**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMPANY APPEAL NO.18 OF 2015**
**IN**
**CLB/COMPANY PETITION NO.76 OF 2012**

Shri Deven Surinder Verma ….Appellant/Petitioner

Vs.

Trikon Electronics Pvt. Ltd. & Ors. ….Respondents

---

Mr. Chirag Balsara a/w. Mr. D. Mehra i/b. Rajani Associates for the appellant/petitioner.

None for the respondents.

---

**CORAM : K.R.SHRIRAM,J**
**DATE : 6th January, 2016**

**P.C.:-**

1 The appeal was first listed on 10th December, 2015 on which date none appeared for the respondent nos.2 and 3. The matter was part heard and was stood over to 17th December, 2015. On 17th December, 2015 it was stood over to 22nd December, 2015. On 22nd December, 2015 the petitioner was directed to give notice to the respondents. The appellant filed an affidavit dated 6th January, 2016 stating that a copy of the appeal memo has been served upon the advocate for the respondent nos.2 and 3 who had appeared before the Company Law Board and also upon the respondent nos.2 and 3. It is stated that the packets served on the respondent nos. 2 and 3 have been returned with the endorsement "unclaimed return to sender".

2 The respondent no.1 - Trikon Electronics Private Limited (company) was registered on 4th June, 1992 in which the appellant was the major promoter/shareholder. Some time in 1997 respondent nos.2 and 3 jointly purchased 50% shareholding (25% each) in the company and were subsequently appointed as directors of the company. Over the years differences cropped up between the appellant on the one side and respondent nos.2 and 3 on the other. The differences came to a head when the appellant in January, 2012 received a SMS on his cell phone from the Central Depository Services Limited (CDSL) stating that a pledge was initiated in favour of SICOM with respect to 26,66,670 equity shares (said shares) held by the company in Aqua Logistics Limited (Aqua).

3 Aqua was a listed company. It was the flagship company of the group controlled by respondent nos.2 and 3. The company had subscribed and was allotted 26,66,670 equity shares comprising 0.88% of Aqua (the said shares). In October, 2011 respondent nos.2 and 3, it is stated, had orally requested the appellant to agree for pledging of the said shares to SICOM as additional security for certain facilities extended by SICOM to Aqua. It is stated that the appellant objected since pledging of the said shares to SICOM was of no benefit to the company.

4 When the appellant received the SMS as mentioned above, the appellant addressed a letter dated 13th January, 2012 to Saffron Global Markets Private Limited (Saffron) asking for the basis on which the said shares were transferred to SICOM. It is the appellant's case that he was the sole signatory to operate the demat account. The appellant also addressed a letter dated 18th January, 2012 to SICOM asking for details based on which SICOM accepted the pledge of the said shares. Saffron by its letter dated 20th January, 2012 replied to the appellant that they received an extract of a board resolution passed on 1st November, 2011 changing the authorised signatories. SICOM by its letter dated 27th January, 2012 informed the appellant that the said shares were duly and properly pledged by the company at the request of Aqua.

5 It is the case of the appellant that he was the sole signatory to operate the demat account and there was no board resolution passed changing the signatory to operate the demat account and no board resolution passed for pledging the said shares to SICOM. The appellant has alleged that the said shares were pledged by the respondent nos.2 and 3 to get their personal shares in Aqua pledged with SICOM to be released.

6 In my view, these allegations are all immaterial and only three issues arise : (a) whether a valid and proper board meeting was held on 1st November, 2011 and the appellant was aware about the meeting and authorised the two new signatories to operate the demat account? (b) whether there was a valid board meeting held on 5th January, 2012 with notice to the appellant authorising the pledge of the said shares to SICOM and whether respondent nos.2 and 3 were authorised to sign the necessary agreements with SICOM? and (c) whether the company benefited by this action?

7 The respondent nos.2 and 3 had filed a petition bearing no.54 of 2012 in CLB to declare the appointment of respondent no.3 therein, viz., the wife of the petitioner as director be declared as null and void and to declare the board meeting appointing the said respondent no.3 as director also as null and void. During the pendency of the petition, the said respondent no.3 ceased to be a director and therefore, the said petition came to be dismissed as infructuous.

