

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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