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

Judgment reserved on: 01.02.2016

%   Judgment delivered on: 11.03.2016

\+   **CO.A(SB) 4/2014**

SHRI JASMOHAN SINGH & ORS.   ..... Appellants

Through: Mr Arun Kathpalia, Mr Sourabh Gupta & Mr Puneet Yadav, Advs.

versus

FREEZE KING INDUSTRIES PVT. LTD. & ORS. ..... Respondents

Through: Mr Jayant T., & Mr N.N. Sareen, Advs. for R- 1 & 3.

Mr B.K.V. Subrahmanyam, Adv. for R-2.

Mr Jayant Bhushan, Sr. Adv. with Ms Aankhi Ghosh & Mr Kartik Prasad, Advs.

\+   **CO.A(SB) 69/2014**

SHRI JASMOHAN SINGH   ..... Appellant

Through: Mr Arun Kathpalia, Mr Sourabh Gupta & Mr Puneet Yadav, Advs.

versus

KOLDHOLD INDUSTRIES PRIVATE LTD & ORS. ... Respondents

Through: Mr Jayant Bhushan, Sr. Adv. with Ms Aankhi Ghosh & Mr Kartik Prasad, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

CO.A(SB) 4/2014 & CA 207/2014
CO.A(SB) 69/2014 & CA 3025/2014 & 3062/2015

1. The captioned appeals raise a common question of law, which is, whether appellants can be given inspection of the statutory records of the concerned companies in which they hold shares, without any fetter. In CO.A.(SB) 4/2014, the appellants impugn the order dated 13.01.2014, passed by the Company Law Board (in short the CLB), while in CO.A.(SB) 69/2014, the challenge is laid by the appellant to order dated 18.09.2014, once again, passed by the CLB.

2. Therefore, let me first articulate the facts, briefly, in each of the appeals.

2.1 Before, I proceed further, I must indicate that the three appellants in CO.A. (SB) 4/2014 and the appellant in CO.A.(SB) 69/2014, will be collectively referred to hereafter as "appellants".

CO.A.(SB) 4/2014

3. The appellants herein had filed a petition under Section 397, 398 and 402 of the Companies Act, 1956 (in short the 1956 Act), alleging oppression and mismanagement by the respondents. This petition was filed before the CLB. The petition was numbered as: CP 106(ND)/2013. The said petition was titled as: Jasmohan Singh & Ors. vs Freeze King Industries Private Limited & Ors. In the said petition several reliefs had been prayed for including a prayer for interim relief, whereby, inter alia, inspection of statutory record of respondent no.1 company i.e. Freeze King Industries Private Limited (in short FKIPL) was sought, albeit, in the presence of a Chartered Accountant (CA).

3.1 On 03.09.2013, the aforementioned company petition was mentioned before the CLB. Notice issued in that petition was accepted on behalf of the respondents. Time was sought to file a reply in the said petition. On that date, on behalf of the respondents, an undertaking was given, that, no Board of Directors (BOD) meeting of respondent no.1 company shall be held without approval of the CLB. The matter was posted for hearing qua interim relief, on 19.11.2013.

3.2 The appellants, however, apprehending that the respondents would fabricate the statutory record and/or remove the same, moved an application for early hearing, wherein other directions were also sought. This application was numbered as: CA 51/C-I/2013. One such direction sought in the said application was that the appellants be permitted to inspect the statutory record of FKIPL.

3.3 The said application came up for hearing before the CLB on 24.09.2013. The CLB, however, passed a short order, which, inter alia, called upon the appellants to move an appropriate application with FKIPL for inspection of the statutory record. This application was to be moved on 25.09.2013. The CLB, however, observed that if inspection was refused, a reply would be filed by the respondents wherein, they would state reasons. The respondents were required to do the needful within three days. Liberty was, however, given to the appellants to mention the said application on 01.10.2013 at 4.00 p.m.

3.4 On 01.10.2013, the CLB passed the following order

> ".....Counsel appearing for respondents, files a letter dated 26.9.2013 written pursuant to a letter given by petitioners for inspection. It is informed that inspection is to be carried on

7.10.2013. Four weeks' time was given to respondents to file their reply by order dated 3.9.2013. The said time is finally extended up to the next date of hearing.

List on 28.10.2013 at 2.30 PM..."

3.5 As is evident, the matter was to come up, in the normal course, on 28.10.2013. In the interregnum, though, respondents vide a letter dated 05.10.2013, informed the appellants, albeit, for the very first time that unless an undertaking was furnished that the information derived during the course of inspection shall be only used for prosecuting CP 106(ND)/2013 and, before no other forum, inspection, would not be given.

3.6 The appellants, being aggrieved, by this communication, on 09.10.2013, brought this aspect to the notice of the CLB via an additional affidavit.

3.7 After completion of pleadings in the application i.e. CA 51/C-I/2013, it was taken up for hearing on 13.01.2014, when, the impugned order, as noted above, was passed. Being aggrieved, the appellants filed the instant appeal.

