



Janak C. Pandya, *Company Secretary*

CORPORATE LAWS

Company Law Update

Case Law No. I

[2012] 111 CLA 426 (Mad.), *In the High Court of Madras., Renuka Ramanath vs. Yes Bank Ltd.*

A nominee director is primarily responsible to a company which nominated him and send his resignation to that company and such company may without resignation letter withdraw his nomination.

Brief facts

The Petitioner is the one of the accused for a case under section 138 of the Negotiable Instruments Act, 1881 ("NIA") for bouncing of cheque. As per the case filed, the Petitioner was claimed to be one of the directors of main accused company i.e Subhiksha Trading Service Ltd ("Company"). To quash the above proceedings against her, Petitioner has filed this petition.

The submissions made by the Petitioner are as follows:

- i. The cheque was signed by another authorised signatories of the company who are also the accused in the case filed.
- ii. Petitioner was not a director at the time of the above incidence of bouncing cheque.
- iii. Petitioner, being a nominee director of ICICI Venture Funds Management Co. Ltd. ("IVFM") on the Board of the Company by virtue of Shareholders Agreement.
- iv. Petitioner has sent her resignation letter to the IVFM intimating her resignation as a director from the board of the company.
- v. Based on the above letter, IVFM has sent a letter to the company withdrawing the nomination of a Petitioner as a nominee director.
- vi. IVFM has also sent a letter to the RoC, Chennai intimating that IVFM has withdrawn the nomination of the petitioner as a nominee director of the company.
- vii. Thus, Petitioner is not responsible as a director as she has already resigned as a director.
- viii. The cheque was issued subsequent to the date of resignation/withdrawal of nominee directorship of the petitioner from the board of accused company.
- ix. Even though, if she assumed to be director, there is no *prim facie* case in the complaint that she is in-charge of day-to-day affairs of the company. Reliance was placed on the judgment of this court in *re S S Lakshmana Pillai vs. RoC [1977] 47 Comp Cas 652 (Mad.)*, wherein view was taken by this court that the moment, the resignation letter is sent, the director is deemed to have resigned from the company.

- x. The another judgment of Karnataka High Court in *Mother Care (India) Ltd. vs. Prof. Ramaswamy P. Aiyar* [2004] 60 CLA 249 (Kar.) / *Manu/KA/0760/2003* also has taken a same view that there is no provisions under the Companies Act for acceptance of the resignation of a director. Further, filing of Form 32 for resignation is only a consequential act to be performed.

From the respondent side they have submitted that

- i. From verification of records of RoC, petitioner name as director is there and thus she continues to be a director of the company even on the day of issue of cheque. The genuineness of the documents related to resignation as director by the petitioner is also doubtful.
- ii. As per the Memorandum and Article 21A of the Articles of Association of the company, IVFM continue to have one nominee director on the board of the company so long it holds more than 2% shares. Thus, so called withdrawal and resignation as nominee director has no validity in law.
- iii. The reliance was placed in Supreme Court judgment in *Harshendra Kumar D. V Rebatilata Koley* [2011] 101 CLA 330 SC / AIR 2011 SC 1090, High Court cannot make an oral enquiry under section 482 of the Criminal Procedure, 1973 (Cr.CP) for quashing the criminal complaint and has relied on unimpeachable documents.

Judgments and reasoning

The Court has allowed the petition and quashed the complaint against the petitioner.

The court has relied on various judgments and analysis of the Companies Act. Based on the resignation letters submitted by the petitioner and letter sent by IVFM to company and RoC, the RoC letter duly acknowledged disclose

the intimation of resignation/withdrawal of the petitioner as a director. The doubt of genuineness of above documents raised by the respondents has no force as RoC office is being a public authority cannot be doubted. The seal and signature of the RoC office on the letter make this document believable and impeachable.

On contention of respondent that by virtue of Article 21A of the Articles of Association, IVFM must have one nominee director is not correct. It was observed that upon perusal of language of said Article, IVFM has a right to nominate a director but does not create a liability or compulsion on it to have one nominee director.

On judgments which was relied upon for acceptance of the resignation of a director under the Companies Act and whether it would effect from the date of resignation or date of acceptance, based on analysis as provided therein, it was observed that there is no such provisions under the Companies Act and hence reliance was placed on common law principles. Court has also accepted the contention that resignation shall be effective from the date submitted. Court also noted the judgment of Karnataka High Court which is also referred by the petitioner. Court also observed that in case of a nominee director, he or she is primarily responsible for the company which nominated him and send his resignation to that company. It is that company to act upon the same and withdraw the nomination. There is no provisions of resignation in the Companies Act, so also the withdrawal of the nomination and thus governed by the provisions under the memorandum and articles of association.

Case Law No. 2

[2012] 175 Comp Cas 248 (Mad.) – *In the Madras High Court – Dasaprakash P. Ltd. vs. Registrar of Companies.*

A company who has voluntarily filed an application for striking-off its name from the Registrar of Companies cannot be an aggrieved

party for making application for restoration of its name with the Registrar of Companies.

