
(2023) 10 J&K CK 0047
In the Jammu And Kashmir High Court
Case No : Civil Petition No. 3 Of 2013

Naveen Bhatnagar

APPELLANT

Vs

M/S Sudarsham Consolidated Limited And Others

RESPONDENT

Date of Decision : 20-10-2023

Acts Referred:

Companies Act, 1956 — Section 10F, 270(1), 283, 283(1), 283(1)(g), 284, 295, 299, 318(3)(a), 313, 314, 318(3)(b)
Companies Act, 2013 — Section 168

Citation : (2023) 10 J&K CK 0047

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Ajay Abrol, C. S. Gupta

Final Decision : Dismissed

Judgement

Sanjay Dhar, J

1. The appellant has filed the instant appeal under section 10F of the Companies Act, 1956(hereinafter to be referred as the Act of 1956) challenging order dated 12.09.2013 passed by the Company Law Board, Northern Region Bench, New Delhi.

2. Vide the impugned order dated 12.09.2013, the Company Law Board on an application filed by the appellant seeking a direction upon the respondent-Company to file Form 32 of the appellant with effect from 17.09.2010, the date he had tendered his resignation as Director of the respondent-Company. The Company Law Board has, while declining the prayer of the appellant, held that the appellant has automatically ceased to be the Director of the respondent-Company in terms of Section 283(1)(g) of the Act of 1956 on and from 01.07.2011 on the ground that he has not attended the Board meetings subsequent to September, 2010. Accordingly, a direction was issued to the respondent-Company to file Form 32 in respect of cessation of the Directorship of the appellant with effect from 01.07.2011 within thirty days and make necessary

corrections in the statutory records.

3. It appears that the appellant was appointed as a Director of the respondent-Company on 06.02.2009 and on 17.09.2010, he addressed a resignation letter to the Board of Directors of the respondent-Company, which was duly received and acknowledged by the respondent-Company. On 21.09.2010, a communication was addressed by one of the Directors of the respondent-Company, namely, S. M. Z. Naqvi to the appellant informing him that his resignation as on 17.09.2010 has been noted in the records of the Company and that he has been relieved with effect from 21.09.2010. The appellant was also informed that his Form 32 will be filed with the Registrar of the Companies accordingly. It seems that when the respondent-Company did not submit Form 32 with the Registrar of the Companies, the appellant made various representations to the respondent-Company as well as to the Registrar of the Companies in this regard but no action was taken in the matter. Ultimately the appellant approached the Company Law Board seeking a direction upon respondent-Company to submit Form 32 of the appellant with the Registrar of the Companies, which prayer was declined by the Company Law Board vide the impugned order and instead it was held that the appellant has automatically ceased to be the Director with effect from 01.07.2011.

4. The appellant has thrown challenge to the impugned order passed by the Company Law Board on the ground that once the respondent-Company admitted the receipt of resignation letter from the appellant and conveyed to him its acceptance vide letter dated 21.09.2010, there was no reason for the respondent-Company not to submit Form 32 in due course of time. It has been contended that the Company Law Board has failed to take note of the resignation letter dated 17.09.2010 and the acceptance letter issued by the respondent-Company on 21.09.2010.

5. Heard learned counsel for the parties and perused record of the case.

6. Section 10F of the Companies Act of 1956 vests appellate powers with the High Court against the orders of the Company Law Board. The scope of interference by the High Court in an appeal under section 10F of the Act is limited to examining substantial questions of law that arise from the order of the Company Law Board. The basis on which the appellate court would interfere under section 10F of the Act of 1956 is if the conclusion of the Company Law Board was against law or it arose from consideration of irrelevant material or there was any omission to consider the relevant material.

7. In light of the afore-stated legal position, let us now proceed to determine the merits of the grounds urged by the appellant in this case. The only question of law that arises for determination in this case is as to when resignation tendered by a Director would take effect.

8. In the Companies Act of 1956 there was no provision relating to resignation of the office of the Director, although Section 168 of the Companies Act, 2013,

specifically deals with resignation of the Director. The said provision was enforced with effect from 01.04.2014 but in the instant case, the matter pertains to the period when Companies Act, 2013 had not been promulgated so this case would be governed by the provisions contained in Companies Act, 1956 in which there is no provision relating to the resignation of the office of the Director. However, Section 283 of the Act of 1956 deals with vacation of the office by the Director and the circumstances under which the office is vacated. It reads as under:

"Section 283(1) in The Companies Act, 1956

(1) The office of a director shall become vacant if-

(a) he fails to obtain within the time specified in sub- section (1) of section 270, or at any time thereafter ceases to hold, the share qualification, if any, required of him by the articles of the company;

(b) he is found to be of unsound mind by a Court of competent jurisdiction;

(c) he applies to be adjudicated an insolvent;

(d) he is adjudged an insolvent;

(e) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months;

(f) he fails to pay any call in respect of shares of the company held by him, whether alone or jointly with others, within six months from the last date fixed for the payment of the call unless the Central Government has, by notification in the Official Gazette, removed the disqualification incurred by such failure];

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

(h) he (whether by himself or by any person for his benefit or on his account), or any firm in which he is a partner or any private company of which he is a director, accepts a loan, or any guarantee or security for a loan, from the company in contravention of section 295;

(i) he acts in contravention of section 299;

(j) he becomes disqualified by an order of Court under section 203;

(k) he is removed in pursuance of section 284; or

(l) having been appointed a director by virtue of his holding any office or other employment in the company, or as a nominee of the managing agent of the company, he ceases to hold such office or other employment in the company or, as the case may be, the managing agency comes to an end.

