

COMPANY LAW BOARD
NEW DELHI BENCH
NEW DELHI

CP NO. 03(ND)2016

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 08.04.2016

NAME OF THE COMPANY: **Ms. Punita Khatter**
Vs.

M/s. Explore Travels and Tour Pvt. Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 397, 398 the Companies Act 1956.

S.NO.	NAME	DESIGNATION	REPRESENTATION	SIGNATURE
1.	VIVEK MALIK	Adv.	Respondent No. 1	
2.	RAMESH KHANNA	Adv.	Respondent No. 2 to 4	<i>Ramesh Khanna</i>
3.	NITIN GUPTA	Adv.	"	<i>Nitin Gupta</i>
4.	DHANAL JAIN	Adv.	"	<i>Dhanal Jain</i>
5.	ADITYA TIWARI	"	"	<i>Aditya Tiwari</i>
6.	RISHABH KAVSHI	"	"	<i>Rishabh Kavshi</i>

1. Mr. Abhinav Vashist, Sr. Adv.
2. Mr. Sudhir Sharma, Adv.
3. Mr. Abhisek Sood, Adv.
4. Ms. Chandni Anand, Adv.
5. Mr. Souabh Gupta, Adv.
6. Ms. Priya Chauhan, Adv.
7. Mr. Sonel Gupta, Adv.

For
Petitioner.

[Signature]



ORDER

1. This is an application filed by the petitioner with a prayer for passing of interim order to stay EGM, which is to be held at 11 a.m. on 11.04.2016. In the proposed agenda the petitioner is sought to be removed as a Managing Director. The prayers in the application are set out below:

- (a) Pass an order setting aside the Resolution, dated 14th March, 2016, passed in the meeting of Board of Directors; and further
- (b) Pass an order staying the Notice dated 14th March, 2016 convening the EGM on 11 April, 2016;
- (c) Restrain the Respondents from, in any manner, removing the Petitioner/Applicant from the post of Managing Director/Director of Respondent No.1 Company, during the pendency of the present petition;
- (d) Pass any such other and further orders/directions as this Hon'ble Board may deem just and proper in the facts and circumstances of the present case.

2. It is pertinent to mention that the Applicant has filed CP No.3 (ND) 2016 under sections 397, 398, 402, 403 & 404 of the Companies Act, 1956. The Petitioner is a shareholder to the extent of 35% and a director apart from being Managing Director. She has sought numerous reliefs against Respondent Nos. 2 to 4 who are majority shareholders in Respondent No.1 Company. According to the allegations, R2 to R4 are solely responsible for



the mismanagement of Respondent No.1 Company, who are acting in a concerted manner to oppress and harass the Applicant who is a minority shareholder. The whole objective of Respondent Nos.2 to 4 is to oust her from the affairs of the Respondent No.1 Company and take complete control of its affairs. The Applicant has asserted that she has been working as managing director of Respondent No.1 Company for the last about 20 years and there is an ugly attempt on the part of Respondent Nos.2 to 4 to remove her. It has also been asserted that the instant petition was filed on 01.10.2015 and with a malafide intention the shareholders sent a notice on 05.03.2016 for convening of EGM.

3. The Board of Directors in their meeting held on 14.03.2016 passed a resolution on the basis of the notice issued by the shareholders and decided to convene the EGM on 11th April, 2016. According to the Applicant, it is a revengeful and malafide action to usurp the complete control of Respondent No.1 Company by suppressing her and is a clear counterblast to the Company Petition which has exposed gross mismanagement of Respondent No.1 Company at the hands of Respondent Nos. 2 to 4. The Applicant has repeatedly raised and brought to the Respondents' attention various acts of gross oppression and mismanagement. Some of the acts of oppression and mismanagement have been set out in Para 4 of the application, which reads thus:



a) Illegal and/or unlawful re-appointment of M/s. I.M.Puri & Co as the Statutory Auditors of the Company, as they were also acting as the internal auditors of the company, as well as also discharging the functions of the Company Secretary, which is in complete violation of S.141 and Companies Act, 2013.

b) Financial mismanagement to the effect that a loan amounting to Rs.75 lakhs to RW Gaming Solutions is shown as an investment in the books of the accounts of the Company by M/s. I.M.Puri & Co., at the behest of the Respondents.

c) Financial misappropriation to the effect that an investment of approximately Rs. 1.755crores in Pebble Brook property in Goa, wherein the Company was a 27% shareholder, was manipulated by M/s. I.M.Puri & Co and shown as a loan after the said property had appreciated significantly in terms of value.

d) Financial misappropriation to the extent of Respondent Nos. 3 & 4 using the company and its resources as their personal fiefdom, including but not limited to the instances of undertaking personal travels at the cost of the Company, getting tickets issued from company's account for travel of friends and relatives, etc.

