



COMMERCIAL/CORPORATE

DUOMATIC PRINCIPLE, HOW IT CAN BE ESTABLISHED?

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The Supreme Court bench comprising Justices Vineet Saran and JK Maheshwari held in a recent judgment¹ that the Duomatic Principle is applicable even in the Indian context which states that ‘Strict adherence to a statutory requirement may be dispensed with if it is demonstrated otherwise on facts if the same is consented by all members.’

The Duomatic principle is derived from common law whereby a company's shareholders can informally give approval through unanimous consent without the need to hold a general meeting. The Court added that the principle can be applied only in such cases where there are bona fide transactions and fraud is a clear exception.

Related Facts of the Issue Raised

Dr. Renuka Dalta, Dr. Vijay Kumar Dalta (late), and G.V. Rao were directors of M/s Biological E. Ltd, as on 20th March 2013. G.V. Rao resigned by submitting a letter on 6th April 2013, and later he withdrew his resignation on 9th April 2013.

The letter of withdrawal of the resignation was reviewed by the board in a meeting on 9th April 2013. The letter was on the board meeting. Dr. Renuka Dalta made no protest in terms of the attendance of Dr. G.V. Rao in the board meeting. Dr. Renuka was also part of the board meetings conducted on 22nd August 2013 and 25 September 2013. She did not protest for the continuation of Mr. G.V. Rao as a director in any of the meeting.

Later, Dr. Renuka made a complaint to the Company Law Board that the board meetings were illegal and stated that an attempt was made to increase the members in the company, so that it is ensured that she does not hold enough shareholding to file a petition under Sections 397 and 398 of the Companies Act, 1995.

The Board dismissed the petition but the Company appeal filed by Dr. Renuka was allowed by the High Court of Judicature at Hyderabad.

In the Appeal before the Supreme Court, one of the question was that whether the Duomatic Principle is applicable in the present case as the issue of resignation of Dr. G.V Rao is lapsed because he continued as a director in the company in the light of the acquiescence of this by Dr. Renuka.

Observations of the Court

The Court stated that the principle was derived from the decision in *Re: Duomatic Ltd.*, [1969] 2 Ch. 365. It noted that *“The Duomatic Principle can be briefly stated as ‘anything the members of a company can do by formal resolution in a general meeting, they can also do informally, if all of them assent to it.’”*

Referring to the decision of Lord Devey in *Salmon v. Salmon Co. Ltd.*, [1897] AC22, (“Salmon's case”), the Court stated, that it was held that “a company is bound in a matter intra vires by the unanimous agreement of its members”.

“The aforesaid Principle emanating from Salmon's Case has found its utility across various aspects of company law such as the Duomatic Principle, Doctrine of Indoor Management, etc. This Principle has its origin in common law and is applicable even in the Indian context,” it added.

Referring to the observations made in *Bowthorpe Holdings Ltd. v. Hills*, [2002] EWHC 2331 (Ch), the Court further noted that, in the above-mentioned context, it notes that the application of the Duomatic principle is only applicable in those cases wherein bona fide transactions are involved.

It also noted that *“Fraud is a clear exception to the application of these principles, be it the Duomatic Principle or Doctrine of Indoor Management.”*

The Court further stated that *“The thrust of the Duomatic Principle is that strict adherence to a statutory requirement may be dispensed with if it is demonstrated otherwise on facts if the same is consented by all members. In this case at hand, there is overwhelming evidence to show that respondent No. 1 had accepted Mr. G.V. Rao back into the Board and her conduct clearly shows that the resignation dated 06.04.2013 was clearly not accepted.”*

The Court observed that G.V. Rao never ceased to be a Director of the Company in view of the acquiescence by Dr. Renuka as he withdrew his resignation before it was accepted. It further stated that the High Court has clearly fallen into error by not considering the aspect of the application of the Duomatic Principle.

Duomatic Principle, how to establish?

Duomatic Principle is an exception, and can be quite contentious. Hence, it is prudent to use formal shareholder resolution, than trying to invoke the Principle. Following must be established to apply Duomatic Principle:

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The consent of shareholder must be unanimous to the matter

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The consent must be given by shareholders in full knowledge of the relevant matter, in other words; and

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The transaction should be bonafide, for instance it shall not results into any fraud such as a mode to overcome moratorium under insolvency laws.

[1](#) Mahima Datla vs Renuka Datla | 2022 LiveLaw (SC) 479 | CA 2776 OF 2022 | 6 April 2022