

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

% **Order delivered on: 13th June, 2016**

+ **C.M. No.23374/2016 in W.P. (C) No.3444/2016**

SUNAIR HOTELS LTD. Petitioner
Through Mr.Jayant Bhushan, Sr. Adv. with
Mr.Atul Sharma & Mr.Nitesh Jain,
Adv.
versus

UNION OF INDIA, MINISTRY OF CORPORATE AFFAIRS & ANR
..... Respondents
Through Mr.D.P. Bhardwaj, CGSC for R-1.
Mr.Jayant Mehta, Adv. with Ms.Bina
Gupta, Ms.Rakhi Ray & Mr.Ashok
Sharma, Adv. for R-2.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The main writ petition is pending adjudication before this Court wherein petitioner seeking quashing/ recall of order of investigation dated 29th February, 2016 under Section 212 (c) of the Companies Act, 2013 issued by the respondent No.1 and subsequent act initiated thereafter. The next date is fixed on 7th July, 2016.

2. During vacation the present application has been filed by the petitioner on the main reason that according to the petitioner the respondent No.1/UOI, despite making a statement before this Court recorded in the order dated 18th May, 2016 that till the next date of hearing i.e. till 7th July, 2016 the UOI would only process the replies to the notices, the allegation is made in the application that UOI through SFIO on the instance of the respondent No.2/VLS Finance Ltd. had conducted a search at the office of the petitioner company and also

served summons on the directors of the petitioner company to be present on 13th, 14th and 15th June, 2016, and also served summons and asking various details.

3. It is submitted that there is no material with the respondent No.1/UOI to suggest or to form any opinion to order an investigation and there is no public interest. Further, despite several directions from this Court, the UOI has not produced the noting sheet or record of inquiry during the hearing of the matter on 18th May, 2016 and 8th June, 2016.

4. Learned Senior counsel appearing on behalf of the petitioner has referred the orders dated 25th April, 2016, 3rd May, 2016 and 18th May, 2016 in support of his submission.

5. He says that vide order dated 25th April, 2016 the Court was inclined to stay the impugned order but on the instance of the counsel for the respondent No.1/UOI, the matter was posted for hearing on the next date i.e. 26th April, 2016. The UOI was also directed to produce before the Court the entire record, on the bases of which the UOI have passed the impugned order. On 26th April, 2016 as there was no time left to hear the matter. On 3rd May, 2016 the respondent No.1/UOI intentionally did not produce the record and gave the excuse that the person carrying the record was on his way to Court. It is stated that on 18th May, 2016 as the matter reached around 4.30 p.m., the counsel for the petitioner company presses for the interim relief and/ or short date, on which on enquiry the counsel for the respondent No.1/UOI record his statement on instruction that "even prior to filing of the petition certain notices had been issued and to which replies are being received and till the next date of hearing the said replies shall be processed. Only on the statement made by the counsel for the

respondent No.1/UOI, the matter was adjourned after summer vacation i.e. 7th July, 2016, the same would have been heard and been disposed off before summer vacation itself.

6. It is stated by the learned Senior counsel that as soon as the Court was closed for summer vacation, on the very first working day i.e. 6th June, 2016, the respondent No.1/UOI contrary to the statement recorded before this Court on 18th May, 2016 without any notice have conducted a search at the office of the petitioner company. As per him the said act is in breach of the statement recorded before this Court as the respondent No.1/UOI have not allowed this Court to adjudicate the main petition.

7. It is also submitted that in the counter filed by the respondent No.1/UOI there is no material suggesting to order an investigation and there is no noting sheet whereby a decision was taken to order an investigation, therefore, why the respondent No.1/UOI on behest of respondent No.2/VLS is acting in malafide manner and contrary to law.

8. Counsel says that in view of said circumstances, further investigation in the matter be stayed till the next date fixed by the roster Bench as it was rightly observed by the Bench in order dated 25th April, 2016 that unless the Court is satisfied that there was consideration by the authority before the order issued by the Court would be entitled to intervene by referring the decision of Supreme Court in which it is held investigation has serious consequences on the commerce of the company.

9. Counsel appearing on behalf of the respondents submit that the investigation was initiated on 1st March, 2016 and it has to be completed within six months i.e. by August, 2016.

10. It is stated by the learned counsel for respondent No.1 that no raid was conducted and no documents and computers had been seized. It is wrongly stated by the petitioner. Copies of data were merely taken during the course of investigation. Even respondent No.1 had not taken any coercive steps and they do not proceed to take any coercive steps till the next date.

11. The matter is already listed on 7th July, 2016. There are two different versions of the parties. On the one hand, the petitioner submits that the Court was inclined to pass the interim order, and on the other hand, respondents submit that the interim order was pressed but not issued.

12. Under this peculiar situation, as far as investigation is concerned, I am not inclined to stay the same because of the reason that the respondents have referred few orders passed by the Supreme Court for the investigation to be carried out by respondent No.1, although, the liberty to initiate the proceedings was granted and the writ petition was duly filed, however, till the next date as stated by the counsel appearing on behalf of respondent No.1, no coercive steps be taken. With regard to the issuance of summons for 13th, 14th and 15th June, 2016 and to produce the documents, the parties would appear as per summons and dates but they would seek an adjournment for production of documents after 7th July, 2016 in view of two versions given by both parties.

13. The order is being passed without expressing any opinion on merits.

14. The above application be also listed before roster Bench on 7th July, 2016.

15. *Dasti* under the signatures of the Court Master.

**(MANMOHAN SINGH)
JUDGE**

JUNE 13, 2016