4. The Applicant has sought a number of reliefs in the CP on the ground of mismanagement and oppression of minority shareholder of the company. A declaration has been sought to declare that all the Board



Meetings/Extra-Ordinary General Meetings/ Annual General Meetings convened by the Respondents wherein the Applicant is not present, as illegal and all the resolutions passed therein be declared void and any filing of the statutory forms pursuant thereto be declared as null and void.

5. A prayer has also been made in the Company Petition that the Applicant be not removed as a Managing Director or a Director of the Respondent No.1 Company. According to the Applicant, the issue concerning her removal as Managing Director is sub-judice and any effort to remove her as a Managing Director would be malafide exercise of power laced with vindictiveness. She has already received a notice dated 05.03.2016, indicating that a meeting of the Board of Directors was to be held on 14th March, 2016, to *inter alia* consider the Special Notice seeking to remove her as a director of the Respondent No.1 Company. A true copy of the notice has been placed on record (**Annexure A**).

6. The Applicant has already submitted a representation in accordance with the provisions of Section 169(4) against the Special Notice to remove her as a Managing Director of the Respondent No.1 Company and has called upon Respondent No.2 individually to forthwith withdraw the Special Notice and has also called upon Respondent No.3 to cease and desist from taking any action and/or passing any resolution in pursuance of the Special Notice and the notice (**Annexure B**).



7. The Respondent Nos. 2 & 3, however, proceeded further with vide resolution dated 14.03.2016 has taken following decisions:

- i. Considered and taken on record the Special Notice S. 115 read with S. 169 ("the Special Notice") as well the notice under S.100, issued by Respondent No.2, seeking to remove the Petitioner/Applicant as the Director/Managing Director of Respondent No.1 Company.
- ii. Appointed Mr. Arjun Mehta, Alternate Director to Ms. Jenny Quake, Director, as the authorized signatory, on behalf of Respondent No.1 Company, to serve the copy of the Special Notice under S. 115 of the Companies Act, 2013 upon the Petitioner/Applicant.
- iii. Approved the draft notice for convening the Extra Ordinary General Meeting ("EGM") of Respondent No.1 Company under S. 100 of the Companies Act, 2013.
- iv. Authorized Mr. Arjun Mehta, Alternate Director to Ms. Jenny Quake, Director to sign the notice to be sent for convening the EGM on 11 April; 2016 to be held at the registered office of the Respondent No.1 Company

8. Accordingly, the Applicant/Petitioner was served the impugned EGM notice on 17th March 2016 for convening the EGM on 11th April, 2016 to transact the following business:



"1. To Consider and, if thought fit, to pass the following resolution as an Ordinary Resolution:

"RESOLVED THAT pursuant to the provisions of Section 169 and other applicable provisions of the Companies Act, 2013 read with Articles 47, 69 and other applicable provisions of the Articles of Association of the company, the consent of the shareholders of the company be and is hereby accorded for removal of Ms. Punita Khatter from the office of the Managing Director of the company with immediate effect.

RESOLVED FURTHER THAT the Board of Director of the Company be and is hereby authorized to take requisite steps and to do all such acts, deeds, things and matters as may be required, considered necessary or incidental thereto to give effect to the aforesaid Resolution and to settle any doubt or question which may arise in connection or relating thereto."

9. A copy of the e-mail dated 17th March, 2016 has been placed on record (Annexure C and Annexure D). The Applicant/Petitioner claims that she has worked to the best of her ability and has acted bonafide in the interest of Respondent No.1 Company. She has also asserted that the Applicant noticed certain acts of siphoning off funds, mismanagement and irregularities existing in the affairs of Respondent No.1 Company and was compelled to file the Company Petition as a whistle blower.

