

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ COMPANY PETITION NO. 137/2008

Date of decision: 29th November, 2010

SH. RAJ KUMAR SHARMA & ORS. Petitioners
Through Mr. Sarat Chandra, Advocate.

versus

REGISTRAR OF COMPANIES Respondent
Through Mr. Baldev Malik, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER (ORAL)

1. By this petition under Section 633(2) of the Companies Act, 1956 (Act, for short), the petitioners have prayed for relief from defaults mentioned in Annexure P-3 and for extension of protection to the petitioners till decision of Company Appeal No. 7/1999 pending before the Division Bench. Annexure P-3 is notice for default under Sections 159/166/210(3) and 220 of the Act in respect of M/s Mehrauli Dehat Transport Company Private Limited (the company, for short). As per this notice, the company has failed to file its annual returns for the financial years 1995 to 2007 in accordance with Section 159 of the Act and has also failed to file annual returns and balance sheets with profit and loss accounts for the financial years ending 31st March, 1995 to 31st March, 2007.

2. It is stated in the petition that the affairs of the company became subject matter of litigation in CP No. 91/1980 under Section 397 and 398 of the Act, which resulted in litigation between Damodar Dass and his son-in-law Ram Kumar Sharma. Ram Kumar Sharma expired on 11th

April, 1990 and Damodar Dass expired on 15th December, 1992. Accordingly, this petition CP No. 91/1980 was not pressed further in terms of orders dated 27th April, 1995 and 12th May, 1995.

3. In this CP No. 91/1980, allegations were made that Ram Kumar Sharma, Managing Director was in possession of the records but was not rendering accounts of the company since 1st April, 1974 onwards besides withholding premises of the company at Mehrauli, Delhi. The petitioners have not enclosed copy of any order or direction passed in CP No. 91/1980.

4. It is stated in the petition that one of the sons of Ram Kumar Sharma, Ghanshyam Dass came into possession of the entire records of the company and there are disputes between Ghanshyam Dass and other shareholders of the company including, Phool Kumar younger brother of Ghanshyam Dass. Application for perjury was filed against Ghanshyam Dass in CP No. 91/1980. It is stated that Ghanshyam Dass has not filed on record copy of any order passed in CP No. 91/1980.

5. The petitioners had earlier filed another petition under Section 633(2) of the Act, CA No. 97/1967. This petition was disposed of vide order dated 2nd December, 1998, which reads as under:-

“ After passing of the order dated 27th April, 1995 by J.K. Mehra, J. for constituting a new board, counsel for the petitioner states that he will file return to the Registrar of Companies w.e.f. 1995 onwards in accordance with Rule as per the law. For the previous year i.e. prior to 1995, he states that company may be exempted from filing the return. Counsel for the Registrar of Companies has no objection provided the return be filed from 1995 till date. In view of this submission made petitioner is exempted from filing the return prior to 1995. But from 1995 onwards he will file return in accordance with law.

The delay for filing the return from

1995 till date is condoned.

With these observations petition stands disposed. Dasti.”

6. This order was subsequently clarified vide order dated 15th December, 1998 and it was held that the word “return” should be read as balance sheets, annual returns and returns.

7. It is clear from the order dated 15th December, 1998 that the Court had granted benefit of Section 633(2) of the Act for defaults upto 1995 as a new Board of Directors was constituted by order dated 27th April, 1995 and the said new Board was required to function and file annual returns, balance sheets etc. as per the Act. The Court specifically directed that from 1995 onwards balance sheet, return etc. should be filed in accordance with law. Obviously, this has not been done and, therefore, Registrar of Companies has issued show cause notice dated 25th April, 2008.

8. It is stated in the application that by order dated 19th February, 1999 in CP No. 80/1984, Ghanshyam Dass was ordered to vacate the premises of the company at Mehrauli, but instead of vacating the premises, Ghanshyam Dass has preferred Company Appeal No. 7/1999 in which order dated 19th February, 1999 has been stayed. It is stated that the petitioners would file annual returns, balance sheets, etc. after Company Appeal No. 7/1999 is decided. I fail to understand and appreciate co-relation between Company Appeal No. 7/1999 and filing of annual returns, balance sheets, etc., after the new Board was constituted vide order dated 27th April, 1995. Even if the company was not doing business and was dormant, annual return, balance sheets, etc., could have been filed on the basis of available records. The Court had earlier granted benefit to the petitioners under Section 633(2) of the Act but with the specific stipulation that the returns with effect from 19th

September, 1995 should be filed in accordance with law.

9. In these circumstances, I do not find any merit in the present petition and the same is dismissed. It is clarified that the observations made in this order are for the purpose of disposal of the present petition and will not be binding and influence the decision of the trial court, if any proceedings are initiated. It is also open to the petitioners to ask for compounding and this order will not come in the way of the petitioners' request for compounding, if any, is made.

NOVEMBER 29, 2010
VKR

SANJIV KHANNA, J.