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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1497/2010

BABITA GUPTA

..... Petitioner

Through: Mr. Jayant Bhushan, Sr. Adv.
Mr. Sandeep Sethi, Sr. Adv. with
Mr. Nitesh Sain and Mr. Atul
Sharma, Advs.
Mr. Arvind Nigam, Mr. Sudhir
Nandrajog, Sr. Advs. with Mr.
Vijay Aggarwal, Mr. Atul Sharma,
Mr. Rakesh Mukhija, Mr.
Gurpreet Singh and Ms. Jasmine
Detwani, Advs.

versus

STATE & ANR

..... Respondents

Through: Ms. Stuti Singh, Adv. for
Mr. Saleem Ahmad, ASC for State
with Insp. Udham Singh, EOW,
Crime Branch, Delhi.
Mr. Aman Lekhi, Sr. Adv. with
Mr. Mohit Mathur, Mr. Vikram S.
Panwar, Mr. Ashok Kumar
Sharma, Mr. Ankur Saigal,
Mr. Gaurav Singh and Mr. P.S.
Singhal, Advs. for VLS Finance
Ltd.

AND

+ W.P.(CRL) 1499/2010

MASTER ANANYA GUPTA THR. KAVEEN GUPTA

ITS GUARDIAN/FATHER

..... Petitioner

Through: Mr. Jayant Bhushan, Sr. Adv.
Mr. Arvind K. Nigam, Sr. Adv.
with Mr. Atul Sharma, Mr. Pawan
Sharma and Mr. Nitesh Jain,
Advs.
Mr. Arvind Nigam, Mr. Sudhir
Nandrajog, Sr. Advs. with Mr.
Vijay Aggarwal, Mr. Atul Sharma,
Mr. Rakesh Mukhija, Mr.
Gurpreet Singh and Ms. Jasmine

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Mr.Saleem Ahmad, ASC for State
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Crime Branch, Delhi.
Mr. Aman Lekhi, Sr. Adv. with
Mr.Mohit Mathur, Mr.Vikram S.
Panwar, Mr.Ashok Kumar
Sharma, Mr.Ankur Saigal,
Mr.Gaurav Singh and Mr.P.S.
Singhal, Advs. for VLS Finance
Ltd.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER
28.09.2010

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1 These writ petitions are directed against order dated 25th September, 2010. I have heard the counsel for the parties at length and as limited issue arises for consideration these writ petitions are disposed of by this order.

2. A charge sheet has been filed on conclusion of investigation in the First Information Report No.90/2000, Police Station Connaught Place.

Mr. S.P. Gupta, Mr. Kaveen Gupta and Mr. Vipul Gupta have been summoned and are facing prosecution under Sections 420/406/409/468/471/477-A and 120-B of the Indian Penal Code, 1860 (IPC for short). Arguments on the point of charge are yet to be addressed.

It is alleged in the charge sheet as under:-

(a) On 11th March, 1995 the accused persons had induced the complainant company M/s. VLS Finance Limited to enter into a Memorandum of Understanding and were obliged to subscribe to 70 lacs equity shares of M/s.Sun Air Hotels of face value of Rs.10/- each for cash at par. M/s. VLS Finance Limited was informed by the accused persons that 2,09,916.00 shares of M/s.Sun Air Hotels Limited have been issued in favour of the promoters/directors i.e.

the accused persons and their family members/associates and while 70 lacs shares had been issued in favour of M/s. VLS Finance Limited. It is also alleged that the complainant company M/s. VLS Finance Limited had made some other payments towards security deposits.

(b) As per the charge sheet, the accused persons used Rs.70 lacs towards share application money along with another Rs.30 lacs deposited by the complainant company in aggregate amounting to Rs.1 crore, 21 times to show infusion of Rs.21 crores of equity capital in M/s. Sun Air Hotels Limited and to issue shares to the accused persons and their associates/family members. It is alleged that the accused being the directors were custodian of the property of M/s. Sun Air Hotels Limited and the funds of the complainant company VLS Finance Ltd. have been dishonestly and fraudulently misappropriated by maliciously utilization of funds to allot shares to to the accused/their group/family members.

3. M/s. VLS Finance Limited filed an application in July, 2009 under Section 451/457 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) before the trial court that the shares being the case property and derivative contraband, the same should remain seized and nobody should be allowed to use the same except in accordance with the directions of the Court and the accused should be restrained from deriving any advantage in any manner. Reply to this application has been filed by the accused. The accused have also filed an application questioning maintainability of the said application on various grounds. In the meanwhile, some of the shareholders who have been issued shares moved applications for impleadment before the trial court.

4. By the impugned order dated 25th September, 2010 learned trial court has held that the registered shareholders have right to be heard in these applications under Section 451/457 of the Code filed by M/s. VLS Finance Limited because this would be contrary to principle of natural

justice. To this extent the petitioners have no grievance. The grievance of the petitioners is that the learned trial court in the second part of the order dated 25th September, 2010 has gone ahead and has passed an interim order / direction that prima facie the allotted shares are tainted property and have been issued without consideration and by cheating the complainant company M/s. VLS Finance Limited and as cognizance of offences against the accused persons had been taken, they should be barred and prohibited from exercising their rights. The relevant portion and the reasoning given by the trial court reads as under:-

“The grievance of the complainant is that the accused are enjoying all benefits arising out of the shares which prima facie are tainted and which prima facie have been allotted by accused persons to themselves without any consideration and by cheating the complainant. The cognizance of the matter/ the offences against the accused persons have been already taken.

