

**BEFORE THE COMPANY LAW BOARD, PRINCIPAL BENCH, NEW DELHI**

**CA No. 493/2010, CA No.363/2011  
& CA No.531/2011 in C.P. No.70/2013**

**Present:- Justice D.R. Deshmukh  
Chairman**

Application under Regulation 44 of the Company Law Board Regulation, 1991.

And

In the matter of  
Mausumi Bhattacharjee

..... Petitioner

Versus

M/s Anghaila Housing Pvt. Ltd.

.....Respondent

And in the matter of  
Mr. Dharam Pal Yadav

.....Applicant

Versus

Mausumi Bhattacharjee  
Mr. Santosh Kumar Giri  
Mr. Virender Ganda

.....Non Applicant

**Present on behalf of the parties**

1. Shri Sangram Patanik, Advocate for the Applicant.
2. Shri Suresh Kumar , Advocate for the Applicant
3. Shri Imran Khan, Advocate for the Applicant
4. Shri Virender Ganda, Senior Advocate for the Non-Applicant/ Petitioner.
5. Shri. Vipul Ganda, Advocate for the Non-Applicant/Petitioner
6. Shri Santosh K. Giri, Advocate for the Non Applicant / Petitioner

**ORDER**

(Pronounced in open court on 10<sup>th</sup> day of April 2015)

This order governs the following:- (i) CA No.493/2010 which is an application filed by one Shri Dharm Pal Yadav a person aggrieved by an order dated 25.5.2004 passed by CLB to which he is not a party. (ii) CA No.363/2011 for amendment to CA No.493/2010 and (iii) CA No.531/2011 for initiation of criminal proceedings/contempt.



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2. A petition (C.P. No.70/2003) filed by Mrs. Mausumi Bhattacharjee, Chairperson and Managing Director of M/s Anghalia Housing Pvt. Ltd. (henceforth the Company) alleging acts of oppression and mismanagement against Shri Sudhir Gupta and others was disposed of by an order dated 25.5.2004 passed by Shri K.C. Ganjwal then Member (Technical), CLB, New Delhi Bench declaring Ms Mausumi Bhattacharjee to be Director of the company and further her resignation dated 01.08.2001 and Form No.32 filed with the ROC Delhi as null and void. It was further held that the appointment of Shri Naresh Kumar, R-3, Shri Ram Saran Singh R-4 and Ms Kusum Lata, R-5 as Directors of the company are invalid and purported allotment to such directors of 4604 equity shares of Rs.10 each was also declared null and void.

3. The applicant has sought intervention of this Board by filing CA No.493/2010 on the ground that he holds absolute title to the entire shareholding and asset of the company and the order dated 25.05.2004 in C.P. No. 70/2003 is a pure and simple case of fraud which was obtained by concealing material facts from CLB. No particulars have been given in the application as to what material facts have been concealed, by whom and in what manner. In other words there is no specific assertion as to how fraud was practiced on the CLB. Although the application details in paragraph 25 the power of the Company Law Board to review an order passed on fabricated and forged documents the application does not disclose specifically which documents were fabricated or forged and by whom. Similarly in para 26 the principle of an order obtained by fraud being a nullity have been gainlessly explained since no material particulars have been given in the application relating to the fraud practiced on the CLB.

4. An application CA No.363/2011 was also filed by the applicant seeking amendment to CA No.493/2010. A perusal of the said application shows that while it points out some contradictions and infirmities in the order dated 25.05.2004 resulting in non application of mind by the CLB, it does not introduce any specific allegations resulting in fraud practiced on this Board for obtaining the order dated 25.05.2004. Besides, the said application is filed under Regulation 44 of the Company Law Board Regulation 1991 which does not in any manner deal with the power of the CLB to grant amendments. The contradictions and infirmities in the



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order dated 25.05.2004 or the non application of mind by the Member (T) while passing the order dated 25.05.2004 could only be agitated in an appeal and not in an application under Regulation 44 alleging fraud. I have perused the application CA No.363/2011 and the amendments sought to be introduced therein and I am of the considered opinion that the application is misconceived, does not throw any light upon the fraud practiced on the CLB and is beyond the scope of Regulation 44 of the CLB Regulations, 1991. AT the most the facts sought to be amended by CA No. 363/2011 disclose some collusion between the petitioners and the Respondents but does not in any manner provide the basis for inferring fraud on the CLB. I am therefore not inclined to grant the prayer in CA No. 363/2011 which is accordingly dismissed.

