

**In the National Company Law Tribunal,
Chandigarh Bench, Chandigarh.**

**CA No.209/2017
IN
CP No.150(ND)/2016
RT CP No.186/Chd/Hry/2017**

**Under Section 128 (3) and (4) of
the Companies Act, 2013.**

In the matter of:

M/s Buddy (Mumbai) Duty Free Service Pvt.Ltd.

....Petitioner.

Versus.

M/s Authentic Restaurants Pvt.Ltd. and Ors.

....Respondents.

Order delivered on: 08.01.2018.

Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).

For the Petitioner:

- 1) Mr.Sandeep Bajaj, Advocate.
- 2) Mr.Pradeep Nauharia, Advocate
- 3) Mr.Soyaib Quereshi, Advocate

For the Respondents:

- 1) Mr.Anand Chhibbar, Senior Advocate
- 2) Mr.Vaibhav Sahni, Advocate
- 3) Mr.Vaibhav Narang, Advocate

Order

Company petition CP No.150 (ND)/ 2016 / RT CP No.186/Chd/Hry/2017 has been filed by M/s Buddy Mumbai Duty Free Services Pvt. Ltd. under Section 241 (1) (a) and 242 of the Companies Act, 2013 (for short to be referred here-in-after as the 'Act') alleging various acts

of oppression and mis-management. It is alleged in the petition that the petitioner company holds 33% shares in respondent No.1 company. Respondent No.5 in the main petition is the applicant in instant CA No.209/2017 under consideration. He is the nominee director of the petitioner in respondent No.1 company in the main petition.

2. This application has been filed under Section 128 (3) and (4) of the Act by respondent No.5 seeking for a direction to the other respondents to allow the applicant to inspect the books of account and other books and papers maintained by the respondent No.1 company. The applicant has stated that the applicant continues to be a director of respondent No.1 company, but the entire affairs of the company are being run to the exclusion of the applicant. The applicant is not aware of the functioning of the respondent No.1 company. The other respondents are conducting the company's affairs in a secret manner as neither any Annual General Meeting (AGM) or any other meeting has been called to the knowledge of the applicant. Copies of the books of account have also not been filed with the Registrar of Companies. Due to the said illegal action on the part of the other directors of respondent No.1 company, the applicant-respondent No.5 may be held directly responsible. The applicant cannot be denied the statutory right of inspection of the company's record.

3. Reply has been filed by the respondent No.1 company. It is stated in the reply that the application is mala fide and filed to delay and derail the disposal of the main company petition. It is stated that apart from various other reliefs, the petitioner in the main petition has also filed an application under Section 242 (4) of the Act with a similar relief and the

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relevant portion of the said application has been reproduced in the reply to the instant application as under:

“Pass an order directing the respondents herein to supply to the petitioner herein forthwith all the records of respondent No.1 company including but not limited to the minutes of all meetings held since after 4.6.2015 and all resolutions passed by the Board or by shareholders meetings since that date; the members’ register; the balance sheets and profit and loss accounts of the company prepared since 4.6.2015; copies of all contracts entered into by respondent No.1 since 4.6.2015; copies of all appointments made of respondent No.1 since 4.6.2015; copies of all notices of any proceedings before any Court/Tribunal or authority against the respondent No.1 company or in which respondent No.1 company may have any interest.”

The said prayer has not been granted by the Tribunal so far. It is further stated that the applicant has never approached the respondent No.1 company seeking inspection of the books of the company and the cause of action would arise only upon refusal of the company to allow the inspection.

4. I have heard the learned counsel for the parties on this application and perused the record carefully.

5. The learned counsel for applicant referred to the provisions of Section 128 (3) and (4) of the Act which entitles the applicant to inspect the record of the company. The relevant provisions of the Act read as under:

“Section 128 (3) :-

The books of account and other books and papers maintained by the company within India shall be open for inspection at the registered office of the company or at such other place in India by any director during business hours, and in the case of financial information, if any, maintained outside the country, copies of such financial information shall be maintained and produced for inspection by any director subject to such conditions as may be prescribed:

Provided that the inspection in respect of any subsidiary of the company shall be done only by the person authorised in this behalf by a resolution of the Board of Directors.

Section 128 (4) :-

Where an inspection is made under sub-section (3), the officers and other employees of the company shall give to the person making such inspection all assistance in connection with the inspection which the company may reasonably be expected to give.”

6. In the petition filed under Sections 241 and 242 of the Act, the reply has been filed by respondents No.1 and 2 and the matter is listed for arguments. No relief has been claimed by the petitioner in the said petition against the applicant. He is rather, alleged to be the Director of respondent No.1 company as nominee of the petitioner under the Sale Purchase Agreement. The version of the petitioner is that no notice of the Board meeting of the company, shareholders meeting was being either issued to the petitioner or the applicant. So, in the facts and circumstances of the case, the applicant, who is respondent No.5 in the main petition

against whom no relief has been claimed, cannot claim for a direction for inspection of the record of the company under the relevant provisions of the Act, which entitles him to inspect the record of the company. The applicant may have an independent right to initiate proceedings, if so advised, for redressal of his grievance for seeking the aforesaid prayer before the appropriate forum and not in the instant case, as he is not the effected party so far as the relief claimed by the petitioner is concerned.

7. In any case, the petitioner having made a prayer in a separate application under Section 242 (4) of the Act, may press upon the said prayer, if need be, which can be decided on its own merits. Therefore, the instant application filed by applicant-respondent No.5 in the main petition in the facts and circumstances of the case, cannot be permitted. Therefore, the application is dismissed.

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

Pronounced.
January 08, 2018.
Ashwani