10. Respondent Nos.2 to 4 have filed their reply to the application and have raised preliminary objection asserting that the resolution passed by



the Board of Directors on 14th March, 2016 has already been acted upon and cannot be set aside the shareholders of the company. Likewise, Respondent No.2 issued a Special Notice in accordance with the provisions of Section 115 of the Companies Act, 2013 and a notice in terms of Section 100 of the Companies Act, 2013 for removal of the Petitioner from the post of Managing Director in terms of the provisions of Section 169 of the Companies Act, 2013 as per the mandate of Article 69 of the Articles of Association. The notice further called upon the directors of the Respondent No.1 Company to requisition a shareholders' meeting to consider the removal of the Petitioner from the post of Managing Director of the Respondent No.1 Company, which enumerated the reasons of her removal. On account of obligation cast by Section 100(2) of the Companies Act, 2013, the Board of Directors was under an obligation to requisition a shareholders' meeting. Accordingly, an EGM has been called for 11.04.2016, therefore, the prayer for setting aside resolution dated 14.03.2016 has been rendered in fructuous as it is acted upon.

11. The Respondents have further submitted that there is an express bar on the powers of any court to stay the EGM of a company which emerges from the judgment of the Supreme Court rendered in the case of *Life Insurance Corporation v. Escorts Limited & Others (1986) 1 SCC 264*. It has been represented that in any case, the EGM is convened to remove the Applicant from the post of Managing Director and there is no proposal to remove her as a Director of Respondent No.1 Company. The services of the



Managing Director are terminable in accordance with the provisions of Article 69 of the Articles of Association of Respondent No.1 Company, therefore, no injunction could be granted.

12. The Respondents have also filed an application u/s 8 of the Arbitration & Conciliation Act 1996, and have, therefore, not filed reply to the main Company Petition. It has come on record that the Applicant along with Respondents commenced their business of tours and travel in 1995. The Applicant was responsible for managing day to day affairs of Respondent No.1 Company which was duly supported by Respondent Nos. 3 & 4 from their business in Nepal. The trust between the partners began to dwindle since 2013 when it came to the knowledge of the Respondent Nos. 3 and 4 that the Petitioner was caught shop lifting in a mall in Hong Kong.

13. In their efforts to amicably decide the dispute, the Applicant started accusing the auditor for not doing their job properly and suggested to remove the statutory auditor who was working with the Respondent No.1 Company for more than 20 years. However, the talks for amicable settlement could not progress. The Applicant has been very reluctant to get the accounts audited. Accordingly, she got a legal notice dated 27.08.2015 issued to the Respondent Nos.2 to 4 with a view to implement her devious and clandestine motive to usurp the company. The legal notice was duly replied by Respondents on 25.09.2015. She has also requested for invoking



the arbitration envisaged under Article 87 of the Articles of Association of the Company. The Applicant and Respondent No.2 called upon Respondent No.1 Company to deliver them various documents, papers, records, information and such other things to ensure that the accounts of the company are fully audited and also requested to render full accounts on a daily basis to an appointed representative by the Board of Directors and refrain from doing any such things which create liability on the company without the prior approval of the board. Likewise, disposal/acquisition of the property not to make any financial arrangements, not to purchase stores; sells products etc. The statutory auditor however, sent a communication to the Board of Directors of R1 Company highlighting the lack of information and non cooperation; there are serious allegations of falsification of bills of vendors/ hotels. The audit thus not progressing because of non-cooperation of the Applicant. She is allegedly in breach of Section 96 (1) and Section 129 (2) of the Companies Act, 2013. There are further allegations of embezzlement and misuse of funds of the company reflected in the letter dated 30th September, 2015, sent by auditors, which are as under:

1. Sale of assets of the company, without seeking approval from the Board, starting with Toyota Corolla car.
2. Wrongful withdrawal of Rs.6, 60,000/- by the Applicant.
3. Unaccounted payments in cash amounting to Rs.20,16,840/-;



4. Assets purchased in the name of Petitioner amounting to Rs.88,590/- but paid by the Company;
5. Unaccounted monies spent on the credit card of Applicant amounting to Rs. 18,81,477/- and paid by the Respondent No.1 Company;
6. Purchase of bags worth Rs. 33,65,107/-;
7. Unaccounted and unexplained expenditure of funds amounting to more than Rs.33, 65,107/-.

