Mismanagement of Company properties - a case study

Company Law is very interesting and complicated. A shareholder having a substantial stake in the Company should be very careful as to how the Company functions and as to whether there is any chance for oppression and mismanagement. A substantial shareholder in a Company should always have an eye on the functioning of the Company and should keep track of all the transactions or the business. It is advisable for a shareholder having substantial interest in a Company to have a say in company transactions and try to have an influence in the management or the Board too.

A substantial shareholder in a largely held Public Company or a Listed Public company need not worry much about his interest in the Company. Because, listed Public Companies are largely held and will have a wide participation of various investors. Again, the market regulator SEBI prescribes so many regulations for the good functioning of a listed Public Company. There are many disclosure requirements, effective grievance redressel, adherence to corporate governance in view of the compulsory listing agreement to be entered into and many other issues.

But, in closely held Public Companies and Private companies, there tend to be frequent internal quarrels; and oppression and mismanagement. Even majority in a Company may be
thrown out by the minority and we see many cases before the Company Law Board where the majority approaches the Company Law Board seeking redressel under section 397/398 of the Companies Act, 1956.

Even the founder of Apple Computers, Stephen Hawking has been thrown out literally in his own words though he could come-back to Apple again through his another Company NEXT. Its a reality that a substantial shareholder in a Company may be in trouble if he fails to keep a close watch on the Company transactions and as to how the company functions.

In India, we see many oppression and mismanagement cases in Private Limited Companies and closely held Public Companies and I would like to give a case study as follows:

**CASE:**

A is a Private Limited Company in India with very good track record in making profits. A is being managed by B and B is a majority group. C is a person with substantial shareholding in the Company and he has not involved in the day-to-day affairs of the Company for some time as he was in abroad. When C has come to India and wanted to take part in day-to-day affairs of the Company, he could not do that due to the influence of B in the Company. C has found out so many irregularities in Company. As the C is coming to know all about the Company, its transactions and its irregularities, B wanted to harm the C by diverting the funds of the Company and by resorting to mismanagement. B has, opposite to its s, entered into a Joint Venture Agreement with a builder to develop all and important immovable properties of the Company. B has undervalued the Companys properties and entered into an agreement and C could not take part in any of the transactions of the Company. C knows that the entire transaction is illegal and it damages his interest in the Company. C could do anything except approaching the Company Law Board seeking various remedial measures and especially setting aside the Joint-venture agreement with the Builder.

Though, C has asked for an interim injunction restraining the builder from carrying out the developmental activities, he could not get the interim injunction as desired and as a result the developmental activity has been proceeding. The main Company Petition is pending before the Board. The perusal of the averments in the Company Petition and the evidence before it makes everyone clear that B is at fault and C deserves a remedy.
But, C is in dilemma as to when the main Company Petition gets disposed of and what happens if the B and the Builders creates some Third Party interest. Again, C has come to know the limitation on the powers of the Company Law Board under section 402 of the Act in setting-aside the transactions.

The interest of C is substantial in A Company and he could not venture ignoring his interest in the Company.

**ANALYSIS:**

1. C could have convinced the Board and could have got the interim injunction.

2. There was no application questioning the maintainability of the application before the Board on the ground that under section 402, the prayer as prayed by C is not maintainable. But, B can raise the issue of maintainability of the prayer sought by the C any time.

3. It is also likely that the Board can finally say that it can not pass an order setting aside the Joint-Venture Agreement entered into between B and the Builder.

4. As many applications are being filed, the case is getting delayed.

5. If a third party interest is created by B and the Builder, then, C may not even see the disposal of his case in his life time.

6. C is confused as to the alternatives for getting an effective and speedy redressel.

**What the Case Highlights**

1. The case highlights the problem being faced by corporates in getting speedy and effective redressel.

2. The case highlights the complications in Company Law.

3. The case highlights the importance of knowledge and technicalities of Company Law for the people at management or the substantial shareholders who are none other than the investors.
Recommended Read

- How to get Duplicate Share Certificates in case your original Share Certificate(s) has lost or misplaced
- How a Company can get registered under MSME?

DURGA RAO  
I say very sorry for the inadvertent mistake in my article when I referred “Stephen Hawking” instead of “Steve Jobs”. I say very sorry for the mistake.

BHASSKAR BORGGOHAIN  
nice case study sir..but C if he has more than 25% the total voting power could veto such an action of the company or can bring an injunction

PRAVIN KUMAR KARN  
Sir I suggest you just delete these unwated marks in your typing, after you past it in dialog box for submission. in fact[if $support Lists$]-> 3.<!{-[endif]--> these unwated things deviate reader mind from fact. Hope now you understand.

DURGA RAO  
Dear praveen, tell me as to how to avoid these things.

DURGA RAO  
Oh, Dear praveen, I got your point. I am not good in using technology and technological issues. I type my article in work document and then copy paste to caclubindia and my blog and other sites.

DURGA RAO  
Dear praveen, I could not understand what you say and I feel very happy to read your clear comment.