
(2021) 04 DEL CK 0062

In the Delhi High Court

Case No : Civil Writ Petition No. 4063 Of 2021

Axis Ispat Private Limited

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 07-04-2021

Acts Referred:

Companies Act, 2013 — Section 186, 186(13), 206, 206(4), 206(5), 207

Citation : (2021) 04 DEL CK 0062

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Dayan Krishnan, Vikas Mehta, Shakeel Ahmad, Apoorv Khator, Nidhi Raman

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode (physical and virtual hearing).

CM APPL. 12279/2021 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

WP(C) 4063/2021 & CM APPL. 12278/2021 (for interim relief)

3. The Petitioner, Axis Ispat Private Limited, has filed the present petition seeking quashing of the 37 show cause notices, dated 28th January, 2021, issued against the Petitioner, by the Ministry of Corporate Affairs, Union of India, under various sections of the Companies Act, 2013. A further prayer of the Petitioner is for the quashing of the letter dated 18th March, 2019, vide which, inspection of the books of accounts and other statutory records of the Petitioner company under section 206(5) of the Companies Act, 2013 was sought for by the Ministry of Corporate Affairs.

4. The submission of Mr. Dayan Krishnan, Id. senior counsel appearing for the Petitioner, is that although, under Section 206 of the Companies Act, the Registrar of Companies has the power to call for information, inspection of books, and to conduct an inquiry, however, the Registrar would have to first call upon the Petitioner to give an explanation and also provide them a reasonable opportunity of being heard before the Registrar, before issuing show cause notices. In the present case, however, he submits that, though there was some delay initially by the Petitioner in filing the reply to the findings, a reply had been given. However, he submits that the said reply appears to have not been considered by the Registrar, as is clear from the text of the show cause notices that have been issued to the Petitioner on 28th January 2021. It is further submitted by Mr. Krishnan, Id. Sr. Counsel that the show cause notices had all been issued on the same date and the said notices record that no explanation had been given by the Petitioner. By way of illustration, reliance is placed upon the show cause notice dated 28th January, 2021, issued under section 186(13) of the Companies Act, for violation of section 186 of the Companies Act by the Petitioner, where it is stated that the Petitioners failed to respond to the letter issued against it. The same is annexed at pages 147 and 148 of the paper book.

5. Thus, Mr. Krishnan submits that the Petitioner be allowed to submit a comprehensive reply to the show cause notices and the same be considered before the Registrar of Companies proceeds further, inasmuch as once the prosecution is directed, the Petitioner would be required to face a full-fledged trial.

6. Ms. Nidhi Raman, Id. Counsel, on the other hand, submits that when the preliminary findings/ report were issued on 2nd September, 2019, sufficient time was given to the Petitioner to file the reply. However the Petitioner chose to file a belated reply only in June, 2020, and the same was also considered by the authority and thereafter the show cause notices have been issued against the Petitioner. She further submits that despite the fact that the show cause notices were issued on 28th January, 2021 and time was given to the Petitioner to reply to the same, till date no replies to the show cause notices have been received. Accordingly, she submits that the authorities ought to be permitted to continue to proceed in accordance with law.

7. A perusal of some of the show cause notices which have been issued shows that, there is a doubt as to whether the reply submitted by the Petitioner in June, 2020 has been considered by the ROC while issuing the showcause notices or not. There is no dispute to the fact that the reply to the preliminary findings was submitted belatedly by the Petitioner, however, considering the nature of allegations and the lockdown which ensued in March, 2020 due to the COVID-19 pandemic, the delay, in filing the reply, would by itself not be a reason to not consider the same, considering that the show cause notices have only been issued after six months having passed from the date of submission of the reply by the Petitioner. Further, in any event, a perusal of section 206(4) of the

Companies Act, also shows that the inquiry has to be conducted by the Registrar, after providing the company a reasonable opportunity of being heard.

8. Section 206 (4) of the Companies Act, 2013, reads as under:

"206. Power to call for information, inspect books and conduct inquiries.-

xxx

(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447"

9. There is no doubt that under Section 207 of the Companies Act, 2013, statements of the Directors of the company have been recorded. However, under these circumstances the Petitioner ought to be given a reasonable opportunity of being heard. In the present case, preliminary findings were issued in September, 2020, and owing to the belated reply, the authorities have proceeded further, to issue the said show cause notices and it is not clear if the reply submitted was considered or not.

10. Under these circumstances, in order to ensure that the interest of the Petitioner is properly balanced, and adequate opportunity is afforded to the Petitioner, the following directions are issued:

(i) A copy of the report of the IO, which contains allegations against the Petitioner, if already not supplied, shall be supplied to the Petitioner within a week from today.

(ii) In continuation of the reply submitted in June, 2020, a comprehensive detailed reply be filed by Petitioner, in response to all the show cause notices within a period of four weeks, i.e. on or before 5th May, 2021. No further opportunity shall be granted in this regard.

(iii) The Registrar shall afford a hearing to the Petitioner in respect of the allegations raised in the preliminary findings and in the show cause notices, and

after affording a hearing to the Petitioner, the Registrar may proceed further in accordance with law. The entire process shall be concluded within a period of two months from May, 2021.

11. The remedies of the Petitioner in respect of any decision that may be taken by the Registrar, are however left open. This Court has not examined the merits of the allegations raised, either in the preliminary findings or in the show cause notices.

12. The petition is disposed of in these terms. All pending applications are also disposed of.