8 The appellant herein had filed before the CLB a company petition bearing no.76 of 2012 by invoking the provisions contained in Sections 397 and 398 of the Companies Act, 1956 alleging therein certain acts of oppression and mis-management in the affairs of Respondent No.1

Company purportedly committed by respondent nos.2 and 3, seeking the following reliefs :-

*(a) to pass an order declaring all and every resolutions to have been passed general meetings or Board meetings purportedly created by the Respondent No.2 and Respondent No.3 for which no proper general meetings or Board meetings was convened or held by the Respondent No.1 as void;*

*(b) to pass an order declaring all and every agreement/s that may have been executed by Respondent No.1, in particular, pledge of aqua shares with SICOM without requisite authorization by the Board of the Respondent No.1 or the shareholders of Respondent No.1, in each case, including the Petitioners;*

*(c) to pass an order restraining the Respondent No.2 and the Respondent No.3 from taking any corporate action in relation to the Respondent No.1, including, without limitation, altering the shareholding pattern of Respondent No.1 by issuing any shares or any other form securities of the Company, or making any further investments in shares or other securities or debt instruments in any body corporate or other person, or borrowing or incurring any indebtedness for or on behalf of the Company, or encumbering or otherwise disposing-off the assets of Respondent No.1;*

*(d) to pass an order restraining the Respondent No.2 and the Respondent No.3 from using any assets of the Respondent No.1, including, utilizing the bank account and all funds lying at the disposal of Respondent No.1;*

*(e) to pass an order appointing the government recognized valuer or a Chartered Accountant to value the Aqua Shares and the loss suffered by Respondent No.1;*

*(f) to pass an order directing the Respondent No.2 and Respondent No.3 to make good the loss suffered by the Company due to pledge and disposal of the Aqua Shares;*

*(g) to pass an order directing the Respondent No.2 and Respondent No.3 to sell their shares of Respondent No.1 to the petitioner;*

*(h) to pass an order disqualifying the Respondent No.2 and Respondent No.3 as directors and further to vacate the Board of directors of the Company;*

(i) to pass an order to free loans given by the petitioner to the company, as on the date of order, be converted into equity shares of Rs.10 each in the Company at par value and accordingly the Company be directed to suitably increase its authorised share capital and to issue corresponding equity shares and deliver the share certificates to the Petitioner and to make all appropriate filings with the Registrar of Companies."

9 The counsel for the appellant submitted that they are pressing in this appeal only the prayer clause -(e) mentioned above. For considering prayer clause -(e), the counsel submitted that the observations made in paragraph 40 of the impugned order have to be set aside. Paragraph 40 reads as under :-

> "*40. I have carefully considered the rival submissions. The Verma Group has not disputed the figures reflected in the chart shown above. However, the Verma Group has failed to substantiate the allegation that the shares belonging to the company were pledged in favour of SICOM illegally and without proper authority on the basis of a forged Resolution dated 1/11/2011 by the Uchil Group and in exchange thereof same number of shares were got released by them which were earlier pledged by the Uchil Group being Promoters of M/s. Aqua Logistic Ltd. for the financial assistance availed by it from the SICOM. It is to be noted that the SICOM through its communication has confirmed that the pledging of shares was under proper authority. It is difficult to believe that the Verma Group was not aware of the pledging of Company's shares and/or has not given his consent for doing so. It is further established that the Uchil Group did not receive any undue monetary gain on account of alleged illegal pledging of Company's share in favour of the SICOM. Assuming for the sake of argument, that the Company's shares were wrongly pledged by the Uchil Group, there is nothing on record to show that the Uchil Group has gained any pecuniary advantage by pledging of the Company's shares. Utmost, it can be said Uchil Group committed an error by taking such commercial decision. But in my opinion, this cannot be said as an act of oppression and mismanagement as defined under Section 397/398 of the Act."*

10 The CLB accepted both the resolutions as correct on the basis that the appellant failed to substantiate the allegation that the said shares belonging to the company were pledged in favour of SICOM illegally and without proper authority and that the resolution dated 1st November, 2011 was a forged resolution. Similarly for the resolution dated 5th January, 2012.

