Company law - gambotto pinciples

Problem Set 4, Question 10 Legal Issue The United s government passes a law making it illegal for American companies to purchase chemicals froma company that has French shareholders, and that action precipitates the company, AgChem pty Ltd, to expropriate minority shareholders shares (100 French shareholders) in order to do business with the U. S. Would this action violate the Gambotto Principles What steps must the company take for this to be legal under Australian law

The Law

A Mr. Gambotto, who was a minority shareholder in the company WPC Ltd, was not present when the majority shareholders voted to acquire minority shares in the company and was motivated to file a major law suit because he believed his rights were violated and his voice was not heard. In regards to this case, Michael Yew Seong Chin in his article Being in the Minority: The CompulsoryAcquisition of Shares writes:

The emancipation of the minority shareholders is a recent event. For most of the first

century of company law they were virtually defenseless... In 1995, the High Court of Australia delivered a corporate law decision that led to a maelstrom of publicity and controversy. This was the Gambotto v WCP Ltd which significantly altered common law governing amendments to a company's articles of association. Gambotto ushered in a

new era of minority shareholder protections by significantly restricting the ability of the majority to acquire 100 percent ownership through amending the articles of association

to introduce a new clause enabling the majority to compulsorily acquire shares of the minority. Gambotto introduces a new test for the validity of such amendments... (Heinonline 1)

A new precedent had been set in corporate law.

Application of Law to Facts

In the original case trial Judge Mclelland J, injuncted the expropriation on the basis that majority shareholders were unjustly oppressing the minority shareholders. That decision was reversed by the Court of Appeal. Here the court noted that the expropriated shareholders received fair compensation for their shares. Using a contraction approach, Priestly J pointed to the fact that the shareholders on becoming members, agreed to become bound by duly passed resolutions, and Meagher JA pointed out that there were enormous tax advantages for the corporation and compensation was fair (Whincop 11). Unhappy with the Priestly/Meagher decision, Gambotto went back to the Court of Appeal and a final decision was reached by Mchugh J: Mchugh determined that the business objective was proper since it enabled the company to save $4 million dollars in taxes. Mchugh held that the concept of fairness had two basic aspects; fair dealing and fair price. In fair dealing one of the requirements is that full disclosure be made especially in regards to the purpose of and reasons for expropriation. He held that the majority had failed to prove that the expropriation was not oppressive as it had failed to make full disclosure of all material matters which might effect a members vote on the proposed modifications, and as such had dealt unfairly with minority shareholders. (Whincop 13)

Conclusion

Before AgChem can expropriate the minority shareholders shares, it will be required to:

(a) have a meeting with all shareholders to disclose all materials as to why an expropriation

must take place

(b) the minority holders must be given a fair price and fair treatment

If AgChem does the two items above (a&b) it will not violate the Gambotto Principles.