5. In the application CA No.493/2010 following prayers have been made by the applicant while invoking the power contained under Regulation 44 of the Company Law Board Regulation, 1991 containing the inherent powers of the Bench:-

- A) Direct the ROC to take on record the documents of the applicant;
- B) Direct the ROC to investigate the affairs of the respondent company;
- C) Direct the Respondents 1 and 2 & 3 to reconstitute the Board of Directors and induct the applicant in the Board of Directors of the Respondent No.1 company;
- D) Revise the C.P. No.70 of 2003 and pass an appropriate direction to the Respondents 1 and 2 to carry out necessary corrections in the Register of Members and to include the applicant's name as a shareholder holding 96% in Respondent No.1 i.e. Anghalia Housing Pvt. Ltd;
- E) Set aside/modify the order passed by this Hon'ble Board on 25.5.2004 by including prayers made in the above paragraphs i.e. (A to D).

6. I have heard the parties at length. I am of the considered opinion that the application deserves to be dismissed in limine on the ground that no material particulars have been given in the application to substantiate the fraud, if any, practiced on this board for obtaining the order dated 25.05.2004. As held in Bishnudeo Narain and Anrs vs Seogeni rai and Jagernath AIR 1951 SC 280 the rule



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which is better established than any other is that in case of fraud the parties pleading it must set forth full particulars of fraud and general allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be. The said principle applies to the present application with full force. The application CA No.493/2010 therefore deserves outright dismissal since no material particulars have been given in the application in relation to the fraud alleged by the applicant to have been played on this Board.

7. A perusal of the relief sought by the applicant also leaves no room for any doubt that the prayer for directing investigation into the affairs of the company could not be granted on an application simpliciter under Regulation 44 without there being any substantive application under section 237 of the Companies Act, 1956. Similarly, prayer a & c can also not be granted by this Board in an application as constituted under Regulation 44 of the Company Law Board Regulation 1991. So far as the power of review of its own order is concerned the said power to review order passed by this Board has been taken away by the Company Law Board (amendment) Regulations 1992 (GSR 492(E) dated 14.5.92). To reiterate the application CA No.493/2010 deserved dismissal in limine for want of specific material particulars relating to the fraud alleged. It is open to the applicant to prefer an appeal against the order dated 25.05.2004 or to invoke the jurisdiction of Civil Court for establishing his title over the shares and assets of the company subject to the law of limitation.

8. It is also pertinent to mention here that to substantiate his title over the shares of the company the applicant had made a positive assertion in para 14 and 24 of CA No.493/2010 that the original share certificates of the company are in the possession of the applicant and he could produce such certificates at any point of time. However, pursuant to a direction given by this Board on 16.07.2013 to the applicant to produce the original share certificates it was specifically stated by the counsel for the applicant on instructions that the original share certificates were not in the possession of the applicant. Thus the applicant has also made a material false assertion which also disentitle him to any relief under Regulation 44 of the Company Law Board Regulation, 1991.



*L. Kumar*

9. With the above observations CA No.463/2010 is dismissed. As a result CA No. 531/2011 filed by the applicant seeking initiation of criminal proceedings/ contempt against Mausumi Bhattacharjee and her counsel is also dismissed.

Under Regulation 29(4) of  
the CLB Regulations, 1991

*[Signature]*  
10.04.2015

[Justice D.R. Deshmukh]  
Chairman, CLB

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*[Signature]*  
10/04/2015  
सऊद अहमद / SAUD AHMAD  
न्याय पीठ अधिकारी / Bench Officer  
कम्पनी विधि बोर्ड / Company Law Board  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi