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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 9049 of 2021

Dr. Jayanta Kumar & Ors.

Vs.

The Union of India & Ors.

Mr. Swatarup Banerjee,
Mr. Nirmalya Dasgupta,
Mr. Jitendra Patnaik

...for the petitioners

The grievance of the petitioners is limited. Since none appears for the respondents despite service, keeping on record the affidavit of service filed in court today, the matter is taken up for hearing in the absence of the respondents.

Learned counsel appearing for the petitioners points out that initially a proceeding was initiated before the Company Law Board under the Companies Act, 1956 wherein it was directed that the respondent no.1/company therein shall appoint such number of the petitioners therein as directors of the Company as are just 'one number' less than the number of Directors representing the respondents' group having 51% shareholding.

Since the present petitioners were aggrieved with the same, an appeal was preferred before the concerned Bench of this Court taking up such matters, giving rise to A.P.O. 190 of 2016 (A.C.O. 74 of 2016). A coordinate Bench, vide judgment and order dated September 14, 2016, was pleased to allow the said appeal, thereby setting aside the Board resolution dated May 31, 2013 and consequent allotment of shares in favour of the respondent nos. 3 and 4. The judgment of the Company Law Board dated May 09, 2016 was also set aside accordingly.

Subsequently, when the petitioners approached the Registrar of Companies (R.O.C.) in terms of and on the strength of the order of the appellate court by way of an application making prayers that both the Form No. 32s be set aside as stated in para A(a) therein, filed by Mr. Shankar Sharma, to set aside the Form No. 2 as stated in para A(b) filed for allotment of 5776 equity shares of the Company, and to take any other steps as may be necessary in the premise of the order of the appellate court dated September 14, 2016, the R.O.C., instead of complying with such request, gave a peculiar reply to the effect that the said office was not made a

party before the court and that the parties of the petition were to take necessary action in order to comply with the court order dated September 14, 2016, since the court order was binding upon both parties in the petition.

The apparent tenor of the order of the R.O.C., as communicated to the petitioners on December 22, 2016, was that, since the R.O.C. was not a party to the proceedings before the appellate court or before the Company Law Board, the R.O.C. was not bound by the said orders.

However, such proposition is not tenable in the eye of law since the R.O.C., even if not “bound” as a party, is bound to comply with the directives passed therein on the parties, in pursuance of the observations made by the appellate court.

The order of the appellate court, as passed on September 14, 2016, apart from being binding on the parties thereto, are also to be given effect to by the R.O.C. As such, refusal of the R.O.C. dated December 22, 2016 cannot be sustained in law.

Accordingly, W.P.A. No. 9049 of 2021 is allowed, thereby setting aside the communication of the R.O.C. dated December 22, 2016 (Annexure P-7 at page 209 of the writ petition) and directing the

R.O.C. to grant permissions sought by the petitioners in their application, which is appearing at page 208 of the present writ petition, subject to compliance of all legal formalities and in accordance with law, in terms of the Judgment and Order dated September 14, 2016 passed by the appellate court in A.P.O. 190 of 2016 (A.C.O. 74 of 2016).

The parties, as well as the R.O.C., shall comply with this order on basis of a server copy of this order, coupled with a communication of the learned advocate for the petitioners, without insisting upon prior production of a certified copy thereof.

The entire exercise shall be completed by the R.O.C. as expeditiously as possible, positively within one month from the date of communication of this order to the R.O.C.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)