

(2017) 11 DEL CK 0228

In the Delhi High Court

Case No : Company Appeal (SB) No. 21 Of 2014, Company Application No. 1025 Of 2014

Vishnu Lal

APPELLANT

Vs

M/S Jai Durga Commodity Trading Pvt. Ltd. & Ors

RESPONDENT

Date of Decision : 23-11-2017

Acts Referred:

Companies Act, 1956 — Section 10F, 283(1), 283(3), 397, 398, 399, 402, 403, 406

Citation : (2017) 11 DEL CK 0228

Hon'ble Judges : Jayant Nath, J

Bench : Single Bench

Advocate : Chandra Shekhar Yadav

Final Decision : Disposed Of

Judgement

Jayant Nath, J

1. This appeal is filed under Section 10F of the Companies Act, 1956 seeking to impugn the order dated 24.02.2014 passed by the Company Law

Board.

2. Pursuant to an order of this court directing service of notice through publication, the necessary publication has been made by the appellant. The respondents are accordingly served. As none is present for the respondents, respondents are proceeded ex parte.

3. The grievance of the appellant is limited. The appellant is said to be one of the initial promoters and the director of respondent No.1 Company till

26.02.2008 holding 5000 fully paid up equity shares of Rs.10 each. The case of the appellant is that being disappointed with the arbitrary functioning of

the other promoter, namely, Bakshi Rajiv Sabharwal, he decided to disassociate himself from the Company and the Board and submitted his

resignation on 26.02.2008. It is the grievance of the appellant that respondent No.2 has not filed Form 32 showing the appellant's resignation and

his name continued to appear in the records of the ROC as the director. The appellant claims to have sent an intimation to the ROC about his

resignation. Aggrieved by the acts of the respondents and the ROC, the appellant also filed a writ petition before the High Court of Judicature at

Allahabad. The writ was disposed of on 14.03.2012 directing the Registrar of Companies to pass an appropriate order in respect of respondent No.1

Company after giving due notice to the appellant and giving fullest opportunity of hearing. No relief was given to the appellant by the ROC.

Thereafter, the appellant filed a second writ petition before the Allahabad High Court. This was subsequently withdrawn and the appellant approached

the Company Law Board with the objections under Sections 397, 398, 399 read with Sections 402, 403 and 406 of the Companies Act.

4. By the impugned order, the Company Law Board observed that the facts show that the appellant had submitted his resignation on 26.02.2008 under

Section 283(3) of the Companies Act. It also noted that the appellant has not attended the Board Meetings held subsequent to his resignation. It also

noted that as per Article 35 of the Articles of Association of the respondent Company, a director can resign from the office. The impugned order also

held that it was necessary to give reasonable time to the respondent Company to appoint a new director and to accept the resignation of the outgoing

director by filing requisite Form 32 with the ROC. Keeping in view the balance between the two situations, in the interest of justice, the impugned

order held that as the appellant had not attended Board Meetings continuously for three quarters, the appellant is deemed to have vacated the office

from 01.01.2009.

5. The grievance of the appellant is that his resignation has to be effective from the date he has resigned, namely, 26.02.2008 and not 01.01.2009.

6. Section 283 (3) of the Companies Act, 1956 reads as follows:-

â??283. Vacation of office by directors.

(1) ...

(2) ...

(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).

7. Hence, an office of the director can be vacated on any ground in addition to those specified in Section 283(1) of the Act. Article 35 of the Articles

of Association of the respondent Company provides that a director shall be entitled to resign from the office of the directors from such date as he may

specify while so resigning.

8. It is manifest from a reading of Section 283(3) of the Companies Act and the Articles of Association of the respondent Company that the Director

had a right to resign from the date he may specify while so resigning. In this context as rightly relied upon by the learned counsel for the appellant

reference may be had to the judgment of the Division Bench of the Bombay High Court in the case of Saumil Dilip Mehta vs. State of Maharashtra

and Ors., AIR 2002 Bom. 194 where the Court held as follows:-

6. The submissions advanced by the litigating parties are touching an important point involved in this matter which make us to express our views on

the point whether a director of a public or private limited company can resign unilaterally and that too by writing a letter to the chairman of the said

company or its secretary. Is it necessary for such a director to fill up form No. 32 and is obliged to give a notice or intimation to that effect to the

Registrar of Companies? The question arises for our adjudication is whether that particular director is obliged to give such information to the Registrar

of Companies and whether he cannot retire without complying with the said requirement. Keeping in view the provisions of the Companies Act the

relevant articles of the Constitution of India, we come to the conclusion that a director of the public limited company or private limited company can

tender his resignation unilaterally and without filling in form 32 and without sending a notice to the Registrar of Companies. It is clear that the filling in

the said form and giving due intimation and information to the Registrar of Companies is the duty of the Company Secretary and not of an individual

director. Suffice it to say that what he has to do is to send in writing a letter informing either the Chairman or the Secretary of the Company, as the

case may be, his intention to resign from the post of the Director of the said company. Thereafter the said letter has to be moved in the meeting of the

directors of the company, may be ordinary meeting or may be extra-ordinary or special meeting, as the case may be, and the Board of Directors have

to take a decision whether the Board is accepting his resignation or not. An intimation should be sent to such director and after such resolution is

passed, the Company Secretary is under the obligation to comply with the legal formalities for giving a finishing touch to the resolution which has been

passed in the said meeting of the Board of Directors. It is for the Company Secretary to fill in the forms as prescribed and to give due information and

intimation to the Registrar of Companies, as the law requires. Thereafter, it has to be so mentioned in all prescribed registers of the company,

accounts and balance sheet of the company and thereafter the said fact is to be brought to the notice of the members of the company as early as

possible and at the latest in annual general meeting.

9. In the present scenario, the Articles of Association of the Company clearly provide that the director has a right to resign with effect from the date

he may specify. I see no reason why the impugned order has accepted the resignation of the appellant with effect from a date different from the date

of his resignation, namely, 26.02.2008. In the facts of this case, in my opinion, resignation has to operate from 26.02.2008 and not from 01.01.2009.

The impugned order accordingly stands modified.

10. The appeal stands disposed of.

11. Pending applications, if any, also stand disposed of.