

BEFORE THE COMPANY LAW BOARD, MUMBAI BENCH, MUMBAI

**Present: Shri Ashok Kumar Tripathi
Member (Judicial)**

C.P No. 38 of 2013

**Under Sections 614 read with Section
303 (2) of the Companies Act, 1956.**

In the matter of:

Mr. Kamal Kumar Gupta

...Petitioner

V/s

M/s. Indus Marine Pvt. Ltd. & Ors.

... Respondents

Petitioner:

Mr. Kamal Kumar Gupta

Respondents:

1. M/s. Indus Marine Pvt. Ltd.
2. Shri. Ajay Bhaskar Bhonsle
3. Shri. Nandakumar Nayak
4. Shri. Ramprasad Akuli Muduli

Counsel Appeared on behalf of the Parties :-

1. Mr. M.S. Bhardwaj, Advocate a/w. Mr. V.P. Verma, Advocates for the Petitioner.
2. Ms. Jaymala Raut, Advocate a/w Ms. Priya Dhole i/b Lalla & Lalla, for Respondents.

Judgment

(Reserved on December 6, 2013)

(Delivered on December 11, 2013)

1. The above captioned C.P has been filed by the Petitioner under Section 614 of the Companies Act. The Petitioner has sought an order thereby directing the R1 to R4 to file Form No. 32 with the ROC, Mumbai, Maharashtra, consequent upon his resignation as a director on the Board of the R1 Company. The Petitioner has also sought relief to effect that the Petitioner may be awarded compensation of Rs. 10,00,000/- for the mental agony that he suffered on account of non-filing of the said Form and direct Respondents to pay the same within the time stipulated by this Bench.



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2. The briefly stated facts of the case are as under:

2.1 Petitioner joined as director on the Board of the company on 06/08/1996 of Respondent No.1 Company. On account of his personal reasons, the Petitioner was unable to devote time to the Respondent No. 1 Company. Hence, the Petitioner resigned from the Board of directors of the 1st Respondent company w.e.f. 30/10/2012 and accordingly he tendered his resignation letter on the same day to the company which was duly acknowledged by it.

2.2 It is further averred that after some time, upon inspection of records of the Respondent No.1 Company on MCA Website, he found that the Company has not submitted the required Form No. 32 with the Registrar of Companies, Maharashtra, Mumbai through MCA website showing his cessation as a director although the stipulated time of 30 days had elapsed.

2.3 According to Petitioner's case, once having accepted his resignation, it was incumbent upon the R1 Company and its officers under Section 303 (2) of the Companies Act, 1956 to submit/ upload his resignation letter with prescribed Form No. 32 on MCA website, notifying the Registrar of Companies, Maharashtra, Mumbai, giving the particulars in the change of Board of Directors of the R1 Company within 30 days w.e.f. the date of receipt of his resignation.

2.4 It is further stated that having come to know the non-compliance of provision of Section 303 (2) of the Companies Act, 1956 by the R1 Company, he lodged a complaint with the Registrar of Companies, Maharashtra, Mumbai in "INVESTOR COMPLAINT FORM" on 29/12/2012. In response to the aforesaid complaint, the Registrar of Companies, Maharashtra, Mumbai vide his reply letter No. ROC/ IPC/ PPP/ 80960/2013/5305, dated Nil, informed the applicant that remedy is provided for non filing of returns under Section 614 of the Act and advised to approach the appropriate authority for taking action against the company and its Directors.

2.5 It is further stated that in reply to his resignation letter dated 30/10/2012, the Respondent No. 1 Company after two months of receipt of the same vide its letter dated 31/12/2012 informed the Applicant that his



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"resignation letter has been duly considered by the Board but kept in abeyance in the interest of the Company and also due to many pending issues." Hence this Petition has been filed by the Petitioner for grant of aforesaid reliefs.

3. In pursuance to the notice Respondents No. 1 to 4 appeared and filed their reply. In the reply, they stated that the Petitioner though had tendered his resignation but it was not accepted by the Company and it was kept in abeyance in the interest of the R1 Company.

3.1 It is further stated that the after resignation of the Petitioner, the R1 Company detected that he has siphoned off huge sums of money and has also manipulated the various records of the R1 Company for which R1 Company proposes to take legal action both civil and criminal against the Petitioner.

3.2 It is next stated that if there is any dispute with regard to the office of the directorship of the Company, CLB is not competent Forum to decide the same under the powers conferred upon it by virtue of Section 614 of the Companies Act. Based on the above the Respondents have prayed to dismiss the Petition.