11 In my view, CLB has erred in putting the onus on the appellant to substantiate the allegations. It is the case of respondent nos. 2 and 3 that such meeting took place and the resolution as mentioned in the extract was passed. Therefore, the onus should have been on the respondent nos.2 and 3 to show that a notice for such a meeting was given to the appellant, the appellant attended or chose not to attend and if the appellant had attended, voted in favour or did not oppose the resolution. It is also not the respondents case that they are unable to get the documents relating to calling for the meeting because the appellant is in control of the management of the company. As the respondent nos.2 and3 have failed to substantiate that the appellant was aware about the meetings, in my view, the resolutions as relied upon by the respondent nos.2 and 3 cannot be accepted. The CLB Member has observed that it is difficult for the Member to accept that the appellant was not aware of the pledging of the company's shares or has not given his consent for doing so. There is nothing in the impugned order to show why the board has come to such a conclusion. The board has also proceeded on the basis that SICOM through a communication has confirmed that the pledging of the said shares was under proper authority. Just because SICOM has assumed that it was under proper authority does not prevent the appellant from alleging that it was improper.

12 It is also stated in the impugned order that the respondents, i.e., Uchil Group did not receive any monetary gain on account of pledging of company's shares in favour of SICOM. This is infact contrary to the stand taken by the respondents (2 and 3) themselves in their affidavit in reply filed before the CLB. Paragraph 6.6 incorrectly mentioned as paragraph 6.5 reads as under :-

> *"6.6 - Pledge of shares by the Respondent No.2 and 3*
>
> *All the averments of the Petitioner in the sub paras under this heading are denied as they are not true. First of all, a small investments made by the Company (shares were allotted at par) in Aqua Logistics Ltd. The flagship company of the Respondents grew multi fold in value on account of the impeccable performance of Aqua Logistics Ltd.*
>
> *In order to tide over the temporary liquidity constraints faced by Aqua Logistics Ltd. It was decided at the Board meeting of the Respondent Company held on 5.1.2012 that the Company would pledge 26,66,670 equity shares held by it in Demat form in the equity capital of Aqua Logistics Ltd. In favour of SICOM to enable Aqua Logistics Ltd. To raise a Short Term Loan of Rs.30 cr.*
>
> ……..
>
> The Respondent Nos.2 and 3 have benefited by pledging the shares held by the Respondent Company in Aqua Logistics Ltd. The Respondent Nos.2 and 3 are taking all steps to set right the temporary difficulties faced by Aqua Logistics Ltd. so that the shares can be redeemed from SICOM and the Respondent Company gets its 22,66,670 shares back."
>
> (emphasis supplied)

It is the respondents' case that they were benefited by pledging the said shares held by the company in Aqua. Infact the respondents have also stated that they will take steps to redeem the said shares from SICOM and that the company gets back the said shares.

13 Therefore, the board has erred in coming to a conclusion that there is nothing on record to show that Uchil Group (respondent nos.2 and 3) has gained any pecuniary advantage by pledging the company's shares.

14 In view of the above, it is also clear that the company has not benefited in any way by act of respondent nos.2 and 3 by pledging the said shares with SICOM.

15 In the circumstances, the observations made in paragraph 40 of the impugned order has to be set aside.

16 Since it was the respondents' case that they were benefited by pledging the said shares to SICOM and respondent nos.2 and 3 having failed to establish that the appellant had consented for pledging the said shares, certainly the loss to the company has to be made good. It is stated that Aqua has already gone into liquidation as could be seen from paragraph 33 of the impugned order. Therefore, the question of bringing back to the company the said shares as promised by respondent nos.2 and 3 does not arise.

17 In the format for disclosures submitted by the respondent nos.2 and 3 to the stock exchange on 13th January, 2012, a copy whereof

is at Exhibit 'F' to the appeal, it is stated that the said shares were pledged with SICOM on 6th January, 2012. In the circumstances, in the interest of justice it is necessary to factor in the value of the Aqua shares as on 6th January, 2012, the date on which the said shares were pledged by the respondent nos.2 and 3 with SICOM.

18 Therefore, the valuer appointed under the impugned order – Mr. Jayesh B. Kapani, partner of M/s. Shanker & Kapani, Chartered Accountants is directed to ascertain the value of the said shares as on 6th January, 2012 and then arrive at the fair value of shares of the company.

19 The appeal accordingly stands disposed.

20 The petitioner to serve a copy of this order upon the respondent nos.2 and 3 by hand delivery and RPAD. The registry is also directed to serve a copy of this order upon respondent nos.2 and 3 by RPAD.

**(K.R.SHRIRAM,J)**