

COMPANY LAW BOARD
NEW DELHI BENCH
NEW DELHI

CP NO. 44/MB/2010

CA NO.

PRESENT: CHIEF JUSTICE M. M. KUMAR
CHAIRMAN


ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NEW DELHI BENCH OF THE
COMPANY LAW BOARD ON 08.03.2016

NAME OF THE COMPANY: **Sh. Rajeev Ramchandra Nanda**

vs.

M/s. Ramchandars Coaching Institute Pvt. Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 397, 398, 399 rw 402 and 403 of the Companies Act 1956.

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NITIN MISHRA	ADVOCATE	RESPONDENT	
2.	Ramchandra Sanyal	~	NO. 1 Applicant	

ORDER

This is an application filed by the widow of one Mr. Ramchandar G. Nanda with a prayer that being the legal heir of her deceased husband, the Respondent No.1 company be directed to pay gratuity belonging to her late husband amounting to Rs. 22,50,000/- alongwith interest amounting to Rs.7,87,500/-. A further prayer for payment of interest till the date of actual payment has also been made.

It is averred in the application that Mr. Rajeev R. Nanda, Respondent No.2, another son of the applicant had filed CP No. 55/2010 which resulted in amicable settlement and in terms of the consent terms it was disposed of on 03.09.2012. According to clause 17 of the consent terms the amount of gratuity and Provident Fund was payable to deceased Mr. Ramchandar G. Nanda and Mr. Rakesh R. Nanda.

P.T.O.

In pursuance of consent terms Mr. Rajeev R. Nanda was put in charge and control of management and affairs of Respondent No.1 company with effect from 04.09.2012(Annexure-C). The consent terms were thus enforced and acted upon. Clause 17 was also binding. Therefore, it was incumbent upon Respondent No.2 to process and pay the gratuity amount to Mr. Ramchander G. Nanda the deceased husband of the applicant on account of his act of mutuality by resigning from the Respondent No.1 company. As per clause 17 the amount should have been paid within two months from the date of handing over the management of the Respondent No.1 company to Mr. Rajeev R. Nanda- Respondent No.2. On 10.09.2014 the claim made by the deceased husband of the applicant was rejected by the Respondent-1 company although the husband of the applicant was in employment of Respondent No.1 company for 19.5 years as a whole-time Director.

The husband of the applicant preferred to wait the result of M.A. No.59/2014 filed in C.P. No.55/2015 filed by Mr. Rakesh R. Nanda, Respondent No.3 with a prayer for payment of the amount of gratuity. His prayer was accepted by Company Law Board in the order dated 16.06.2014 (Annexure-H). The Company Appeal No. 65 of 23014 against the order of the C.L.B. was dismissed by Hon'ble Bombay High Court on 10.07.2015 (Annexure-I). The S.L.P. met the same fate and was dismissed on 10.08.2015 (Annexure-J).

The instant application has been opposed and it has been disclosed in the reply that 3 days after the death of Mr. Ramchandrar G. Nanda on 15.07.2015 Respondent No.2 Mr. Rajeev R. Nanda filed an application for disbursement of gratuity on 18.07.2015, an Indemnity Bond on 20.07.2015 and the gratuity amount alongwith interest was released to him on 21.07.2015. Apparently respondent No.2 is at the helm of affairs of Respondent No.2 company and self serving decision favourable to him was reached.

Rejoinder has also been filed which shows that Respondent No.2 Mr. Rajeev R. Nanda has been disinherited in his Will by the Testator namely deceased Mr. Ramachandar G. Nanda.

I have heard ld. counsel for the parties at length. There are facts and circumstances which favour the applicant. Clause 17 of the consent terms clearly postulates the payment of gratuity and the provident fund to the husband of the applicant and her

other son Mr. Rakesh R. Nanda. Accordingly the whole amount of gratuity should have been paid to her husband and to her other son Mr. Rakesh R. Nanda. At this stage the covenant of the WILL may not even be taken into account. The stand of Respondent No.1 company against the claim made by Mr. Rakesh R. Nanda in MA No. 59/2014 was rejected vide order dated 16.06.2014 passed by the C.L.B. (Annexure H). That order has been upheld by the Hon'ble Bombay High Court on 10.07.2015 and the appeal has been dismissed (Annexure-I). Even the S.L.P. has been dismissed by the Hon'ble Supreme court on 10.08.2015. Therefore, the basic objection raised by Respondent No.1 company stands rejected.

On the contrary, sequence of events suggests that Respondent No.1 company has not acted fairly by releasing the amount of gratuity belonging to the late husband of the applicant to her son Respondent No.2. The gratuity has been released to Mr. Rajeev R. Nanda in an unfair manner. Three days after the death of his father on 15.07.2015 Mr. Rajeev R. Nanda filed an application for release of gratuity alongwith interest belonging to his father on 18.07.2015. Thereafter he filed an Indemnity Bond on 20.07.2015. The amount of gratuity with interest stood released on 21.07.2015.

This act of Respondent No.1 company prima facie appears to be unjust and unfair because Mr. Rajeev R. Nanda, Respondent No.2 has apparent conflict of interest with his father. This conflict had lead Mr. Rajeev R. Nanda to file C.P. No.44/MB/2010. It was settled in terms of amicable settlement., Respondent No.2 contested the claim relating to payment of gratuity under clause 17 of the consent terms and lost legal battle upto Supreme Court. Even then he got the payment of gratuity made to himself. Indemnity Bond from Respondent No.2 is most unfortunate because in terms of clause 17 he had no right to stake claim to the amount gratuity.

At this stage, ld. counsel for Respondent No.1 company requests for some time to seek instructions whether Respondent No.1 company is prepared to disburse the amount of gratuity with interest to the applicant Ms. Sarita Ramchandrar Nanda or other legal heir Mr. Rakesh R. Nanda after accepting their Indemnity Bond.

List on 17.03.2016 at 10.30 AM.


[CHIEF JUSTICE M.M. KUMAR]
CHAIRMAN

Date: 08.03.2016
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