CO.A.(SB) 69/2014

4. Similarly, in the aforementioned appeal, the appellant filed a petition under Section 397, 398 and 402 of the 1956 Act, alleging oppression and mismanagement by the respondents. This petition was numbered as: CP 101(ND)/2014. The said petition was titled as: Shri Jasmohan Singh. vs M.S. Koldhold Industries Private Ltd & Ors.

4.1 As in the other company petition filed before the CLB, the appellant prayed for various reliefs, including, for issuance of an interim direction to respondents to allow inspection of the statutory records, in the presence of a

CA. The petition was mentioned on 18.09.2014, when arguments were heard by the CLB. The CLB, after hearing arguments, passed the impugned order dated 18.09.2014.

4.2 On the said date (i.e. 18.09.2014), the CLB, while giving time to the respondents to file a reply to the main company petition, directed maintenance of status quo as regards the assets and shareholding till the next date of hearing, save and except in the usual and normal course of business. In so far as inspection of records was concerned, the following directions were issued, which are contained in paragraph 2 of the said order. For the sake of convenience, the said paragraph is extracted hereafter:

> ".....2. Ld. Sr. counsel for the Petitioner prays for inspection of the records of the company. Counsel for the, Respondents does not oppose the prayer on condition that the information gathered after inspection of records, shall be kept confidential and shall not be used to the detriment of the company before any other forum or authority without seeking prior approval of this Board. In view of the multiple litigation going on between the parties and to protect the interest of the company, I direct the Respondents to give inspection of the records of the company to the Petitioner after a written undertaking by the Petitioners to the company that information collected during inspection shall be kept confidential and shall, not be used to the detriment of the company or its shareholders before any forum or authority without seeking prior approval from this Board. In this view of the matter, the Petitioners shall send a written communication to the company seeking inspection accompanied with such undertaking. On receipt of such communication the

> company would provide inspection to the Petitioners within a week from the date of receipt of such communication...."

4.3 Aggrieved by the impugned order dated 18.09.2014, the appellant, filed the captioned appeal qua the said order.

5. Arguments on behalf of the appellants in both the appeals, were addressed by Mr Arun Kathpalia, Advocate. On the other hand, on behalf of the respondents in CO.A.(SB) 69/2014 arguments were advanced by Mr Jayant Bhushan. However, the learned counsel, appearing for the respondents in CO.A(SB) 4/2014, adopted the submissions made by Mr Jayant Bhushan.

6. Briefly, the arguments of Mr Kathpalia were as follows:

(i) That the appellants have an unfettered right to seek inspection of the records of the concerned companies.

(ii) The CLB has no power to stipulate conditions for seeking inspection of the statutory records.

(iii) The appellants could not have been impeded in the exercise of their legal rights based on information received during the course of inspection.

(iv) The issues pertaining to oppression and illegal activity can only come to fore, once, inspection is granted.

(v) The aspect with regard to conditions being put forth was not articulated by the respondents in the hearing held before the CLB on 24.09.2013 and 01.10.2013 qua CA No. 51/C-I/2013. The conditions were put forth by the respondents, for the first time, in their communication dated 05.10.2013.

(vi) The CLB has no jurisdiction and/or power to injunct the appellants from instituting any proceedings which otherwise, the said persons are entitled to prosecute, in a court or an appropriate forum, which is, not subordinate to the CLB. In this behalf, learned counsel relied upon the provisions of Section 41(b) of the Specific Relief Act, 1963, as also the judgement of the Supreme Court in the case of ***Cotton Corporation of India Ltd. vs United Industrial Bank Ltd. & Ors.(1983) 4 SCC 625***.

(vii) The law mandates that anyone, who is in possession of information pertaining to commission of a cognizable offence, can make a report with regard to such offence to the police. The police, after registration of the case, based on that report, in accordance with Section 154 of the Code of Criminal Procedure, 1973 (in short the Code) can investigate the matter. If the investigation, reveals that an offence has been committed, the police are required to file a challan in the concerned court, whereupon, trial of the case would commence. This submission was sought to be supported by relying on a judgement of a Single Judge of this court in: ***S.P. Gupta & Ors. vs State (NCT) of Delhi & Anr. 119 (2005) DLT 214***.

(viii) Furthermore, the impugned orders were bereft of reasons. It was submitted that though arguments were advanced that the use of information could not be circumscribed by putting in place any conditions, the CLB, had not dealt with the same.

7. Mr Bhushan, learned senior counsel, on the other hand, who argued on behalf of the respondents in CO.A.(SB) 69/2014, submitted that the appellants had filed several complaints with statutory authorities, including the Economic Offence Wing (EOW). It was submitted that the purpose of the complaints, was to impede the business of the concerned companies i.e.

KFIPL and KIPL. It was further submitted that the appellants before this court had sought inspection only as a counter blast to directions issued by CLB in CP No. 34(ND)/2012, titled: Jang Bahadur Singh vs Frick India Ltd. & Ors.

7.1 It was stated that in the aforementioned company petition the respondents therein, had granted the inspection of statutory records to the petitioner on the condition that they would maintain confidentiality qua the information derived upon inspection of the statutory records, and that, the information made available would not be used before any forum save and except the CLB. In other words, it was argued that the order dated 14.06.2012 passed by the CLB, in the aforementioned company petition, was no different to the orders impugned in the present appeals.

