(2012) 11 DEL CK 0131

In the Delhi High Court

Case No : Co. A (SB) 84 of 2012

N.C Bakshi APPELLANT

Vs

Delhi and District Cricket Association and Others RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Companies Act, 1956 — Section 10F, 25, 25(5), 621A, 629A

Citation : (2013) 112 CLA 347 : (2012) 116 SCL 607

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : Tanuj Khurana and Mr. Issan Madan, for the Appellant; J.S. Bakshi and Mr. Amitesh Bakshi, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—This appeal is directed against the judgment of the Company Law Board (CLB) dated 28.9.2012 wherein the application filed by the applicant company (M/s Delhi and District Cricket Association-DDCA) seeking a composition of an offence committed by them u/s 621A of the Companies Act had been allowed; penalty/compounding fee of Rs. 1,00,000/- has been imposed upon the company and Rs. 50,000/- on each member of the Governing Council. This order is the subject matter of the present petition.

2. At the outset, this Court notes that this is an appeal u/s 10F of the Companies Act which clearly stipulates that an appeal lies against the order of the CLB on a question of law arising out of such an order. The decision of the CLB in the fact finding Court. It is only when a question of law emanates that an appeal would lie under this statutory provision. Relevant it would be state that no question of law has been formulated in the entire body of the appeal. Grounds of appeal are contained in the body of the petition which will be the subject matter of discussion in the following paragraphs.

3. The DDCA have been issued a licence u/s 25 of the Companies Act by the

Regional Director. Object clause of the Memorandum of Association of the Company permitted the Company to promote the game of cricket in terms of certain conditions which had been specified in the licence itself. Clauses 2, 3, 5, 6, 7 and 8 are relevant. Clauses 3, 6, 7 and 8 read as under:

(3) That no remuneration or other benefit in money or money''s worth shall be given by the Company to any of its members, whether officers or servants of the company or not except payment of out-of-pocket expenses, reasonable and proper interest on money lent or reasonable and proper rent on premises to the company;

(4)... ...

(5)...

(6) That nothing in clauses (3), (4) and (5) shall prevent the payment by the company in good faith, with the previous approval of the Central Government of India reasonable and proper remuneration to any of its members in return for any services (Not being services of kind which are required to be rendered by a member), actually rendered to the company;

(7) That an alteration shall be made to the Memorandum of Association or to the Articles of Association of the Company, which are for the time being in force, unless the alteration has been previously submitted to and approved by the Central Government, and

(8) That the licence and the registration of the said company pursuant hereto shall cease to have any force or effect on violation of any of the aforesaid conditions or any of the conditions and provisions contained in its memorandum of association and thereupon this licence shall be revoked in accordance with the provisions of the said section 25 of the Companies Act, 1956.

4. Submission of the appellant is that admittedly the company by blatant violation of the conditions of the licence had paid lacs of rupees to its members; no prior approval of the Central Government has been taken. On 22.11.2010 a complaint had been made by the petitioner to the Ministry of Corporate Affairs bringing these facts to their knowledge. Legal notice dated 25.6.2011 to the Ministry of Corporate Affairs through Regional Director was also served upon them. Reply was filed by the Regional Director to this notice along with the copy of the communication furnished by the company (DDCA) dated 07.7.2011 which had been forwarded to the CLB alongwith the application of the Company filed u/s 621A of the Companies Act.

5. A perusal of this application shows that the company had admitted that it had paid honorarium to its members for the years 2008-09, 2009-10, 2010-11. This position is also not disputed by the learned counsel for the respondent. He has admitted that honorarium was in fact paid by the company (DDCA) to its various members for the aforenoted three years; submission being that for the year 2010-11 a prior approval of the Central Government has been taken which fact

had been brought to the notice of the CLB. For the other two years i.e. for the financial year 2008-09, 2009-10 prior approval for payment of honorarium to its members had not been taken for which the requisite application u/s 621A of the Companies Act seeking compounding of this offence had been filed.

