

(2015) 01 DEL CK 0082

In the Delhi High Court

Case No : Writ Petition (C) 7892/2014 and CM No. 18495 of 2014 (Stay)

Sheeba Wheels Private Ltd.

APPELLANT

Vs

Satvijay Investment and Consultancy Services (P) Ltd. and
Others

RESPONDENT

Date of Decision : 13-01-2015

Acts Referred:

Companies Act, 1956 — Section 397, 398, 402

Citation : (2015) 217 DLT 399

Hon'ble Judges : Rajiv Shakdher, J.

Bench : Single Bench

Advocate : Vishwendra Verma, for the Appellant; Rajeev Saxena, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rajiv Shakdher, J.—This writ petition is directed against an order dated 23.9.2014 passed by the Company Law Board (CLB). The said order came to be passed on an application moved by the petitioner herein, whereby the petitioner sought stay of proceedings, in Company Petition No. 45/2003, on the ground that criminal proceedings were pending against the respondents herein, in FIR No. 63(11)/2004, P.S. Laban, Shillong, under various sections of the IPC. Briefly, it is the assertion of the petitioner that respondent Nos. 26 and 27 have by committing forgery transferred shares of companies, arrayed as respondent Nos. 1 to 25, which, in turn, has become the basis of a petition under Sections 397 and 398 read with Section 402 of the Companies Act, 1956 (in short the Act) being filed against it. It is also the assertion of the petitioner that because of forgery committed by the respondents herein, which includes, unauthorised use of signed cheques, letterheads and other documents, it is facing criminal prosecution in several Courts. The forged documents, according to the petitioner, are subject matter of consideration both before the trial Court at Shillong as well as the CLB.

2. A perusal of the impugned order would show that after broadly noting the aforementioned assertion, the CLB instead of acceding to the petitioner's request for grant of stay of the proceedings called upon its Counsel to make his submissions in the main petition filed on behalf of the respondents herein.

2.1 The CLB, in the impugned order has also come to the conclusion that stay of the CLB proceedings could not be granted on account of pendency of criminal proceedings against respondent Nos. 1 to 27 herein. As a matter of fact, the petitioner's application for stay has been dismissed with cost of Rs. 10,000/-.

2.2 I am informed that the matter is listed before the CLB on 16.1.2015.

3. Mr. Verma, who appears for the petitioner submitted initially that the documents which are being considered by the trial Court at Shillong are the very documents, which the petitioner seeks to rely upon in its defence in the petition filed by the respondents herein, under Sections 397 and 398 of the Act. Based on this, Mr. Verma had sought to contend that the CLB was obliged to stay the proceedings.

4. Having considered the matter, there was, in my view, no error in the judgment of the CLB. In my opinion, the documents in respect of which the petitioner alleges forgery can always be examined by the CLB. The scope of proceedings before the CLB is to ascertain whether there is oppression and mismanagement of the shareholders. Nothing is shown which would demonstrate that the CLB proceedings and the criminal proceedings are grounded on the same set of facts. As is well known, the standard of proof in civil proceedings is much lower as compared to that in criminal proceedings. In these facts, no stay can be granted qua the pending CLB proceedings. [See Noida Entrepreneurs Association v. Noida and Ors., III (2007) SLT 264 : (2007) 10 SCC 385].

4.1 The CLB would, therefore, in my view, be entitled to examine the documents if, they are filed, as contended and relied upon by the petitioner in opposition to the petition filed by the respondents herein.

5. Upon the above being put to Mr. Verma, the learned Counsel revisited his submission and stated that his only apprehension, was that, the CLB may not examine the documents in respect of which forgery is alleged.

6. I have no reason to come to this conclusion at this juncture. I am sure if the documents in respect of which umbrage is taken by the petitioner, are relied upon by the petitioner herein, the CLB will examine them in accordance with law, after taking into account the submission, if any, the petitioner may make in that behalf.

7. At this stage, the learned Counsel for the petitioner says that the cost imposed is heavy and that the impugned order to that extent be set aside.

7.1 I am sure if, the petitioner, moves an appropriate application, the CLB would consider its request on that score, as well. Mr. Saxena, the learned Counsel for

the respondents says that insofar as the costs are concerned, he will not oppose any submission made on behalf of the petitioner in that respect; leaving it entirely to the discretion of the CLB.

With the aforesaid observations in place, the writ petition and the pending application are disposed of Dasti.