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

+ **W.P.(C) 5939/2015**

ANIL KUMAR PODDAR

..... Petitioner

Through: Mr. Sanjay Kumar Pathak, Advocate
with Mr. Sunil Kumar Jha, Mr. Kushal
Raj Tater and Ms. Shreya Kasera,
Advocates.

versus

RELIANCE INDUSTRIES LTD AND ORS.

..... Respondents

Through: Mr. Ritim Pal, Advocate with
Mr. Vishnu Sharma and Mr. Raghu
Chandra, Advocates.

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Date of Decision : 23rd March, 2016

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed seeking a direction to prohibit respondent no. 1-Company from holding its Annual General Meeting (for short "AGM") on the ground it has violated Section 134 of the Companies Act, 2013 inasmuch as it has not disclosed to its investors/shareholders true and correct state of affairs in its Annual Report and Director's Report for the year 2014-15. It is alleged in the petition that respondent no. 1 is adamant in

holding its AGM in violation of statutory provisions to perpetuate a fraud and to legalize siphoning of Rs. 18,000 crores without disclosing the true and correct state of affairs to the petitioner and other stakeholders/shareholders.

2. On the other hand, in the counter-affidavit it is stated that the petitioner is a holder of only two shares out of a total of 32.35 crores issued shares, i.e., holder of only 0.00000000006811% of the equity share capital of respondent no. 1. It is also stated in the counter-affidavit that petitioner is a 'habitual frivolous litigant' who has filed more than 149 cases against respondent no. 1-Company.

3. It is further stated in the counter-affidavit that in 2012, the petitioner had sought similar relief of stay of AGM from the Mumbai High Court - which was declined. The said writ petition was ultimately withdrawn with liberty to approach Company Law Board, Mumbai. However, the said company petition was dismissed with the observation that the petitioner had approached the Company Law Board with unclean hands.

4. In the present case, the Vacation Judge had refused to grant interim stay of the AGM on the ground that grievance of the petitioner would be taken care of by Section 134(8) of the Companies Act, 2013.

5. I am of the view that principle of corporate democracy requires that meeting of shareholders should normally not be interdicted. I may refer to the following observations of Supreme Court in ***Life Insurance Corporation of India v. Escorts Ltd. and others, AIR 1986 SC 1370:-***

“95. A company is, in some respects, an institution like a State functioning under its ‘basis Constitution’ consisting of the

Companies Act and the Memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes “the member in general meeting” and the directorate as the two primary organs of a company and compares them with the legislative and the executive organs of a parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of Government. Like the Government, the Directors will be answerable to the ‘Parliament’ constituted by the general meeting. But in practice (again like the Government), they will exercise as much control over the Parliament as that exercises over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it clearly would not be practicable (except in the case of one or two – man- companies) for day-to-day administration to be undertaken by such a cumbersome piece of machinery. So the modern practice is to confer on the Directors the right to exercise all the company’s powers except such as general law expressly provides must be exercised in general meeting. (Gower’s Principles of Modern company Law). Of course, powers which are strictly legislative are not affected by the conferment of powers on the Directors as Section 31 of the Companies Act provides that an alteration of an article would require a special resolution of the company in general meeting. But a perusal of the provisions of the Companies Act itself makes it clear that in many ways the position of the directorate vis-a-vis the company is more powerful than that of the Government vis-a-vis the Parliament. The strict theory of Parliament sovereignty would not apply by analogy to a company since under the Companies Act, there are many powers exercisable by the Directors with which the members in general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognises that the analogy of the legislature and the executive in relation to the members in general meeting and the Directors of a Company is

an over-simplification and states “to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution. "As already noticed, the only effective way the members in general meeting can exercise their control over the Directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the Directorate and appoint others in their place. The holder of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a director and appoint another.”

(emphasis supplied)

6. Keeping in view the aforesaid mandate of law as well as the fact that AGM has already been held, I am of the view that petitioner is not entitled to any relief.
7. In any event, even if there is violation of Section 134 of the Companies Act, 2013 by reason of inadequate information, the matter is to be enquired into by the authorities under the Companies Act, 2013. Such a detailed enquiry cannot be undertaken in writ jurisdiction.
8. At this stage, learned counsel for the petitioner states that since NCLT has not been constituted, petitioner does not have an alternate efficacious remedy.
9. I am of the opinion that till the NCLT becomes functional, jurisdiction of appropriate Company Law Board can be invoked in accordance with law. There is no averment in the writ petition that Company Law Board is not

functional. No prayer has also been sought seeking a direction to Company Law Board to decide the petitioner's representation/application/petition.

10. Consequently, present writ petition is dismissed with liberty to petitioner to avail other alternate remedies that may be available to him in law. This Court clarifies that it has not expressed any observation on the merit of the case. Rights and contentions of all the parties are left open.

MARCH 23, 2016
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MANMOHAN, J

