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

+ **CO.A(SB) 11/2016**

KRISHAN GUPTA

..... Appellant

Through: Mr Kapil Sankhla, Ms Meghna Sankhla,
Ms Meghna De and Ms Pratiksha Chaturvedi,
Advs.

versus

ORGANIC INDIA PVT. LTD. & ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

22.03.2016

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CA 1076/2016 (Exemption)

1. Allowed subject to just exceptions.

CO.A.(SB) 11/2016 & CA 1075/2016

2. This is an appeal preferred against the order dated 24.02.2016, passed by the Company Law Board (CLB). The certified copy of the impugned order is appended as annexure P-1 at page 33 of the paper book. The said order reads as follows:

“..... Ld. counsel for the Petitioner again requested for some more time to file rejoinder. In the last order, it was made clear that the rejoinder be filed and it was to be regarded as the last opportunity. Let the rejoinder be now filed within two weeks with a copy in advance to the counsel opposite. However, the same shall be subject to payment of Rs. 5000/- (Rupees Five Thousand only) as cost payable to the respondent.

List on 31.03.2016 at 10.30 AM....”

3. At the outset, learned counsel for the appellant says that the other version of the impugned order is at page 34 of the paper book, which, he says, was obtained after the case file was inspected. The relevant part of the order is extracted hereafter for the sake of convenience:

“.....Application on behalf of the Petitioner under section 10(4c) (a) and (c) of the Companies Act, 1956 read with regulation 24 and regulation 44 Company Law Board Regulation, 1991 with order 11 Rule 14 Code of Civil procedure 1908 for direct to Respondent No.1 to 5 for discovery and production of the documents along with affidavit.

ORDER

Ld. Counsel for the Petitioner again requested for some more time to file rejoinder. In the last order, it was made clear that the rejoinder be filled and it was to be regarded as the last opportunity. Let the rejoinder be now filed within two weeks with a copy in advance to the counsel opposite. However, the same shall be subject to payment of Rs. 5000/- [Rupees five thousand only] as cost payable to the respondent.

List on 31.03.2016 at 10:30 AM...”

4. The only difference in the two orders, is that, in the second version of the order, which is found at page 34 of the paper book, there is a paragraph incorporated therein, which refers to an application filed under Section 10E(4C) (a) and (c) of the Companies Act, 1956 (in short the 1956 Act), read with regulation 24 and 44 of the Company Law Board Regulations 1991, as also, to Order 11 Rule 14 of the Code of Civil Procedure, 1908.

5. Learned counsel for the appellant is not able to tell me with, specificity, as to whether the so called second version of the impugned order,

as placed on the file, had signatures appended to it. It is quite possible, that second version of the impugned order was a draft order.

5.1 Be that as it may, the sum and substance of the submission advanced by the learned counsel for the appellant is that the appellant could not have been asked to file a rejoinder before the application filed by the appellant was adjudicated upon by the CLB.

6. As indicated above, that application, to which reference is made in the second version of the impugned order, is an application, whereby discovery and production of certain documents is sought from the respondent. For this purpose, learned counsel for the appellant has drawn my attention to paragraph 8 of the said application. Accordingly, for the sake of convenience, the averments made in the application with respect to the documents whose discovery and production is sought, are extracted hereinbelow:

- “.....a. The various Memorandum of Understandings and Agreements referred by the Respondents in their reply with reference to transfer of shares.
- b. Details of all the property acquired by the Respondent No. 1 and the title document³ of the same and any permissions granted by any government authority for the acquisition for the same.
- c. Valuation Report of the Shares of Respondent No. 1 Company at the time of transfer of shares to Respondent No.5.
- d. Agreement/Deeds/Transactions/Documents executed by or between Respondent No. 1 and i5 and/or its shareholders and directors for transfer of 40% shares of Respondent No. 1 to Respondent No. 5...”

7. Based on the aforesaid, learned counsel for the appellant says, by way of example, that the maintainability of the appellant's main petition filed before the CLB is dependent on whether or not he meets the eligibility criteria as prescribed under Section 399 of the 1956 Act. It is, therefore, the submission of the learned counsel for the appellant that decision in the said application is crucial to his case. It is thus, submitted, that time for filing rejoinder was sought in this context.

8. According to me, the appellant has put the respondents to notice with regard to, at least, the documents, which have been, purportedly, referred to in their reply filed before the CLB and, which, according to him, have not been filed with the reply. Therefore, if those documents are not produced before the CLB, the logical approach would be that the CLB may, perhaps, draw an adverse inference qua the respondents. These are matters, ultimately, qua which the CLB needs to come to a conclusion one way or the other. The appellant could, also perhaps, advert to the alleged non-supply of documents even in his rejoinder.

8.1 However, for the appellant to withhold the filing of a rejoinder, on this ground, is not understood by me.

9. At this stage, learned counsel for the appellant says that he will file a rejoinder and also seek waiver of cost from the CLB.

10. In these circumstances, the appeal is disposed of with a direction that the appellant will be at liberty to file a rejoinder, within one week from today. In so far as the imposition of costs is concerned, an appropriate application will be moved before the CLB, on which, the CLB, will be free to pass appropriate orders. In so far as the application filed by the appellant

is concerned, which is appended as annexure P-2 to the instant appeal, the CLB will, I am sure, pass appropriate orders on the next date of hearing.

11. The appeal and the pending application are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

MARCH 22, 2016

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