

NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P NO. 122(ND)/2016
CA NO.

CORAM:

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

SH. S. K. MOHAPATRA
Hon'ble Member (T)

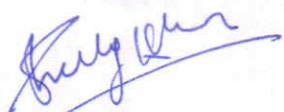

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF SPECIAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 2.09.2016

NAME OF THE COMPANY: Sanjiv Gupta

Vs.

M/s. Getit Infoservices Pvt. Ltd. &ors.

SECTION OF THE COMPANIES ACT: 241/242, 24

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Ms. Visendus Ganda,	Sr. Adv.	for Petitioner	
2.	Ms. Vipul Ganda,	Adv.		
3.	Mr. S.K. Gisi,	Adv.		
4.	Ms. Shelly Khanna,	Adv.		
5.	Mr. Tarun Mehta,	Adv.		
1.	MR. AMIT SIBAL,	JR. ADV.	Advocates for Respondent No. 2	
2.	SUSMIT PUSHKAR,	ADV.		
	XXXXXXXXXXXXXXXXXXXX			
3.	DIWAKAR MAHESHWARI,	ADV.		
4.	ANKUR KHANDELWAL,	ADV.		
5.	SUSANNAH NAUSHAD,	ADV.		
6.	Mr. Arun Kathpalia,	Sr. Adv.	for Respondent No. 1	Bhatia
7.	Mr. Vidur Bhatia,	Adv.		
8.	RAJAT JONGTA,	Adv.	Respondent No. 3 & 4	Raj - 1



ORDER

This is an application seeking clarification of order dated August 30, 2016 on the ground that the non applicant -respondents have committed acts of impropriety when the matter was in the process of being heard on August 24, 2016 and eventually the interim order was passed of August 30, 2016. It has been asserted that the factum of resignation tendered by the applicant – petitioner on August 12, 2016 was intimated to the Registrar of Companies by uploading its website on August 29, 2016 when the hearing in this case was in progress. It is appropriate to mention that on August 30, 2016 after hearing learned counsel for parties we have passed the following order:-


"On 24-08-2016, this petition was mentioned and we had heard the Ld. Counsel for the petitioner at some length on the interim relief sought. The petitioner was, however, resisted by the respondents on the ground of maintainability and objection was raised u/s 244 of the Companies Act, 2013.

2. The matter came up for hearing yesterday and it was ordered to be taken up today. Accordingly, we have heard the arguments on interim relief.

3. There is a consensus between the parties that the respondents shall maintain status quo as on date with regard to the constitution of the Board of Directors and that no meeting of the Board of Directors of Respondent No. 1 company shall be held without prior permission of the Tribunal.

4. Mr. V.K. Ganda, Ld. Sr. Counsel for the petitioner has, however, argued and insisted for the interim relief of stopping the two additional directors inducted on 16.06.2016 from discharging day to day functions by arguing that their appointment as Additional Directors is wholly illegal. In that regard, Mr. Ganda has referred to the minutes of the meeting item No. 4.10.3 under the caption 'Appointment of Directors'. According to Mr. Ganda, the aforesaid item has been taken up in the Board meeting under the heading "Any other items" and there was no prior agenda circulated.

5. A perusal of the minutes under item 4.10.3 would show that Mr. Sandeep Vats and Mr. Prakash Mishra were taken as Additional Directors on the Board of the company to fill up the vacancy caused by the resignation of Mr. Dato Mohamed Khadar Merican and Mr. Lakshman Gupta Kanamarlapudi.



Mr. Ganda states that their induction as Additional Directors is prima facie unsustainable and illegal and, therefore, interim order banning their interference in the day to day functioning of the company must be passed. According to Mr. Ganda, they have entered the company premises with musclemen and with armed personnels. They then directed the employees to vacate the premises.

