$~1

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

\+ **CO.APP. 20/2018**

MAHESH CHANDRA SHARMA ..... Appellant

Through: Mr.Rajnish Kumar, Advocate.

versus

TYCOON SEEDS PVT. LTD. & OTHER ..... Respondents

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **04.02.2019**

<u>CM APPLs.41587/2018 (Delay) & 41588/2018 (Delay)</u>

1. For the reasons stated in the applications, the delay in filing and re-filing the appeal is condoned. The applications are allowed.

<u>CO.APP. 20/2018</u>

2. This appeal is directed against an order dated 8th May 2018 of the learned Company Judge dismissing an appeal filed by the present Appellant under Section 10-F of the Companies Act, 1956 against an order dated 21st August 2014 passed by the Company Law Board (CLB).

3. As is seen from the impugned order, the case of the Appellant was that he is a shareholder and director of Respondent No.1 Company, which was engaged in the business activity of storing, packing and dispatching seeds.

Earlier the Appellant had filed a suit for a decree of permanent injunction to restrain the company and its directors from carrying on any business activity. A decree for rendition of accounts was also sought.

4. By an order dated 12th February 2013, the said suit was held to be not maintainable in terms of Order VII Rule 11 CPC. By the said order an option was given to the Appellant/Plaintiff to either amend the plaint, or withdraw the suit with liberty to take appropriate action, or press the suit as it was. By a subsequent order dated 17th April 2013, the Court confirmed that the suit was not maintainable and proceeded to dismiss it.

5. During the pendency of the said suit, the Appellant filed an application under Sections 397 and 398 of the Companies Act before the CLB for various reliefs. This application was dismissed by the CLB by order dated 21st August 2014. Apart from holding that the plea of the Appellant was barred by *res judicata*, since the civil suit filed by the Appellant had been dismissed, the CLB also noted that the company itself was defunct and had not been carrying on any business or been filing returns before the Registrar of Companies (RoC). Further there were no registered assets of the company. The CLB accordingly held that this was not a fit case to invoke the jurisdiction under Sections 397 and 398 of the Companies Act.

6. Aggrieved by the said order, the Appellant filed Company Appeal (SB) 67 of 2014 under Section 10-F of the Companies Act. In the impugned order while dismissing the appeal, the learned Single Judge concluded that no substantial question of law arose from the order of CLB which warranted

interference. Further, it was not for the Court to go into a disputed question of fact.

7. Having heard learned counsel for the Appellant, and having examined the papers, this Court is not persuaded that the learned Single Judge has committed any error legally or factually in declining to interfere with the order of the CLB. Indeed, it does not appear that any substantial question of law arose for determination of the order of the CLB which was under appeal before the learned Single Judge. This appeal is accordingly dismissed.

S. MURALIDHAR, J.

SANJEEV NARULA, J.

FEBRUARY 04, 2019

tr