

BEFORE THE COMPANY LAW BOARD, PRINCIPAL BENCH, NEW DELHI**C.P. No.84(ND)/2013****Present:- Justice D.R. Deshmukh
Chairman**

Under Sections 397, 398, 237(b) read with section 111, 402, 403, 405, 406 and 539 of the Companies Act, 1956

And

In the matter of

Mr. Arun Kumar Goyal and Ors

..... Petitioners

Versus

M/s Aar Kay Chemicals Pvt. Ltd. & Ors.

..... Respondents

Present on behalf of the parties

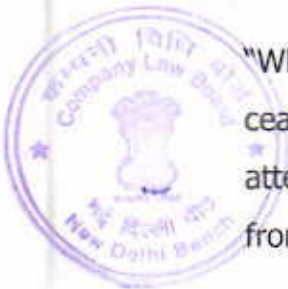
1. Shri Virender Ganda, Senior Advocate for the Petitioners.
2. Shri Vipul Ganda, Advocate for the Petitioners
3. Shri C.S Chauhan, Advocate for the Petitioners
4. Ms Ranjana Roy Gawai Advocate for the Respondents.
5. Ms Tushita, Advocate for the Respondents

ORDER(Pronounced in open court on 11th day of March 2015)

This order governs the following preliminary issue framed by me vide order dated 26.8.2014 as being relevant to the adjudication of the statutory right of P-2 to inspect the records of the company as a Director:-

"Whether P-2 had, u/s 283(1)(g) of the Companies Act 1956 statutorily ceased to be a Director of the company on account of abstaining from attending 3 consecutive Board Meetings without obtaining leave of absence from the Board of Directors"

2. Admittedly P-2 Mr. Ravi Nandan Goyal was appointed as a Director in M/s Aar Kay Chemicals Pvt. Ltd. [henceforth "R-1 company"] on 19.3.1998 whereas R-2 Mr. Vijay Goyal and R-20 Mr. Shiv Kumar Goyal were appointed as Director on 27.8.1999. On 27.11.2013 the statement on admission by the learned counsel



appearing for the company and Co-respondents was recorded that P-2 and R-20 continued to be Directors in the company. A perusal of the order dated 27.11.2013 depicts that on such date learned counsel never intended to dispute the right of inspection of P-2 on the ground u/s 283 (1)(g) of the Act but solely questioned it on the touchstone of conduct of such Director disentitling him the right u/s 209(4) of the Companies Act to inspect the records of the company. On 6.2.2014 the submission of Shri Arun Kathpalia, learned counsel for the Respondents was recorded that while the respondents have not removed P-2 as a Director of the company through a Board Resolution, the law would take its own course u/s 283 (1) (g) of the Companies Act 1956 (henceforth the "Act") if P-2 had abstained from attending three consecutive Board Meetings of the company without obtaining leave of absence from the Board. Admittedly notice of the Board Meetings dated 16.8.2012 and 19.1.2013 were duly received by P-2 who abstained from attending such meetings.

3. During the course of arguments learned counsel for the Respondents Ms. Ranjana Roy Gawai while placing reliance on *Mother Care (India) Ltd. v. Prof. Ramaswamy P. Aiyar* ILR 2004 Karnataka 1081, *Re Bodega Co. Ltd.* (1904) 1. Ch. 276 and *Bharat Bhushan v H.P. Portfolio leasing Ltd.* 1992 ILR Delhi 193 argued that section 283(1)(g) of the Act does not require any declaration by the company regarding the cessation of a Director and there is also no legal obligation on the company to issue show cause notice to such Director who had absented himself in the three consecutive Board Meetings without seeking leave of absence. It was further submitted that sending notice of further Board meetings to such director is of no consequence since such Director by operation of law automatically vacates his office u/s 283(1)(g). Learned counsel argued that even if section 283(1)(g) of the Act is held to be inapplicable in the facts of the present case the respondents reserved their right to oppose the right of P-2 to inspect the records of the company on the ground of conduct disentitling him to do so.

