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RAMA NARANG  
v.  
RAMESH NARANG AND ORS.

JANUARY 19, 1995

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[A.M. AHMADI, CJ, R.M. SAHAI AND  
K. JAYACHANDRA REDDY, JJ.]

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*Companies Act, 1956—Ss.267, 274, 283—Managing Director—Appointment of after incurring disqualification—Effect of—Company appointing a person as Managing Director after he was convicted of offence involving moral turpitude—operation of judgment of Sessions Court stayed by appellate court under s. 389(1) Cr.P.C.—Fact that stay sought of disqualification incurred under s.267 because of conviction not mentioned in stay application—Held, company committed infraction. of mandatory provision of s.267—Operation of s.267 would take effect as soon as conviction is recorded by a competent court—Order of appellate court can not be extended to stay of conviction for avoiding disqualification under s.267.*

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*Code of Criminal Procedure 1973—Ss. 374, 389(1), 482—Suspension of sentence or order appealed—Held, appellate court can stay operation of order of conviction for the purpose of avoiding disqualification under s. 267 of Companies Act, if the precise purpose is brought to notice of the court—High Court under s. 482 can pass orders preventing irreparable damages to applicant.*

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*Practice and Procedure -*

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*Parties to approach the court with clean hands—A person against whom an order of conviction is passed by trial court cannot suppress the precise purpose for which he seeks suspension of conviction and obtain a general order of stay and then claim that disqualification as a result of conviction has ceased to operate.*

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**The appellant and his sons, respondents no.1 and 2 had share holding in a deemed Public Limited Company. The appellant, who was the founder and largest shareholder of the Company was, by a resolution dated 25.6.1990, appointed as the Managing Director of the Company. Respondent no. 1 challenged the said appointment in a Company Petition**

before High Court of Bombay on the ground that the appellant having been convicted of an offence involving moral turpitude could not hold office of Managing Director in view of provisions of S. 267 of the Companies Act, 1956. It was not disputed that the appellant had been convicted of offences punishable under ss. 120-B and 420 I.P.C. and sentenced to rigorous imprisonment for two and a half years, by Additional Sessions Judge, Delhi on 22.12.1986 and on appeal, the High Court of Delhi released him on bail and directed stay of the operation of the order passed by Addl. Sessions Judge. However, respondent no. 1 unconditionally withdrew the said company petition.

Subsequently, in a petition before the Company Law Board, the functioning of the appellant as the Managing Director was again questioned on the ground of his conviction. Respondent no. 1 claimed himself to be the Managing Director and purporting to act as such issued a notice convening a meeting of the Board of Directors on 13.7.1992. It was claimed that in the said meeting it was *inter alia* resolved that the appellant had ceased to be the Managing Director and Director of the Company by virtue of s.267 of the Companies Act. Thereupon, the appellant and respondents no. 4 and 5 filed a suit for declaration that the Board meeting held on 13.7.1992 was illegal and the decisions taken therein were null and void, and for a permanent injunction restraining respondents no.1 and 2 from implementing the decisions taken in the said meeting. A Single Judge of the High Court, while granting the interim reliefs sought, held that the appointment of the appellant as Managing Director was not *void ab initio* notwithstanding the provision of s.267 of the Companies Act and, that the meeting of 13.7.1992 was not properly and validly convened and, therefore, the entire proceedings were bad in law.

On appeal, the Division Bench of the High Court held that provisions of s.267 of the Companies Act were mandatory in nature and it was not permissible to appoint or continue any person as Managing Director of a company on his being convicted of an offence involving moral turpitude. As regards the effect of the stay order granted by the High Court of Delhi in appeal filed by the appellant against his conviction, the Division Bench held that under s.389(1) of the Code of Criminal Procedure, 1973 the High Court of Delhi could only suspend the execution of the sentence; and it neither suspended the order of conviction nor did it have the power to do so even under s. 482 of the Code. Aggrieved, the appellant filed the

A appeal.