6. Impugned order after noting the respective the contentions of the parties and the admitted facts as noted above had permitted the compounding of the offence u/s 621A of the Companies Act; it had noted that the contravention by the company was one covered under the category of Section 629A of the Companies Act.

7. Section 621A permits the Central Government to impose penalty for any default committed by a company or any its officers thereof provided that the said offence is compoundable u/s 629A of the said Act. Section 629A applies to cases where there is contravention of provisions of this Act for which there is no punishment specifically provided.

8. The licence had been granted to the company u/s 25 of the Companies Act. u/s 25(5) of the Companies Act the licence may be granted by the Central Government on such conditions and subject to such regulations as it thinks fit which shall be binding upon on the body to which it is granted. Sub-Section 8 specifies the conditions under which the license can be revoked by the Central Government. Sub-Section 10 contains the penal provision for non-compliance of sub-Section 9 which comes into play only on the revocation of the licence.

9. In the instant case the company in breach of the conditions of the conditions of the licence which had been granted to it paid honorarium to its members without the prior approval of the Central Government. Under sub-clause 6 of the license the company could pay a remuneration to its members but only with the previous approval of the Central Government

10. Record shows that the prior approval from the Central Government for the year 2010-11 has been obtained. For the other two years i.e. 2008-09, 2009-10 prior approval from the Central Government has not been taken for which purpose the said application u/s 621A of the Companies Act had been filed.

11. Since the offence was committed by the company for the breach of the conditions of the licence which licence has been given to the company u/s 25 of the Companies Act, Section 629A of the Companies Act rightly stood attracted. No specific penalty having been provided for contravention of sub-section (5) with regard to the conditions and regulations of the licence; accordingly the Company and its officers shall in default be punishable u/s 629A; Section 629A not creating any offence but only providing a penalty for such contravention of the Act for which no specific penalty is provided.

12. Discretion was properly exercised by the CLB in imposing a penalty of Rs. 1,00,000/- on the company and Rs. 50,000/- on each of the members of the Council who had paid remuneration/honorarium to its members without prior

approval of the Central Government. It was a fair exercise of the its discretion based on reasoned findings..

13. Even otherwise apart from the fact that no question of law has been formulated, the grounds of appeal lay challenge only to the express provisions of the licence; submission being that if there is a breach or violation of any of the conditions of the licence there would be an automatic revocation; this submission is a misdirected submission. The licence can be revoked by the Central Government, but only after an opportunity of hearing has been granted; it has to be a speaking order and in consonance with the principles of natural justice.

14. Learned counsel for the respondent has also pointed out that a Writ Petition No. 6478/2012 has been filed before a Coordinate Bench of this Court wherein also the pleas now made in the present appeal have been taken in the said petition. A copy of this petition has been placed on record. Averments made in this writ petition clearly show that the petitioner was aggrieved by the remuneration paid by the company to its members in the year 2008-09, 2009-10, 2010-11 which is also the same grievance of the petitioner in this appeal. The prayer made in this petition is that appropriate action be taken against the company for the breach committed by it of Section 25 of the Companies Act under which the licence has been granted to it.

15. There is no dispute that remedy of an appeal u/s 10F of the Companies Act impugning the order of the CLB is an independent remedy but at the same time this Court cannot lose sight of the fact that the averments and the prayers made in the Writ Petition if granted would tantamount to the same relief which has now been sought for in the present appeal. That apart an appeal u/s 10F is maintainable only on a question of law and as noted supra no question of law has even been formulated. Grounds of appeal are contained on page 28 of the paper book. All of them are bordered upon the conditions of the licence which had been granted to the company u/s 25 of the Companies Act; submission being that the breach of the mandatory conditions of the licence amounts to an automatic revocation

16. Except sub-section (10) of Section 25 of the Companies Act (which comes into play only after the licence has been revoked) there is no provisions u/s 25 of the Act which lays down a penalty for non-compliance of the licence granted u/s 25; for a breach of such conditions provisions of Section 629A of the Act have be to be resorted to. There is no infirmity in the impugned order of the CLB; it calls for no interference. Appeal is without any merit; it is accordingly dismissed with costs of Rs. 20,000/-.