I have carefully perused the judgments relied upon by the learned counsel for the intervener/applicant. At this stage the Court is of the opinion that there appears to be no bar to the maintainability of the application under Section 451/457 Cr.P.C.

Considering the rights of the shareholders which might be affected by the final order on application u/s 451/457 Cr.P.C., it would be proper that they are given an opportunity of being heard prior to finally deciding that application. Considering that prima facie the shares held by them are allotted by way of fraud and cheating and without any consideration it would be proper that till the final disposal of the application u/s 451/457 Cr.P.C. the tainted property i.e. the shares are not used by any party in exercising one or the other right including the possession of shares or exercising the rights in the management of the company or election of Director etc, based on those tainted shares.”

5. Learned counsel for the petitioner has submitted that the impugned direction/restraint order cannot be sustained and is a non-speaking order. It is stated that the petitioners herein had raised various contentions including

and not limited to maintainability of the application under Section 451/457 of the Code by a private party. In this connection it has been submitted as under:-

(1) Vide order dated 1st March, 2004 Economic Offences Wing (Crime Branch) had directed to Tourism Finance Corporation of India Limited where the shares had been pledged not to liquidate or deal with anybody including allottee with the shares without permission of the Hon'ble Court. However no restrain or direction with regard to voting rights has been made.

(2) M/s. VLS Finance Limited had filed Writ Petition (Criminal) No.1188/2007 which was disposed of on 10th January, 2008 rejecting similar prayers made by M/s. VLS Finance Limited.

(3) M/s. VLS Finance Limited had filed company appeal (SB) No.11/2001 against order dated 13th June, 2001 passed by the Company Law Board. While disposing of the appeal, it was recorded as under:-

“ 27. The appellant had vehemently pressed that the entire allocation of shares in favour of the respondents by virtue of the MOU dated 11th March, 1995 ought to be cancelled and in the process the appellant were to become the majority shareholders holding 87% of the equity. This plea also can not be granted at this stage to the appellant as the respondent No.2 is a running company. The appellant's counsel Shri Manmohan in the alternative has also prayed that the impugned order of the CLB be set aside and the matter be remanded to CLB for fresh consideration in the light of the pleas of the appellant.”

(4) M/s. VLS Finance Limited has filed an application in the Company Law Board to restrain the registered shareholders from exercising voting rights but no interim order or direction has been passed.

(5) The shareholders are recorded registered shareholders in the register of shareholders and the right to vote is governed by the

Companies Act. Criminal Court has no jurisdiction to stay and restrain the petitioner from exercising voting rights.

(6) Relying upon *Smt. Anisa Begum Vs. Masoom Ali*, Criminal Revision No.1986 DRJ 224, it is submitted that power under Section 451 is essentially inter locutory and the object and the purpose of the said section is to ensure proper custody of the property produced during the inquiry or trial and pending conclusion of inquiry or trial. Order under the said section is to preserve the property either as evidence or in order to make a proper order after the case is over. Order under Section 451 is not intended to decide rights of the parties to pass on the properties or decide questions of title or ownership of rival claimants. It is only intended to ensure proper custody of the property during pendency of the trial. Voting rights have nothing to do with Section 451 of the Code.

6. Learned counsel appearing for the respondent M/s. VLS Finance Limited submits that he had countered the said submissions before the learned trial court and none of them are sustainable in law. Mr. Aman Lekhi, Senior Advocate has further submitted that the application under Section 451/457 has remained pending for over a year and even in terms of the seizure order dated 1st March, 2004 passed by the Economic Offences Wing (Crime Branch), the shareholders could not have exercised their voting rights.

7 I have reproduced above the relevant portion of the order dated 25th September, 2010 passed by the learned trial court issuing interim direction /stay order. The said order does not deal with the rival contentions, examine and consider them. No reasons have been given to accept or reject the contentions. The impugned directions have a drastic affect on the rights of the parties and have extreme and wide consequences. In case voting rights in respect of the shares is denied, the shareholding pattern in the company will undergo a complete change. It will affect the management and control of the company. It is pointed out that for last 12 years the

shareholders have been exercising the voting rights on the basis of the said shares. There was no urgency to pass the said interim order when the learned trial court itself was of the opinion that the individual shareholders have right to be heard and should be given hearing. In these circumstances, the impugned interim directions quoted above in the order dated 25th September, 2010 are set aside.

8. The learned trial court will dispose of the pending applications in accordance with law. Learned counsel for the respondent M/s. VLS Finance Limited has submitted that the decision on the applications is being delayed and they should be decided expeditiously. It will be open to the counsel for the respondent to make the same prayer before the learned trial court.

9. In view of the aforesaid order, learned counsel for the petitioners state that they are not pressing for other prayers made in the petitions. It will be open to the petitioners to raise all contentions before the learned trial court and it will be open to the counsel for the respondent to respond to the said contentions.

10. I have reproduced the contention of the petitioners in detail as the impugned order is against them and the contention raised is that these aspects have not been considered. This should not be construed as expression of opinion on merits by this Court. Observations made in this order are for the disposal of the present petition and will not be construed as observations on merits binding on the trial court.

Dasti under the signatures of the Court Master. The petitioners can send copy of this order to the Registrar of Companies, if required and necessary.

SANJIV KHANNA, J.

**SEPTEMBER 28, 2010
J/NA/VKR/P**