14. Even the directors of the company have called upon the applicant in her capacity as Managing Director of the company to provide them various information regarding the affairs of the company, which pertains to details in respect of employees of the company, usage of corporate credit cards, debtors and creditors. On December 29, 2015, again information was sought with regard to complimentary benefits received by the company, the vehicles owned by the company and contract entered into by the Managing Director on behalf of the company. However, she refused to provide the information so asked by the directors of the company. There are further allegations of non-compliance with the direction issued by Hon'ble High Court of Delhi that the Petitioner was not to sign any cheque for and on behalf of Respondent No.1 Company alone and she was to do so jointly with Mr. Arjun Mehta. The aforesaid information in the order dated 05.02.2015, was forwarded to HDFC Bank. As a result, the Respondent No.1 Company has remained unable to pay salaries to its employees, make



payments to its vendors and other essential payments because of the Applicant had failed to cooperate to or adhere to the orders of Hon'ble High court of Delhi. Even then the Petitioner has failed to supply information concerning financial affairs of Respondent No.1 Company from time to time and some of the instances are as follows:

- i. On September 30, 2015, almost 6 (six) months ago, the statutory auditor requested the Respondent No.2 to provide answer to certain queries so that balance sheet for the tear 2014-15 could be finalized;
- ii. On October 6, 2015, Board of Directors called upon the Respondent No.1 to provide answer to certain queries, however, until date these queries stand unanswered;
- iii. On December 28, 2015 and December 31, 2015, the Board of Directors had issued certain letters to the Respondent No.1 asking certain details about the affairs of the Respondent No.2 Company, However, until date these details have not been provided.
- iv. The Respondent No.1 failed to support the efforts of the Petitioner to replace the signatories with the bank account.

15. In the para wise reply, most of the averments have been repeated. It has however been stated that the appointment of M/s. I.M. Puri & Co as the Statutory Auditors of the company was illegal, as they were also acting as the internal auditors of the company, as well as also discharging the



functions of the Company Secretary, which violated the provisions of Section 141 and Section 144 of the Companies Act, 2013. Any financial mismanagement of a loan amounting to Rs.75lacs to RW Gaming Solutions has also been denied. It is shown as investment in the books of the accounts of the company, at the behest of the Respondents. The allegation of oppression and mismanagement have also been denied. It is however asserted that on account of pendency of an application u/s 8 no detailed reply has been filed to the Company Petition.

16. The Applicant has also filed rejoinder reiterating the averments made in the application. Therefore, I do not wish to refer them in details. They have attached the report of compliance of the order along with few documents. The preliminary objections have been denied.

17. When the application came up for consideration on 21.03.2016, I noticed the argument raised by Ld. Counsel for the non-applicant/respondents and had passed the following orders.

“Mr. Rakesh Khanna, Ld. Counsel for the Respondents has placed reliance on the observation made by 5 Judge bench of the Supreme Court in the case of LIC v. Escorts Ltd. (1986) 1 SCC 264. In para 95 at Page 340 the last few lines read thus “The holders of the majority of the stock of a corporation have the power to appoint, by election, directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to



restrain the holding of a general meeting to remove a Director and appoint another.”

Faced with the above situation, Id. Counsel for the Petitioner requests that respondents may be asked to submit reply. Let the reply be filed within a week, by 04.04.2016, with a copy in advance to the applicant-petitioner. Rejoinder, if any be filed within four days thereafter with a copy in advance to the counsel opposite.

List for further consideration on 08.04.2016 at 10.30 a.m.”

18. I have heard Ld. Counsel for the parties, at considerable length, and have perused the paper book with their able assistance.

19. Mr. Abhinav Vasisht, Ld. Counsel for the Applicant has vehemently argued that the five Judge Bench Judgment of Hon’ble the Supreme Court in the case of *Escorts Limited & Others (Supra)* would not be attracted and applicable to the facts of the present case because the facts herein are entirely different than those of the *Escorts Limited & Others (Supra)* decided by Hon’ble Supreme Court. According to the Ld. Counsel, before the Hon’ble Supreme Court, it was a listed public limited company whereas, in the case in hand, it is a private limited company which is in the nature of partnership. In support of his submissions, Ld. Counsel has submitted that there is no bar on the powers of this Board to issue interim order for staying the implementation of a resolution which may be passed by the EGM. Ld. Counsel has placed reliance on a judgment of Chennai



Bench of this Court rendered in the case of *Saroj Hasmukh Patel and Ors. v. Kantilal Pranlal Patel and Ors.* (2007) 75 SCL 122 (CLB).

