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**(2010) 04 DEL CK 0140**

**In the Delhi High Court**

**Case No :** Co. A. (SB) No. 23/09 and C.A. No's. 784 of 2009 and 785 of 2009

R.K. Garg

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 13-04-2010

**Acts Referred:**

Arbitration and Conciliation Act, 1996 — Section 8  
Companies Act, 1956 — Section 10F  
Constitution of India, 1950 — Article 227  
Limitation Act, 1963 — Section 14

**Citation :** (2010) 04 DEL CK 0140

**Hon'ble Judges :** P.K. Bhasin, J

**Bench :** Single Bench

**Advocate :** Harish Malhotra and Vipul Gupta, for the Appellant;

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## **Judgement**

P.K. Bhasin, J.—I had already heard the preliminary submissions in the matter made by Shri Harish Malhotra, the learned senior counsel for the appellant and had reserved orders which I proceed to pass today.

2. The appellant, who claims himself to be a Director and shareholder of M/s. Montreaux Resorts (P) Ltd. (MRL), respondent No. 2 herein having got 30,200 shares of the value of Rs. 30.20 lacs pursuant to the decision taken by the Board of Directors of MRL taken in Board meeting held on 18th December, 2007, has filed this appeal against the order dated 31st January, 2008 passed by the Company Law Board (CLB) in Company Petition No. 114 of 2007 Sonia Khosla v. Montreaux Resorts (P) Ltd., (filed by Ms. Sonia Khosla, another Director of MRL) while disposing of CP No. 01/08 filed by someone on behalf of MRL, whereby the CLB set at naught the decisions taken by the Board of Directors in the meetings held on 11th and 18th December, 2007 under the Chairmanship of Ms. Sonia Khosla allotting shares to different persons and inducting the appellant herein in the Board as a Director. The grievance of the appellant is that the order dated 31st January, 2008 was passed not only without affording any hearing to him but also without even issuing any notice to him of either the main petition of Sonia

Khosla or even of CP 01/08.

3. The appellant's case is that there were some disputes between two Groups claiming to be exclusively entitled to manage the affairs of MRL. One Group was "Khosla Group" and the other group was "Bakshi Group". Ms. Sonia Khosla, one of the two original Directors of MRL claiming oppression and mismanagement of the affairs of MRL at the hands of Bakshi Group, which was primarily comprising of one Mr. Vikram Bakshi, Mr. Wadia Prakash and Mr. Vinod Surha, out of whom Mr. Wadia Prakash and Mr. Vinod Surha were initially inducted as Additional Directors into the Board of Directors and they, in turn, subsequently had inducted Mr. Vikram Bakshi also as a Director in the Company's Board.

4. The disputes between the two Groups resulted in both the Groups convening separate meetings of the Board of Directors of MRL. The Board meetings on behalf of Khosla Group were held under the Chairmanship of Ms. Sonia Khosla while the other Group started holding Board meetings under the Chairmanship of one of the above named three persons belonging to Bakshi Group. During the pendency of the Company petition filed by Ms. Sonia Khosla she along with another Director whom she had brought into the Board held a Board meeting on 18-12-2007 and in that meeting, as per the appellant's case, he was not only allotted shares of MRL but he was also made a Director. During the pendency of the Company petition the Bakshi Group proposed to hold a Board meeting on December 24, 2007. An application came to be moved before CLB on behalf of Khosla Group for restraining Bakshi Group from holding that meeting. CLB passed an order on 24th December, 2007 restraining the Bakshi Group from holding that meeting. Thereafter Bakshi Group moved the CLB by filing a petition (being CA 01/08) alleging that the said order had been obtained by Khosla Group by misrepresentation of facts etc. That application was taken up by the CLB on 3-01-2008 when the CLB passed an order restraining both the Groups from holding any Board meeting. CA No. 01/08 came to be finally disposed of vide impugned order dated 31st January, 2008 with the direction that the allotment of shares made to different persons and induction of new Directors into the Company's Board by the Khosla Group in the meetings held on 11-12-2007 and 18-12-2007 under the Chairmanship of Ms. Sonia Khosla shall stand cancelled with immediate effect and status-quo with regard to the composition of the Board and the shareholding as existed on the day of filing of the Company Petition, which was filed on 13th August, 2007, was ordered to be restored.

5. The appellant, who was not a party to the Company Petition, felt aggrieved with the order dated 31st January, 2008 because of it having cancelled his shareholding and Directorship in MRL without any notice to him and so he filed a petition in this Court under Article 227 of the Constitution of India seeking quashing of the said order of CLB. In that petition (CWP No. 1703/2008) this Court had initially passed an order of status-quo with regard to the shareholding of the petitioner therein, (the appellant herein) in MRL. He was also allowed to participate in the Extraordinary General Meeting of the Company. However,

subsequently on an objection being raised on behalf of Bakshi Group that the petitioner should have recourse to the remedy of appeal provided u/s 10F of the Companies Act the writ petition was allowed to be withdrawn and liberty was given to the petitioner to file an appeal with the further observation that if the petitioner would file an appeal the Company Court may consider the question of limitation appropriately. Accordingly, the present appeal came to be filed. Along with the appeal, the appellant also moved an application by way of abundant caution for condoning the delay in filing the appeal by invoking Section 14 of the Limitation Act.

6. It was submitted by the learned senior counsel for the appellant at the time of the preliminary hearing that the impugned order is *ex facie* illegal having been passed without affording any hearing to the appellant which was required to be given to him before removing him as a Director of MRL and cancelling his entire shareholding which he had acquired by paying lacs of rupees. It was also contended that although the limitation period for filing of appeal u/s 10F of the Companies Act is not attracted in the facts and circumstances of the present case because the appellant's contention is that the impugned order is a nullity not only for the reason that the CLB had passed it without hearing the appellant but also because the CLB had ceased to have jurisdiction to pass any order since before the date of that order it had already entertained an application moved on behalf of Bakshi Group u/s 8 of the Arbitration and Conciliation Act, 1996 and that application was yet to be finally disposed of, one way or the other. However, by way of abundant caution only application for condonation of delay had been moved and benefit of Section 14 of the Limitation Act was being sought in the event of this Court finding the appeal to be time barred. Learned Counsel further submitted that the impugned order is causing undue hardship to the appellant because of his having been removed from the Directorship of MRL and cancellation of his entire shareholding by one stroke of pen of the CLB and, therefore, that order should not be allowed to continue to operate against the interests of the appellant.

7. I am of the view that the contentions raised in the appeal need to be gone into and notice deserves to be issued to the respondents.

8. Accordingly, notice of this appeal, condonation of delay application (being 785/09) as well as stay application (being CA No. 784/09) is ordered to be issued returnable for 30th April, 2010. Till then, the operation of the impugned order dated 31st January, 2008 passed by the CLB insofar as it has cancelled the shareholding of the appellant and Directorship in MRL is stayed.