

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present :-

The Hon'ble Justice Moushumi Bhattacharya.

W.P.A 23115 of 2022

Shree Radhe Tea Plantation Private Limited & Anr.

Vs.

Registrar of Companies, West Bengal & Ors.

For the petitioners : Mr. Abhrajit Mitra, Adv.
Mr. Shaunak Mitra, Adv.
Mr. Sanket Sarangi, Adv.
Mr. Deepam Sarkar, Adv.
Mr. Sanjiv Kr. Trivedi, Adv.
Mr. Iram Hassan, Adv.
Mr. Subhajit Ghosh, Adv.

For the respondents : Mr. Avinash Kanakani, Adv.

Last Heard on : 15.11.2022.

Delivered on : 18.11.2022.

Moushumi Bhattacharya, J.

1. The petitioners seek an injunction restraining the respondents, namely the Registrar of Companies, West Bengal and Regional Director, Ministry of Corporate Affairs from taking any further steps in pursuance of an inquiry report dated 13th April, 2021. The petitioners also seek a restraint on the

respondents from acting in pursuance of a further inquiry report issued to the petitioners from 7th October, 2021 to 26th July, 2022.

2. The case sought to be made out by the petitioners is that the ROC cannot initiate multiple proceedings under section 206(4) of The Companies Act, 2013, in respect of the same alleged contraventions. Learned counsel appearing for the petitioners places an order passed by the ROC under section 206(4) of the Act dated 4th July, 2022 pursuant to which summons were issued on 26th July, 2022 and the petitioners attended a hearing in August, 2022. Counsel submits that the petitioners submitted their written response dated 1st August, 2022 and 17th August, 2022 after the hearing at the office of the inquiry officer. Counsel submits that the ROC is yet to submit a report on the inspection under section 208 of the Act. Counsel submits that the petitioners were made aware of the impugned inquiry report dated 13th April, 2021 only in a winding up proceedings instituted against the petitioner no. 1 in May, 2022 before the National Company Law Tribunal (NCLT), Kolkata. It is submitted that the report could not have been made under section 206(4) since a report can only be made under section 208 after completion of inspection and inquiry. It is also submitted that the Deputy ROC referred the matter to the Income Tax Department for further course of action and for examining the matter which is outside the purview of section 206(4) of the Act.

3. Learned counsel appearing for the respondents submits that the proceedings before the NCLT have been instituted under section 271 of the Act, namely for winding up of the petitioner no. 1 company. Counsel points to the powers of the Tribunal which is hearing the of winding up proceedings and

submits that the order which was subsequently served on the petitioner dated 4th July, 2022 under section 206(4) of the Act was on the discovery of further financial irregularities necessitating a separate proceeding under section 206(4) of the Act. Counsel submits that since the winding up proceeding is presently being heard by the NCLT, Kolkata, the Writ Court should not intervene and restrain the ROC from proceeding in terms of the impugned inquiry report dated 13th April, 2021.

4. A careful perusal of the provisions relating to inspection, inquiry and investigation of companies under sections 206-210 of the Companies Act, 2013 indicates that the sequential steps required to be taken by the ROC must be followed before the ROC submits the report in writing to the Central Government for further investigation into the affairs of the company if necessary. The stage of filing a report comes only after inspection of books of accounts or conducting inquiry under sections 206 and 207 of the Act. Section 210 is the culmination of this batch of provisions relating to inspection, inquiry and investigation into the affairs of the company where the Central Government may investigate into the affairs of a company if it is of the opinion that it is necessary to do so and on fulfillment of the conditions under section 210(1)(a)-(c). To the extent of the steps taken by the respondents including the order under section 206(4) dated 4th July, 2022, the summons issued thereafter, the hearing given to the petitioners and the acceptance of the petitioners' response, there is little doubt that the respondents must follow the step-wise compliance of sections 206-210 of the Act.

5. The contention that the respondents are statutorily precluded from initiating a proceeding under section 206(4) after the impugned inquiry report dated 13th April, 2021 is mis-reading the relevant provisions referred to above. Sections 206-210 of the Act do not contain a bar on the Registrar calling for information or conducting an inspection or inquiry if the Registrar comes across additional material warranting the second proceeding under section 206. The presumption that the impugned report dated 13th April, 2021 should be stayed since a parallel inquiry has been initiated in July, 2022 is not borne out from the relevant statutory provisions.

6. A significant factor would be the pendency of winding up proceedings before the NCLT, Kolkata. Even if the contention that the petitioners came to know of the impugned inquiry report dated 13th April, 2021 only in the course of such proceedings is to be accepted, the petitioners have every opportunity to contest the report as part of its defence in the winding up proceedings. Moreover, the contention raised before this Court are purely factual in nature, namely the time of initiation of the two proceedings and whether the said proceeding was served on the petitioners at the material point of time. The Writ Court is not the forum for deciding these questions particularly where the parties are before the statutory forum which is mandated to deal with these factual questions.

7. It is also relevant to state that the provisions for inspection, inquiry and investigation are distinct from sections 271-273 dealing with the circumstances in which a company may be wound up by the Tribunal. Section 273 in fact empowers the Tribunal not only to make an interim order but to

pass any other orders as it may deem fit subject to the three *provisos* following section 273(1)(e) of the Act. Given the wide powers of the Tribunal under section 273, there is no reason to hold that the petitioners would not get an opportunity in the winding up proceedings to seek appropriate orders with regard to the inquiry report which is impugned in the present writ petition. The implication of a stay on the inquiry report dated 13th April, 2021 is another factor which weighs upon this Court since the order prayed for would result in staying of all further notices issued by the ROC which in turn would indelibly impact the winding up proceedings.

8. This Court is hence not inclined to interfere with or interdict the impugned inquiry report dated 13th April, 2021. It is however made clear that the concerns raised by the petitioners on the impugned notice and the reference/alleged delegation to another authority shall be given due consideration by the forum where the parties are presently contesting the winding up proceedings.

9. WPA 23115 of 2022 is accordingly dismissed without any order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(Moushumi Bhattacharya, J.)