
(2014) 04 DEL CK 0267

In the Delhi High Court

Case No : C.O. A(SB) 16/2014 and CA Nos. 812-813/2014

R.C. Kohli

APPELLANT

Vs

Sports Goods Export Promotion Council

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Companies Act, 1956 — Section 10F, 192, 25, 25(8), 25(8)(a)

Citation : (2014) 5 AD 77

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Rakesh Kumar and Shashank Agarwal, Advocate for the Appellant

Final Decision : Disposed Off

Judgement

Vibhu Bakhru, J.—This is an appeal filed u/s 10F of the Companies Act, 1956 impugning an order 17.02.2014 passed by the Company Law Board u/s 621A of the Companies Act, 1956. The said order hereinafter referred to as the "impugned order". By the impugned order, the Company Law Board has allowed the application being CA No. 16/440/13 filed by the respondent company and its officers (respondents Nos. 2 to 6 herein) for compounding of default u/s 25(8) and Section 192 of the Companies Act, 1956 (hereinafter referred to as the "Act"). The said applicants had stated that a Special Resolution passed at 36th Extraordinary General Body Meeting (EOGM) of the company held on 01.11.2002 had not been filed with the Registrar of Companies, within the period of 30 days of passing the same as required under the Act. It was also contended that Section 25(8) of the Act required prior approval of the Central Government for any modification in the Articles of Association of the Company and there was also a default in compliance of the said provision of the Act.

2. The Company Law Board passed the impugned order allowing the compounding of the defaults, for the financial years 2002-03 to 2013-2014, by imposing a penalty of Rs. 60,000/- on the respondent company and Rs. 36,000/- on each of its officers u/s 25(8) of the Act and further imposing a penalty of Rs.

48,000/- on the respondent company and Rs. 24,000/- on each of its officers u/s 192 of the Act.

3. It is a grievance of the appellant that the Board of Directors of the company (referred to as Committee of Administrators) were endeavouring to legitimise certain illegal acts under the guise of the compounding application. First of all it is contended that the compounding application seeks to bring on record amended Articles of Association of the company that had never been approved by the company. It is submitted that the 36th EOGM of the company only approved certain changes in the bye-laws and under the guise of said resolution the Committee of Administrators were attempting to introduce a completely new set of Articles of Association which had not been approved at the EOGM. Secondly, it is contended that there is no offence u/s 25(8) of the Act since 25(8)(a) of the Act requires prior permission of the Central Government only where the object clause of the Memorandum of Association is altered. It is stated that under guise of compounding an offence u/s 25(8) of the Act the Committee of Administrators were attempting to introduce a completely new set of Articles of Association.

4. It is apparent from the pleadings and submission made by the learned counsel for the appellant that the appellant is aggrieved by certain actions of the company in seeking to introduce a set of Articles of Association. According to the appellant, the new set of Articles cannot be introduced as the same have not been approved by the members of the respondent company.

5. In my view, the appellant cannot be aggrieved by the impugned order of the Company Law Board compounding certain defaults which are voluntarily disclosed by the company. It is also not in dispute that the Resolution passed in the 36th EOGM had not been registered. Thus, admittedly a default u/s 192 had occurred and the same has been compounded. The appellant cannot make any grievance in this regard. The appellant also cannot be aggrieved by compounding of an alleged offence u/s 25 as it is the case of the appellant that no such offence had occurred.

6. The principal grievance of the appellant is not against the compounding of the alleged offences but against the introduction of a new set of Articles of Association, which the appellant contends is without due sanction of the members of the company. It is not necessary in these proceedings to adjudicate whether a new set of Articles of Association has been filed or whether the same has the approval of the members of the respondent company. The appellant is at liberty to raise such contentions in appropriate proceedings. It is open for the appellant to institute such action as may be advised to challenge the set of Articles which will be considered by the appropriate forum completely uninfluenced by the impugned order passed by the Company Law Board. This clarification would adequately protect the appellant as the impugned order cannot not be considered as legitimising any action of the company which may otherwise be unlawful. The import of the impugned order is only to compound the specified defaults, if any, under the Act. The appeal and all the pending

applications are disposed of with this clarification.