7.2 It was thus, the submission of the learned senior counsel that the right of the appellants to seek inspection of the statutory record of the concerned companies was not unfettered, especially, where there was a serious apprehension of injury and/or damage being caused to the concerned companies. In support of this submission, learned counsel sought to place reliance on a judgement of a Single Judge of this court in the matter of: ***D. Ross Porter vs Pioneer Seed Co. Ltd. (1989) ILR I Del. 150***.

7.3 Learned counsel also placed reliance on the extract from the report of the Company Law Committee, 1952 contained in Chapter-XII, para 183, bearing the heading "Inspection and Investigation", to buttress his submissions.

7.4 What was sought to be conveyed by the learned senior counsel, based on the extract of the aforementioned report, was that, the right to inspection could not be abused and, therefore, ought not to become a tool of harassment or oppression in the hands of those, who have been conferred the said right.

8. Having heard the learned counsels for the parties, and perused the record, what has come to fore is briefly as follows:

(i) That while the petitions under Section 397, 398 and 402 of the 1956 Act were pending adjudication, request was made both by the appellants in CO.A.(SB) 4/2014 as also the appellants in CO.A.(SB) 69/2014, to seek inspection of the statutory records.

(ii) By virtue of the impugned orders, referred to above, dated 13.01.2014 and 18.09.2014, inspection was allowed subject to certain conditions being imposed.

(iii) In the order dated 13.01.2014, the condition imposed was that the information retrieved could only be used before the CLB and not before any other forum, without seeking prior approval of the CLB. The relevant part of the order dated 13.01.2014 is extracted hereinbelow:

> ".... The Respondents are hereby directed to grant inspection of the statutory records of the Company to the petitioners on 29.1.2014 from 10.30 AM after an undertaking is given by the Petitioners that the information elicited during inspection shall not be used by the petitioners to the detriment of the company and before any forum other than the Company Law Board without seeking prior approval of this Board....."

(iv) The order dated 18.09.2014, is substantially the same as is evident from the extract set forth in paragraph 4.2 above.

(v) In so far as CO.A.(SB) 4/2014 is concerned, the respondents did not raise any issue with regard to conditions being imposed, before the CLB, either in the hearing held on 24.09.2013 or in the hearing convened on 01.10.2013. The condition was sought to be imposed by the respondents, for the first time, in their communication dated 05.10.2013, which propelled the appellants in the said appeal to approach the CLB, once again.

9. The aforesaid facts would show that while Mr Bhushan does not contest the right of the appellants to inspect the statutory record, an aspect, which is also reflected in the two impugned orders, it is only the use of information, so derived upon the inspection, that is, at the heart of the contest in the two appeals. Mr Bhushan, therefore, contended before me that the appellants could not use the information derived to the detriment of the concerned companies and, therefore, if there was such an apprehension, the concerned forum, in this case the CLB, could pass appropriate directions to protect their interests.

9.1 To my mind, quite clearly, this stage can only arise, once information is derived and its intended use is known. The CLB while passing the impugned order has left no scope for having the information placed before it, and thereafter, issuing appropriate directions with regard to the use of information. The CLB, on the other hand, has simply injuncted the appellants from using the information derived save and except in regard to matters pending before it. The argument advanced on behalf of the appellants by Mr Kathpalia, that the CLB has no such jurisdiction to pass such a direction, which in effect restrains them from pursuing their legal rights, before a forum which is not subordinate to CLB, has not even been touched upon in the impugned order.

10. Therefore, in my view, the impugned orders will have to be set aside with the following directions:

(i) The appellants will have the right to inspect the statutory records of FKIPL and KIPL. The information so derived will be placed before the CLB. The CLB will, thereafter, ascertain as to the manner and the forum before which the appellants wish to use the information.

(ii) In case the CLB, on receipt of such information, if inclined to injunct the appellants from using the information, it would first deal with the submission of the appellants that it would have no jurisdiction to prevent them from using the information, so derived, before a forum which is not subordinate to it.

(iii) In this context, the CLB will, inter alia, keep in mind the fact that, if, information derived discloses a cognizable offence, whether it would have the jurisdiction to prevent its use, by the appellants, while exercising powers under Section 402 and 403 of the 1956 Act.

11. Accordingly, the impugned order dated 13.01.2014, passed in CO.A.(SB) 4/2014 and order dated 18.09.2014, passed in CO.A.(SB) 69/2014, are set aside.

11.1 The appellants will thus, as indicated above, be entitled to inspection of the statutory record; which information, in the first instance, they will place before the CLB, along with an affidavit, indicating therein, as to the manner and the forum before which they propose to use the information.

11.2 The CLB will, thereafter, upon hearing the parties and their counsels, pass a fresh order if it is inclined to injunct the use of information keeping in mind what has been observed hereinabove.

11.3 The inspection will be given within ten days from today. The appellants will, scrupulously, follow the directions issued by this court.

12. The appeals and the applications are disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

MARCH 11, 2016
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