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

\+ W.P.(C) 6478/2012

NC BAKSHI ..... Petitioner

Through: Mr P. Chaitanyashil, Advocate.

versus

UNION OF INDIA & ORS ..... Respondents

Through: Mr Anil Soni, CGSC with Mr Naginder Benipal, Advocate for R-1 to R-3.
Ms Sonali Malhotra, Advocate for R-4 (DDCA).

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **01.08.2017**

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

> "a) Issue a writ of mandamus in favour of the petitioner and against Respondent nos.1, 2 and 3 thereby directing Respondents nos 1,2 & 3 to take appropriate action against the Respondent no.4, in terms of section 25 of the Companies Act, 1956 and more so upon admitted breach of the mandatory terms of the license / conditions so granted by the Respondent nos.1, 2 & 3 to the Respondent No.4 dated 28th June, 1985;"

2. The subject matter of the dispute relates to grant of remuneration to executive members / members of respondent no.4 (hereafter 'DDCA').

3. DDCA is a company incorporated under Section 25 of the Companies Act, 1956 (hereafter 'the Act') and is a non-profit organisation. It is not

disputed that DDCA was issued a licence under Section 25 of the Act by the Regional Director (hereafter 'RD'). The object clause of the Memorandum of Association of the DDCA permits it to promote the game of cricket. Clause 3 of the licence is important and reads as under:-

> "3 That no remuneration or other benefit in money or money's worth shall be given by the Company to any of its members, whether officers or servants of the company or not except payment of out-of-pocket expenses, reasonable and proper interest on money lent or reasonable and proper rent on premises to the company;".

4. It is not disputed that DDCA had paid remuneration / honorarium to some of its executive members and concededly this was in violation of the terms of the licence. Accordingly, the Directors of DDCA had applied under Section 621A of the Act for compounding of the offences before Company Law Board (CLB). The CLB, by an order dated 28.09.2012, allowed the application for compounding the offences and imposed compounding fees of ₹1 lac on DDCA and ₹50,000/- each on the members of the Governing Council who were responsible for the default. The relevant extract of the said decision is quoted below:-

> "11. As regards the issue relating to the compounding of offence, the same is examined and considered by the Bench in view of the submission made by the either counsels, provisions of the Companies Act, and the report of the ROC, New Delhi. On the facts and circumstances as put forth before this Bench, it is observed that the payment of remuneration was made to some of the members for the services rendered to the company in various capacities during

the years 2008-09, 2009-10 and 2010-11 respectively, and this cannot be termed as sharing the profits with its members. However, there is no doubt that the company had violated the terms of license issued by the Central Government u/s section 25 of the Act, as the remuneration was paid without obtaining the approval of the Central Government, for which it has made proper and appropriate application for compounding of offence u/s 621 A of the Act, and also made the default good by making application for obtaining prior approval of the Central Government for payment of remuneration for the financial years 2011-12, 2012-13 and 2013-14 who in turn has granted its approval for payment of such remuneration during the financial years 2011-12, 2012-13 and 2013-14.

12. Further, though the said violation does not fall under the provisions of any specific section of the Act, it falls under section 25 of the Act, as the license granted under section 25 of the Act, which does not provide any punishment or specific penalty for such violation. Accordingly, section 629A of the Act, comes in the picture and empowers this Board to consider, adjudicate and decide the application filed by the company for compounding of offence. Section 629A inter alia provides that:

Section 629A "If a company or any other person contravenes any provisions of this Act, for which no punishment or penalty is provided elsewhere in this Act, or any condition, limitation, or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction, or exemption in relation to any matter has been accorded, given or granted the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to five thousand rupees, and where the contraventions is a continuing one, with further fine which may extend to five hundred rupees for every day during which the contravention continues".

13. In view of the facts and circumstances of the case and the arguments of the either counsels it is therefore, held that

> the application of company made u/s 621 A of the Act, for compounding of offence committed on account of remuneration paid to some of its members during the financial year 2008-09, 2009-10 and 2010-11 without obtaining the prior approval of the Central Government and forwarded by the ROC. Delhi & Haryana, is hereby allowed by imposing the compounding fee Rs 1,00,000/- on company and Rs 50,000/- on each governing council's member responsible for default, being officer in default.
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> The compounding fee as imposed is to be paid within 30 days from the date of order."

5. According to the petitioner, the said offence could not be compounded and the petitioner preferred an appeal under Section 10F of the Act (Company Appeal No. 84 of 2012) impugning the order dated 28.09.2012 passed by the CLB. This appeal was disposed of by this Court by a judgment dated 02.11.2012 whereby this Court affirmed the order passed by the CLB and, accordingly, dismissed the appeal with costs of ₹20,000/-.

6. The present petition was filed prior to the passing of the above order dated 28.09.2012.

7. It is apparent from the above that the breaches committed in the years 2008-09, 2009-10 and 2010-11 had been compounded. Since it is an admitted position that relevant permission was required from the Central Government for disbursing any remuneration, it is expected that DDCA shall take the requisite permissions and ensure that it does not fall foul of the statutory requirements. Needless to mention that if DDCA violates any of

the statutory provisions, the same would inevitably be visited with consequences as provided in law.

8. The petitioner's apprehension that the statutory provisions would be continued to be violated is not persuasive since this Court has already appointed an independent administrator, *inter alia*, to ensure that the affairs of the respondent are conducted in a proper manner.

9. In view of the above, this Court is not inclined to interfere in the present petition. The same is, accordingly, disposed of.

VIBHU BAKHRU, J

AUGUST 01, 2017
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