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

% Date of Decision: 07.08.2019

+ CO.A(SB) 33/2014

ASHOK MANUFACTURING PVT LTD. ANR..... Appellant

Through Mr.(name not given), Adv.

versus

ATUL NATH & ORS

..... Respondent

Through Mr.Saurabh Kalia, Ms.Parika Thakral
and Mr.Harshit Aggarwal, Advs. for respondent-1

Mr.Samar bansal, Mr.Manan Sisodia and
Mr.Sachin Mishra, Advs. for R-5

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. This appeal is filed by the appellant under Section 10F of the Companies Act, 1956 seeking to impugn the order dated 9.5.2014 passed in Company Petition No. 119 (ND) of 2012. The company petition had been filed by the respondent under section 397/398/402 and 403 of The Companies Act, 1956 for alleged acts of oppression and mismanagement on the part of the respondents/appellant.

2. In the meantime, the intervener/applicant filed the present application CA 256/2014 seeking a direction to direct the respondent company to disburse the outstanding salary of the intervener for the month of November 2013 and to not withhold the salary in future.

3. By the impugned order dated 9.5.2014 the Company Law Board concluded that the applicant Shri Vikas Jain is a regular employee of the respondent company and has been rendering services over the years and is

entitled to get his salaries. A direction was passed to the respondent company to release salary of the applicant for the month of November 2013 to April 2014 and not to withhold the salary of the employee without leave of this Bench.

4. I may only note that this is a dispute between the family members of late Shri Ashok Nath.

5. I have heard learned counsel for the appellant. She has only submitted that the issue regarding the salary of the applicant i.e. respondent No.5 was not a dispute that would have gone into by the CLB.

6. On 28.2.2013 the CLB passed the following directions:-

“Having gone through the Company Application, Reply, Rejoinder and Arguments (Oral and Written), it is apprehended that there have been some problems in the Respondent Company in regard to the payment of salaries for the month of November and December, 2012. Further, the issue of shareholding of the Petitioner below 10% has also been raised though the Petitioners’ have claimed their shareholding as 27%. Secondly, the matter relating to appointment of Internal Auditor has also been indicated. Not only this, Petitioners as well as Respondents alleged against each other of their interference in the functioning of the company. Besides, the employees are also being made scape goat in the ongoing inter se disputes between the parties leading to the disturbance in the normal working of the company. At this stage, I am not inclined to look into the merits of the Company Petition No.119(ND)12. However, while deciding the present Company application, it is essential to facilitate the smooth functioning and working of the company as it was continuing prior to the filing of the Petition. Therefore, in the interest of the company, I hereby direct that :-

(a) There shall be no change in the day-to-day working

and management of both the Divisions without the leave of this Bench.

(b) No employee of the Respondent Company should be suspended or terminated without the satisfaction of this Bench that such action is in the larger interest of the company;

(c) Employees dealing with excise related issues prior to filing the Petition, to continue with this assignment to ensure proper compliance of excise laws.”

7. Now by the impugned order the CLB concludes that Mr. Vikas Jain the applicant has been working with the company since 1989 and is presently discharging his duties as a Manager Sales. It is also noted that the dispute between the petitioner group and the respondent group is pending for adjudication. It also noted that on 28.2.2013 certain directions were passed in the interest of the management of the respondent company. It was in those circumstances that directions were passed to the respondent company to release the salary of the applicant.

8. The powers of the Tribunal while dealing with an application under section 397 and 398 of the Companies Act, 1956 are given in section 402. Same reads as follows:-

“402. Powers of Tribunal on application under section 397 or 398. Without prejudice to the generality of the powers of the Tribunal under section 397 or 398, any order under either section may provide for-

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely:-

(i) the managing director,

(ii) any other director,

(iii) the manager, Upon such terms and conditions as may, in the opinion of the Tribunal be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(g) any other matter for which in the opinion of the Tribunal, it is just and equitable that provision should be made.”

9. Interim direction can be given by the Tribunal under section 403 of the Companies Act which reads as follows:-

“403. Interim order by Tribunal pending the making by it of a final order under section 397 or 398, as the case may be, Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company' s affairs, upon such terms and conditions as appear to it to be just and equitable.”

10. The ambit of the powers of the CLB to grant interim relief under

Section 403 of the Act was spelt out by a Coordinate Bench of this court in ***Sanjay Gambhir & Ors. vs. D.D. Industries Ltd. & Ors., 2013 (199) DLT 144*** where the Court held as follows:-

“26. As far as the power of the CLB to grant interim relief under Section 403 is concerned, it is power incidental to the power to order substantial reliefs as set out in Section 402. The width of the power is indicated by the words “any interim order which it thinks fit” and “such terms and conditions as appear to it to be just and equitable.” The power is not limited by other provisions of the statute. Section 402 in fact begins with the words “Without prejudice to the generality of the powers of the Tribunal...”. There is nothing to indicate that while exercising the powers under Sections 402 or 403 of the Act the CLB has to necessarily account for the mandatory requirements of other provisions like Sections 169 or 186 of the Act. The language in fact appears to indicate to the contrary. It permits the CLB to pass orders as long as it is in the interests of the proper conduct of the affairs of the company and it is “just and equitable” to pass such order. Whether in fact the order is justified will of course depend on the facts of each case.”

11. Hence, the CLB is free to pass orders as long as they are in the interest of proper conduct of the affairs of the Company. I may also note that earlier also the CLB had passed the order dated 28.02.2013 by which it had made certain directions regarding the employees of the company including that the employees shall not be suspended or terminated. It is manifest from the said order that the employees would have also to be paid their salaries. The said order was not challenged in any proceedings and to that extent has attained finality. The present impugned order has been passed only in furtherance to the said directions given on 28.02.2013.

12. It is clear that the impugned order has been passed in appropriate exercise of the powers under Section 403 of the Companies Act. Passing

directions regarding the employees of the Company is an interim arrangement regarding management of the affairs of the Company. There are no questions or issues raised in this appeal which would warrant exercise of powers of this court under Section 10 F of the Companies Act 1956.

13. Appeal is accordingly dismissed.

JAYANT NATH, J

AUGUST 07, 2019

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