

**National Company Law Tribunal: Allahabad**

**Company Application No. 92 of 2014**

**(In Company Petition No. 08 (ND) of 2009)**

**Dated the Wednesday, 21<sup>st</sup> September, 2016**

Present:

Shri V. S. R. Avadhani, Member (Judicial)

And

Shri H. P. Chaturvedi (Member (Judicial))

Between

Shri Pawan Tiwari

.... Petitioner

S/o Sh. Rajendra Prasad Tiwari,

R/o 24, Saket Colony,

Hathras, Uttar Pradesh

And

1. Shri Ganga Sheetgrih Private Limited & Others

.... Respondents

Having its registered office at Village Jogia,

Hathras, U.P.

2. Mr. Arvind Tiwari

S/o Shri Maheever Tiwari

R/o 237, Vasundra Enclave,

Mursan Gate,

Hathras, U.P.

3. Mr. Jitendra Tiwari

S/o Shri Maheever Tiwari

R/o 237, Vasundra Enclave,

Mursan Gate,

Hathras, U.P.

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**Claim:** To reject the Report No. CFSL-2013/A-1881/0904 dated 05.03.2014, Finger Print Division and the Report No CFSL-2014/A-1881-2058(CSFL-2013/A-1881dated 1.05.2014, Document Division, sent by Director CFSL: CBI, New Delhi.

This Petition came before the Bench for final hearing on 06.09.2016 in the presence of *Shri Rajnish Sinha*, Advocate for the petitioner and of *Shri Nawal Kishore Mishra*, Advocate for Respondents 2, 3 and 4, and no representation is recorded for Respondent No. 1, and having stood till this day for consideration before the Bench, the Bench passes the following-

### ORDER

**(Per Mr. V. S. R. Avadhani, Member (Judicial))**

- 1) This Company Application is filed by the petitioner in the Company Petition which itself was filed under Sections 397,398,403 & 406 of Companies Act, 1956 (since repealed by Companies Act, 2013). We feel it is not necessary to make intricate reference to the conflicting claims in the main company petition except to have a little focus on the core controversy to facilitate us to dispose of the present application.
- 2) The petitioner complains that without his knowledge and by fabrication of documents, he was removed from his directorship under the alleged minutes of the Board dated 01.09.2007 and on the same day a resignation letter was pressed into service as if he had tendered resignation to the directorship. In the rejoinder filed by the petitioner he has further asserted that he had not tendered resignation, nor did he sold or transferred his shares to the second respondent or did he had withdrawn the consideration from the Bank by either signing or affixing his thumb mark on the receipts or vouchers. His contention therefore is, all these documents are forged.
- 3) The Respondents' contention is that the petitioner had sold away his shares to the 2<sup>nd</sup> respondent and tendered resignation and the same was accepted by the Board and the same was communicated to the bank for record purpose and the consideration for the sale of equity shares was also withdrawn by the petitioner from the bank duly signing and affixing his thumb mark on the receipt and he came forward with this frivolous proceeding.

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4) On motion by the petitioner, the then Company Law Board had referred the disputed documents containing the disputed signatures and the thumb mark of the petitioner to the Central Forensic Science Laboratory, New Delhi. To be more clear, as per orders dated 03.09.2013 and 18.10.2013 the Board had referred the following documents for forensic examination after obtaining specimen signatures and thumb mark of the petitioner in the court. The documents are:

- (i.) Original Board Resolution dated 01.09.2007;
- (ii.) Original Resignation Letter dated 01.09.2007;
- (iii.) Original Receipt dated 05.11.2007 for Rs. 30,000/-; and,
- (iv.) Original Share Transfer Form dated 19.10.2007;

5) The director CFSL had forwarded two separate reports dated 08.03.2014 and 21.05.2014 to the Board, viz., the first report dated 08.03.2014 is with respect to the disputed thumb impression and the second report is with respect to the disputed signatures. Regarding the thumb impression, it is reported that the questioned thumb impression is identical with specimen left thumb impression of *Shri Pawan Tiwari* i.e. petitioner herein. The other report shows that the comparison of the disputed signatures with the admitted signatures obtained in the Court could not be done and the Senior Scientific Officer Grade II had addressed thus:

“... that after comparison it has been felt necessary to have ample number of admittedly genuine signatures written during usual course of business and of the contemporary period along with a few sheets of specimen signatures of the person called *Pawan Tiwari* for further scientific examination and to arrive at any opinion.”

