

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CA NO.17/2017
IN
CP NO. 65(ND)/2013
RT NO. 56/2016**

Parshotam Kumar

...Petitioner.

Versus

M/s Graphic Motors Pvt. Ltd. & Ors.

...Respondents.

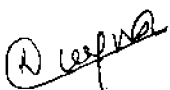
Present: Dr. Rajansh Thukral, Advocate for petitioner.
Dr. S.P.Sharma, Advocate for respondent Nos.1 to3.
Mr. Deepak Goyal, Advocate for respondent No.4.

Justice R.P.Nagrath, Member(Judicial) [Oral]

The matter was listed for arguments today in the main petition as the pleadings are already complete. However, Mr. Deepak Goyal, Advocate for respondent No.4 (R-4) filed CA No.17/2017 on 01.02.2017 for deletion of the name of R-4 from the array of respondents. This application is purportedly filed in terms of Rule 11 of NCLT Rules, 2016. Notice of this application has been issued to the petitioner. Advance copy of the CA has already been supplied to Dr. Rajansh Thukral, Advocate who has accepted notice on behalf of the petitioner.

Dr.S.P.Sharma, Advocate earlier represented all the four respondents including R-4, and he got recorded statement separately that he has no objection if Mr.Deepak Goyal, Advocate now appears on behalf of R-4.

I have heard Mr. Deepak Goyal, learned counsel for applicant/R-4, Dr. Rajansh Thukral, learned counsel for the petitioner and Dr. S.P.Sharma,



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learned counsel for the respondents No. 1 to 3 and find no merit in the application for deletion of R-4 from the array of respondents. It is admitted proposition of fact that the written statement dated 17.11.2016 and the sur-rejoinder dated 19.01.2017 were filed by all the respondents, including R-4 to jointly contest the company petition. It is admitted, and also submitted by Dr. S.P.Sharma, Advocate that both the written statement and the sur-rejoinder which are also signed by R-4 do not contain any averment about the resignation tendered by R-4 on 21st March 2014.

Learned counsel for the applicant/R-4 however, submits that the only prayer made in the company petition against R-4 is that he be removed from the directorship of the company and since he is no more in the management now because of the resignation, factum of which was also intimated to the Registrar of Companies, Punjab in Form DIR-12, the application may be allowed. On the other hand, learned counsel for the petitioner vehemently opposed this contention that the resignation seems to have been tendered about one year after his appointment as Director by an extraordinary resolution. Otherwise, according to the learned counsel for petitioner, the resolution at page No.162 of the Paper Book for appointment of R-4 was ipso-facto defective but still R-4 held the office of Director on the basis of such a resolution for about more than one year.

Learned counsel for the petitioner further contends that one of the prayers in the instant petition is to order investigation into the affairs of R-1

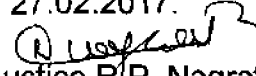
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company and R-4 who continued to be associated with the affairs of the company for a long time. Learned counsel for the applicant - R-4, however, submits that the allegations of fraud have been made against respondents No. 2 & 3 only and not against R-4. The fact of the matter is that R-4 had been contesting the instant petition till the time of filing sur-rejoinder. It seems that purpose of filing the instant application is to bring on record resignation documents for which Dr. Rajansh Thukral, Advocate for the petitioner has made a statement that the documents Annexure R-4/1 attached with CA No.17/2017 be taken on record with the submission that there was concealment of fact while filing written statement and the sur-rejoinder. That is, however, a question of merits to be considered later on. The respondents have in fact, not even filed any application so far to amend the written statement or the sur-rejoinder to bring on record the allegation of resignation of R-4 and deletion of the name of R-4. Without such an amendment there would always remain inconsistency in the pleadings.

In view of the aforesaid facts, I find no merit in this application and the same is dismissed with the observation that the documents at annexure R-4/1 be taken on record by way of additional evidence, the consequences of which would be a question on merits of the case.

List the main case for final arguments on 27.02.2017.


(Justice R.P. Nagrath)
Member (Judicial)

February 06, 2017
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