

THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

TCP 59/397-398/CLB/MB/2014

Under Section 397-398 of the  
Companies Act, 1956

In the matter of

Mr. Prakash Motiram Mishra

Mr. Rakesh Motiram Mishra

Mr. Rajesh Motiram Mishra

.... Petitioners

v/s

M/s Durgeshwari Construction  
Pvt. Ltd.

.... Respondent no. 1

Mr. Motiram Jagnarayan Mishra

.... Respondent no. 2

Mrs. Sudha Motiram Mishra

.... Respondent no. 3

Order delivered on: 14.11.2017

**Coram:**

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner:**

Mr. Dharam Junani, Advocate for Petitioner, i/b Ganesh & Co.

**For Respondent:**

Mr. Mahesh Mahadgut, Advocate for respondent no. 1 to 3

**Per:** M. K. Shrawat, Member (J)

1. A Petition has been filed on 16<sup>th</sup> June, 2017 by invoking the provisions of section 397 and 398 of Companies Act, 1956 and the relief sought therein were as under: -

*“(a) The Hon’ble Company Law Board may be pleased to issue directions on the Respondent No. 2 & 3 to file Form 32 for re-Appointment of Petitioners on the Directorship of the Company as per provisions of Companies Act, 1956*

*(b) The Hon’ble Company Law Board may be pleased to issue directions on the Respondent no 2 & 3 to file Form 32 for reporting Resignation of Respondents from the Directorship of the Company as per provisions of Companies Act, 1956.*

*(c) The damages sustained by the Company be the wrongful acts of the Respondents be assessed and the Respondent No. 2 & 3 be directed to compensate the Company and Petitioners.*

*(d) Such further or other orders be made or directions be given affording necessary relief to the Petitioners as in the premises the Hon’ble Company Law Board may deem fit and proper.*

*(e) The Hon’ble Company Law Board may be pleased to issue directions on the Respondent No. 4, Registrar of Companies, Mumbai, to quash and cancel the Form 32 filed w.r.t. Appointment of Respondent 2 and Respondent 3, including their names on the Directorship database of the Company, maintained on the Portal of Registrar of Companies (MCA 21).*

*(f) The Hon’ble Company Law Board may be pleased to issue directions on the Respondent No. 4, ROC, Mumbai, to quash and cancel the Form 32 w.r.t. alleged removal Petitioners from the Directorship of the Company and same be declared as null and void and be set aside.”*

2. Thereafter the Petition was listed for hearing on number of occasions in past years and the pleadings have also been completed. However, the Ld. Counsel of the Petitioner has stated that there is a latest development having direct bearing on the issues raised by the Petitioner. Ld. Counsel has informed that RoC, Mumbai has delisted/disqualified the two directors of the

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Company viz. M/s. Durgeshwari construction Pvt. Ltd.,  
Respondent No. 1 of the main Petition.

3. In support a copy of the order of 7<sup>th</sup> September 2017 alongwith the list of the persons disqualified is placed on record. The reason assigned for disqualification is that pursuant to section 164(2)(a) of the Companies Act, 2013, the directors of the Companies who have not filed Financial Statement or Annual returns for continuous period of 3 Financial Years in default have been declared disqualified. The accounting period in respect of the Company were stated to be 2014, 2015 and 2016. He has informed that the DIN number of the said two directors have been mentioned in the list of persons, therefore as per the DIN it is noticed that the same pertains to Mr. Motiram Jagnarayan Mishra and Mrs. Sudha Motiram Mishra. Due to the impugned disqualification the grievance of Petitioner now is stood redressed. As a result, the Petitioner is seeking permission to withdraw the Petition.
4. On the other hand, from the side of the Respondent the Ld. Advocate has vehemently opposed the withdrawal of the Petition and informed that the petitioners are trying to control the Company by illegally passing a resolution which should not be allowed by this respected bench.

**Findings: -**

5. Having heard the submissions of both the sides we are of the opinion that if the Petitioner is willing to withdraw his Petition then no authority can stop to withdraw the Petition if no prejudice is going to be caused to any of the party or the same is not against the Public interest. In this case the admitted factual position is that the two directors (Respondent No. 2 and 3 of the main Petition) have been disqualified by the RoC, hence these two directors have no role to play in the business activity of the Company. Even they have no legal sanctity in objecting the prayer of "withdrawal" of the Petition, especially when their right of directorship have been snatched away. As far as the question of withdrawal is concern, under circumstances the Petitioner cannot be stopped. Otherwise also if a Petitioner is not interested in pursuing a Petition then there is no law through which such Petitioner can be stopped. As a result, we hereby grant permission to the Petitioner to withdraw this Petition, especially when the relief sought in the main Petition now stood resolved on

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disqualification of two directors i.e. Respondent No. 2 and 3. The Petition is disposed of as withdrawn. At the end; from the side of the Respondent a prayer has been made that it is justifiable to record that this order shall not come into the way of the Respondent's if seeking a remedy available under law so as to comply with a statutory obligation granted under any of the provisions of this Act. This liberty is always available to the litigants in general.

6. Resultantly to this Petition is disposed of as withdrawn and to be consigned to the record.

Sd/-

**Bhaskara Pantula Mohan**  
**Member (J)**

Sd/-

**M. K. Shrawat**  
**Member (J)**

**14<sup>th</sup> November, 2017**