On the questions : (1) whether the appellant was liable to be visited with the consequence of s.267 of the Companies Act notwithstanding the interim order passed by the Delhi High Court while admitting the appellant's appeal against his conviction and sentence; (2) whether the interim order passed by the Delhi High Court had the effect of staying the operation of s.267 of the Companies Act; and (3) whether the scope of s.389(1) of the Code extends to conferring power on the appellate court to stay operation of the order of conviction.

C Dismissing the appeal, this Court

D HELD : 1.1. The company in appointing the appellant as Director and Managing Director after his conviction, committed an infraction of the mandatory prohibition contained in s.267 of the Companies Act, 1956. The section not only prohibits appointment or employment after conviction but also expects discontinuance of appointments or employment already made prior to conviction. This is plainly the mandate of s.267. The language of the section is intended to be mandatory in character. The word 'shall' occurring in the section brings out its imperative character. [468-C-D-B]

E 1.2. The operation of s. 267 would take effect as soon as conviction is recorded by a competent court of an offence involving moral turpitude. Sections 267, 274 and 383 constitute a Code whereunder a Director, Managing Director and a whole time Director are visited with certain disqualifications in the event of conviction. The Act has drawn a distinction between a Director and a Managing Director in the matter of fixation of the point of time when the disqualification becomes effective in the respective cases. The provisions applicable to a Managing Director are more stringent. And so it should be, because it is the Managing Director who is personally responsible for the business of the company. Such a person must be above board and above all suspicion. [471-B, 469-C]

G *Needle Industries (India) Ltd. v. Needle Industries Newcy (India) Holding Ltd.*, [1981] 3 SCR 698, referred to.

H 2.1. The Delhi High Court while granting stay under s.389(1) of the Code of Criminal Procedure 1973, of the judgment passed by the Sessions Court, in the context of the averments made in the application seeking

such an order, did not and could not have intended to extend the stay of conviction for the purpose of avoiding the disqualification under Section 267 of the Companies Act. To that extent the interpretation put by the Bombay High Court on the interim stay is unassailable. [474-B]

2.2. In a situation, where the order of conviction may incur disqualification under any other statute, as in the instant case, the power under s. 389(1) of the Code can be invoked and the attention of the appellate court must be specifically invited to the consequence that likely to fall, to enable it to apply its mind to the issue, since under s. 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. [472-B]

2.3. The appellant in his application for interim stay had not sought any order from the Delhi High Court for stay of the disqualification he was likely to incur under s. 267 of the Companies Act on account of his conviction and, therefore, it cannot be inferred that the High Court had applied its mind to this specific aspect of the matter and had thereafter granted stay of the operation of the judgment of the Sessions Court. That is why in the order of the High Court there is not a single reason relevant to the consequence of the conviction under s.267 of the Companies Act. The interim stay granted by the Delhi High Court must, therefore, be read in that context. [473-B-C]

2.4. If the Delhi High Court had 'consciously' passed an order even in purported exercise of power under Section 389(1) of the Code granting stay of the order of conviction so as not to result in the disqualification envisaged by Section 267 of the Companies Act, it would not be open to the Bombay High Court in collateral civil proceedings to overlook it on the ground that the scope of Section 389(1) of the Code did not extend to grant of such a stay order. However, it was perfectly open to the Bombay High Court, without questioning the legality and validity of the interim order passed by the Delhi High Court, to interpret the scope of the said order in the context of the averments made in the application seeking such an order. [473-E-G]

2.6. Since the order of conviction does not on the mere filing of an appeal disappear, it cannot be said that s.267 of Companies Act must be read to apply only to a final order of conviction. Such an interpretation may defeat the very object and purpose for which it came to be enacted.

A Therefore it cannot be said that on the admission of appeal by the Delhi High Court the order of conviction had ceased to exist.

