

Dinesh Saini Vs. Uoi and ors

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Court : Delhi

Decided On : Jul-23-2013

Judge : V. K. Jain

Appellant : Dinesh Saini

Respondent : Uoi and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

23. 07.2013 W.P.(C) 9003/2011 DINESH SAINI Petitioner Through Mr. Tanuj Khurana, Advocate versus UOI AND ORS Respondents Through Ms. Inderjeet Sidhu, Adv. for UOI/R-1 and 2 Ms. Shalini Kapoor, Adv. for R-3 CORAM: HON'BLE MR. JUSTICE V.K.JAIN JUDGMENT V.K.JAIN, J.

(ORAL) 1. Section 210 of the Companies Act, 1956 to the extent it is relevant for our purpose requires a company to hold its Annual General Meeting for considering profits and loss account and balance sheet, within six months of the close of the financial year. The said section also permits the company to extend the financial year by upto three months. The period can be further extended by upto 6 months with the special permission of the Registrar of Companies.

2. In the case before this Court, in terms of Section 210 of the Companies Act, respondent no. 3 which is a company registered under the Companies Act, 1956 was required to hold its Annual General Meeting on or before 30.09.2011, its

financial year being 01.04.2010 to 31.03.2011. No decision prior to 11.08.2011 was taken by respondent no. 3 company to extend the accounting year. It was only by way of resolution dated 11.08.2011 that the company decided to extend the accounting year 2010-11 by three months so as to end the said year on 30.06.2011. Consequently, it became eligible to hold the Annual General Meeting, for the purpose of considering the account and balance sheet, on or before 31.12.2011.

3. The contention of the learned counsel for the petitioner is that the decision to extend the accounting year for a period upto three months can be taken by the company before the end of the financial year or at best before the period by which the financial year is to be extended, expires and not thereafter. In other words, according to the learned counsel, the decision to extend the accounting year ought to have been taken on or before 31.03.2011 or at best by 30.06.2011 whereas in the present case it was taken on 11.08.2011 after the aforesaid three months had already expired.

4. The learned counsel for the respondent no. 3, on the other hand, submits that the decision to extend the financial year could be taken by the company even after expiry of the period by which the financial year is sought to be extended and there is no requirement of law that such a decision has to be taken before expiry of the financial year or the period by which the financial year is sought to be extended.

5. The learned counsel appearing for respondent nos. 1 and 2 i.e. Registrar of Companies also supports the contention of learned counsel for respondent no. 3 in this regard. She has in this regard drawn my attention to para 4 of the reply filed by respondent nos. 1 and 2, which reads as under: That when it came in the notice of the ROC, that the aforesaid company has not filed Annual Return and Balance Sheet for the year 2010-11, the office of respondent issued the show cause notice dated 23.12.2011. In response to that the company vide its letter dated 2.1.2012 replied that they have extended the financial period (from 1.4.2010 to 31.3.2011) to (from 1.4.2010 to 30.6.2011) and hence the company could hold AGM by 31st December, 2011. The company did hold the AGM on 21st December, 2011 and the accounts of a period of 15 months from 1.4.2010 to 30.06.2011 were approved

at the AGM. Accordingly, the company was to file its balance sheet and P&L account by 19th January, 2012 i.e. within 30 days from the date on which the balance sheet and P&L account were laid in the AGM and annual return by 18th February, 2012 i.e. within 60 days from the day on which AGM held.

6. I have carefully examined the provisions of Section 210 of the Companies Act. The said provision does not require the company to take decision to extend the financial year, either by the end of the financial year or within the time period by which the financial year is to be extended. The decision to extend the financial year, therefore, can be taken at any time though the period cannot be extended by more than three months without special approval of the Registrar of Companies. To take an example, if an company is expecting to finalize its accounts and balance sheet in time and towards the fag end of the financial year, it finds that for some reason or the other, it shall not be in a position to finalize the accounts and balance sheet by the end of the financial year, in case the contention of the learned counsel for the petitioner is extended, it will have to convene a Board meeting on or before the end of the financial year. Considering that, sometimes, there may be a last minute glitch in finalization of accounts and balance sheet, the need to extend the accounting year may arise say on 29th or 30th of the March in a case where the financial year ends on 31st March, 2013. It may not be possible for every company to convene the Board Meeting at such a short notice. Therefore, it would be unrealistic to take a view that in every case, the company must take decision to extend the financial year, before the financial year or the period by which the financial year is sought to be extended, expires. Neither there is such requirement laid down in Section 210 of the Act nor there is any necessity to read such a requirement in the provisions of the Act.

7. Considering that the time available to the company is only three months and thereafter, it will necessarily have to go to Registrar of Companies seeking a special approval for extending the financial year beyond three months and obviously, the Registrar of Companies would not accord such an approval unless he is satisfied that there are sufficient reasons for granting such an extension, I find no illegality in the decision taken on 11 th August, 2011, to extend the financial year by 3 months. I find no merit in the present writ petition and the same is

dismissed as such. No order as to costs. V.K. JAIN, J JULY 23 2013 sd

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