

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

% *Date of Judgment:07.12.2012.*

+ **CO.A(SB) 101/2012**

H.J CONSULTANTS PVT LTD & ANR Appellant
Through Mr. Jayant Bhushan, Sr. Adv.
with Mr. Abhishek K. Rao, Adv.

versus

NAVEEN GUPTA AND ORS Respondents
Through Mr. Arun Kathpalia, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

Caveat Nos.1230-31/2012

1. Since learned counsel for the caveator has put an appearance,
caveats stand discharged.

Co. Application No. 2365/2012 (Exemption)

2. Exemption allowed subject to all just exceptions.

3. Application disposed of.

CO.A(SB) 101/2012 & Co. Application No. 2364/2012 (Stay)

4. This appeal has been directed against the order of the Company Law Board (CLB) dated 16.11.2012 whereby the application filed by the petitioner (CA No. 523/2012) seeking a dismissal of the petition filed by Naveen Gupta with an additional prayer to initiate proceedings under Section 340 of the Cr.PC against him had been dismissed.

5. Record shows that a petition under Section 397 read with Section 398 of the Companies Act had been filed by the petitioner Naveen Gupta before the CLB. After reply had been filed, rejoinder-affidavit had been filed by Naveen Gupta accompanied by an affidavit. Attention has been drawn to the rejoinder as also the affidavits filed along with the rejoinder (pages 384, 386 & 390 of the paper book); submission being that the signatures of Naveen Gupta are not his signatures; they are of some other person and this is evident from a comparison by a naked eye of these questioned signatures with the admitted signatures (page 484 of the paper book); further submission being that the impugned order has also noticed this serious mis-matching in the signatures but had thereafter proceeded to dismiss the application of the petitioner for no

reason whatsoever; a fraud has been committed upon the Court as Naveen Gupta had not signed the aforementioned documents; cognizance of this offence should have been taken by the CLB and proceedings under Section 340 of Cr.PC should have been initiated against him.

6. Learned counsel for the petitioner has drawn attention of this Court to the provisions of Section 340 of the Cr.PC and the procedure as contained under Section 195 of the Code; submission being that the offence had been committed by Naveen Gupta under Section 463 read with Section 471 of the Indian Penal Code; a fraud has been played upon the Court; this is evident from the comparison of the signatures which the CLB had also done under its power under Section 73 of the Indian Evidence Act. Further submission being that on 15.10.2012, the CLB had in fact called for the admitted signatures of Naveen Gupta from the banks pursuant to which the Canara Bank and Yes Bank had furnished his admitted/specimen signatures; the subsequent affidavit of Yes Bank dated 05.11.2012 is a false affidavit wherein he has stated that Naveen Gupta had on two earlier occasions signed cheques which were not in consonance with his signatures in the record available with the

Bank; submission being that this affidavit has been filed in connivance with Naveen Gupta only to help him in his exoneration.

7. On advance notice, learned counsel for the respondent has put an appearance. Counter submissions have been made. It is pointed out that the background of the case is also relevant; the respondent is not allowing the case to progress in the court below for one reason or the other; hurdles are being created.

8. Learned counsel for the respondent points out that Naveen Gupta had been summoned in the Court and he had owned his signatures on the rejoinder as also the two accompanying affidavits.

9. The documents have been perused. The CLB has noted the mismatching in the questioned and the admitted signatures yet on a perusal of the same and the submission of the learned counsel for the respondent which is to the effect that the signatures of a person do vary at different points of time which submission is not out of context.

10. It is also not the case of the petitioner that any unfair advantage or a dishonest gain has been made by the petitioner in not deliberately

appending his signatures on the aforenote documents. The offences, complained of by the petitioner, which are under Sections 463 and 471 of the IPC necessary entail a mensrea; in the absence of an intent to defraud the offence is not made out.

11. Reliance placed upon by the learned counsel for the respondent reported as AIR 1963 SC 1572 Dr. Vimla Vs. Delhi Administration is relevant in this context. This was a case wherein on an insurance claim, the mother Vimla had signed on behalf of her daughter Nalini; the Magistrate had convicted Vimla for the offence under Sections 463 & 464 of the IPC. The Supreme Court as noted as under:-

“33. To summarize : the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

34. Now let us apply the said principles to the facts of the present case. Certainly, Dr. Vimla was guilty of deceit, for though her name was Vimla, she signed in all the relevant papers as Nalini and made the insurance company believe that her name was Nalini, but the said deceit did not either secure to her advantage or cause any

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non-economic loss or injury to the insurance company. The charge does not disclose any such advantage or injury, nor is there any evidence to prove the same. The fact that Dr. Vimla said that the owner of the car who sold it to her suggested that the taking of the sale of the car in the name of Nalini would be useful for income-tax purposes is not of any relevance in the present case, for one reason, the said owner did not say so in his evidence and for the other, it was not indicated in the charge or in the evidence. In the charge framed, she was alleged to have defrauded the insurance company and the only evidence given was that if it was disclosed that Nalini was a minor, the insurance company might not have paid the money. But as we have pointed out earlier, the entire transaction was that of Dr. Vimla and it was only put through in the name of her made minor daughter for reasons best known to herself. On the evidence as disclosed, neither was she benefited nor the insurance company incurred loss in any sense of the term. ”

12. Apart from the fact that Naveen Gupta had appeared in the Court and owned his signatures on the rejoinder and the affidavits accompanying it, the CLB has also returned a fact finding that there is nothing on record to show that Naveen Gupta was not in Delhi at the time when the said affidavit was filed; this Court has also perused the documents and there appears to be no manifestly evident difference in the questioned and the admitted signatures for which recourse is required for the non-applicant to be hauled-up for the offences under Section 463 or 471 of the IPC. As noted supra, it is also not the

argument of the petitioner that any benefit has occurred to Naveen Gupta or the corresponding loss has occurred to the opposing party. In such a situation, no case for initiation of proceedings under Section 340 of Cr.PC is made out. The intent of fraud on the part of Naveen Gupta is clearly not made out. The ratio of judgment of Dr. Vimla (Supra) is fully applicable.

13. This appeal is nothing but an abuse of the process of the Court. Being a wastage of its precious time, it is dismissed with costs of Rs.25,000/-.

INDERMEET KAUR, J

DECEMBER 07, 2012

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