2.7. A person against whom an order of conviction is passed by the trial court, cannot suppress the precise purpose for which he seeks suspension of the conviction, and obtain a general order of stay and then claim that the disqualification has ceased to operate. In the instant case, the appellant did not approach the Delhi High Court with clean hands but indulged in an exercise of hide and seek in obtaining the interim stay without drawing the pointed attention of the Delhi High Court that stay of conviction was essential to avoid the disqualification under s.267 of the Companies Act. [472-C, 474-C-D]

3.1. There is no reason to place a narrow interpretation on s.389(1) of the Code not to extend it to an order of conviction. Under the provisions of the Code there are two stages in a criminal trial before the Sessions Court - the stage upto the recording of conviction and the stage post-conviction up to the imposition of sentence. It is only after these stages are covered that a judgment becomes complete and can be appealed against under s. 374. The appeal under s.374 of the Code of Criminal Procedure is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under s.374, the appeal is against both the conviction and the sentence. [475-A, 474-H]

3.2. The Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under s. 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the convicted person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by s. 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the appellate Court. [475-C]

3.3. While granting a stay of suspension of the order of conviction the court must examine the pros and cons and if it feels satisfied that a

case is made out for grant of such an order, it may do so and impose such conditions as are considered appropriate. [475-D] A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5620 of 1994.

From the Judgment and Order dated 8/9.6.94 of the Bombay High Court in A. No. 684 of 1992. B

G. Ramaswamy, Yashank Adhyaru, R.N. Karanjwala, P.K. Mullick, Manik Karanjwala and Ms. Suruchi Aggarwal for the Appellant.

F.S. Nariman, Jagjit Singh, Ms. Monika Mohil and Ms. Bina Gupta for the Respondent No.1. C

P. Chidambram, Dilip Jhangiani and Anip Sachthey for the Respondent No. 4.

The Judgment of the Court was delivered by D

AHMADI, CJI. This appeal arises from the order dated 8/9th June, 1994 of the Division Bench of the Bombay High Court rendered in Appeal No. 684 of 1992 against an order dated 17th August, 1992 passed by the learned Single Judge making absolute the notice of motion No. 1593 of 1992 taken out by the appellants-Rama Narang and the respondents Nos. 4 & 5, namely, Narang International Hotels Private Limited and Arvind Ghei. The two reliefs granted by the learned Single Judge were to restrain respondent Nos. 1 & 2 from (a) acting upon, implementing, circulating, or taking any steps in furtherance of any decision purported to have been taken at the Board meeting alleged to have been held on 13th July, 1992 and from (b) obstructing or interfering with the petitioner's functioning as Chairman and Managing Director of the respondent-company. By the impugned judgment, the Division Bench partly allowed the appeal by setting aside the order of the learned Single Judge in respect of grant of prayer (b) of the motion while keeping the relief in terms of prayer (a) of the notice of motion undisturbed. E F G

M/s. Narang International Hotels Private Limited is a deemed Public Limited Company under Section 42(a) of the Companies Act engaged in the business of the hoteliering and flight catering. The members of the Narang Family have share holding in this company. Rama Narang, the H

A appellant before us is the founder and the largest shareholder of the company. The respondents 1 and 2 are the sons of the appellant. The respondent No. 3-Kantilal Sethia and the respondent No. 5-Arvind Ghei were the Secretary and Director of the Company, respectively.

B In a general meeting of 25th June, 1990 the appellant was appointed the Managing Director of the Company and his wife Mrs. Mona Rama Narang was appointed whole-time Additional Director. On 29th June, 1990 in an extraordinary general meeting of the company, the Articles of Association were amended and the appellant was appointed as the Chairman and Director for life of the Company.

C On 14th November, 1990, the respondent No.1 Ramesh Narang filed a Company Petition No. 681 of 1990 before the Company Judge in the High Court of Bombay under Sections 397 and 398 of the Companies Act challenging the validity of the Board meeting of 25th June, 1990 on the ground that the appellant being convicted for an offence involving moral turpitude could not hold office of the Managing Director in view of the provisions of Section 267 of the Companies Act. That Section lays down that no company shall appoint or employ, or continue the appointment or employment of any person as its managing or whole-time Director, who is, or has at any time been convicted by a Court of an offence involving moral turpitude. The appellant was tried by the Additional Sessions Judge, Delhi in case No. 134 of 1985 (*State v. Ram Lal Narang & Ors.*) and was convicted on December 22, 1986 for having committed offences punishable under Section 120-B and Section 420 read with Section 114 of the Indian Penal Code. He was sentenced to rigorous imprisonment for three months on the first count and rigorous imprisonment of two & a half years and a fine of Rs. 5,000/- on the second count. On appeal, Criminal Appeal No. 17 of 1987; the High Court of Delhi released the appellant on bail and directed stay of the operation of the impugned order.