4. To the reply filed by the Respondents, the Petitioner filed a rejoinder affidavit thereby denying the allegations made by the Respondents against him with respect to siphoning of funds and fabrication of accounts and further reiterated his version as contained in the Company Petition.

5. I have heard the Parties Counsel and have gone through the relevant documents.

6. The principal contention of the Ld. Counsel for the Petitioner is that admittedly, the Petitioner has tendered his resignation on 30/10/2012. It is, therefore, argued that the filing of Form No. 32 cannot be refused by the Company inter alia on the ground that the certain alleged financial irregularities and manipulation of funds were detected in the affairs of the Company and therefore the Petition deserves to be succeed. The Ld. Counsel has relied upon the decision in the case of **L. Srinivasan v. Rasi Nidhi Limited and Ors. 2005 124 CompCas 140 CLB, 2005 57 SCL 391 CLB** wherein it was held that: "there was resignation by director, but no intimation

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was sent to Registrar the letter of resignation was sent by regd. post with AD. Photocopy of the AD card was produced. The company was thereunder directed to file Form No. 32 with ROC with effect from the date of resignation."

7. On the other side, the Ld. Counsel appearing for the Respondents submits that the resignation was never placed before the Board for consideration nor was it accepted and therefore, the contention of the Petitioner to the contrary is not tenable and liable to be rejected. To support her contention, Ld. Counsel for the Respondents has relied upon a decision in the case of **Nekkala Usha Rani and Ors. v. Visakha Imagings and Medical P. Ltd. and Ors. [2009] 148 Comp Cas 298 (CLB)** in which it is held as follows: "That in the matter of notifying the Registrar about cessation of the second respondent as a director, the Petition under section 614 of the Act did not survive, in view of the serious dispute raised in regard to convening and holding of the annual general body meeting on September 30, 2004, as the Board would not exercise its jurisdiction under the section in deciding any dispute involving questions of law or facts."

8. I have considered the rival submissions and examined the material available on record and the case laws referred to hereinabove. It is seen from the perusal of the record that vide letter dated 30/10/2012, the Petitioner had tendered his resignation. It is further noticed from the perusal of the letter of R1 Company dated 31/12/2012 addressed to the Petitioner, informing that the same has been duly considered by the Board but the Board kept the resignation tendered by him in abeyance in the interest of the Company. The relevant extract of the said letter is follows:-

"Indus Marine Pvt. Ltd.
29 BTM, Signal Hill Avenue,
Reay Road, Mumabi-400 010.

31st December, 2012

To,
Mr. Kamal Kumar Gupta
9, Sudhan Laxmi Soc.,
Ellora Park, Vadodara.

Sub:- Your Letter of resignation

With reference to your letter dated 30th October 2012, resigning from the Directorship of the company, please be informed that the same has been duly considered by the board but kept in abeyance in the interest of the Co. and also due to many pending issues.



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Sd/-
For ARC Marine Pvt. Ltd.

9. In addition to the above in response to the notice issued by the Petitioner, the Company sent a reply notice dated 26/02/2013. The contents of the said reply further reveals that the Company had accepted the resignation of the Petitioner.

**"LALLA & LALLA
ADVOCATES**

CHAMBERS:
514, Commerce House,
140, Nagindas Master Road,
Fort, Mumbai - 400 001.
Tel.: (022)-22633123
Telefax: 22679019
Mobile: 9821031647
Resi: 24011346
Email: anil.lalla@yahoo.com
26.02.2013

Ref. No. 035/LL/2013

COURIER

To,
Mr. Jaidep Verma,
Advocate High Court & Corporate Consultant
302, "A Square", 82- Urmi Society,
Productivity Road, Baroda - 390 007.

Re: Your Notice dated 13th February 2013

Dear Sir,

Our clients M/ s ARC Marine Pvt. Ltd. of Plot No.7, Sector 6, Sanpada, Navi Mumbai 400 705 have placed in our hands your notice dated 13.02.2013 with instructions to reply thereto as under;-

1. At the outset our clients wish to place on record that the contents of your notice are false, motivated, untrue and incorrect. Our clients vehemently deny your every contention raised therein unless specifically admitted herein below. The para-wise comments to your notice is as under;

2. With reference to your unnumbered paragraph 1 of your notice, it is denied that your client Shri. Kamal Kumar Gupta had given loan to M/s ARC Marine Pvt. Ltd. from his personal Account to meet the financial commitment of our clients with an anticipation that the same would be repaid to him as per his needs. In your notice under reference you have not supported the contention of your clients by submitting certified documentary proof in respect thereof. Your client resigned from M/s Indus Marine Pvt. Ltd. on 30.10.2012 and **his resignation was taken on record only after our clients noticed grave and serious financial irregularities committed by your client during his tenure as a Director of the Company.**

3. With reference to para 2 & 3 of your notice, it is denied that your client had given them loan to uphold the reputation of the Company i.e. our clients. It is also denied that your client repeatedly reminded our clients regarding the payment of loan to which there was no response from our clients. Your client is fishing in the dark by raising frivolous claims against our clients.



