



2024:DHC:6286



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

% **Date of order: 13th August, 2024**

+ **CO.A(SB) 4/2016**

SMT. KAVITA ARORAAppellant

Through: **Mr. Rohit Dutta, Mr. Shyam Kishor
and Mr. Maurya, Advocates.**

versus

LEPTONS DESIGNTEK PVT LTD. & ORS.Respondents

Through: **Mr. Anirudh K Mudgal and Mr.
Sanchit Saini, Advocates.**

+ **CO.A(SB) 5/2016**

SMT. KAVITA ARORAAppellant

Through: **Mr. Rohit Dutta, Mr. Shyam Kishor
and Mr. Maurya, Advocates.**

versus

LEPTONS EXIM PVT.LTD. & ORS.Respondents

Through: **Mr. Anirudh K Mudgal and Mr.
Sanchit Saini, Advocates.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. This common judgment/order shall decide the above-noted appeals filed by the appellant under Section 10 (f) of the Companies Act, 1956

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Signing Date: 21.08.2024
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CO.A(SB) 4/2016 & CO.A(SB) 5/2016

Page 1 of 10



2024:DHC:6286



against the common order dated 2nd December, 2015 passed by the Company Law Board, New Delhi, ('CLB' hereinafter) whereby the learned CLB has dismissed the said petitions filed by the appellant herein under Sections 397, 398, 402 & 403 of Companies Act, 1956

2. In 1996, the appellant herein started her proprietary business of dealing in consultancy services for export and import of goods under the name "Leptons". The respondent no.1 herein was incorporated on 23rd October, 2003 at the instance of respondent no. 2, wherein the appellant and respondent No. 2 are the only directors and shareholders. In the said company, the appellant held 1000 shares (10%), while respondent no. 2 held 9000 shares (90%). The appellant was also an authorised signatory for the Company's bank account, subsisting with HDFC Bank, Old Rajinder Nagar, New Delhi.

3. In 2007, marital issues between the appellant and respondent no. 2 began and led to appellant seeking a divorce and a verbal agreement was reached regarding the division of funds and properties and the same was confirmed *via* email on 5th November, 2009.

4. Thereafter, the appellant got apprised of the fact that she had been removed from the directorship based on a purported resignation letter dated 31st March, 2010, and the minutes of a board meeting noted the appointment of respondent no. 3 and 4 as directors due to which the respondent no. 2 managed to increase his shares in the Company to 95% in February 2008, thereby reducing the appellant's shares to 5%.



5. Additionally, in the second appeal, the appellant has stated that she was running a proprietary business at the behest of respondent no. 2 and that an immovable property bearing no. A-18, Sector 57, Noida, was purchased in the name of the respondent no. 1 using the company funds.

6. Pursuant to appraisal of the said appointment, it is stated that the appellant found that the respondent No. 2 planned to sell the properties acquired by the company without seeking her consent, leading to filing of a complaint with the Economic Offences Wing, resulting in registering an FIR dated 10th December, 2013.

7. Thereafter, the Economic Offences Wing seized the alleged forged documents having signatures of the appellant and the appellant filed Company Petition bearing no. 58 (ND)/2010 and 59(ND)/2010 under Sections 397, 398, 402, and 403 of the Companies Act, 1956, before the learned CLB seeking the said relief.

8. Pursuant to the proceedings, the learned CLB dismissed the petition *vide* order dated 2nd December, 2015, directing the appellant to seek redressal before the Civil Court.

9. Aggrieved by the same, the appellant has filed the instant appeals.

10. The learned counsel appearing on behalf of the appellant submitted that the learned CLB erred in holding that it lacks jurisdiction to adjudicate the issue of forgery of documents.

11. It is submitted that the persons approaching the forum under Companies Act, 1956 are required to file a petition in the concerned civil Courts if their grievance is beyond the scope of the learned CLB, however,



2024:DHC:6286



in the instant case, the learned CLB is well within its jurisdiction to adjudicate the issue.

12. It is submitted that the dispute in the instant case is regarding the oppression on part of the management and therefore, the same lies well within the domain of the learned CLB.

13. It is submitted that the appellant is a victim of fraud on part of the respondents, ultimately causing her great financial loss due to the change in the shareholding of the company and therefore, the learned CLB ought to have adjudicated the issue.

14. It is submitted that the appointment of the respondents no. 3 and 4 as directors of the company is in direct contravention with the provisions of the erstwhile Companies Act, 1956.

15. It is submitted that the learned CLB erred in not appreciating its powers to summon the witnesses and their examination as the said powers are provided under Section 10E (4C) of the Act.

16. In view of the foregoing submissions, the learned counsel for the appellant submitted that the present appeals be allowed, and reliefs be granted as prayed.

17. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant appeals and submitted that the same are frivolous and filed with an ill intent.

18. It is submitted that the allegation regarding forging of the signatures is baseless as the appellant had signed a series of documents and therefore, the allegations of forging the signatures are baseless.



2024:DHC:6286



19. It is submitted that the said allegations are subject to scrutiny by the Court and since the learned CLB is not equipped to do so, it rightly dismissed the petition due to lack of jurisdiction.

20. It is submitted that the judicial dictum as laid down by the National Company Law Tribunal ('NCLT' hereinafter) as well as the other appellate authorities makes it clear that the CLB/NCLT cannot determine the issues raised by the appellant herein.

21. In view of the foregoing submissions, the learned counsel for the respondents submitted that the present appeals being devoid of any merit may be dismissed.