20. Another submission advanced by Mr. Abhinav Vashisht, is that the Applicant has been instrumental in setting up Respondent No.1 Company and has given excellent performance in her capacity as managing director during the last 20 years. She has uplifted the company to its present glory single handedly. Therefore, the applicant/petitioner should not be removed as a managing director of the company.

21. It was then submitted that convening of EGM is a colorable and malafide exercise of power and there is no inherent restriction or limitation on the power of this Board to check a malafide action in a petition filed u/s 397/398 of the Companies Act.

22. A reference has been made to Sections 402, 403 of the Companies Act and then reliance has also been placed on the judgment of the Hon'ble Supreme Court rendered in the case of *V.S.Krishnan v. Westfort HI-Tech Hospital Ltd.* (2008) 3 SCC 363. It has been argued that where the conduct is harsh, burdensome and malafide then the case for oppression is made out and interim direction should be issued.

23. The last submission of the learned counsel is that the meeting of the EGM has been convened to achieve oblique motive and in fact it is a counterblast to the Company Petition to get rid of Applicant as a managing director. According to the learned counsel, the Company Petition was filed



on 01.10.2015 and the respondents sent a notice for EOGM on 05.03.2016, which was much later. A meeting of Board of Director was thereafter held on 14.03.2016, wherein the resolution has been passed to hold the EGM on 11.04.2016. The sequence of events would show that it is an act of vindictiveness to stop the Applicant from proceeding with her Company Petition.

24. Mr. Rakesh Khanna, Ld. Counsel for the non-applicant states that judgment of the Constitutional Bench is binding on all courts. According to the Ld. Counsel an *obiter dicta* of a Constitutional Bench judgment would also be binding and the principle of law laid down in such a judgment cannot be made inapplicable merely because there is variation on facts. Therefore, it has been submitted that the Para 95 & 100 of the judgment would be fully applicable. The democratic corporate principle conferring rights on the shareholders to convene a meeting, to remove a managing director/director, therefore, cannot be stayed by any court.

25. It has been explained that the comprehensive procedure laid down in Article 69 of the Articles of Association for removal of a Managing Director has been followed in letter and spirit. According to the Ld. Counsel Article 69 mandates that the procedure laid down u/s 169 for removal of a director shall be followed when a managing director is to be removed. There is religious compliance with the aforesaid provision. A Special Notice for the meeting of the Board of Directors was admittedly issued to the petitioner



and she also made a representation on 11.03.2016. In the aforesaid representation, she has made an appeal to the shareholders to vote in her favor on accounts of her excellent performance. It was then pointed out that the petitioner was appointed as MD by the Board of Director but for removal procedure laid down in Article 69 of the Articles of Association read with Section 169 of the Companies Act is being followed.

26. Mr. Rakesh Khanna, has further argued that Applicant is not being removed as director but she is being removed as a managing director. A draft agenda has been proposed for her removal as managing director. The managing director has no statutory status and is merely an employee of the company for remuneration. In that regard reliance has been placed on a judgment of the Hon'ble Supreme Court rendered in the case of *Ram Pershad v. The Commissioner of Income Tax, New Delhi* (1972) 2 SCC 696. My attention has been drawn to the observation made in Para 7 to argue that a managing director is an employee of company for remuneration. A Reliance has also been placed on the observation made in the case of *Joginder Singh Palta v. Time Travels Pvt. Ltd. Comp Case 1984 (56) 103*, and a judgment of Madras High Court in the case of *N.Ram and Ors. v. N.Ravi and ors.* (2011) 166 Comp Cas 555 (Mad).

Conclusion:

27. Having heard learned counsel for the parties and after minutely considering their submissions, I have not been able to persuade myself to



accept the prayers made in the application. The five Judge Bench judgment in the case of *Escorts Limited & Others (Supra)* in categorical terms has laid down that a EGM convened at the instance of the shareholders cannot be stayed by any court. In the opening para of the judgment it has been observed that the "political process of 'corporate democracy' are sought to be subjected to investigation by us by invoking the principle of the Rule of Law, with emphasis on the rule against arbitrary state action." The Bench, then went on to deal with the facts and the principles of the corporate democracy which have been discussed in para 95 where the following pertinent observations have been made.

