

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **CRL. MISC.(CO.) NO. 3 OF 2008**

+ **Date of Decision: 15th February, 2010**

Sonia Khosla **...Petitioner**
! **Through:Mr.Deepak Khosla,Attorney**

Versus

\$ **VIKRAM BAKSHI & ORS.** **...Respondents**

CORAM:

* **HON'BLE MR. JUSTICE P.K.BHASIN**

1. Whether Reporters of local papers may be allowed to see the judgment?(No)
2. To be referred to the Reporter or not?(No)
3. Whether the judgment should be reported in the digest?(No)

ORDER

P.K.BHASIN, J:

This application under Section 340(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.' in short) has been filed by the petitioner for taking action against the three respondents herein under Section 340(1) Cr.P.C. read with Sections 195(1)(b) and 195(4) Cr.P.C. for their having committed acts of perjury etc. in the petition under Sections 397/398 of the Companies Act (being Company petition no. 114/07) filed by her before the Company Law Board (in short 'CLB'),

2. In the petition filed before the CLB the petitioner had claimed that she was the founder Director of a Company by the name of Montreaux Resorts(P) Ltd.(hereinafter to be referred as the 'Company')

which was incorporated in the year 2005, *inter alia*, with the object of developing and operating tourist resorts and hotels etc. The petitioner's husband had entered into sale agreements with some land owners in Himachal Pradesh for purchase of land since the petitioner had perceived tremendous potential for tourism in that area. Petitioner's father-in-law Shri R.P. Khosla already owned some land in Himachal Pradesh. However, for the purpose of developing tourist resorts they required crores of rupees and to generate enough funds they were on the look-out for assistance from financial investors. They came across respondent no.1 herein, Shri Vikram Bakshi, who showed his inclination for being associated in the intended projects of opening of tourist resorts in Himachal Pradesh and after discussions, an MoU and one agreement were executed by him with the Company, the petitioner herein, the petitioner's husband Mr. Deepak Khosla and her father-in-law Mr.R.P.Khosla sometime between December, 2005 and March, 2006. As per the MoU the Board of Directors of the Company was reconstituted and respondents no.3 and 4 herein, namely, Shri Vinod Surha and Shri Wadia Parkash became Additional Directors of the Company as the nominees of Shri Vikram Bakshi.

3. It appears that before the project in Himachal Pradesh could really take off disputes arose between Shri Vikram Bakshi, Shri Vinod Surha and Shri Wadia Parkash (who can be described collectively as

the 'Bakshi Group') and the petitioner and her family members(who can be referred to as the 'Khosla Group'). According to the petitioner, Mr. Vikram Bakshi, who was also made an Additional Director on 19/03/07 by Mr. Wadia Prakash and Mr. Vinod Surha illegally, along with these two persons started using the Company only for their personal enrichment and were committing acts to the detriment of the Company and that too by keeping the petitioner in dark about whatever they were doing and they were also treating the Company as their personal fiefdom. So, the petitioner approached the CLB. The reliefs prayed for by the petitioner in her petition before the CLB, *inter alia*, included an order for removal of Mr.Vikram Bakshi, Mr. Vinod Surha and Mr. Wadia Prakash from the Board of Directors of the Company. Alongwith that petition an application for some interim directions was also moved. The CLB initially gave a direction to its Bench Officer to authenticate the minute books and account books of the Company and the petitioner was allowed to inspect the records. After authenticating the documents the Bench Officer is stated to have made copies of those documents and placed them on the file of C.P.No.114/07.

4. Before any reply to C.P.No.114/07 could be filed by any of the respondents therein one application (being C.A.No.572/2007) was filed before the CLB on 24/12/07, apparently on behalf of the Khosla Group, by one Mr. Vineet Khosla claiming himself to be a Director of

the Company. It was claimed in that application that Shri Vinod Surha and Shri Wadia Prakash, who were initially appointed as Additional Directors of the Company under Section 260 of the Companies Act were to remain as Directors till the holding of the first AGM after their becoming Additional Directors which was allegedly held on 30/09/06. But in that AGM they were not confirmed/elected as Directors and so by operation of law both of them had ceased to be the Directors w.e.f. 30/09/06. Consequently, Shri Vikram Bakshi, who was appointed as an Additional Director by these two persons on 19/03/07, after they themselves had ceased to be the Additional Directors of the Company, could also not claim himself to be a Director of the Company. However, despite all three of them being not the Directors of the Company they were going to hold a meeting of the Board of Directors of the Company on 26/12/07. A prayer was made in that application for restraining these three persons from claiming themselves as the Directors of the Company and holding the meeting on 26/12/2007. On 24/12/07 the CLB had passed an order directing the deferment of that meeting which was going to be held on 26/12/07.