22. Heard the learned counsel for the parties and perused the records.

23. The instant appeals are admitted.

24. Since the instant appeals arise out of the erstwhile Companies Act, it is important to mention that with the establishment of the NCLT and National Company Law Appellate Tribunal ('NCLAT' hereinafter) effective from 1st June, 2016, matters pending before the Company Law Board or those that should be remanded back to the Company Law Board are transferred to the NCLT as per standard practice and rules.

25. Therefore, the limited question for adjudication before this Court is whether the NCLT has the authority to examine documents allegedly to be forged and fabricated, which purportedly led to the changes in directorship of the company and the transfer of shares to the respondents?

26. To address the aforementioned issue, it is pertinent to emphasise that Rule 43 of the NCLT Rules 2016 explicitly grants the authority to the CLB



2024:DHC:6286



to refer evidence and documents in cases involving allegations of forgery and fabrication for forensic examination. The said rule under NCLT Rules 2016 is reproduced below:-

“43. Power of the Bench to call for further information or evidence. - (1) The Bench may, before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary:- (a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or (b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

(2) Without prejudice to sub-rule (1), the Bench may, for the purpose of inquiry or investigation, as the case may be, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.

(3) Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.”

27. Upon perusal, it is clear that the learned Tribunal is empowered to examine the documents and direct forensic examination of the same,



therefore, the contention of the respondents regarding the same does not hold any merit.

28. Furthermore, in the case of ***Channel Foods Private Limited and Others. V. A.K. Nowshad 2022 SCC OnLine NCLAT 4443***, the appellate body, i.e. the NCLAT unequivocally held that the NCLT has very wide powers under the Companies Act and the NCLT Rules, 2016 to enquire into the allegation of oppression and mismanagement and sending disputed documents for forensic investigation is also part of this enquiry. The relevant paragraph of the abovementioned case is reproduced below:

“29 (I) (B) It is therefore clear from the reading of above provisions of law that the Tribunal exercising the statutory powers conferred on it under rule 43 of NCLT Rules 2016 and that of under Section 424 of Companies Act 2013 can ask the parties to produce documentary or other evidence as it may consider necessary to meet the ends of natural justice.

29 (I) (C) The Rule 43(1), (2) & (3) of NCLT Rules 2016 clearly states that for the purpose of satisfying itself as to the truth of the allegations made, for ascertaining any information which in the opinion of the Tribunal is necessary for the purpose of enabling it to pass orders and where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Tribunal hearing the matter can allow the petition if it think so.”

29. Therefore, the application of the above said principle to the cases involving forensic examination makes it clear that the learned Tribunal i.e. the NCLT is well within its power to examine the allegations of forgery.



2024:DHC:6286



30. The learned counsel for the respondents vehemently opposed the jurisdiction and authority of the CLB. However, with the introduction of the NCLT and its prescribed rules, which specifically allow for forensic examination of disputed documents, this Court is of the view that in the interest of justice, the matter at hand should be remanded to the NCLT. It is crucial to ensure that no party is deprived of their rights and to prevent any mismanagement or oppression within the companies.

31. In the instant case, the learned CLB dismissed the contention of the petitioner and held as under:

“it does not have the power to decide the issues of forgery and fabrication of documents raised by the Appellant against Respondent No.2 to 4 and the same could be decided by a Civil Court only by holding trial. The relevant portion of the impugned order is extracted as under:

35. Since the issues between the petitioner and the second respondent are complicated with grave allegation of forgery and fabrication against transfer of the petitioner's shareholding and the petitioner's resignation as director from both the companies, I fear, if any decision is taken on any of these issues without testifying to these allegations. there could be every chance of aberration of justice. Therefore, this Bench is of the opinion that these issues are amenable to be decided by a Civil Court and not by Company Law Board because Company Law Board primarily goes on deciding the issues between the parties on the affidavits filed by the parties. Even if any dispute is there in relation to the facts of the case, if this Bench is in a position to come to a conclusion or determination to say what would be the truth in the case, then only the Company Law Board would take a decision over facts. When the case is solely on forgery and fabrications, these issues are to be decided by a Trial Court by holding a trial over the facts in dispute.



2024:DHC:6286



36. Therefore, these two Company Petitions CP 58(ND)/ 2010 and CP 59(ND)/ 2010 are hereby dismissed, giving liberty to the petitioner to place her grievance before Civil Court on the same cause of action." 3. Being thus aggrieved by the impugned order dated 02-22-2015 in C.P. No. 59(ND)I 2010, the present appeal is filed on the following among other grounds. These grounds are taken in the alternative and without prejudice to one another"

32. Upon perusal of the above reproduced extracts, it is made out that the learned CLB had denied the adjudication of the dispute on the ground that the contention of the appellant regarding the alleged forgery was out of its jurisdiction.

33. As discussed in the foregoing paragraphs, the Rule 43 of the NCLT rules, 2016 as well as the judicial dicta provides for powers to the NLCT to adjudicate such claims and direct expert examination of the alleged forgery.

34. Therefore, this Court is of the view that the NCLT is well empowered to adjudicate the issues and give its findings on the basis of the contentions advanced by the respective counsel as well as the forensic report.

35. Based on the aforementioned case laws and relevant provisions of the law, the matter is remanded back to the NCLT, which has the requisite jurisdiction to adjudicate the allegations of forgery and fabrication as raised by the appellant.

36. Therefore, both appeals before this Court, bearing Nos. CA (SB) No. 4 of 2016 and CA (SB) No. 5 of 2016 are allowed and the cases are remanded back to the NCLT for adjudication.



2024:DHC:6286



37. Accordingly, the instant appeals stands disposed of along with pending applications, if any.

38. Order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 13, 2024
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Click here to check corrigendum, if any

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CO.A(SB) 4/2016 & CO.A(SB) 5/2016

Page 10 of 10