4. Shri Virender Ganda learned senior counsel appearing for the Petitioner while not disputing the proposition of law that under section 283(1)(g) of the Act a Director vacates the office by operation of law on failure to attend three consecutive



Board Meetings without obtaining leave of absence also drew my attention to the evidence of postal service of notices of the three Board meetings dated 16.8.2012, 13.10.2012 and 19.1.2013 annexed with the affidavit filed by R-1 company on 9.1.2015 and argued that notice of the second alleged Board Meeting dated 13.10.2012 was sent in a highly dubious manner as the Respondents had, in the normal course, sent notices of the first and the third Board Meeting to P-2 from Dhuri, where P-2 was previously residing. On the other hand, the notice of the second alleged Board meeting was sent to P-2 from Malerkotla, which is apparently 40 kms away from Dhuri. Adding more to the suspicion, learned counsel added that there is admittedly no mention of the second alleged Board Meeting in the reply filed by R-20. Counsel further urged that the format of such notices dated 8.8.2012 and 10.1.2013 as compared to the notice dated 5.10.2012 aroused suspicion. Learned senior counsel also drew my attention to the order dated 27.10.2014 wherein it was recorded as under:-

"It also needs to be mentioned here that on 27.11.2013 there was an admission on instructions by the counsel for the Petitioner in CP 84(ND)/2013 on 27.11.2013 that R-2 continues to be a Director in the Company. The original Minutes of the 3 disputed Board Meetings were shown during augments of CA No.153(C-1)/2014 and 154(C-1)/2014. These minutes were not bound and not paginated as required by law. The possibility of tampering with the minutes cannot be lost sight of"

Learned counsel argued that since the minutes of such board meetings were not paginated and bound as required by law, no reliance could be placed on the notice for such meetings. Learned counsel also argued that since R-1 is a closely held company, as per practice prevalent formal notice of Board Meeting was not required to be sent and leave of absence was routinely granted to a Director who did not attend a meeting. Shri Sarabjeet Mokha v. Marble City Hospital (2008) 142 Company Case 757 (CLB) and S. Ajit Singh v. DSS enterprises (P) Ltd. (2002) 109 Company Case 597 (CLB) were relied on to show that in many closely held companies neither meetings were held at regular intervals nor formal notices sent for Board meetings and to highlight that in family companies or closely held



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companies, leave of absence is normally given without oral or written request reliance was placed on S. Ajit Singh and Anr v DSS Enterprises Pvt. Ltd. and Ors. (2002) Vol 109 company case 597.

5. I have considered the arguments advanced on both sides on the preliminary issue framed by me and the case law cited. The relevant provision u/s 283 of the Act which deals with vacation of office by Directors is as under:-

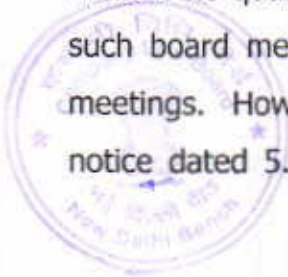
"283. Vacation of office by directors.

(1) The office of a director shall become vacant if-

(g) he absents himself from three consecutive meetings of the Board of directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the Board;

A plain reading of section 283(1)(g) shows that in order to substantiate vacation of office by a Director under this provision it must be shown that he had absented from three consecutive Board Meetings of the Board of directors without obtaining leave of absence from the Board. As a necessary fall out of the above it must therefore be shown that notice of all the three consecutive Board meetings of the Board of Directors were served on such director.

6. R-1 is admittedly a closely held company. Interestingly it is admitted by both the parties that there was never any requirement to send formal notices of Board meetings to the Directors as parties were working on mutual trust. In order to attract automatic cessation of the office of Director by P-2 by operation of law it is imperative for the Respondents to establish by adducing reliable and unimpeachable evidence that notices for the three consecutive Board Meetings dated 16.8.2012, 13.10.2012 and 19.1.2013 were sent to P-2 as required by law and P-2 had failed to attend any of the three consecutive Board meetings without obtaining leave of absence. So far as the notices for Board Meetings dated 16.8.2012 and 19.1.2013 there is no quarrel since the Petitioners have themselves produced copy of notice of such board meetings with the petition and P-2 did not attend either of the two meetings. However so far as the Board meeting allegedly held on 13.10.2012 the notice dated 5.10.2012 does arouse suspicion and smacks of manipulation. The