5. Instead of filing reply to the said application of Khosla Group an application (being C.A.No.01/08) was moved before the CLB, which was apparently on behalf of the Bakshi Group, for vacating the above order dated 24/12/07. Responding to the averments made in C.A. No.372/07 that Shri Vinod Surha and Shri Wadia Parkash had ceased

to be the Directors of the Company w.e.f. 30/09/06 it was claimed in that application that Shri Vinod Surha and Shri Wadia Prakash were, in fact, confirmed as Directors of the Company in the AGM held on 30/09/06 but inadvertently in the minutes of that meeting that fact was not mentioned. During the hearing of that application the CLB restrained both the groups from holding any Board meetings. It appears that after getting copies of the minutes of the meetings of the Company convened by Bakshi Group the petitioner came to know that in the AGM held on 30/09/06 Shri Vinod Surha and Shri Wadia Parkash were not confirmed/elected as Directors of the Company and, so, they had ceased to be the Directors by operation of law and that she had remained as the only Director of the Company. She then co-opted one Mr. Vineet Ahuja as a Director of the Company on 11/12/07 and on 18/12/07 she brought on the Board her husband and one Mr. R.K.Garg also and she also issued additional shares of the Company. The CLB, however, while disposing of C.A.No.01/08 vide order dated 31/01/08 quashed the appointments of the three Additional Directors appointed by Mrs. Sonia Khosla and also the additional shares allotted by her on 18/12/07.

6. The petitioner now claims that in the C.A.No.1/08 filed by Bakshi Group it was falsely claimed before the CLB that Mr. Vinod Surha, respondent no.2 herein, and Mr. Wadia Prakash, respondent no.3 herein, had been confirmed as Directors of the Company in the

first AGM held on 30/09/06 since in the minutes of the alleged AGM held on 30/09/06 there is no such decision mentioned. The petitioner also claims that even the minutes of the said AGM were forged inasmuch as the minutes record the presence of the petitioner also in that meeting when in fact on that day she was in London. The petitioner has placed on record copy of the minutes of the AGM held on 30/09/06. Thus, according to the petitioner, the respondents herein in conspiracy with each other had fabricated a document i.e. minutes dated 30/09/06 of the AGM in order to use the same in judicial proceedings and had also made false claim relying upon that document that the appointment of Shri Vinod Surha and Shri Wadia Prakash as Directors was confirmed in the AGM held on 30/09/06 and accepting their stand to that effect the CLB passed an order on 31/01/08 which, as per the petitioner virtually amounted to rejection of her main petition and acceptance of the case of the respondents without any enquiry into the rival stands without even there being any reply to C.P.No.114/07. For these acts, primarily, of the three respondents herein, namely, Shri Vikram Bakshi, Shri Vinod Surha and Shri Wadia Prakash, the petitioner is seeking their prosecution by praying to this Court, being the appellate Court of the CLB, for making a complaint to the Magistrate for the commission of offences punishable under Sections 191/192/196/197/198/199/200/202/204/205/209/463/464/466/467/468/471/474 of IPC read with

Sections 120-B and 176 IPC. The petitioner has also placed on record a copy of her passport showing her departure for London as also the date of her return from there. As per her passport she had left India for London on 16/09/06 and had come back only on 03/10/2006. She has also placed on record confirmation letter from Emirates Airlines on whose flight she had flown to London.

7. The petitioner claims that before filing of the present petition before this Court for invoking the jurisdiction vested in this Court under Section 340(2) Cr.P.C. she had approached CLB for initiating similar action against the respondents but the learned CLB had observed in its order dated 28/07/08 that for action against the respondents for 'forgery' the remedy of the petitioner was to approach the Civil Court which, according to the petitioner, showed that the learned CLB did not even understand the scope of Section 340(1) Cr.P.C. and that necessitated invoking the powers vested in this Court as the appellate Court of CLB since the remedy of action under Section 340 Cr.P.C. is the only remedy in respect of offences affecting the administration of justice and Civil Court has no role to play in this kind of a situation.

8. In view of the fact that the respondents Mr. Vinod Surha and Mr. Wadia Prakash have claimed before the CLB to have been appointed as Directors in the AGM which they had held on 30/09/06 showing the petitioner Sonia Khosla also to be present in that meeting, being the shareholder as well as the Director of the Company, while her

passport shows that she had left India on 16/09/06 and come back on 03/10/06, this aspect definitely needs to be enquired into. However, before any final decision is taken by this Court for exercising the powers under Section 340(2) Cr.P.C. for making a complaint to the Magistrate, this Court deems it fit to hold a preliminary enquiry for looking into the claim of the petitioner that she was not in India during the period from 16/09/06 to 03/10/06 and for that reason she could not have been present in the AGM of the Company which respondents 2 and 3 herein had allegedly held on 30/09/06 and so the minutes of 30/09/06 are fabricated. I, therefore, direct the Registrar (Vigilance) of this Court to hold a preliminary enquiry into the said aspect relating to the genuineness of the minutes of the AGM held on 30/09/06 and for that purpose he would be at liberty to take any steps including inspection of the record of this petition as well as that of the Company Law Board and the Company. The report would be submitted to this Court within six weeks.

P.K. BHASIN,J

February 15, 2010