Brief facts

This petition has been filed under section 560(6) of the Companies Act, 1956 (“Act”) for restoration of the name of the Petitioner company.

As many companies due to various reasons are not operating and hence Government of India, Ministry of Corporate Affairs launch a Fast Track Scheme (“FTA”). Under FTA, the companies which are not starter, without going through long process of voluntary winding up, can get their name removed from the Registrar of Companies (“RoC”). Such companies are required to submit the application in prescribed fee.

Petitioner company wanted to avail the benefit of FTA and hence submitted the application and accordingly the name of the petitioner company was struck off from the RoC.

After 12 years, the petitioner-company has filed this petition u/s 560(6) for restoration of its name with RoC. The submission made by it is even though name of the company was struck off, it was doing its business and all meetings as required under the Act were regularly being held. The argument placed is that as per the Act, the restoration of name of the company which was struck-off can be done within 20 years from such date.

Judgments and reasoning

The court has set aside the petition of the company for restoration of its name with the RoC. The court has analysed the provisions of section 560(6) regarding restoration of name which provides that petition can be made by a company or any member or any creditor if they feel aggrieved by the decision of RoC for striking of its name. However, in current situation, the company itself has applied under FTA for striking-off its name and thus cannot be said to be an aggrieved person for seeking restoration of its name to the RoC.

Regulatory Update

Company Law / SEBI

Abbreviations

Act	The Companies Act, 1956
MCA	Ministry of Corporate Affairs
RoC	Registrar of Companies
R.D.	Regional Director
C.G.	Central Government
CLB or Bench	Company Law Board
O.L	Official Liquidator
DIN	Director’s Identification Number
DPIN	Designated Partners Identification Number
XBLR	eXtensible Business Reporting Language

A. Company Law

1. *General Circular No. 40/2012 dated December 17, 2012 on No Objection from the concerned regulator/institute for LLP name approval and incorporation*

In the case of LLP for carrying out profession of Chartered Accountant, Company Secretary, Cost Accountant, Architect, etc., the consent of council / regulator governing the profession shall be obtained at the time of incorporation as well as for changing name of the existing LLP.

2. *Notification dated December 19, 2012 on new Form 23C for the appointment of Cost Auditor.*

By this notification, Central Government has amended rules related to the Companies (Central Government’s) General Rules and Forms (Seventh Amendment) Rules, 2012. These rules shall be applicable from December 23, 2012 by which existing Form 23C has been substituted with new Form 23C related to the appointment of Cost-Auditor.

3. Notification dated December 24, 2012 on new Form 18 for notice of situation or change of situation of registered office

By this notification, Central Government has amended rules related to the Companies (Central Government's) General Rules and Forms (Seventh Amendment) Rules, 2012. These rules shall be applicable from December 25, 2012 by which existing Form 18 has been substituted with new Form 18 related to informing the Registrar of Companies as to address of the registered office of the company.

As per new form, the following information must be verified and attached with the Form 18 as applicable by the professional like Chartered Accountant, Company Secretary and Cost Accountant while certifying the above form.

- a. Proof of Registered Office address in case same is on lease or owned by the company.
- b. If registered office is owned by a director, then no objection from such director.
- c. If, it is owned by such other entity and not taken on lease by the company, then a proof that the company is permitted to use the said address is to be obtained.

4. Notification dated December 24, 2012 on new Form DIN 1 for obtaining Directors Identification Number

By this notification, Central Government has amended rules related to the Companies Directors Identification Numbers (Third Amendment) Rules, 2006. These rules shall be applicable from December 25, 2012 by which existing Form DIN 1 has been substituted with new Form DIN 1.

As per new form, the following information must be verified and attached with the Form

DIN-1 as applicable by the professional like Chartered Accountant, Company Secretary and Cost Accountant while certifying the above form.

- a. In case, when professional itself certifying DIN related documents, then it has to confirm while attesting the photo of the applicant that applicant is known to him or applicant met the professional in person alongwith the original of the attached documents.
- b. Further, NOW, applicant has to provide the affidavit of verification on non-judicial stamp paper of ₹ 10/- each regarding his or her personal information which earlier was only to be provided by way of declaration. More importantly it has to confirm that "particular of address provided are correct beyond all reasonable doubts.

5. Notification dated December 24, 2012 on certification of DIN 4 for changing information related to Directors Identification Number

By this notification, Central Government has amended rules related to the Companies Directors Identification Numbers (Third Amendment) Rules 2006. These rules shall be applicable from December 25, 2012. The following new information need to be certified by the professional.

- a. To satisfy about the identity of the director /designated partner based on original documents.
- b. The photograph should be attested based on either knowing him personally or who has met him personally along with the original attached documents and that all relevant attachments are attached with the application.

