IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

283

CWP-1001 of 2024 (O&M)
Date of Decision:28.02.2024

M/s Bata Steels Pvt. Ltd.

....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

****

Present: Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Saurabh Kapoor, Additional Advocate General, Punjab

Mr. Gurinderjit Singh, Advocate,
for respondents No.2 and 3.

****

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Petitioner is a company before us and prays for directing the respondent No.2-Assistant/Deputy Commissioner, Central GST Division, Range-II, Ludhiana (East) to cancel the registration obtained by respondent No.3-M/s Asian Packaging, Phase-7, B-58, Opp. Santosh Dharam Kanda, Focal Point, Ludhiana under the GST Act dated 22.10.2021 (Annexure P-14) on the basis that the said registration has been obtained by means of fraud, willful misrepresentation and suppression in terms of Section 29(2) of the Central GST Act, 2017 (for short "the Act of 2017).

2. Learned counsel for the petitioner submits that respondent No.4-

Bikramjit Singh Shad who was an authorized Director of the petitioner company M/s Bata Steels Pvt. Ltd. and without getting any resolution passed by the company, it proceeded to first form a partnership with his wife in the name of M/s Asian Packaging and leased out the property of the company to such respondent No.3-M/s Asian Packaging without authorization.

3. Learned counsel has invited attention to Section 188 of the Companies Act, 2013 (for short "the Act of 2013") to submit that such an action taken by respondent No.4 has to be termed as legal and therefore the rent deed as submitted by respondents No.3 and 4 before respondent No.2 for the purpose of registration of GST, could not have been noticed by respondent No.2 and such rent deed being unauthorised and illegal in terms of Section 188 of the Act of 2013 has to be treated as an act of fraud and willful misrepresentation and on the said basis alone, the registration needs to be cancelled in terms of Section 29(2) of the Act of 2017. He further submits that respondent No.4 Bikramjit Singh Shad, the petitioner and their mother Hardeep Kaur Shad who are the Managing Director of the petitioner company while respondent No.4 was an authorized Director, he did not take into confidence either the petitioner or the mother and no formal resolution was passed for leasing out the property of the company to the newly firm M/s Asian Packaging. Thus, it is a case of fraud with the company and on the said basis *mandamus* ought to be issued directing respondent No.2 to take appropriate action for cancellation of the registration. Further, it is also a case of willful mistake while obtaining registration and at the first blush this Court was of the view that there is a dispute *inter se* between the family members

and the same could be resolved. However, upon examining the case from the legal point of view, we find ourselves disabled to enter into a judicial review with regard to the dispute which the petitioner has raised before this Court. It would be apposite to quote Section 188 (1), 188 (3), 188 (4) and 188 (5) of the Act of 2013 is reproduced as under:-

> "**188. Related party transactions.**--(1) Except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to--
>
> (a) sale, purchase or supply of any goods or materials;
>
> (b) selling or otherwise disposing of, or buying, property of any kind;
>
> (c) leasing of property of any kind;
>
> (d) availing or rendering of any services;
>
> (e) appointment of any agent for purchase or sale of goods, materials, services or property;
>
> (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
>
> (g) underwriting the subscription of any securities or derivatives thereof, of the company:
>
> Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a 1[resolution]:
>
> Provided further that no member of the company shall vote on such [resolution], to approve any contract or arrangement which may be entered into by the company, if such member is a related party:

[Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:]

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arms length basis:

[Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.]

Explanation.-- In this sub-section,--

(a) the expression "office or place of profit" means any office or place--

(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm, private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;

(b) the expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.

(2) xxxxx xxxxx xxxxx

(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a1[resolution] in the general meeting under sub-section*(1)* and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement 4[shall be voidable at the option of the Board or, as the case may be, of the shareholders] and if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

(4) Without prejudice to anything contained in sub-section *(3)*, it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.

(5) Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall,--

(i) in case of listed company, be [liable to a penalty of twenty-five lakh rupees]; and

(ii) in case of any other company, be [liable to a penalty of five lakh rupees]."

4. It is apropose to state Section 241 of the Act of 2013 which reads as under:-

"241. **Application to Tribunal for relief in cases of oppression, etc.-** (1) Any member of a company who complains that-

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the companys shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

1[Provided that the applicants under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.]

2[(3) Where in the opinion of the Central Government there exist circumstances suggesting that--

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principle or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to default its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the officer of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be jointed as a respondent to the application.

(5) Every application under sub-section (3)--

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government.]”

5. The cancellation or suspension of a registration of a particular

firm already done in this case, a partnership firm i.e. respondent No.3 M/s Asian Packaging could have been done only as per Section 29 of the Act of 2017, which provides as under:-

> "**29. Cancellation [or suspension] of registration**.- (1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where,-
>
> (a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
>
> (b) there is any change in the constitution of the business; or
>
> [(c) the taxable person is no longer liable to be registered under section 22 or section 24or intends to opt out of the registration voluntarily made under sub-section (3) of section 25:]
>
> [Provided that during pendency of the proceedings relating to cancellation of registration filed by the registered person, the registration may be suspended for such period and in such manner as may be prescribed.]
>
> (2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-
>
> (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
>
> (b) a person paying tax under section 10 has not furnished 3[the return for a financial year beyond three months from the due date of furnishing the said return]; or
>
> (c) any registered person, other than a person specified in clause (b), has not furnished returns for a [such continuous

tax period as may be prescribed]; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

1[Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.]

(3) The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

> Provided that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.
>
> (6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed."

6. From the perusal of aforesaid provisions, it is thus apparent that if there is an *inter se* dispute between the Directors of a company, the appropriate proceedings under Section 188(3), 188(4) and 188(5) of the Act of 2013 could have been initiated by taking umbrage of Section 241 of the Act of 2013. However, in the present case no such action has been taken by the company. A presumption therefore cannot be drawn by this Court that there is a *prima facie* dispute between the Directors especially so when respondent No.4 is admittedly an authorized Director of the company. Secondly, this Court also finds itself unable to enter into the dispute raised herein with regard to direction to be given to the Registering Authority as the cancellation of registration as noticed above, can be only in two circumstances. Where the concerned Registering Authority *suo moto* on its own motion reaches to a conclusion that the registration has been obtained by means of fraud, willful misrepresentation or suppression of facts. Section 29 (2) of the Act of 2017 empowers the officer for the said purpose and for reaching to such conclusion, it has to be either on his own motion. Thus, Section 29(2)(e) of the Act of 2017 would come into picture where the

registration was obtained by means of fraud, willful misrepresentation or suppression of facts while willful mis-statement or suppression of facts is a bundle of facts which have to be proved, in separate proceedings this Court would not presume only on the statement made by the petitioner that such an action has actually been taken place as noticed above since the petitioner company has not taken any steps either before the concerned competent company Court nor it has taken any such resolution in the Board, nor it has initiated any criminal or civil proceedings, we cannot presume that such fraud or mis-statement of facts has been committed by respondent No.4.

7. In these circumstances, the prayer made for issuing *mandamus* to respondent No.2 fails and consequently, the present writ petition is dismissed.

8. Pending applications, if any, also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

February 28, 2024
dinesh Whether speaking : Yes/No
Whether reportable : Yes/No