

44IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
CAPP No. 13 of 2015 and
CMA No. 36 of 2015
Date of decision: May 4 , 2015

Suneel Khanna

..... Appellant

Versus

V-Qube Travel Solutions Pvt. Ltd.

....Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Jaskirat Singh Sidhu, Advocate and
Mr. Sourabh Goel, Advocate and
for the appellant.

Mr. Anand Chhibbar, Senior Advocate with
Mr. Vaibhav Sahni, Advocate and
Mr. Gaurav Mankotia, Advocate
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

Amit Rawal, J (Oral)

The appellant Suneel Khanna being Director and share holder of 3300 Equity Shares in the respondent No.1- Company amounting to 33% of total shares of the respondent- Company invoked the provisions of Section 397 and 398 of the Companies Act(hereinafter called as 'the 1956 Act' (by filing Company Petition No. 16 (ND) of 2015 before the Company Law Board, New Delhi Bench at New Delhi (hereinafter called 'the CLB') challenging his fraudulent removal as Director from the Company vide shareholders meeting illegally being convened on 28.1.2015 on various grounds. It has been stated that respondent No.2 is Director

and shareholder of the Company holding 3300 equity shares and both respondent Nos. 2 and 3 in connivance with each other attempted to ouster the petitioner from respondent No.1-Company. It has further been alleged that respondent Nos. 2 and 3 (before the CLB) are mis-managing and acting contrary to the interest of respondent No.1 and thereby causing heavy loss to respondent No.1. It has been stated in the petition that Directors of respondent No.1-i.e. respondent Nos. 2 and 3 entered into a code of conduct and working guidelines for Directors and came to an understanding that administrative control of respondent No.1's e-mails would be kept by respondent Nos. 2 and 3 and w.e.f. 20.10.2013. All the revenue received by respondent No.1 through respondent No.2's contracts would be distributed in the following manner i.e. respondent No.3 would get 45% share respondent No.2 would receive 40% share and the appellant would receive 15%. Furthermore it was agreed that with effect from 20.10.2013 all revenue received by the respondent No.1 through the appellant's contracts would be distributed in the following manner i.e. respondent No.3 would get 45% share, respondent No.2 would receive 15% share and the appellant would receive 40%.

Besides aforesaid primary contentions the appellant also sought the following interim relief:-

- a) *Pass an order restraining the respondent No. 1,2 and 3 from conducting the scheduled Extraordinary General meeting till the pendency of the captioned matter;*
- b) *Pass an order restraining the respondent No.1, 2 and 3 and any of their*

agents/representative/assignees from ousting the petitioner from the directorship of the respondent No.1 company till the pendency of the captioned matter;

c) Pass an order restraining the respondent Nos.1,2 and 3 from making any changes in the signatories for the operation of the bank accounts of the respondent No.1.

d) Any further board meetings of the company be held with the prior permission of the CLB;

e) Pass any other and further orders that this Hon'ble Board deems fit and proper in the facts and circumstances of the captioned matter.”

When the appeal came up for preliminary hearing a specific averment was made that copy of the impugned order dated 26/27.2.2015 was not available with the appellant and exemption from filing the copy of the order was sought. This Court on the basis of the averments and submission made on 27.2.2015 passed the following interim order:-

This is an appeal under Section 10-F of the Companies Act, 1956 (hereinafter called as 'the Act') against the order dated 26.2.2015 which though has not been attached with the present appeal and exemption accompanied by an affidavit of the same has been sought on the ground that the Company Law Board in a petition bearing Company Petition No. 16(ND) of 2015 titled as Suneel Khanna Vs. V-Qube Travel Solutions Pvt. Ltd and others filed under Section 397 and 398 of the Act along with an application seeking interim relief bearing Number Nil was filed and following prayer was sought:-

a) Pass an order restraining the respondent No. 1,2 and 3 from conducting the scheduled Extraordinary General meeting till the pendency of

the captioned matter;

b) Pass an order restraining the respondent No.1, 2 and 3 and any of their agents/representative/assignees from ousting the petitioner from the directorship of the respondent No.1 company till the pendency of the captioned matter;

c) Pass an order restraining the respondent Nos.1,2 and 3 from making any changes in the signatories for the operation of the bank accounts of the respondent No.1.

d) Any further board meetings of the company be held with the prior permission of the CLB;

e) Pass any other and further orders that this Hon'ble Board deems fit and proper in the facts and circumstances of the captioned matter.”

