and mismanagement. Leave alone the resolution passed in the meeting held on 09.12.2011 placed by the petitioner

before Oriental Bank of Commerce is genuine or not or valid or not.

63. *Now, coming to the Board meeting dated 28.04.2012 it is the case of the petitioner that, Board meeting dated 28.04.2012 was called basing on his letter dated 19.04.2012. but a perusal of Ex. R-18 attached to the reply show that notice dated 23.04.2012 was issued to all directors and invitees to attend the Board Meeting scheduled to be held at 12.00 noon on 28.04.2012. in the said notice, subject for discussion was as follows:-*

(1) To grant leave of absence, if any,

(2) To approve the minutes of previous Board Meeting held on 15th March, 2012

(3) To discuss about alleged oppression and mismanagement in the company as per letter dated 19th April, 2012 received from Mr. Radhakishan B. Ruchandani and also to take note of his conduct

(4) To discuss about various matters connected with the working of the company including broad basing the Board of the company

(5) Any other business with the permission of Chair.

64. *In the said notice there is no mention about the proposed business viz. appointment of Amit Pitamberdas Ruchandani (R-3) and Jitesh Pitamberdas Ruchandani*

(R-4) as directors of the company. But a perusal of the resolution passed in the Board of Directors meeting dated 28.04.2012 show that the meeting was chaired by the second respondent and petitioner also attended the said meeting. In fact, petitioner admitted that he has attended the said meeting. It is the case of the petitioner that, son of the petitioner was not allowed to attend the said meeting but son of the second respondent who is third respondent, remained present in the meeting. It is also the case of the petitioner that, Smt. Radhaben Ruchandani wife of late Bharat Ruchandani was not allowed to enter into the office. It is also the case of the petitioner that, Mr. Kanaiyalal Ruchandani, respondent 6 was absent in the said meeting. According to the petitioner, meeting was concluded without any conclusion but the second respondent fabricated the resolution and filed form 32 with the Registrar of Companies regarding appointment of respondents 3 and 4 as directors which is not even the subject matter. A perusal of annexure "L" – consent letters of respondent 3 and 4 show that respondents 3 and 4 gave consent to act as directors of the first respondent company only on 28.04.2012. Therefore, it is clear that appointment of respondents 3 and 4 was taken up without specific agenda and they were appointed as

directors by obtaining their consent on the very same day, that too by casting vote by Chairman, i.e. 2nd respondent. Minutes of the Board Meeting is signed by only 2nd respondent and not by the petitioner although he was present in the meeting. Therefore, it appears that, appointment of respondents 3 and 4 were taken up without consent of petitioner who is a director of the first respondent company and without notice to respondent 6 who is also a director of the first respondent company. Therefore, it is also an act of mismanagement.”

2. Along with the appeal, a petition for condonation of delay of 24 days has been filed wherein the following grounds have been shown to condone the delay:

“2. The contents of the Appeal are not reproduced herein for the sake of brevity and may kindly be read as a part of the present application as well.

3. That the impugned order is liable to be set aside by this Hon’ble Court on the grounds mentioned in the Appeal.

4. that the present application is being preferred by the Appellant as there is a delay of ___ days in re-filing the present Appeal before the Hon’ble Court. That the Petition was first filed on 20.6.2017.

It is submitted that the delay is owed to the curing of defect with regard to Condonation of delay as it was not in a proper format as required by this Tribunal. It is submitted that the application went for signatures as the verification and affidavit had to be signed by the client in Gujarat but it got lost in the transit. Therefore, we had to resend it to Gujarat which has caused the delay. It is submitted that the application is being filed as per the format of this Learned Tribunal.”

3. Having heard learned counsel for the appellants, we are not satisfied with the grounds shown in the petition for condonation of delay. There are six appellants in this appeal including the first appellant company. Any one or other could have sworn the affidavit and could have preferred the appeal on time but they failed to do so. No explanation has been given as to why other appellants have not taken any step for preferring the appeal within time. Merely because one of the appellants had gone for spiritual work to a different place and purported to have suffered from diarrhoea for which no medical certificate has been enclosed, this cannot be a ground to condone the delay, particularly, when the Appellate Tribunal has been granted only 45 days to condone the delay and not beyond the same.

4. This apart, on merits also, we do not find any ground to interfere with the impugned order, in view of the observations made by the Tribunal, as quoted above.

5. For the reasons aforesaid, we dismiss the petition for condonation of delay. In effect, the appeal is dismissed being barred by limitation. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Balvinder Singh)
Member(Technical)

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