

\$~CP-12

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

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Date of decision: 04.12.2017

+ CO.A(SB) 14/2016

RAHUL MEHRA

..... Appellant

Through Ms.Vibha Mahajan Seth, Adv.

versus

AG INTERNATIONAL LOGISTICS INDIA

(P.) LTD. & ANR.

..... Respondents

Through Mr.Sarat Chandra, Advocate for
R-2/ROC.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This appeal is filed under Section 10F of the Companies Act, 1956 (*hereinafter referred to as 'the Act'*) seeking to impugn the order dated 04.12.2015 passed by the Company Law Board (*in short 'the CLB'*) in CP No. 01/614/2014 under Section 614 of the Act.

2. Some of the relevant facts as stated in the appeal are that the appellant was appointed as a director of respondent No.1 company on 30.01.2006 and was allotted 1% equity shareholding for which he paid a sum of Rs.1,50,000/-. The appellant was also paid a fixed monthly salary by respondent No.1 company for his services as the whole-time director of respondent No.1 company. As disputes had arisen between the appellant and respondent No.1 company, the appellant resigned from his post of director w.e.f. 01.07.2009 vide his letter of resignation dated 01.07.2009. Thereafter, it is the case of the appellant that he received a notice dated 22.07.2009 for

the next Board Meeting of respondent No.1 company to be held on 23.07.2009. One of the agendas for the Board Meeting was the resignation of the appellant. However, the appellant did not attend the said meeting.

3. Thereafter, the appellant received another notice dated 28.07.2009 pointing out the postponement of the previous meeting to be held on 23.07.2009 to 30.07.2009.

4. It is also the case of the appellant that no Board Meeting has taken place to deal with the resignation of the appellant. However, as per the appellant, respondent No.1 company has not paid any salary to the appellant after his resignation dated 01.07.2009 and neither has the appellant attended any Board Meeting of the directors of respondent No.1 company since then.

5. The Company Law Board by impugned order dated 04.12.2015 noted the contentions of the appellant that the Board of Directors of respondent No.1 company has since been re-constituted, the signatories to the bank operations in relation to all bank accounts of respondent No.1 company have also been changed. Hence, it noted that the appellant ceased to continue to be as director of respondent No.1 company. However, the impugned order further held that there is nothing on record to show that the Board of respondent No.1 company passed a resolution stating that the appellant has ceased to continue to be as director on the resignation letter given. It noted that Section 614 of the Act can be invoked only when a company has made default in complying with any of the provisions of the Act. The order holds that there is no default of respondent No.1 company and hence, this section cannot be pressed into service directing respondent No.1 company to file Form 32 saying the petitioner ceased to continue to be as director. Accordingly, the petition was dismissed.

6. I have heard the learned counsel for the appellant and the learned counsel for respondent No.2/Registrar Of Companies.
7. The learned counsel for the appellant relies upon the judgment of the Madras High Court in the case of ***T.Murari v. State, 1976 Vol.46 Company Cases 613*** to contend that in the absence of any such provision in the articles of association of the company, a resignation once made will take effect immediately when the intention to resign is made clear.
8. A perusal of the resignation letter dated 01.07.2009 would show that copies of the resignation letters have been marked to the Registrar of Companies. Further, immediately thereafter on 22.07.2009 respondent No.1 company has received a notice of a proposed Board Meeting to be held on 23.07.2009 where one of the items was to approve the resignation of the appellant from the Board of Directors. It is also not disputed that the appellant has not attended any Board Meeting and has also not performed any function for respondent No.1 company after his resignation.
9. Respondent No.1 company has been served through publication. None has appeared for respondent No1 company. Respondent No.1 company is proceeded *ex-parte*.
10. The admitted fact is that the articles of association of respondent No.1 company does not deal with the situation where one of the directors tenders his resignation.
11. The Madras High Court in ***T.Murari v. State***(supra) on this aspect of resignation of a director held as follows:

“..... So far as the Indian Companies Act is concerned, this has followed the pattern of the British law relating to companies. If there is any provision in the articles giving right to a director to resign at any time, the resignation will take effect without any

need for its acceptance by the board or the company in the general meeting. In the absence of any provision relating to resignation in the articles of association, it is well-settled that a resignation once made takes effect immediately when the intention to resign is made clear.

In Halsbury's Laws of England, fourth edition, volume 7, at page 316, in paragraph 536, under the heading "Resignation", it is stated as follows:

"Where by the articles a director has power to resign at any time, his resignation takes effect independently of acceptance by the other directors or the company. Where the articles of association of a company provide that the office of a director is to be vacated ipso facto if by notice in writing to the company a director resigns office, an oral resignation if accepted by the company is valid."

Of course, it is not made clear here as to what happens when no provision for resignation is made either in the Act or in the articles of association as in the instant case. But the true position of directors is that of agents for the company,

In Palmer's Company Precedents, seventeenth edition, Part I, at page 565, it is stated as follows:

"Even in the absence of any express power to resign, it is submitted that, unless the articles are specially framed, a director may by notice to the company resign his directorship. Directors 'are merely agents of the company'....., and an agent may determine his agency."

In Palmer's Company Law, twenty-first edition, at page 543, under the heading "Resignation", it is stated as follows:

"A director can at any time resign his office, and usually the articles make express provision accordingly. If he communicates his resignation to the company, for instance, by a notice upon the company served in the manner provided by Section 437, his resignation is

effective. A resignation once made cannot be withdrawn, except with the consent of the company.....

.....In the decision in State of Bihar v. Sitaram Jhunjhunwala, in considering as to when the resignation takes effect, it was held that the acceptance of resignation is unnecessary for the resignation to take effect when once it is tendered in writing. In that case, the articles of association of the company itself provided that the director will cease to hold office ipso facto upon giving the notice of resignation in writing.

But, however, in the instant case, the articles of association do not provide specifically about "resignation".

I am of the view that even in the absence of a provision in respect of resignation under the Act or under the articles of association of the company, the resignation tendered by a director or managing director unequivocally in writing will take effect from the time when such resignation is tendered. It is clear from the evidence in this case that even within six months after the company was formed, the petitioner tendered his resignation in writing on January 17, 1968, and, in my view, the resignation had taken effect on that day itself and the petitioner ceased to hold office from January 17, 1968.”

12. I have no hesitation in agreeing with the aforesaid legal position that the director of the company cannot normally, be forced to continue as a director of the company in case he does not wish to do so. Hence a resignation in writing by a director will take effect on the day itself.

13. Accordingly, in my opinion, the impugned order has wrongly held that in the absence of a resolution of the Board of Directors accepting resignation, the same would not be effected. The impugned order of the learned Company Law Board is set aside. The resignation of the appellant will be effective w.e.f. 01.08.2009. The ROC will take appropriate steps in

this regard.

14. The appeal is disposed of. All pending applications, if any, are also disposed of.

JAYANT NATH, J.

DECEMBER 04, 2017/v

