

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**I.A. No. 1024 of 2017 in Company Appeal (AT) No. 275 of 2017**

**IN THE MATTER OF:**

**Mcdonald's India Pvt. Ltd. & Ors.**

**...Appellants**

**Vs**

**Vikram Bakshi & Ors.**

**....Respondents**

**Present:**

**For Appellants: Mr. Rahul Dave and Mr. Niti Dixit, Advocates for Appallent No. 1.**

**Mr. Amit Dhingra, Mr. Abhishek Tiwari, Ms. Raunaq Mathur, Ms. Zahra Aziz, Mr. Mohit Negi and Mr. Suryaveer Berry, Advocates for Appallent No. 2 and 3.**

**For Respondents: Mr. Jayant Mehta, Mr. Rahul Kukreja and Mr. Gauhar Mirza, Advocate for Respondent no. 1, 2& 9.**

**Mr. P. Nagesh, Advocate for Respondent No. 3.**

**Mr. Arun Kathpalia, Sr. Advocate with Mr. Satyajit Sarna, Ms. Pallavi Srivastava, for Respondent No. 7.**

**ORDER**  
**(03.01.2018)**

Heard learned counsel for the Applicant Mr. Devinder Jain who is respondent no. 7 in the appeal. The learned counsel for this applicant submits that the impugned judgment and order passed in the main matter of the appeal is under challenge and is still pending. He submits that the applicant was appointed as Company Secretary which appointment was confirmed by resolution passed by the Board of Directors on 29.09.2008 which is at Annexure P1. He submits that in 2009 the Board of Directors gave additional charge to the applicant of General Manger Legal. It is stated that when the matter was pending before the NCLT the respondent no. 1, 2 and 9 raised various disputes against the applicant and he was harassed and attempts

were made to dislodge him but the NCLT protected the applicant. The counsel referred to order dated 05.12.2013 copy of which has been filed at page 24 and another order dated 09.09.2015 copy of which has been filed at page 37 and a reference has also been made to another order dated 02.07.15 passed by the High Court of Delhi in a Contempt Application. The counsel further referred to the final order passed by The Institute of Company Secretaries of India copy of which is filed as Annexure P2 exonerating the applicant for the acts alleged against him by the respondent no.1 making grievance of filing of Form 32. The learned counsel further referred to the order dated 23.07.2015 passed by Company Law Board copy of which is at Annexure P4 to submit that the present Appellant moved the NCLT for protecting the employees from the acts of the present respondents and the Company Law Board had protected them.

2. The learned counsel has then referred to Annexure P7, document signed by respondents 9 (of the appeal) which is a letter issued on 21.12.2017 to the applicant (respondent no. 7). The main contents read as under:

*“Sub: Termination of Services*

*Dear Mr. Jain,*

*This is to inform you that your services as General Manager- Legal & Secretarial, stand terminated w.e.f. December 21, 2017.*

*As per clause No. 10 of the Letter of Appointment issued to you on dated 03.09.2008, you are being given one month's gross salary in*

*lieu of the notice period. This is in accordance with the said appointment letter.*

*As you have been terminated as General Manager- Legal & Secretarial with effect from 21.12.2017, the additional responsibility assigned to you as the Company Secretary and Compliance Officer of the Company, also stands withdrawn with effect from 21.12.2017.*

*Accordingly, you are advised to contact the HR Department today to complete the separation formalities to process your full and final settlement.”*

3. The learned counsel for the applicant states that when the earlier record shows that the applicant was appointed by the Company and the Board resolutions had conferred certain duties on him, the present letter dated December 21, 2017 by respondent no. 9 as “Sr. Director- Human Resources & Corp. Community” could not have been issued in the manner in which it has been done and the present action of the respondent no. 9 cannot be protected and the said letter deserves to be stayed.

4. Advocate Shri Amit Dingra for appellants 2 and 3 submits that there was a board meeting held on October 25, 2017 in which one of the subject was whether the applicant should continue as Company Secretary and General Manager- Legal of the company but the item was not discussed and the same was deferred and thus he submits that there is no board resolution.

