
(2019) 07 DEL CK 0420

In the Delhi High Court

Case No : Criminal Original (Company) No. 2 Of 2012, 11 Of 2014, 22 Of 2015

M/S Dimensions Investment & Securities Limited

APPELLANT

Vs

Uday Dutt & Ors

RESPONDENT

Date of Decision : 05-07-2019

Acts Referred:

Companies Act, 1956 — Section 303, 303(3), 454(2), 454(8)

Citation : (2019) 07 DEL CK 0420

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Kunal Sharma, Saurabh Soni, Kshitiz Rao

Judgement

Jayant Nath, J

CA No. 1446/2016 in CRL.O.(CO.) 2/2012

1. By this application, the applicant-Mr.Rajeev Bakshi prays that he may be deleted from the array of the parties of the present Crl.O.(CO.) 2/2012. It is submitted in the present application that the winding up petition was filed in 2010 and the applicant had resigned from the claimant Company in 2009. It is further stated that the applicant intimated the Registrar of Companies about the factum of non-filing of Form 32 showing the cessation of the applicant from the board of the claimant company by the company. It is stated that the Registrar of Companies had filed a complaint against the company for violation of Section 303 of the Companies Act for non-filing of Form 32. Reliance is also placed on the report of the SFIO to state that the SFIO has exonerated the applicant. Hence, the prayer to delete the name of the applicant from the array of the parties.

2. A perusal of the record shows that the applicant resigned from the board of the complainant company on 27.03.2009. The complainant has on 15.04.2009 acknowledged the receipt of the resignation and also accepted the resignation.

3. A complaint was filed under Section 303 (3) of the Companies Act by the Registrar of Companies against the complainant Company and Mr.Uday Dutt, the Managing director for non-filing of form 32 for cessation of the directorship of the company by the applicant-Mr.Rajiv Bakshi. Relevant part of the application reads as follows:-

"3. That this office has received Complaint dated 25.06.2012 (copy enclosed as Annexure-III) from Shri Rajeev Bakshi regarding non filing of Form 32 for his cessation from the directorship of the Company. It appears from the complaint that Company and its Director has not filed information about Cessation of Shri Rajeev Bakshi from Directorship of the Company as per the provisions of Section 303 of the Companies Act, 1956."

4. Learned counsel appearing for the OL however states that under Section 454 (2) of the Companies Act, the OL can direct the applicant to file the necessary statement of affairs in as much as he has admittedly been director for some time of the company.

5. The above stated contention has been denied by the applicant relying upon the judgment of this court in the case of Dr.J.S. Gambhir vs. Millennium Health Institute and Diagnostics (P) Ltd., (2014) 3 High Court Cases (Del.) 11.

6. The Coordinate Bench of this court in the aforementioned case of Dr.J.S. Gambhir vs. Millennium Health Institute and Diagnostics (P) Ltd.(supra) held as follows:-

"25. A plain reading of Section 454(2) of the Act indicates that a Statement of Affairs has to be filed by persons who are Directors on the relevant date. Sub-section 8 of Section 454 defines the relevant date to be the date on which a Provisional Liquidator is appointed. And, in case where no such appointment is made, the relevant date is defined to be the date on which the winding up order is passed. In the present case, the relevant date would be 15.01.2010 when the order appointing the Official Liquidator as a Provisional Liquidator was passed by this Court. Thus, all persons who were Directors on 15.01.2010 were obliged to file a Statement of Affairs.

26. The Official Liquidator could also require other persons as specified in Section 454(2) of the Act to file a statement of affairs, however, such a direction could only be passed in cases where the Official Liquidator believed that such persons had control over certain records of the company or had particular knowledge regarding the affairs of the company. In the present case, the liability was sought to be imposed on the applicant on the assumption that the applicant was a Director of the company at the relevant date (15.01.2010) and was thus, obliged to file a Statement of Affairs. The Official Liquidator has proceeded on the basis that the applicant was a Director solely on basis that the records of the Registrar of Companies indicated the respondent to be a Director of the company on the relevant date.

27. As stated earlier, the applicant is stoutly disputing the assumption that he

was a Director of the company on 15.01.2010. It is apparent, from the reply filed on behalf of the company, that the company represented the applicant to be a Director of the company in spite of the applicant having submitted his resignation only on the basis that his resignation had not been accepted by the Board of Directors of the company. In conformity with this stand taken by the company, the company also did not file Form No. 32 with the Registrar of Companies.

28. In the aforesaid circumstances, the substratal controversy that needs to be addressed is whether filing of Form No. 32 or acceptance of resignation submitted by a Director is necessary for the same to be effective. It is well settled that unless otherwise specified in the Articles of Association of a company, a resignation by a Director would become effective from the date on which it is communicated. A resigning Director is not obliged to file Form No. 32 with the Registrar of Companies. A resignation by a director implies a relinquishment of his office. This is a unilateral Act which unless the Articles of Association otherwise provide, is not contingent on the acceptance by the company. Directors act as agents of the company and are, thus, also entitled to terminate their agency. The act of resignation or relinquishment of the office would not require the consent of the company and, therefore, would become effective from the time when the intention to relinquish the office as a Director is communicated."

In view of the above, in my opinion, in the absence of any other material on record, it is quite clear that the applicant ceased to be a director of the complainant company prior to the filing of the winding up petition. Hence, the present complaint would not lie against him.

The application is allowed.

The applicant is deleted from the array of parties.

CA Nos. 1731/2017 and 1733/2017 in CRL.O.(CO.) 22/2015 CA No. 1447/2016 in CRL.O.(CO.) 11/2015

Learned counsel for the applicant states that the complainant company here is a subsidiary of Dimension Investment & Securities Ltd. i.e. complainant whose case has been dealt with by this court above. He states that the facts are identical to the above matter.

In view of the above, the present applications are allowed.

The applicant is deleted from the array of parties of the present cases.

CRL.O.(CO.) 2/2012

CRL.O.(CO.) 11/2014

CRL.O.(CO.) 22/2015

List on 25.09.2019.