

S.R.JOSHI

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 5003 OF 2022

Rajiv Sharma

... Petitioner

Versus

**SMITA
RAJNIKANT
JOSHI**

1. Registrar of Companies, Mumbai
5th Floor, 100, Plot No-1450,
Shahadra Delhi, India-110093.

2. Regional Director, Ministry of Corporate
Affairs (Western Region)
5th Floor, 100, Everest Building, Netaji
Subhash Road, Marine Drive, Mumbai
Maharashtra 400002.

3. Ministry of Corporate Affairs, through Secretary
A Wing, Shastri Bhawan, Rajendra Prasad Road,
New Delhi – 110001.

4. Local Search Solutions Private Limited
Plot No.55, Ground Floor, CBD Belapur Mumbai,
Maharashtra-400614.

5. Natailla Chernova, Director
Flotskaya Street, Building 76, Flat 76,
125413, Moscow, Russia.

... Respondents

Mr. Ashok Singh, for the Petitioner.

Mrs. Shehnaz V. Bharucha and Mr. Mohamedali Chunawala, for
Respondent Nos. 1 to 3.

**CORAM: G. S. KULKARNI &
FIRDOSH P. POONIWALLA, JJ.**
DATED: 9 FEBRUARY, 2024

ORAL JUDGMENT :- (Per G. S. KULKARNI, J.)

RULE, made returnable forthwith. Respondents waive service. By
consent of the parties, heard finally.

Digitally signed by
SMITA RAJNIKANT
JOSHI
Date: 2024.02.26
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2 This Petition under Article 226 of the Constitution of India, is filed by the Petitioner, praying for a relief against Respondent No.1 – Registrar of Companies, Mumbai, for a direction to remove the name of the Petitioner as a Director of Respondent No.4-company – *“Local Search Solution Pvt. Ltd., Mumbai”*.

3 There are two substantive prayers made in the Petition, being prayer clauses (a) & (b) which read thus:-

“(a):- this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or direction directing the Respondent No.1 to remove the name of Petitioner as a Director of Respondent No.4 with effect from 01.09.2021 i.e. the date of resignation;

(b) this Hon’ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or direction directing the Respondent No.1 to initiate appropriate action/steps against Respondent No.4 for default in complying with the provisions of the Companies Act, 2013 regarding resignation of the Director.”

4 The case of the Petitioner is that on 14 August 2020 the Petitioner had given consent for appointment as a Director of respondent No.4 as also respondent No.5 who is a foreign director gave her consent for appointment as a Director on 19 August 2020.

5 The Petitioner contends that the business of the Company never commenced. It is contended that such consent was given during Covid-19 pandemic. In these circumstances, Petitioner tendered his resignation on 24 August, 2021 which was to take effect from 1 September, 2021. In the resignation letter addressed to the Board of Directors of Respondent No.4, the Petitioner categorically stated that the resignation letter may be acknowledged and necessary forms be arranged to be submitted with the office of Registrar of Companies, Mumbai. The Petitioner has contended that on receipt of such resignation letter, the Board of Directors passed a resolution by way of

circulation dated 1 September 2021, thereby accepting the resignation of the Petitioner. Resolution to that effect reads thus : -

"4. To take note of Resignation letter tendered by Mr. Rajiv Sharma to the Board of Directors of the Company with effect from 1st September, 2021:

RESOLVED THAT pursuant to the provisions of Section 168 of the Companies Act, 2013 read with Companies (Appointment and Qualification of Directors) Rules, 2014, the resignation tendered by Mr. Rajiv Sharma from the office of Directors of the Company with effect from 1st September, 2021 be and is hereby noted."

"RESOLVED FURTHER THAT intimation of Form DIR-12 signed by one of the Directors be filed with Registrar of Companies, Mumbai."

"RESOLVED FURTHER THAT Mrs. Vidya Pawar, Mr. N D Satish, Mr. Ashwin Dhawle or Ms. Della Santhosh T the Company Secretaries in Practice, be and are hereby authorised to certify the necessary e-form as may be required to be filed by the Company with the Registrar of Companies, Mumbai."

By Order of the Board

***For LOCAL SEARCH SOLUTIONS PRIVATE LIMITED
LOCAL SEARCH SOLUTIONS PRIVATE LIMITED"***

6 The Petitioner has annexed documents to show that the business of the Company could never commence. As nothing was heard from the Company in regard to the steps being taken to complete the formalities of resignation of the Petitioner as a director, the petitioner addressed a letter to the Registrar of Companies, *inter alia*, informing that on 24 August 2021, the petitioner had tendered his resignation from the Directorship of Company, which was to take effect from 1 September 2021, and the same being approved by the Board of Directors in a meeting held on 1 September 2021. Petitioner also stated that he was unable to file e-Form DIR-11 as the Company had not filed e-form INC 20A in regard to commencement of its business. The petitioner, therefore, requested that his name be removed from the Directorship of Respondent No.4-Company with immediate effect as the

Petitioner had already tendered resignation on 24 August 2021 and no action was initiated to that effect by the Company.

7 On 12 July 2022, the petitioner through his advocate addressed a letter to the Registrar of Companies requesting that the Respondent No.4/company's portal be updated in pursuance of the resignation of the petitioner, as all details in regard to the resignation of the petitioner were furnished to the Registrar of Companies, as also copy of the said letter was forwarded to respondent No.5. In such letter, it was specifically stated that despite following up continuously with the company and / or the person authorised in regard to the updation and to adhere to the requirements of law, no steps were taken in that regard, and to the distress of the petitioner, his name continued to be reflected as director, in the register of ROC. It was also recorded that the petitioner was continuously following up for necessary compliance but no steps were taken.

8 In pursuance of such letter addressed on behalf of the petitioner, the Registrar of Companies issued a notice dated 15 July 2022 to respondent No.4/Company *inter alia* calling for the comments and clarifications on the complaint as made by the petitioner. However, the said letter of the Registrar of Companies was returned undelivered. It is on such backdrop, the petitioner is before the Court praying for the reliefs as noted hereinabove.

9 On behalf of respondent Nos. 1, 2 and 3, reply affidavit of Mr. N. Cholarajan, Deputy Registrar of Companies, Ministry of Corporate Affairs, Government of India, Mumbai is filed. On a perusal of the reply affidavit, it is seen that the case of the petitioner for the reliefs as prayed in the Petition is being opposed primarily on the ground that the company had not fulfilled some of the compliances required to be made under the provisions of Companies Act, 2013, more particularly under Sections 10A, 12, 92, 137 &

96 thereof. It is averred that the Directors are in default as per Section 166(3) of the Companies Act. The affidavit referring to such provisions contends that the claim of the petitioner for deletion of his name as director of the said company in the official records of Respondent No.4, could not to be accepted, for want of such compliances by the company. It is also stated that both the directors of the company, namely, the petitioner as also respondent No.5, were in default for having not complied with the provisions of Rule 12A of the Companies (Appointment and Qualification of Director) Rules, 2014, by not submitting form DIR-3 within the prescribed time period and hence, the DIN of Respondent No.5 (the foreign director) was also deactivated. The relevant contents of the affidavit reads thus:

"6. With reference to Paras C, D, E, of the grounds provided by the petitioner, the contention of the Petitioner is not valid as the Company has not filed Form INC - 20 as per the provisions of Section 10A, of the Companies Act, 2013 and as a result form DIR 11 and Form DIR 12 cannot be filed. Hence the Petitioner cannot claim relief on the basis that his resignation was not communicated to the Respondent through Form DIR 11 and DIR 12 due to failure on the Petitioners part to file the necessary forms relating to the commencement of business.

That, it is also most respectfully submitted that Ms. Natalia Chernova, the Director apart from the Petitioner of the Company, has not complied with Rule 12A of the Companies (Appointment and Qualifications of Director) Rules, 2014 and has not submitted Form DIR 3 within the prescribed time period and hence her DIN has been deactivated. The contravened Rule 12A of the Companies (Appointment and Qualification of Directors) Rules 2014, is read as under-

"Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th April of immediate next financial year."

That, it is most respectfully submitted that, since both the Directors of the captioned Company are in continuing default, which indicates that the Directors are willful defaulters, the Company is not able to file DIR 11 and DIR 12. It is the responsibility of the Directors of the Company to file all the necessary forms as per the provisions of the Act, and since both the Directors have defaulted in filing the commencement of business, the Company and its Directors are not capable of filing any other forms.

That, it is most respectfully submitted that, since both the Directors are in default, the Respondent can initiate strike off proceedings against the Company as per Section 10A of the Companies Act, 2013."

10 On the above backdrop, we have heard learned counsel for the parties, we have also perused the records.

11 At the outset, we need to observe that the present case is quite peculiar, inasmuch as, the company was sought to be formed during the period when the country was impacted by the Covid-19 pandemic. This is clear from the dates as noted by us above. The petitioner as also respondent No.5 had resumed their position in the company as directors on 19 August 2020. It appears to be not in dispute that the company never commenced its business, there were hence defaults in undertaking various compliances. It is in these circumstances, the petitioner tendered his resignation by his letter dated 24 August 2021, which was during the pandemic period, which was duly noted by the Board of Directors and a resolution to that effect was also passed which we have extracted hereinabove. It appears that, however, what had remained on the part of the company, was to make necessary compliances with the Registrar of Companies, so that the records of the Registrar of Companies qua the company stand updated *inter alia* also in regard to the resignation of the petitioner. As the business of the company itself did not commence such compliances had remained to be undertaken. The petitioner being an Indian director, however, was certainly more concerned that his name ought not to continue as the director of the said company as the other director was a Russian National (Respondent No.5).

12 In the context of the issue in hand, we need to note the relevant provisions of the Companies Act, 2013 in relation to resignation of the Director being Section 168 of the Companies Act which reads thus:-

“168. Resignation of Director.— (1) A Director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be

prescribed and shall also place the fact of such resignation in the report of Directors laid in the immediately following general meeting by the company:

Provided that a Director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a Director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the Director in the notice, whichever is later:

Provided that the Director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the Directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of Directors who shall hold office till the Directors are appointed by the company in general meeting.”

13 On a plain reading of the aforesaid provision, it is clear that subsection (1) provides for the procedure which would be required to be adopted, when the director of the company resigns. What is significant is that subsection (2) thereof provides that the resignation of a director shall take effect from the date on which the resignation notice is issued by the company or “*the date, if any*”, specified by the director, in the notice whichever is later, however, with a proviso that the director who has resigned shall be liable even after his resignation for the offences which may have occurred during his tenure, which is not attracted in the present case.

14 Thus, insofar as the legal position is concerned, by virtue of subsection (2) of Section 168, the resignation of a director shall take effect from the date on which the notice is received by the company, which in the present case was on 24 August 2021 and which stood confirmed by the resolution of the board of directors of the company that from 1 September 2021, in terms of the petitioner’s resignation letter, and as clearly noted in the said resolution.

Hence, by operation of law, the petitioner ceased to be a director of Respondent No.4 with effect from 1 September 2021. If this be the position the law would bring about, then certainly it would be an obligation on the Registrar of Companies to give effect to such legal position in its records, and more particularly when an intimation to that effect was received from the petitioner.

15 In our opinion, although certain compliances on the part of the company, as noted by us hereinabove were necessary, however, in the peculiar facts of the present case, it is clear that the company itself did not commence its business, as also the other director being a foreign director did not take any steps in that regard. Added to this was the Covid-19 pandemic period during which such compliances could not be made. All these circumstances ought not to weigh against the petitioner, for deletion of his name as a director from the record of the Registrar of Companies. This also for the reason that severance of the petitioner's relationship as a director of the company took effect from 1 September 2021 as per the petitioner's letter dated 24 August 2021 received by the company. This is the legal consequence as brought about by Section 168(2) of the Companies Act, 2013. Further, except for certain forms not being filled by the company within the prescribed time, there does not appear to be any other gross default or illegality or any other justifiable reason for the Registrar of the Companies to give effect to the resignation of the petitioner, in the official records, as maintained by him. This is fortified from the contents of the reply affidavit of the official respondents which categorically state that even the explanations / comments and / or compliances as demanded by the Registrar of Companies from respondent No.4/company were reported to be not answered by the company. This was a default on the part of a non-functional company. Thus, this is clearly a case where the company itself was stillborn.

16 In the light of the above discussion, the petition needs to succeed,
it is accordingly allowed in terms of prayer clause (a).

17 It is clarified that, however, in regard to any other compliances and
/ or defaults of respondent No.4-company, it is open to the Registrar of
Companies to take appropriate actions as the law may mandate.

18 Rule is made absolute in the above terms.

19 Disposed of. No costs.

(FIRDOSH P. POONIWALLA, J.)

(G. S. KULKARNI, J.)