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4. With reference to para 4 of your notice, our clients repeat and reiterate that your client has not advanced a loan at any time and that an amount of Rs. 2,52,000/- is due and receivable by your client. Factually your client owes our clients a huge sum of money. Your client has cheated our clients and duped them for a sum of Rs. 1,00,00,000/- (Rupees One Crore Only). Our clients are therefore not liable to pay any amount towards any loan to your client as falsely stated.

5. With reference to your unnumbered paragraph 5, our clients never informed your client that they would repay the hard earned money of your client within 2 - 3 days as alleged. The contentions of your client, is nothing but a figment of his imagination. On the contrary our clients have overwhelming documentary proof in their possession to show that your client has committed a fraud upon them while in office as a Director of the Company. Our clients are advised to file civil & criminal litigation against your client before appropriate Forum at Mumbai. Nevertheless if your client is ill-advised to proceed against our client as stated in your notice, our clients shall defend themselves in these proceedings entirely to the risk of your clients as to costs and consequences which please note.

Thanking you

Yours Truly

Sd/-

ANIL G. LALLA
LALLA & LALLA
ADVOCATES"

10. In my opinion, the reason shown by the Respondents' that since the Board decided to keep in abeyance the resignation letter of the Petitioner, after having come to know some alleged financial irregularities committed by him during his tenure as a Director of the Company and therefore, the Form No.32 was not uploaded on the portal of the ROC, Mumbai, has hardly any substance. The CLB has raised certain queries vide its order dated 7/10/2013 and asked the R1 Company to answer the queries on affidavit. In compliance of the said order, an affidavit has been filed which clearly says that after resignation, the Petitioner was never served with any notice in respect of the Board meeting held by the Company after his resignation. The affidavit further says that the Petitioner has not been paid any salary as a director which he was getting prior to the date, he tendered his resignation. The above stated answers clearly prove that the Petitioner's resignation was in fact accepted and was acted upon. I, therefore, hold that the petitioner ceased to be Director of the Company from the date, he resigned from the Board.

11. Further, the case law cited by the Ld. Counsel for the Respondents in my view has no application having regard to the facts of the case in hand. The said decision is in relation to a Petition under section 397 and 398 of the Act where the resignation purportedly tendered by the Petitioner was in



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dispute. In the instant, case the Resignation has admittedly been tendered. Therefore, the said case law does not assist the Respondents.

12. In so far as the allegations of misappropriation of funds and financial irregularities are concerned, in my view, the R1 Company, is free to take appropriate remedy available as per law but it cannot refuse to accept the reasons merely for the reason of alleged misappropriation of funds.

13. I have also considered the other prayers made by the Petitioner to award him a sum of Rs. 10 Lacs as compensation for the mental agony that he suffered on account of non-filing of E-Form No. 32, as mentioned above. In my considered view the said prayer is vague. No particulars are given. Such prayer to my mind does not fall within the ambit and scope of the provisions contained in Section 614 of the Act. Therefore, the said prayer is liable to be rejected.

14. For the reason discussed herein above, I have come to the conclusion, that the Petition deserves to be allowed partly.

Order

1. C.P. is allowed. I, therefore, in the exercise of the powers vested in me by virtue of the provisions contained in Section 614 of the Act, hereby direct the Respondents No. 1 to 4 to file Form No. 32 notifying the cessation of Petitioner from its Board of Directors within 21 days from the date of receipt of this order. However, it is clarified this order should not be construed as if, the R1 Company has been precluded from taking appropriate legal remedy available to it as per law with respect to alleged charges leveled by it upon the Petitioner. The other relief sought by the Petitioner to award sum of Rs. 10,00,000/- as compensation for the mental agony is hereby declined being devoid of merits.

2. No order as to cost.

3. C.P. stand disposed off in the above terms.

4. Let copy of the order be circulated to all concern.

Sdt
A.K.Tripathi
Member (Judicial)

Dated this December 11, 2013



CERTIFIED TO BE TRUE COPY

Sawant
S. P. SAWANT, ICLS
Bench Officer
Company Law Board
Mumbai Bench

Dated: 12/12/2013