$~8

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

\+ CO.A(SB) 17/2016 & Co. Appl. No.4814/2016

MANAV KUMAR AGARWAL ..... Appellant

Through: Mr. Arun Kathpalia, Sr. Advocate with Mr. Rahul Sahai & Ms. Himani Katoch, Advocates.

versus

DISCOVERY ENTERPRISES PRIVATE LIMITED & ORS. ..... Respondents

Through: Mr. Ashish Midha, Advocate.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

% **10.02.2017**

The present appeal under Section 10-F of the Companies Act, 1956 assails the order dated 1.3.2016 rendered by the Company Law Board in Co. Pet. No.51/614/CLB/2016, whereby the said company petition instituted on behalf of the appellant came to be dismissed *in limine, inter alia,* for the reasons that the resignation of a Director of a company is a bilateral act and further that a resolution accepting the said resignation has to be duly passed by the Board of Directors of the subject company before any resignation becomes effective in accordance with law.

Mr. Arun Kathpalia, learned senior counsel appearing on behalf of the appellant has invited my attention in this behalf, to paragraph 9 of the impugned order which reads as follows :-

> *"On reading this section, it is no doubt true that the Tribunal is vested with powers to direct the company to make good the default in case the company flouted any of the provisions of the Companies Act, 1956. It is a settled proposition of law, whenever company is to file any return, account or other*

documents, then it has to necessarily pass a Board Resolution to send such document to the Registrar of Companies. Unless the company has passed any resolution, accepting document or return, it can't be said that the company has committed default in filing of form before the Registrar. Here, the case of the petitioner is that he has given resignation letter to the company on 18.01.2011 but it is not the case of the petitioner that the company passed a resolution and failed to file such resolution copy approving resignation of the petitioner as director before RoC. For there being no Board Resolution accepting the resignation, his mere giving resignation letter will not amount to resolution by the Board. It is needless to say that unless there is a Board Resolution by the company, it shall be presumed that the petitioner has been continuing as director of the company."

A plain reading of the above extracted paragraph clearly shows that the Company Law Board was of the view that in absence of Board Resolution accepting the appellant's resignation, his merely giving a letter of resignation would not suffice and in law, it would be presumed that the appellant continued as a director of the company.

Mr. Kathpalia, learned senior counsel states that the said issue is no longer *res integra,* inasmuch as, it is covered on all fours by a decision of this court in *Dr. J.S. Gambhir vs. Millennium Health Institute and Diagnostics Pvt. Ltd. in Co. Pet. No.203/2007* rendered on 11.02.2014 and, in particular, paragraphs 26 to 31 thereof which read as under :-

"26. As stated earlier, the applicant is stoutly disputing the assumption that he was a Director of the company on 15.01.2010. It is apparent, from the reply filed on behalf of the company, that the company represented the applicant to be a Director of the company in spite of the applicant having submitted his resignation only on the basis that his resignation had not been accepted by the Board of Directors of the company. In conformity with this stand taken by the company, the company also did not file Form No. 32 with the Registrar of Companies.

27. In the aforesaid circumstances, the substratal controversy that needs to be addressed is whether filing of Form No. 32 or acceptance of resignation submitted by a Director is necessary for the same to be effective. <u>It is well settled that unless otherwise specified in the Articles of Association of a company, a resignation by a Director would become effective from the date on which it is communicated.</u> A resigning Director is not obliged to file Form No. 32 with the Registrar of Companies. <u>A resignation by a director implies a relinquishment of his office. This is a unilateral Act which unless the Articles of Association otherwise provide, is not contingent on the acceptance by the company. Directors act as agents of the company and are, thus, also entitled to terminate their agency. The act of resignation or relinquishment of the office would not require the consent of the company and, therefore, would become effective from the time when the intention to relinquish the office as a Director is communicated.</u>

28. The law on the question as to when does a resignation by a director become effective, is stated in Palmer's Company Precedents, seventeenth edition, part 1, at page 565 as under:-

> *"Where there is no provision in the Articles as to the procedure for resignation it would seems that resignation will take effect until it has been tendered to the company as a whole, but the company cannot refuse it.*
>
> *xxxx xxxx xxxx xxxx xxxx*
>
> *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.*
>
> *xxxx xxxx xxxx xxxx xxxx*
>
> *Where a director has resigned he is not liable for a*

report made after his resignation, even though his resignation was not communicated to the company and his name appeared in the report."

29. The statement of law on the subject in Gore-Browne's Handbook on Joint Stock Companies, 41st edition, page 358, reads as under:-

> *“Articles usually permit a director to resign. Even in the absence of such a power, unless the articles contain conditions, he may resign, and his resignation is complete where notice is given to the secretary, and cannot subsequently be withdrawn and even though no acceptance has taken place. Notwithstanding that the articles contemplate a written resignation a verbal notice of resignation given and accepted at a general meeting of the company is binding."*

30. In the present case, the Articles of Association also provides that the resignation would take effect from such date as may be specified. Article 35 of the Articles of Association of the respondent company is relevant and is quoted below:-

> *"Section 283 of the Companies Act, 1956 shall be applicable with regard to vacation of office by a Director. A Director shall also be entitled to resign from the office of Director from such date as he may specify while so resigning."*

31. By virtue of Section 303(2) of the Act a company is obliged to file a return in the prescribed form indicating inter alia any change among its directors. Section 303(2) of the Act is quoted below:

> *"(2) The company shall, within the periods respectively mentioned in this sub- section, send to the Registrar a return in the prescribed form containing the particulars specified in the said register and a notification in the prescribed form of any change among its directors, managing directors, managers or secretaries specifying the date of the change. The*

period within which the said return is to be sent shall be a period of thirty days from the appointment of the first directors of the company and the period within which the said notification of a change is to be sent shall be thirty days from the happening thereof."

e-Form No. 32 of the Companies (Central Government's) General Rules and Forms, 1956 is the prescribed form in which the relevant return in accordance with section 303(2) of the Act is to be filed. It is thus apparent that filing of Form 32 is an obligation of the company and not of the Director who is demitting office. The filing of Form 32 with the Registrar of Companies is an action which is required to be taken by a company and not by a Director who has tendered his resignation. And, the same is required to be initiated after the resignation by a Director has become effective. It is obvious that once a Director has demitted his office, he would have no authority to file any form on behalf of the company."

(emphasis supplied)

A plain reading of the above extracted paragraphs makes it manifestly clear that a resignation by a director is a unilateral act and unless otherwise specified in the Articles of Association of a company, a resignation would become effective from the date on which it is communicated.

After hearing learned counsel for the parties and in view of the foregoing, it is axiomatic that the enunciation of the law in paragraph 9 of the impugned order is erroneous, contrary to and consequently unsustainable in law. Thus, the appeal has to be allowed on this ground alone.

The impugned order is consequently set aside. The matter is remitted back to the Company Law Board (now National Company Law Tribunal hereinafter referred to as 'NCLT') for determination of the underlying dispute *de novo,* in accordance with law, as expeditiously as possible.

It is needless to state that the present order has been rendered in light of the legal position that has emerged, without making any comment on the facts or merits of the case.

The above order has been passed without prejudice to the rights and contentions of the parties in relation to the underlying lis and with the consent of learned counsel for the respondent. The parties are at liberty to raise all the factual averments that have been made in the present appeal before the NCLT.

List before the Registrar, NCLT, in the first instance, on 17th March, 2017.

SIDDHARTH MRIDUL, J.

FEBRUARY 10, 2017
'AA'