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format of notice for Board meeting dated 16.8.2012 and 19.1.2013 is identical but the notice for Board meeting dated 13.10.2012 is in a completely different format. Notice for Board meeting dated 16.8.2012 and 19.1.2013 is sent to all Directors named in the notice while the notice dated 5.10.2012 for the Board meetings dated 13.10.2012 is addressed only to P-2 in the form of a letter. Besides, such notice is not on the letter head of the company as compared to the notice dated 8.8.2012 and 10.1.2013. A comparison with notices for the subsequent Board meetings sent to R-2 also shows that to the exception of notice dated 5.10.2012 all such notices were printed on the letter head of the company and were sent collectively to all Directors. The manner in which even the loose minutes for the three consecutive Board meetings produced by the Respondents were found to be not bound and paginated as required by law and aroused suspicion. Besides, as stated in the notice dated 5.10.2012, the copy of agenda of the business to be transacted at the meeting on 13.10.2012 and the notes on agenda have also not been filed with the affidavit dated 9.1.2015. Notices to the Directors for Board Meetings were normally sent by courier from Dhuri. Therefore sending of a particular notice dated 5.10.2012 to P-2 from Malerkotla, a place 40 Kms away from Dhuri also renders such notice doubtful.

7. The admission by counsel for the respondents as recorded in para 2 of this order coupled with the fact that notices for subsequent board Meetings were continued to be sent to P-2 by the company also raises a strong suspicion whether any Board Meeting of the company was actually held on 13.10.2012. The stand taken by the counsel for the Respondents prior to the filing of counter and as recorded in order dated 27.11.2013 also leads to an inference that the averments in the counter relating to Board Meeting dated 13.10.2012 and the ground u/s 283(1)(g) of the Act taken by the Respondents is an afterthought. Even though there is no legal bar on sending notices to a Director who had absented from three consecutive Board meetings without obtaining leave of absence, the fact of continuously sending notices to P-2, a Director who had ceased to be a Director u/s 283(1)(g) of the Act for further Board meetings coupled with the admission by



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counsel as recorded on 27.11.2013 the automatic cessation of P-2 as director does not stand to reason.

8. A perusal of the reply by the Respondents at para 5.1.32 (page 143) it appears that leave of absence was granted to P-2 for the Board Meeting held on 18.4.2013 i.e. after three months subsequent to the alleged Board meeting held on 19.1.2013. The Company being a closely held company and in the peculiar circumstances of the case it can be presumed that leave of absence was normally granted without oral or written request from a director. Reliance is placed on S. Ajit Singh and Anr v DSS Enterprises Pvt. Ltd. and Ors. (2002) Vol 109 company case 597. Admittedly the company is a closely held company in which mutual trust prevailed between the parties up to a certain point of time and the parties resided together at Dhuri. Therefore in the peculiar facts and circumstances of the case it can be safely held that there is an implied leave of absence granted to a Director who abstained from a meeting of the Board of Directors. This is further corroborated not only by the fact that the company continued sending notices of further Board Meetings after 19.1.2013 to P-2 but also granted leave of absence as prayed by P-2 on 18.4.2013.

9. For the reasons aforesaid I therefore hold that P-2 did not cease to be a Director under section 283(1)(g) of the Act and continued to be a director in the company as the Respondents have failed to substantiate that P-2 had absented from three consecutive Board meetings on 16.8.2012, 13.10.2012 and 19.1.2013 without obtaining leave of absence and answer the preliminary issue in the negative in favour of the Petitioners. This is without prejudice to the right of the Respondents to oppose right of P-2 to inspect the records of the company on the ground of misconduct or breach of fiduciary duty. The matter is now listed on 17.4.2015 at 2.30 pm for further hearing on the right of P-2 to inspect the records of the company as a Director.



प्रमाणित सत्य प्रतिलिपि
CERTIFIED TRUE COPY

Vikram Singh 11/3/15

विक्रम सिंह / VIKRAM SINGH
न्याय पीठ अधिकारी / Bench Officer
कम्पनी विधि बोर्ड / Company Law Board
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

[Signature]
11.03.2015

[Justice D.R. Deshmukh]
Chairman