

## Noteworthy Rulings in Corporate Laws

By CS Gaurav Pingle, Assistant Editor, Lawstreetindia.com  
(Email: acsgauravpingle@gmail.com)



### **SAT interprets Clause 16 of Listing Agreement; states that 30 days time-gap applies to 'two book closures'**

#### **Case Details:**

1. In matter of Oracle Financial Services Software Limited Vs SEBI & Others
2. Order passed by Justice J.P. Devadhar, & Presiding Officer Mr. A.S. Lamba, Member;
3. Order dated September 23, 2014

#### **Facts:**

1. Oracle Financial Services Software Limited ('Oracle'), company listed on BSE & NSE, was to hold its 25th AGM on 12th September, 2014 and for that purpose it had declared Book Closure during period from 8th September, 2014 to 12th September, 2014;
2. On 8th September, 2014 Oracle intimated BSE & NSE that in the Board Meeting to be held on 12th September, 2014, Board would consider declaration of interim dividend;
3. On 12th September, 2014, AGM was held and on same day, Board declared interim dividend of Rs. 485 per share and for that purpose fixed record date as 24th September, 2014;
4. Accordingly, on 12th September, 2014, NSE placed on its website that Oracle has informed that interim dividend has been declared and dividend would be paid to equity shareholders on or before 29th September, 2014. Similarly, on 12th September, 2014, BSE had announced on its website that Oracle's Board has declared interim dividend;
5. As per Cl. 16 of Listing Agreement, Oracle gave 7 days notice to BSE & NSE relating to record date fixed as 24th September 2014 and sought their approval in that respect;
6. Since both stock exchanges were of opinion that under Cl. 16 of Listing Agreement, time gap between book closure and record date should be 30 days and in present case time gap being less than 30 days, issue was referred to SEBI;

7. By SEBI communication dated 19th September, 2014, it informed stock exchanges and the stock exchanges, in turn, informed Oracle that record date fixed on 24th September, 2014 is violative of Cl. 16 of Listing Agreement and accordingly informed to comply Cl. 16 of Listing Agreement;
8. Challenging SEBI's order, Oracle filed the appeal to SAT.

#### **Verdict and Basis of SAT's Verdict:**

1. SAT interprets Clause 16 of Listing Agreement relating to book closure & record date for purpose of declaration of dividend / issue of rights or bonus shares etc;
2. SAT observes that in a year there could be more than one book closure and in such case time-gap of 30 days under Cl. 16 of Listing Agreement refers to time gap between two book closures;
3. SAT further states that 'and' is used between words 'two book closures' and 'record dates' and hence cannot be inferred as time-gap between a book closure & a record date;
4. SAT interprets that word "two" used prior to "book closures" suggests that time gap is intended between two book closures and two record dates and not between a book closure and a record date.

Note: Relevant part of Cl. 16 of Listing Agreement states as follows:

"The Issuer further agrees to ensure that the time gap between two book closures and record dates would be at least 30 days."

#### **Members' statutory rights under Section 397 & 398 of Companies Act, 1956 overrides the Arbitration Clause under Articles of Association of the Company**

#### **CASE DETAILS:**

1. Mysore Realty Pvt. Ltd. v. H.P. Basavaraju & Ramakrishna Chikkachaniah;
2. Order passed by Shri. Kanthi Narahari, Judicial Member, CLB, Chennai Bench;
3. Order dated September 19, 2014.



**FACTS:**

1. Co. Petition was filed by H.P. Basavaraju & Ramakrishna Chikkachaniah (Respondents in present case) alleging oppression & mismanagement by Mysore Realty Private Limited (Applicant) and prayed for direction of investigation in its affairs and removal of auditor;
2. Present Co. Application was filed by Applicant praying to refer subject matter of Company Petition to Arbitration in terms of Arbitration Agreement incorporated in Articles of Association ('AOA') and Shareholders Agreement (SHA) and to vacate interim orders passed and dismiss Co. Petition;
3. Applicant alleges that petition is filed for reliefs which are covered by SHA and AOA, which, by law constitute a binding contract between company and its shareholders and shareholders inter se. Respondents challenged maintainability of Co. Application and stated that present Co. Application is filed by applicants only to deprive Respondents from their lawful right of filing petition under Section 397, 398 and 237 of Companies Act, 1956 ('CA, 1956');
4. Co. Application would be maintainable only if subject matter of Arbitration Agreement & Co. Petition are same and also requires commonality of parties. It was submitted that there are 10 promoters who are party to SHA and out of them only 2 are parties to Petition and subject matter of petition and SHA are different and therefore, application is liable to be dismissed.
5. Section 8 of Arbitration and Conciliation Act, 1996 empowers Court to refer parties to arbitration where there is an arbitration agreement provided there is commonality of subject matter and parties. The subject matter of Co. Petition in present case relates

to rights of members and relief in pursuance of statutory provisions under Section 397 to 403 of CA, 1956 and same cannot be construed as matters covered by scope of Arbitration Agreement;

**Verdict and Basis of CLB's verdict:**

1. CLB dismisses Co. Application for reference of oppression & mismanagement petition to Arbitration as it does not satisfy requirements of Sec. 8 of Arbitration and Conciliation Act, 1996;
2. CLB observes that Sec. 8 of Arbitration and Conciliation Act, 1996 makes clear distinction between statutory power and terms of any mutual arrangement by an agreement. States that in oppression and mismanagement matters, Arbitration Clause in Articles of Association shall not have legal force and validity of enforcement in view of Sec. 9 of Companies Act, 1956 which gives 'overriding' effect to Act notwithstanding anything contained in MoA & AoA;
3. CLB states that Arbitration Agreement shall fall within arbitrator's jurisdiction subject to statutory provisions conferring exclusive domain to tribunal and courts such as matters covered by Sec. 397 to 402 of CA, 1956 before CLB;
4. CLB relies on SC judgment in *Booz Allen and Hamilton v. SBI Home Finance Ltd.* that for referring disputes in pending legal proceeding to arbitration, there should be unanimity of cause of action and parties, and petition ought to be within four corners of arbitration agreement.

*Note: Views expressed / Analysis prepared in the Article are personal and are not binding on Pune Chapter of ICSI. But, the same should not be construed as legal / professional advice / opinion.*