"The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognizes that the analogy of the legislature and the executive in relation to the members in general meeting and the Directors of a company is an over-simplification and states "to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution." As already noticed, the only effective way the members in general meeting can exercise their control over the directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the directorate and appoint others in their place. The holders of the majority of the stock of a corporation have the power



to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a Director and appoint another. "(emphasis added)

28. The aforesaid para makes it obvious that the shareholders can act to replace the directors and restrict their powers by incorporating amendment in the Articles of Association. The reason such a course is allowed to follow is that the shareholders' are the real stakeholders and the executive i.e., the Board of Directors have to act according to the will of the shareholders as per the stipulations in the Articles of Association. Thus, the principle of corporate democracy has been highlighted, which is fully applicable to the facts of the present case. According, draft proposal has been rightly moved for removal of the Applicant from the post of Managing Director.

29. In para 100, it has further been clarified that such a meeting or the rights of the shareholders cannot be stayed nor the reasons for proposing a resolution is subject to judicial review. The observations made in para 100 reads thus:

"Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for



the resolutions proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review."

30. However, Mr. Abhinav Vashist, Ld. Senior Counsel has argued that the view taken in the case of *Escorts Limited & Others (Supra)* would not be attracted to the facts of the present case. It has been pointed out that in the case in hand the company is in the nature of a partnership, whereas in the *Escorts Limited & Others (Supra)* it was a Public Limited Listed Company. To a query by the court, Ld. Counsel remained unable to substantiate as to how the principles governing corporate democracy enshrined in *Escorts Limited & Others (Supra)* would be applied differently with the shareholders of a Private Limited Company. In other words for the purpose of corporate democracy distinction between Public Limited Listed Company and a Private Limited Company would not be material as it would have no nexus with the object of granting corporate democracy to the shareholders. Such a corporate democracy has to be available to shareholders of both private and public limited listed companies. Therefore, I am of the view that the principles laid down in an *Escorts Limited (Supra)* case would be fully applicable to the shareholders of a Private Limited Company as well.

31. Mr. Vashisht has however, cited a judgment of this Board in the case of *Saroj Hasmukh Patel (Supra)* and has argued that when the court is to consider the allegations of oppression and mismanagement, then these



principles of corporate democracy would not apply. However, it is difficult to accept the submissions in the face of the overwhelming authority of Hon'ble the Supreme Court in the case of *Escorts Limited & Others (Supra)*. A close scrutiny of the five Judge Bench judgment would also show that their Lordship of the Supreme Court were conscious of the principles governing oppression and mismanagement as is evident from para 84(iv) and (v). Therefore, it cannot be concluded that merely because a shareholder or a director has availed the remedy concerning oppression and mismanagement under sections 397 & 398 then corporate democracy is to be abandoned. The shareholders would not be deprived of proposing a resolution for removal of any director by calling an EGM. Therefore, the view taken by this Board has to be declared as per incuriam. It is well settled that the *obiter dicta* formulations by a Constitutional Bench of the Hon'ble Supreme Court would be binding on all courts and must regarded as 'law' declared under Article 141 of the Constitution. (See *ADM Jabalpur v. Shiv Kant Shukla* AIR 1976 S.C.818 and *Oriental Insurance Co. Ltd. v. Meena Varial* (2007) 5 SCC 428). The arguments of Mr. Vashisht, therefore, would not be acceptable.

32. It is further pertinent to mention that the respondent company is religiously following the procedure postulated for convening an EGM. In that regard a reference is necessary to Article 69 of the Articles of Association (A3 with CP 3/2016). Article 69 reads as under:



“The Managing Director shall (subject to the provisions of any contract between him and the Company) be subject to the same provisions as to resignation and removal as the other Directors and shall, ipsofacto and immediately cease to be Managing Director, if he ceases to hold office of Director from any cause.”