(2) Notwithstanding anything in clauses (d), (e) and (j) of sub-section (1), the disqualification referred to in those clauses shall not take effect - (a) for thirty

days from the date of the adjudication, sentence or order ; (b) where any appeal or petition is preferred within the thirty days aforesaid against the adjudication, sentence or conviction resulting in the sentence, or order until the expiry of seven days from the date on which such appeal or petition is disposed of ; or (c) where within the seven days aforesaid, any further appeal or petition is preferred in respect of the adjudication, sentence, conviction, or order, and the appeal or petition, if allowed, would result in the removal of the disqualification, until such further appeal or petition is disposed of. (2A) Subject to the provisions of sub-sections (1) and (2), if a person functions as a director when he knows that the office of director held by him has become vacant on account of any of the disqualifications, specified in the several clauses of sub-section (1), he shall be punishable with fine which may extend to 3 [five thousand] rupees for each day on which he so functions as a director. (3) A private company which is not a subsidiary of a public company may, by its articles, provide that the office of director shall be vacated on any grounds in addition to those specified in sub-section (1)”

9. From a perusal of the aforesaid section, it is cleared that there is no provision for vacancy by resignation of a Director. Section 284 of the Companies Act deals with removal of Directors. The expression resignation finds mention only in section 318, sub section (3) clause (a) and (b) of the Act of 1956. This provision does contemplate resignation of a Director but there is no express provision for a vacancy by resignation and as to when a resignation by a Director would take effect.

10. In Palmer’s Company Precedents 17th Edition part 1 at page 565, it has been stated that even in the absence of any express power to resign unless the articles are specifically framed, a Director may by notice to the company resign his Directorship. Again in Parmer’s Company Law, 21st Edition at page 543 under the heading “Resignation”, it has been stated that a Director can at any time resign from his office and usually the articles make express provision accordingly.

11. From the above, it can be inferred that if the Articles of Association of a company make a provision for resignation, the same has to be resorted to in accordance with the provisions contained in the Articles of Association. As to when a resignation is to take effect on acceptance, the same would be governed by the Articles of Association. In the absence of any indication as regards the effect of resignation in the Articles of Association, a resignation would take effect immediately.

12. If we have a look at the Articles of Association of the respondent-Company, clause 95 deals with the situations when an office of the Director shall become vacant. It reads as under:

“95. The office of a Director shall become vacant:-

(i) On the happening of any of the events provided for in Section 283 of the Act;

- (ii) On the contravention of the provisions of Section 314 of the Act, or any statutory modifications thereof;
- (iii) if a person is a Director of more than fifteen Companies at a time;
- (iv) In the case of alternate Director on return of the original Director to the State, in terms of Section 313 of the Act, or
- (v) On resignation of his office by notice in writing and is accepted by the Board.”

Clause 96 of the Articles of Association further provides that every Director present at any meeting of Board or Committee thereof shall sign his name in a book to be kept for that purpose to show his attendance there at.

13. From a perusal of the clauses 95 and 96 of the Articles of Association, it is clear that the office of a Director would become vacant on resignation of his office by notice in writing and its acceptance by the Board of Directors and at any meeting of the Board, every Director has to sign his name in the book to be kept for the purpose.

14. In the instant case, the appellant has tendered his resignation in terms of letter dated 17.09.2010. One of the Directors of the respondent-Company has acknowledged receipt of the said letter and has conveyed its acceptance on 21.09.2010. However, it has been consistent stand of the respondents before the Company Law Board as also before this Court that the resignation letter was never considered by the Board of Directors of the respondent-Company and therefore, there is no question of its acceptance by the Board.

15. The appellant has not placed on record anything to even remotely suggest that any meeting of the Board of Directors had taken place for considering his letter of resignation. In fact, it is not even the case of the appellant. Even the letter of acceptance dated 21.09.2010 does not bear any reference to any resolution of the Board of Directors of the respondent-Company on the basis of which, the said letter of acceptance has been issued. In the face of this situation, it can safely be stated that letter of resignation dated 17.09.2010 was never placed before the Board of Directors of the respondent-Company nor was it considered and accepted by the Board.

16. Clause 95 of the Articles of Association of the respondent-Company clearly provides that the office of the Director would become vacant on resignation of the Director by notice in writing and its acceptance by the Board, meaning thereby that unless the resignation is accepted by the Board of Directors, the same would not take effect. Therefore, the Company Law Board is right in holding that resignation of the appellant would take effect only if his letter of resignation is considered and accepted by the Board of Directors, which in the instant case, has not been done.

17. It is not a case where the Articles of Association of the respondent-Company do not provide for eventuality of a resignation and it is also not a case where

Articles of Association of the respondent-Company lay down that resignation of a Director would take effect immediately on tendering the resignation, but it is a case where the Articles of Association of the respondent-Company provide that resignation of a Director would take effect when it is accepted by the Board of Directors. Therefore, the contention of the appellant that the moment resignation was tendered by him, the same would take effect, is not tenable. Merely because one of the Directors had conveyed acceptance of the resignation of the appellant vide his letter dated 21.09.2010 would not make any difference because the resignation of the appellant was not accepted in the manner as provided under the Articles of Association.

18. For the foregoing reason, I do not find any ground to interfere with the well reasoned and lucid order passed by the Company Law Board. The appeal lacks merit and is dismissed accordingly.