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

\+ **W.P.(C) 11225/2016**

M/S MONISH UPPAL & ASSOCIATES ..... Petitioner

Through Mr Sudhir Nandrajog, Senior Advocate with Mr Bhagwant Singh, Mr Mansimran Singh, Ms Vishakha Ahuja, Advocates.

versus

REGIONAL DIRECTOR, NORTH REGION & ORS ..... Respondents

Through Mrs Bharati Raju, CGSC for Respondent No. 1/UOI.
Mr Amit Singh, Advocate for Respondent No.1.
Mr A.S.Chandiok, Senior Advocate with Mr V.S. Dubey, Mr Dipender Chauhan, Ms ramya Kutty, Advocate for Respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **26.10.2017**

VIBHU BAKHRU, J

CM 43928/2016

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

W.P.(C) 11225/2016 & CM 4874/2017 (delay)

3. The petitioner – a Chartered Accountant by profession – has filed the present petition, *inter alia*, impugning an order dated 19.10.2016 passed by

the Regional Director, Northern Region, Ministry of Corporate Affairs (hereafter 'the RD'), whereby he has allowed the respondent no.2's application and recalled the order dated 04.02.2016 and further decided to proceed with respondent no.2 company's application for permission to remove the petitioner as a statutory auditor.

4. Mr Nandrajog, learned Senior Counsel appearing for the petitioner has contended that the order passed on 04.02.2016 was a consent order and therefore, could not have been recalled by the RD.

5. The contentions advanced on behalf of the petitioner are not persuasive. Respondent no.2 had filed an application seeking permission from the RD (as he is the delegate of the Central Government) for removal of the petitioner as a statutory auditor. This application was made in terms of Section 140(1) of the Companies Act, 2013. Section 140(1) of the Companies Act, 2013 is set out below:

> "The auditor appointed under section 139 may be removed from his office before the expiry of his term only by a special resolution of the company, after obtaining the previous approval of the Central Government in that behalf in the prescribed manner:
>
> Provided that before taking any action under this sub-section, the auditor concerned shall be given a reasonable opportunity of being heard."

6. In view of the above, RD's jurisdiction was limited to accepting the said application and granting permission to remove the petitioner or rejecting such permission. Notwithstanding the limited scope of the matter before the RD, he was persuaded to pass an order on 04.02.2016, *inter alia*, directing as under:

"I. The Respondent will commence the audit w.e.f. 15/02/2016 at 11:00 A.M. onwards at the Registered Office of the Applicant;
II. The Applicant will provide all necessary assistance to the Respondent;
III. The Respondent will ensure that Audit work will not be held up due to lack of any information or absence of any records. The Respondent is at liberty to make observations in this regard in his Audit Report;
IV. The draft Audit Report so prepared will be addressed to the Board of Directors with a copy to this Forum on or before 15/03/2016;
V. The Applicant will ensure that all necessary infrastructural facility should be provided to the Respondent as directed;
VI. The Applicant and Respondent will ensure that as mutually agreed for the commencement of Audit and submission of draft Audit Report, it is executed that both parties will provide all necessary information and cooperation so that health of the Company and the dignity of the profession will not be affected.

The matter will be heard of 16/03/2016 at 3:30 P.M. onwards."

7. It is relevant to notice that the said order did not dispose of the application filed before the RD (a delegate of central Government) but was passed as an interim measure to put a quietus to the disputes between the parties. The said order did not serve its intended purpose and the parties have continued with their disputes. It is the petitioner's case that he attempted to comply with the order and approached respondent no.2 along with his audit team for conduct of audit. This is disputed by respondent no.2. It is in this context that respondent no.2 filed an application for recall of the

directions issued by the RD on 04.02.2016. By the impugned order, the RD has decided to proceed with respondent no.2's application for permission to remove the petitioner as an auditor of the company; which in any case he was required to do.

8. The Court finds no infirmity with the impugned order. As stated above, the jurisdiction of the Central Government (RD as its delegate) is limited to considering the application for permission to remove an auditor prior to expiry of his term.

9. It is noticed that a considerable time has already elapsed and hence, it is directed that the RD shall consider respondent no.2's application in accordance with law and pass a final order within a period of four weeks from today.

10. The plain reading of the petition also indicates that the petitioner seeks to challenge the maintainability of the application filed by respondent no.2 before the RD on the ground of limitation. It is the petitioner's case that the said application was not filed within the time as specified in Rule 7 of the Companies (Audit & Auditors) Rules, 2014, which is set out below:

> "7. Removal of the auditor before expiry of his term.-
> (1) The application to the Central Government for removal of auditor shall be made in Form ADT-2 and shall be accompanied with fees as provided for this purpose under the Companies (Registration Offices and Fees) Rules, 2014.
> (2) The application shall be made to the Central Government within thirty days of the resolution passed by the Board.
> (3) The company shall hold the general meeting within sixty days of receipt of approval of the Central Government for passing the special resolution."

11. It is the petitioner's case that the extraordinary General Body meeting

was called on 01.10.2015 and the General Body meeting was held on 26.10.2015, wherein a special resolution was passed to remove the petitioner as the auditor. However, the application in Form ADT-2 was made on 14.11.2015. This Court is of the view that the aforesaid controversy need not delay the matter and thus, it is directed that it would be open for the respondent no.2 company to file a fresh application notwithstanding the application filed earlier which is pending for consideration. The respondent no.2 may thereafter hold a General Body meeting for removal of petitioner, if the permission to do so is granted by the Central Government (the RD).

12. The petition and the pending application are disposed of with the aforesaid directions/observations.

13. Order *dasti*.

VIBHU BAKHRU, J

OCTOBER 26, 2017/pkv