6) Now the petitioner challenges the above reports of the CFSL on the following grounds, as cull out from the present application.

- i) The Bench Officer had shown resignation of Pawan Tiwari instead of mentioning documents showing the signatures taken in the court room, in the covering letter addressed to CFSL;
- ii) There is a abnormal delay in comparison and report;
- iii) In the report dated 05.03.2014 it is mentioned that CFSL had received the thumb impression slip in an envelope in ‘unsealed condition’;

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On the basis of the above grounds, the petitioner contends that it creates 'serious doubt' on the report of the finger print and hand writing experts of CFSL and therefore requested the Board to 'reject' the reports dated 05.03.2014 and 21.05.2014. That is the purport of the application.

The respondents filed a detailed counter in which they have emphatically and steadily denied every averment made in the petition and urged to dismiss the same.

7) We have heard both the learned Counsels at length and have given our consideration to the facts and circumstances. The Ld. Counsel for petitioner has argued that the record itself speaks volume about the unreliability of the reports of the CFSL and in as much as the disputed documents were received by the CFSL in 'unsealed condition', the authenticity of the reports will come under a cloud of doubt and if the reports are accepted serious prejudice is ensue to the petitioner. The learned Counsel for respondents would submit that the report of the expert is not substantive evidence and it is only an opinion and at the time of final hearing, the petitioner can demonstrate to the Tribunal that the report cannot be taken into account to arrive at a final conclusion on the disputed questions of fact and therefore rejection of the report at this stage is uncalled for and premature.

8) In view of the above pleadings and arguments, the point arises before us for consideration is:

***Whether the reports of the Central Forensic Science Laboratory dated 05.03.2014 and 21.05.2014 are liable for rejection?***

**Point:** The area of controversy in this company application is limited to the extent of deciding whether there is necessity of 'rejecting' the CFSL reports. This question takes us to make reference as to what is the relevancy and evidentiary value of an expert report. We are conscious of the fact that the provisions of the Indian Evidence Act are not applicable to the proceedings in the Company law Tribunal. However, the general principles of evidence recognised in Common law that are perhaps embedded in the Indian Evidence Act, cannot be ignored in the process of decision making.

There is a manifest difference between an 'expert' and a 'witness of fact'. The expert, at any rate, is not a witness of fact.<sup>1</sup> His evidence is only 'opinion' and is advisory in character. His report is not evidence and to substantiate his opinion expressed in the report, he shall invariably be examined in the Court and subject himself to the scrutiny of examination and cross examination. His evidence and the opinion have to be corroborated before accepting the report as reliable and to be read in evidence. Only when it inspires confidence of the Court, Court can accept his report and there is no rule that the evidence of the handwriting expert shall be accepted under all circumstances.

<sup>1</sup> Ramesh Chandra Agrawal vs. Regency Hospital Ltd & others (2009) 9 SCC 709

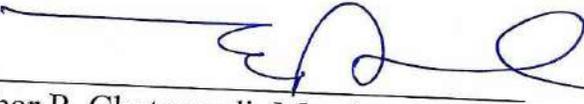
The Court has a duty before acting upon the evidence of handwriting expert to satisfy with two things to have been proved, namely (i) the genuineness of the specimen/handwriting of the concerned person and (ii) the handwriting expert is a competent, reliable and dependable witness whose evidence inspires confidence.<sup>2</sup>

Therefore, placing non-reliance upon the expert's opinion is the final outcome of appreciation thereof in the light of other evidence, circumstances etc, to be done at the final stage of the matter. His report has no value as such without his oral evidence. There is no necessity of expressing an opinion about the reliability of the report at this stage and reject the same at the threshold. If it is done at this stage and the report is expunged from the record, the party in whose favour the opinion is expressed by the expert would be put to disadvantage. If at all the expert is examined by the opposite party to prove the contents of the report, then it is open to the petitioner to raise the same objections raised now, to demolish the reliability of the expert opinion and his evidence. We are, therefore, not impressed with the sustainability of the relief claimed in this petition.

In the result, the petition is dismissed. Both parties shall bear their own costs of the petition.

Dictated to the Stenographer, written by her in longhand, corrected and pronounced by us in open court this the 21<sup>st</sup> day of September, 2016.

  
21-9-2016  
V.S.R. Avadhani Member (Judicial)

  
Harihar P. Chaturvedi, Member (Judicial) 22/09/2016

Dated: 21<sup>st</sup> September, 2016