Company Law Board simply issued the notice of the petition ibid for 24.7.2015 but neither granted any interim relief nor rejected the same. In essence, simply issued a notice of the petition ibid.

Learned counsel appearing on behalf of the appellant submits that dehor of the fact that the petition under Section 397 and 398 of the Act has been filed with regard to the mis-management and oppression of the affairs of the Company but the malafide act of the respondent-director who is stated to be Incharge and Controller of the Company, is writ large as from the perusal of the e-mail dated 23.1.2015 whereby the appellant received a notice of the Board meeting for

24.1.2015 was only qua changing of bank operations, the said communication stated to have been replied by the appellant on 24.1.2015. As per email notice dated 24.1.2015 convening of the meeting, i.e. the purported agenda was to change the Banking operation which according to the learned counsel, was not in consonance with the provisions of the Act. It has further been contended that the appellant was flabber gasted to receive notice dated 24.1.2015 qua his removal from the post of director to be held on 28th February, 2015 at Hotel Sidhartha, East Patel Nagar, Rajendera Place, New Delhi.

Learned counsel appearing on behalf of the appellant submits that notice dated 24.1.2015 giving indication of holding of the extraordinary general meeting could have only been convened by giving notice of specified period as per the provisions of Section 169 and Section 189 of the Act in general meeting. In essence 21 days notice prior to holding of the general meeting on 24.1.2015 ought to have been circulated, therefore, there is clear cut violation of the provisions of law.

I have heard learned counsel for the appellant and am of the view that notice dated 24.1.2015 apparently appears to have been issued only on 24.1.2015 without convening the general meeting as envisaged under Section 169 and 189 of the Act and according to the averments made in the petition, the appellant has not received any notice of general meeting prior to 23.1.2015 except only notice in respect of the changing of the Banking operations which was also as per contention, not in accordance with law.

It is also noticed that the notice Annexure A-12 do not indicate the time of holding of the meeting.

Notice of motion for 15.5.2015.

In the meantime operation of the notice dated 24.1.2015 Annexure A-12 holding of the extraordinary general meeting for 28.2.2015 at Hotel Sidhartha, East Patel Nagar, Rajendera Place, New Delhi shall remain stayed till the next date of hearing.

Copy of the order be given dasti under the signatures of the Reader attached to the Bench.”

During the interregnum respondents vide Misc. application bearing CMA No. 36 of 2015 sought vacation of the interim order. Along with the application copy of the impugned order dated 26/27.2.2015 has been annexed as Annexure R-1.

Notice of the application was issued and the respondents have chosen to file reply.

Mr. Jaskirat Sidhu, learned counsel appearing on behalf of the appellant contends that notice dated 24.1.2015 (Annexure A-12) had been issued by the Requisitionist and not by the Company, thus, the notice is not in consonance with the provisions of Section 169 of 1956 Act thus impugned order is not sustainable on following points:-

i) That the order is not in consonance with the provisions of Section 169 of 1956 Act.

ii) That Annexure A-2 is not a notice issued by

the Company but it is copy of the Requisitionist to the Shareholder.

Mr. Anand Chibbar, learned Senior counsel appearing on behalf of respondent No.2 submitted following submissions in support of the impugned order.

i) That on 23.1.2015 respondent No.2 had sent a e-mail to the petitioner and as well as to respondent No.3 for calling a meeting of the Board on 24.1.2015 at 11.00 A.M to change the banking operations and the venue of the meeting was fixed at Siddharth Hotel and the appellant despite his own request did not attend the Board meeting on 24.1.2015 and instead sent a e-mail whereby he had intimated his inability to attend the same and rather sent a request for re-schedulement of the meeting on 2/3.2.2015. Copy of the said e-mail has been annexed along with the appeal as Annexure A-9 at page 68 of the paper book.

ii) He further submitted that on 24.1.2015 in the Board of meeting was with regard to only banking operations were discussed.