6. Having heard the aforesaid submissions made by the Ld. Sr. Counsel, we are unable to accept the same because the petitioner herein has only 0.06% shareholding and the shareholders having over 99% shareholding in the company cannot be allowed to overawe at the instance of the petitioner. Moreover, the day to day affairs of the company cannot be brought to a standstill because it would affect the health of the respondent company. It is a primary consideration under the Companies Act which has to be kept in view before passing any interim order. Moreover, no reply has been filed and the preliminary objections raised u/s 244(1) of the Act is yet to be examined by us.

7. Therefore, the aforesaid relief cannot be granted at this stage and the same is rejected.

8. Ld. Counsel for the respondents seeks four weeks time to file reply. Let reply be filed within four weeks with a copy in advance to the petitioner. Rejoinder, if any, be filed within two weeks thereafter, with a copy in advance to the counsel opposite.

List for further consideration on 17.10.2016."

2. The petitioner had approached this Tribunal on August 22, 2016 by filing C.P. No. 122/ND/2016 with the progress for following interim reliefs :-

- (i) Direct the Respondent No.2 company to maintain the status quo ante (Pre -June 16,2016);
- (ii) Restrain the respondents from effecting any change in the Board of the Respondent No.1 company;


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- (iii) Pass an appropriate order directing the Respondent No.2 Company to maintain the status quo vis a vis the present status of the assets available with the respondent No.1 company.

3. We have heard Mr. Virender Ganda learned senior counsel for the applicant – petitioner and Mr. Arun Kathpalia and Mr. Amit Sibal learned senior counsel for the non applicant-Respondents.


4. Mr. Ganda learned counsel for the applicant-petitioner has argued that when the hearing was in progress on August 24, 2016, August 29, 2016 and August 30, 2016 non applicant- respondents stealthily uploaded E form DIR-12 as is evident from the perusal of Annexures III and IV. Accordingly to the learned counsel the rule of propriety demands that such an action should have been brought to the notice of this Tribunal on August 30, 2016 and the respondent in fact should have restrained from proceed any further by taking any step whatsoever. It has also been submitted that resignation tendered by the applicant-petitioner on August 12, 2016 (at p.35) did not become effective as it required acceptance at the hands of the Board of Directors and it could be uploaded on the portal of the Registrar of Companies thereafter. Mr. Ganda has emphasized that had it been disclosed to this court on August 29, 2016 this court would have passed a stay order allowing the applicant –petitioner to continue as Managing Director. Mr Ganda has pointed out that the information regarding uploading was received on August 30, 2016 at 12.49 when the matter had already been argued, therefore no information with regard to that fact could have been given to the Tribunal by the applicant-petitioner. Learned counsel has then submitted that the non applicant- respondent had the information on August 29, 2016 itself and should have shared that information with this Tribunal.

5. Mr. Ganda has further argued that the resignation did not attain finality and became effective immediately because on August 25, 2016. Mr. Grant Ferguson, Director of Respondent No.1 company sent an email to the applicant-petitioner stating that the resignation without due notice amounted to improper termination of the Consultancy Agreement dated January 29, 2014 executed between the applicant – petitioner and the company. It has been highlighted that there were 'ifs and buts' and doubts raised to the acceptance of the resignation. Therefore it could not be



claimed that the resignation of the applicant-petitioner by virtue of provision of section 168 of Companies Act, 2013 (for brevity 'the Act') could be regarded as cessation of relationship between the applicant –petitioner and non applicant-respondent No.1 company.