33. A perusal of Article 69 shows that a Managing Director has to be removed by following, the same procedure as is to be followed in the case of other directors. Accordingly the provision of Section 169 providing for Special Resolution is admittedly being followed. On the receipt of requisition, the Board of Directors are obliged to call an EGM of the company. In the present case a requisition was received on 05.03.2016, which is found to be in order and the meeting of the Board of Directors was held on 13.03.2016 with the draft agenda of removal of the petitioner as a Managing Director and a special notice was sent to her (There is no draft agenda or requisition to remove her as a director). Before the meeting dated 14.03.2016, she sent a detailed representation. On the receipt of Special Notice projecting her view point she has urged the shareholders to vote for her on account of her excellent performance. Accordingly, EGM has been called for 11.04.2016 which is 21 days later than the date of meeting of the Board of Director. A period of not less than 21 days notice has been provided by S.169 of Companies Act. Therefore, it has been rightly argued by Ld. Counsel for the respondents that the procedure for



removal of Managing Director as provided in the Article 69 of the Articles of Association read with S.169 of the Act is being religiously followed.

34. I am satisfied that Special Notice as per the requirement of S.169 has also been issued to the Applicant and the same stands already circulated amongst the shareholders.

35. The argument of Mr. Vashisht, that the EGM has been convened with a malafide intention has failed to impress me. I do not find any substance in the allegations that convening of EGM is a counterblast to the filing of the Company Petition on 01.10.2015, merely because the requisition for convening of EGM has been made on 05.03.2016. In the reply filed by the respondents to the instant application, a reference has been made to the dwindling relationship between the petitioner and the respondents, since petitioner was caught shop lifting in a mall in Hong Kong in 2013. Respondent No.3 claims to have met the petitioner in June, 2015, to amicably separate from the business on account of numerous irregularities, which were pointed out by the statutory auditors to the applicant. The audit of the company had commenced but the applicant issued a legal notice on 27.08.2015 to the non-applicant making numerous allegations against the auditors. A false claim has also been made in the legal notice that she had 50% shareholding. On 25.09.2015, the legal notice was replied by the auditors, which clearly mentioned in para 3 "Despite our repeated requests, for reasons best known to your Company's Managing Director



and other concerned employees of the company, they are deliberately stalling the audit process. It is very disturbing that one of our audit team members, who visited your office in the normal course of business of carrying out the audit was treated with utter disrespect and disdain, and particularly at such point of time, when he shockingly discovered blank letterheads of various hotel vendors and had been raising some seemingly relevant though uncomfortable queries, the Managing Director and Mr. Neeraj Singhal from your accounts department forcibly took and retained our audit working paper files. Such hostile and threatening conduct is wholly unacceptable and unwarranted and is preventing us to complete the audit and needless to mention that we will not permit any of our staff/team member to be subjected to such threatening behavior. Copies of the emails on the matter sent are attached as "Annexure B" hereto. Few samples of letter heads and related ledger and other accounts obtained by our audit team as mentioned in Para 2 above also form part of these working papers."

36. There are various other allegations made in reply sent by Shri I.M.Puri & Co., the statutory auditors and respondents, therefore, the filing of the petition on 01.10.2015 prima facie has to be regarded as an attempt to intercept the statutory auditors from completing their work. The argument that the requisition to call EGM is a counterblast to the petition, therefore, cannot be readily accepted, nor the move on the part of the shareholders

① would be regarded as malafide.




37. The judgment of Hon'ble Supreme Court in the case of *V.S.Krishnan & Ors. (Supra)* lays down that Company Law Board has wide powers under sections 402 & 403 of the Act. However, when the facts of the present case are examined in the light of the principles laid down in the Articles of Association, Companies Act and the Judgment of Hon'ble the Supreme Court laid down in *Escorts Limited case (Supra)*. I remained unable to persuade myself to accept the arguments to the contrary.

38. As a sequel to the above discussion this application fails and the same is dismissed.

39. However, it is made clear that any observations made in this order shall not be construed as conclusive and an expression of opinion on the merit of the main petition because the respondents are yet to file their replies which has been withheld on account of pendency of an application filed u/s 8 of the Arbitration and Conciliation Act, 1996. These are first blush observations and the company petition shall be decided on its own merit without being influenced by this order.

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(CHIEF JUSTICE M.M. KUMAR)
CHAIRMAN

Dated: 08.04.2016
(anjali)


दीपक परसोया / DEEPAK PERSOYA
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