S/L 29
29.01.2026
Court. No. 25
sourav

WPA 23558 of 2019

M/s. Tushar Enterprise Pvt. Ltd. & Ors.
Vs.
Union of India & Ors.

Mr. Anujit Mookherjee
Mr. Debopam Roy
Mr. Sarangam Chakraborty

... for the petitioners.

Mr. Noni Gopal Chakraborty
Ms. Mounita Mondal

... for the Union of India.

1. The petitioners have filed the present writ application challenging the order passed by the Regional Director (AR), the respondent no. 2, Eastern Region, Ministry of Corporate Affairs, Kolkata by rejecting the request of the petitioners for removal of its statutory auditor filed by the company under Section 140 of the Companies Act on the ground that the application filed by the petitioners does not have any merit.

2. The respondent no. 2 has passed the following orders:-

*"**AND WHEREAS** from the contentions in the application and further submissions of the Applicant Company during the course of hearing and all other relevant facts as available on record, it is observed that:*

i) No documentary evidence regarding proof of submission of Board's approved Financial Statement for 2016-17 to Respondent Auditor has been furnished by the Applicant Company. Hence, it cannot be said that the respondent auditor was in a position to comment on Financial Statements for the year 2016-17. Further, the Respondent Auditor is ready to do Audit of Accounts of the applicant company.

ii) *It is seen that the last two years' Financial Statements i.e. 2015-16 and 2014-15 were signed timely by the Respondent Auditor on 26/08/2016 and 31/08/2015 respectively.*

iii) *In case of non-cooperation in any matter/facts/duty/work with the management, not being Audit assignment, the applicant company is free to appoint/engage a person of its choice for such matter, hence this ground is not tenable in such case.*

iv) *The Applicant Company had failed to produce evidence to substantiate their other allegations made against the Respondent Auditor for his removal, hence that grounds cannot be acceptable.*

v) *It is settled principle that for removal of Auditor, the applicant company must prove that it has lost its confidence from the Auditor due to some tenable reasons. Merely filing application in Form no. ADT-2 under Section 140 of the Companies Act, 2013 without corroborating documentary evidence in support of tenable ground(s) cannot be a valid ground for such application for removal of Auditor.*

In view of the above observations, the subject application for removal of its Statutory Auditor filed by the Applicant company u/s 140 of the Act does not merit to be allowed.

NOW THEREFORE, in exercise of the powers delegated on the undersigned under section 140 of the Companies Act, 2013 read with Notification No. S.O. 4090(E) dated 19th December, 2016 (published on 19th December, 2016) issued by the Ministry of Corporate Affairs, Government of India, and in view of reasons explained aforesaid, the subject application u/s 140 of the Companies Act, 2013 for removal of its Statutory Auditor is hereby rejected. Hence the instant application shall stands disposed of."

3. The petitioners have filed the present writ application on the ground that at the time of hearing, the petitioners intend to file their written notes of argument but the respondent no. 2 failed to accept the written notes of argument and subsequently, finding no other alternative, petitioners forwarded the written notes of argument through email but the respondent no. 2 has not considered the written notes of argument and the documents disclosed in the written notes of argument.

4. Learned counsel for the petitioners draws attention of this Court to the written notes of argument at Page No. 107, Paragraph No. 31 wherein it is categorically mentioned that the auditor under various other authorities such as income tax department is also under scanner for misappropriation of funds and other fraudulent act which forms the secondary offences for adjudication of present matter. It is also informed that an FIR was also initiated against the auditor and the FIR was annexed with the said written notes of argument.

5. The petitioners have also relied upon the email dated October 12, 2018 wherein the petitioners have categorically informed the authority that the ROC without any reasonable cause denied to accept their written notes of argument. The petitioners have also disclosed the documents in the present writ application issued by the statutory auditor dated September 5, 2017 wherein it is mentioned that due to their preoccupation in other assignment, they are not in a position to devote their time

to the Affairs of the company. Accordingly, the auditors have submitted their resignation as statutory auditors of the company for the financial year 2016-17 with effect from September 5, 2017.

6. Learned counsel for the petitioners further submits that after the order passed by the respondent no. 2, the statutory auditor by a letter dated November 2, 2018 has informed the petitioners that the statutory auditor is resigning from the post of the Statutory Auditor of the petitioners' company with immediate effect.

7. Learned counsel for the respondents submits that the hearing was concluded on October 11, 2018 and subsequently, the petitioners have sent the email and it is not possible for the ROC to consider the said email. Learned counsel for the respondents further submits that the respondent no. 2 has passed speaking and reasoned order as the petitioners failed to prove the allegation against the statutory auditor as such the respondent no. 2 has rejected the application filed by the petitioners for removal of the Statutory Auditor.

8. Considered the submissions made by the learned counsel for the respective parties.

9. Perused the materials on record.

10. This Court finds that by an email dated October 12, 2018, the petitioners have informed the concerned authority that the respondent no. 2 has denied to accept the written submission which the petitioners intend to file at the time of hearing of the case. In the written notes of argument, the

petitioners have made out a specific averment that an FIR has also been initiated against the auditor. It is also found from the record that in the year 2017, the auditor has informed the petitioners' Company that the auditor has resigned from the company as a Statutory Auditor for the financial year 2016-17 with effect from September 5, 2017.

11. This Court also found that the in the application filed by the petitioners under Form ADT-2 dated August 8, 2018, it is categorically mentioned that "auditor refused to do audit". Considering the above, this Court finds that there are several material on record but the respondent no. 2 has not considered the same and even after the impugned order, the auditors have submitted resignations to the petitioners' Company to act as Statutory Auditors of the company.

12. In view of the above, the impugned orders dated October 6, 2018 passed by the respondent no. 2 is set aside and quashed and the matter is remanded back to the respondent no. 2 to consider afresh by taking into consideration all the documents including the written notes of arguments and the subsequent letters submitted by the statutory auditor dated 02.11.2018 wherein the statutory auditor has informed the petitioners that they have resigned from the company as Statutory Auditor.

13. The respondent no. 2 is directed to give an opportunity of hearing to the petitioners and the connected parties and to pass a reasoned and speaking order within a period of eight weeks from the date of receipt of the order.

14. **WPA 23558 of 2019** is disposed of.

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

16. It is made clear that if the petitioners failed to appear before the respondent no. 2 at the time of hearing, the respondent no. 2 is free to take appropriate decision in the absence of the petitioners.

(Krishna Rao, J.)