iii) That the notice dated 24.1.2015 Annexure A-12 was a notice to the shareholders for holding an Extraordinary General Meeting on 28.2.2015 giving more than 21 days notice in compliance of Section 169 of the 1956 Act and the said notice was issued in pursuance to the Requisition and thus was in consonance with the provisions of the Act.

iv) The requisition was on behalf of respondent No.3 having 34% shareholder for removal of appellant from the

Directorship of respondent No.1-Company.

v) The said notice was received by the appellant on 27.1.2015 and on 23.2.2015 the appellant approached the Company Law Board by filing Company Petition. He further submitted that the order passed by the Company Law Board is fair, legal and in consonance with the provisions of 1956 Act and there is no irregularity, much less any perversity and thus is liable to be upheld.

vi) He also submitted that the appellants have made an attempt to mislead this Court in obtaining the interim order under the garb that the e-mail sent was for holding the meeting for discussing banking operations. This Court had been made to believe that the said notice was not in consonance with the provisions of the 1956 Act by stating that the petitioner was sought to be removed without following the procedure prescribed under the Act.

Mr. Jaskirat Sidhu, learned counsel for the appellant in rebuttal has cited the judgment of Hon'ble the Supreme Court in **Dr. Keshav Devi Vs. Girdhari Lal Pahwa and others (1987) 1 SCC 92** and **V. G. Balasundaram and others Vs. New Theatres Carnatic Talkies Pvt. Ltd.and others 1993 77 Comp.Cases 324 Mad.** to contend that it is only the Company which has to issue a notice for 21 days for the purpose of convening the meeting of the Board but whereas in the instant case it is requisitionist who did not sent any request to the Company for holding a meeting in case the Company did not issue notice under Section 169 of 1956 Act.

I have heard learned counsel for the the parties and appraised the paper book and case law cited at Bar.

In order to appreciate the aforementioned observations the controversy between the parties to the *lis*, it would be apt to refer the relevant provisions of Section 169 of the 1956 Act. Calling of extraordinary general meeting on requisition.

169. Calling of extraordinary general meeting on requisition.

(1) The Board of directors of a company shall, on the requisition of such number of members of the company as is specified in sub- section (4), forthwith proceed duly to call an extraordinary general meeting of the company.

(2) The requisition shall set out the matters for the consideration of which the meeting is to be called, shall be signed by the requisitionists, and shall be deposited at the registered office of the company.

(3) The requisition may consist of several documents in like form, each signed by one or more requisitionists.

(4) The number of members entitled to requisition a meeting in regard to any matter shall be-

(a) in the case of a company having a share capital, such number of them as hold at the date of the deposit of the requisition, not less than one- tenth of such of the paid- up capital of the company as at that date carries the right of voting in regard to that matter;

(b) in the case of a company not having a share capital, such number of them as have at the date of deposit of the requisition not less than one- tenth of the total voting power of all the members having at the said date a right to vote in regard to that matter.

(5) Where two or more distinct matters are specified in

the requisition, the provisions of sub- section (4) shall apply separately in regard to each such matter; and the requisition shall accordingly be valid only in respect of those matters in regard to which the condition specified in that sub- section is fulfilled.

(6) If the Board does not, within twenty- one days from the date of the deposit of a valid requisition in regard to any matters, proceed duly to call a meeting for the consideration of those matters on a day not later than forty- five days from the date of the deposit of the requisition, the meeting may be called-

(a) by the requisitionists themselves,

(b) in the case of a company having a share capital, by such of the requisitionists as represent either a majority in value of the paid- up share capital held by all of them or not less than one- tenth of such of the paid- up share capital of the company as is referred to in clause (a) of sub- section (4), whichever is less; or

(c) in the case of a company not having a share capital, by such of the requisitionists as represent not less than one- tenth of the total voting power of all the members of the company referred to in clause (b) of sub- section (4).

Explanation.- For the purposes of this sub- section, the Board shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required by sub- section (2) of section 189.

(7) A meeting called under sub- section (6) by the requisitionists or any of them-

(a) shall be called in the same manner, as nearly as possible, as that in which meetings are to be called by the Board; but

(b) shall not be held after the expiration of three months

from the date of the deposit of the requisition.

Explanation.- Nothing in clause (b) shall be deemed to prevent a meeting duly commenced before the expiry of the period of three months, aforesaid, from adjourning to some day after the expiry of that period.