6. Per contra both the learned counsel Mr. Kathpalia and Mr. Sibal for the non applicant-respondent have argued that resignation has attained finality in view of the mandatory provisions of section 168 (1) (2) of the Act. According to the learned counsel the J.J. Irani report on Company Law also supported the aforesaid view and have argued that there is no requirement on the part of non applicant –respondent company to formally accept a resignation for it to be effective. Therefore it became effective from the date of resignation unless contrary intention is expressed or it is a resignation from a future date. Referring to the letter of resignation tendered by applicant –petitioner learned counsel have argued that the applicant – petitioner tendered his resignation by addressing the Company Secretary 'to record the resignation with immediate effect from the post of Managing Director of Respondent No.1-company and also from the Board'. He has also given detailed reasons for doing so. Learned counsel have also placed reliance on the judgment of the Madras High Court rendered in the case of T. Murari v The State (1976) 46 Com case 613 (Mad). Our attention has been drawn to para 11, 12 and 18 to raise the argument that resignation tendered by a director or a Managing Director unequivocally in writing will take effect from the time when such resignation is tendered or from any date specified therein. According to the learned counsel in the present case the resignation has been tendered on August 12, 2016 with immediate effect and nothing turns on subsequent event of uploading it on the website of Registrar of Companies on August 29, 2016 which is a ministerial act or sending intimation to the applicant-petitioner on August 30, 2016. Therefore there was no act of impropriety on the part of the non applicant – respondent company which may warrants issuance of any interim order. Learned counsel have maintained that if on August 30, 2016 the information with regard to uploading the website of the Registrar was placed before this Court it may not have granted status quo ante as it existed before August 12, 2016 as was prayed by the applicant -petitioner.



7. Having heard the learned counsel for the parties and perusing the averments made in the application we feel that the whole information by both the parties should have been placed before us on August 30, 2016 including the factum of uploading the E form DIR 12 on the portal of Registrar of Companies. Having observed in the aforesaid terms we are left to examine the effect of not placing the complete information before this court. As per the provision of section 168 no formal acceptance of resignation is contemplated by law nor a resignation is to become effective on the uploading of the same on the portal of ROC. The aforesaid legal position is evident from a bare perusal of section 168(1) (2) which reads thus:-

"168 (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:

Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:

Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

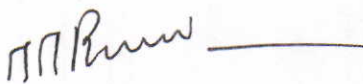
(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting."

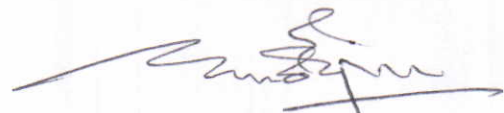
8. The position may not be any different in the case of Managing Director as Managing Director is covered by the definition of expression Director as define u/s 2(54) of the Act. This is our prima facie view which is subject to consideration finally



in the main petition at the time of final arguments. It is also pertinent to mention that in the prayer clause of the main petition the applicant-petitioner has prayed for only grant of status quo ante as it existed pre-June 16, 2016. In that regard we have expressed during the course of hearing on August 30, 2016 that a status quo ante would be in the nature of mandatory injunction which could not be ordinarily granted until and unless the Respondents have filed their reply and the matter is considered finally after hearing of arguments. It is true that this Tribunal is clothed with powers to pass any interim order including an order of status quo ante. However, it has to be done to avoid grave injustice. We have also noted that the applicant-petitioner has only 0.06% shareholding and there is a serious preliminary objection raised u/s 244(1) of the Act. In the order dated August 30, 2016 we have turned down the prayer of the applicant –petitioner to stay the day-to-day interference of the newly appointed two directors in the affairs of the company. Therefore we are of the view that the applicant –petitioner cannot be granted status quo ante as existed before August 12, 2016 and restore him as Managing Director of Respondent No.1.

9. As a sequel to the above discussion this application fails and the same is dismissed. We make it clear that any observation made in this order shall not be construed as an expression of opinion on merit finally. These are our first blush expression for the purpose of interim relief. However we express our concern that complete information with regard to all the development till the date of the hearing should be brought to the notice of the bench so that no gaps are deducted later on leaving the room for filing of any such application.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT


(S.K. MOHAPATRA)
MEMBER (T)

Dated: 5/9/2016
(Vidya)

Lat. & Long.
Responded
No 1

Revised
Saw
for Pet.
5/9/16

Received in history 1
Go Reginald Smith (NR)
Issue
6.9.16