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

Judgment pronounced on: 18 April, 2018

+ W.P.(C) 3811/2018

ARUN KUMAR SARAF AND ORS.

..... Petitioners

Through Mr. Anish Dayal, Ms. Rupam
Sharma and Mr. Arjit Pratap
Singh, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through Mr. Vinod Diwakar, CGSC for
R-1 & 2

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. Issue notice. Mr. Diwakar accepts notice on behalf of official respondents.
2. Learned counsel for the respondents says that he does not wish to file a counter affidavit in the matter and that he will argue the matter based on the record presently available with the Court.
3. Briefly, the averments made by the petitioners are as follows:
 - 3.1 The respondent no.3 is a joint venture company which has been incorporated by a set of persons originating from India and Russia (hereafter referred as Indian and Russian partners respectively).

3.2 The respondent no.3 company, as per the record, presently, placed before the Court appears to have been incorporated on 27.3.2008.

3.3 Evidently, disputes erupted between the Indian and the Russian partners, in and about April and June, 2009.

3.4 Consequent thereto, litigation got triggered before various foras, which includes a title suit no.4197/2009, instituted before a Civil Court in Kolkata and before an arbitral tribunal, which was constituted pursuant to the order of the Supreme Court dated 18.2.2011.

3.5 There is also, I am told, litigation pending in the High Court of Calcutta. These proceedings are numbered as AP no. 497/2011. I am further informed that proceedings are also pending before the High Court of Orissa. These proceedings are numbered as COA no. 02/2016. These proceedings I am told arise out of the Company Law Board (Kolkata Bench, as constituted at the relevant time) proceedings registered as CP 183/2014.

4. The net effect of the disputes obtaining between the Indian and the Russian partners was that the financial statements and statutory returns pertaining to respondent no.3 company could not be filed. Given the fact that, the Articles of Association of respondent no.3 company require the participation of Russian partners, no board of directors meeting, I am told, has been held since 2009.

4.1. In support of this submission, the petitioners seek to place reliance on Articles 104 and 113 of the Articles of Association. For the sake of convenience, the said articles are extracted hereafter:

“104. The Board of Directors of the Company shall be elected by the General meeting of shareholders for three years and shall consist of 7 (seven) members in accordance with the procedure stipulated by these Articles of Association and the laws of the Republic of India. The Board of Directors shall be composed of four (4) nominees of the Russian party and three (3) nominees of the Indian party. Every Party shall be entitled to recall its representative in the Board of Directors suggesting a new nominee within the period not less than 30 calendar days from the date of recall, with it being further approved by the General meeting of shareholders. The First Directors of the Company shall be the persons whose names are mentioned in the form 32 filed at the time incorporation.

113. The meeting of the Board of Directors shall be deemed to be qualified if not less than five (5) members of the Board of Directors among which not less than three (3) members of the Board of Directors representing the Russian party are present at the meeting. In case there is no quorum at the meeting of the Board of Directors of the Company such meeting shall be adjourned, with the members of the Board of Directors being notified of the new date and place of holding the meeting.”

(emphasis is mine)

5. It appears that on account of a logjam in the management of respondent no. 3 company, as indicated above, the requisite financial statements and statutory returns could not be filed; resultantly, the official respondents struck off the name of respondent no.3 company from the register of companies. Consequently, as alluded to above, the petitioners' names were put in the list of disqualified directors.

5.1 The petitioners being aggrieved have approached this Court by way of the instant petition.

6. I am informed that petitioners are directors on the Boards of several other companies apart from the Board of respondent no.3 company.

7. Mr. Diwakar, who appears for the official respondents says that since this is a case pertaining to internecine management dispute, the matter can be remanded to the ROC for necessary deliberation and decision.

8. I tend to agree with the submission made in this regard by the counsel for the official respondents.

9. Accordingly, the writ petition is disposed of with the following directions:

(i) The petitioners will appear before the ROC, on 27.4.2018, at 3.00 p.m.

(ii) The ROC will, thereafter, pass a speaking order; a copy of which will be furnished to the counsel for the petitioners. In case the petitioners are aggrieved by the ROC's order they will have liberty to assail the same in the manner known to law.

(iii) Pending the decision by the ROC, the operation of the impugned list of disqualified directors shall remain stayed insofar as the petitioners are concerned.

(iv) To facilitate the aforesaid exercise, the petitioner's DIN and DSC will be activated by the ROC.

(iv) Since, the aforementioned interim directions are passed to facilitate the disposition of the case by the ROC, and to enable petitioners to function in the interregnum, the ROC, will have the authority to vary or even withdraw the facility accorded to the petitioners if the circumstances necessitate such a move.

10. *Dasti.*

RAJIV SHAKDHER, J

APRIL 18, 2018

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