(8) Where two or more persons hold any shares or interest in a company jointly, a requisition, or a notice calling a meeting, signed by one or some only of them shall, for the purposes of this section, have the same force and effect as if it had been signed by all of them.

(9) Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board duly to call a meeting shall be repaid to the requisitionists by the company; and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration for their services to such of the directors as were in default.

On going through the contents of the statutory provision *ibid* it is evident that it is the Board of Directors of the Company who shall, on receipt of requisition of such number of members of the Company as specified in sub Section 4 call an Extraordinary General Meeting of the company and not the requisitionist. The stage/situation to hold the Extraordinary General Meeting on behalf of the Requisitionist would arise only as per provisions of sub Section 6 of Section 169 of the 1956 Act i.e.in a situation where the Board does not within 21 days from the date of deposit of valid requisition proceed to call a meeting for consideration of those matters on a day or not later than 45 days from the date of receipt of requisition. However, in the instant case, such situation

had not arisen enabling the requisitionist to call for the meeting of Extraordinary General Meeting at their own level.

From the perusal of the order, it appears that the Company Law Board while deciding the interim relief has addressed that notice dated 24.1.2015 (Annexure A-12) has been issued by the Company whereas on going through the contents of the notice it is seen that it is on behalf of Requisitionist for holding an Extraordinary General Meeting. For the sake of brevity the contents of the notice is extracted hereinbelow:-

“To

The Shareholders of

V-Qube Travel Solutions Pvt.Ltd.

Regd Office: F 32, South City 1, Gurgaon 122001

Notice is hereby given that an Extraordinary General Meeting of the members of V-Qube Travel Solutions Pvt.Ltd.having its registered office at F32 South City 1, Gurgaon 122001, convened by the undersigned requisitionist pursuant to Section 100 (4) of the Companies Act, 2013 will be held on 28th February, 2015 at Hotel Sidhartha, East Patel Nagar, Rajendera Place, New Delhi to transact the following business:-

(1) REMOVAL OF DIRECTOR

To consider and, if thought fit, to pass with or without modification, the following resolution as a Ordinary Resolution:-

RESOLVED THAT pursuant to the provisions of Section 169 of the Companies Act, 2013 Mr. Sunil Khanna, be and is hereby removed from the Directorship of the Company.

*Name of the requisitioner: Mr. Vivek Kumar Gupta
sold Shares held 3400
%Holding 34%”*

Similarly, the Company Law Board while accepting the contention of the appellant that no time had been mentioned in the notice relied on copy of the e-mail purported to have been sent by the respondent to the appellant that the Extraordinary General Meeting would be held at 11.00 A.M.on 28.2.2015 and therefore the notice, according to the Company Law Board was not bad in law.

The Company Law Board while disposing of the interim prayer/application of the appellant has remained oblivious of the provisions of Section 169 of the 1956 Act (supra).

The Madrash High Court in **V. G. Balasundaram and others's case (supra)** while deciding the controversy with regard to the holding of the Extraordinary General Meeting interpreted the provisions of Section 169 to say that it is the Company who has to issue a 21 days notice for holding Extraordinary General Meeting on receipt of the requisition and not the requisitioner.

In the instant case, it is not the case of the respondent that despite having giving requisition to the Company, the Company did not issue notice of Extraordinary General Meeting within a period of 21 days maximum up to 45 days which necessitated the requisitioner to call for Extraordinary General Meeting at their level. There is another aspect to be seen that notice

Annexure A-12 vide which meeting was fixed is vitiated in law in as much as, the requisitioner in pre-determined mind had already decided to remove the appellant as Director and thus the notice was not in accordance with the provisions of Section 169 of 1956 Act. Since the Company Law Board has not noticed the aforementioned defects, I deem it appropriate to set aside the order by remitting the matter back to the Company Law Board to decide the interim application afresh in accordance with the provisions of Section 169 of the 1956 Act after giving opportunity of hearing to both the parties to the *lis*. It is expected that the Company Law Board shall decide the application within a period of four weeks from the date of receipt of copy of this order.

With the aforementioned observations, the appeal is accordingly allowed.

**(AMIT RAWAL)
JUDGE**

**May 4, 2015
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