5. Against this the learned counsel appearing for respondent no. 1, 2 and 9 in the appeal, tenders across the Bar a document dated 3<sup>rd</sup> September, 2008. It is taken on record and marked 'X' for identification. The learned counsel submits that by this letter the applicant was appointed as General Manager-Legal & Secretarial and condition 10 of the appointment reads as under:-

***“10. Resignation/ Termination of Services***

*Your employment will be subject to termination by either party by giving to the other party 30(thirty) days notice in writing. In the event of your leaving employment without notice, you shall pay to the Company a sum equivalent to one month gross salary and similarly the company shall be liable to pay an amount equal to one month gross salary. In event of your leaving employment without notice, your Privilege Leaves available at the time of resignation will be adjusted against the notice period.”*

6. Referring to the above condition the submission is that the company can terminate the service of applicant by giving one months notice or salary in lieu of the notice period. According to the counsel in line with this condition the present letter in Annexure P7 has been issued which is perfectly legal and thus according to him no orders need be passed which would be in the nature of mandatory directions. It has been further submitted that the interim orders which were passed during the pendency of the matter before NCLT got merged in the final orders disposing the Company Petition and whatever is not saved

in the final order cannot be banked upon. The counsel referred to the impugned final order which is subject matter of the appeal and reference was made with regard to applicant in Para 36 where the NCLT had observed that it was taking the order dated 08.04.2017 on record as passed by the Institute of Company Secretaries of India without making any further observation and had added that it shall not however act to the prejudice of any of Mr. Vikram Bakshi. The learned counsel then referred to the part of impugned order which states that all the applications stood disposed off. The counsel submitted that the final order in Para 41(i) recorded that the filing of the form 32 was illegal. Thus he justifies the impugned letter and according to him the present application cannot be maintained by the applicant and no relief can be given.

7. It has been further stated for Respondent no. 1, 2 and 9 that there is no provision that for removing the Company Secretary Board Resolution would be necessary.

8. We have heard counsel for both sides. Going through the material available and which has been pointed out to us and to which we have referred above, as well as the fact that the present appeal is fixed for hearing finally on 12<sup>th</sup> January, 2018 along with the Company Appeal 280/17 which has been filed by respondent no. 1, we find that it would be appropriate that the parties do not indulge in any such acts which would create hindrances in the decision of the appeals. It is not appropriate that the main issues get brushed aside and other disputes are created, taken up and agitated. It is in the interest of both the sides that both the appeals are taken up for hearing finally and

whatever decision is taken gets taken in the main matters. At the same time, looking to the various orders and directions which were passed when the matter was in the NCLT where also it appears respondent no. 1 and 9 had grievances against the applicant and still the NCLT had protected applicant/respondent no. 7 till the final decision was taken, it would be appropriate that the position is maintained. The submission of the learned counsel for the respondent no. 1, 2 and 9 that in the final order submission of Form 32 by Applicant has been held illegal is subject matter of the appeal. The main matter is yet to be finally decided in this Tribunal and thus at the moment it would not be appropriate to put a finger there and maintain action of respondent no. 9 pending the appeal. It is rightly submitted by the counsel for the applicant that there is no board resolution for removing a person of the status of the applicant from the company. When the appointment was made by the company, a person in the status of General Manager- Legal & Company Secretary who has been protected when the matter was in the NCLT could not be dealt with in the manner in which respondent no. 9 has issued Annexure P7.

9. For the above reasons, we stay the letter dated December 21, 2017 (Annexure P7) and its effects till decision of the appeal. Till the decision of the appeal, status quo anterior to the issue of this letter Annexure P7 shall be maintained with regard to the services of applicant. In the meanwhile, if Board of Directors duly take any unanimous decision with regard to services of

Applicant/ Respondent no. 7 the same may not be acted upon without reference to this Tribunal.

10. The application is accordingly disposed.

(Justice A.I.S. Cheema)  
Member (Judicial)

(Justice Bansi Lal Bhatt)  
Member (Judicial)

Sh/nn