G The High Court of Bombay by an order dated 6th December, 1990 restrained the company for holding any Board meeting or general body meeting. Subsequently, on July 5, 1991, the respondent No.1 unconditionally withdrew the Company Petition with the permission of the Company Judge. On July 12, 1991, Sanjay Narang, nephew of the appellant, preferred Petition No. 10 of 1991 before the Company Law Board under Sections H 397 and 398 of the Companies Act challenging the appellant's appointment

as Managing Director of the Company on the same ground as in the Company Petition No. 681 of 1990. During the pendency of the said petition before the Company Law Board, some family settlement was arrived at on 30th January 1992 between the members of the Narang Family recognising, *inter alia*, that the appellant was validly appointed as the Chairman and Managing Director of the company and was not disqualified to act as a Managing Director. Under the settlement Ramesh Narang ceased to be a Director. The petition before the Company Law Board was disposed of in terms of the said settlement.

On 30th June, 1992, the respondent No. 1 instituted Petition No. 28 of 1992 before the Company Law Board at New Delhi complaining of oppression and mismanagement of the Company by the appellant. On July 9, 1992, the appellant in his capacity as Chairman and Managing Director issued a notice to convene a meeting of the Board of Directors on July 13, 1992. On July 10, 1992, the appellant informed Rajesh Narang, respondent No. 2, that he had ceased to be a Director of the Company. This was disputed and the functioning of the appellant as the Managing Director was again questioned, on the ground of his conviction. The respondent No.1 on the other hand claimed to be the Managing Director and purporting to act as such issued notice convening a parallel meeting of the Board of Directors on 13th July, 1992 at the registered office of the Company. The respondent No.1 claimed that a meeting was held on 13th July, 1992 at which several resolutions were passed including the one declaring that the appellant had ceased to be the Managing Director and Director of the Company in view of the provisions of Section 267 of the Companies Act. On this, the appellant and the respondents Nos. 4 & 5 instituted Suit No. 2090 of 1992 on July 16, 1992 praying for :

- (a) a declaration that the Board meeting purported to have been held on July 13, 1992 was illegal and all decisions purported to have been taken therein were null and void and of no effect;
- (b) a permanent injunction restraining Ramesh and Rajesh Narang from in any manner acting upon or implementing the decisions taken in the said meeting; and
- (c) damages in the sum of Rs. 1,00,000/-.

Interim relief was sought in terms of reliefs (a) and (b) above under the

## A Notice of Motion No. 1593 of 1992.

The notice of motion for the grant of interim relief was heard for several days by a learned Single Judge, the main contention being whether or not the appellant could be appointed or continued as the Managing Director of the Company after his conviction by the Additional Sessions Judge, Delhi. There was also some controversy in regard to, whether or not any meeting as alleged had taken place on July 13, 1992 and, if yes, whether it was properly convened. The learned Single Judge came to the conclusion that the appointment of the appellant as Director in 1988 and as Managing Director in 1990 was not void *ab-initio* notwithstanding the provision of Section 267 of the Companies Act and in any case it was not open to respondent No.1 Ramesh Narang to challenge the same in view of he having not pursued the earlier challenge. The learned Single Judge also came to the conclusion on an appreciation of the evidence that the meeting of July 13, 1992 was not properly and validly convened and hence the entire proceedings were bad in law. The learned Single Judge, therefore, granted the interim reliefs sought.

The matter was carried in appeal, Appeal No. 684 of 1992, before a Division Bench of the High Court by Ramesh Narnag. The principal contention urged in the appeal was in respect of the capacity of the present appellant to be appointed as Director and Managing Director of the Company after his conviction on 22nd December, 1986. The factum of conviction and sentence as well as that the conviction was in respect of offences involving moral turpitude was not in dispute. The appointment of the appellant as Director and Managing Director having been made in 1988 and 1990, were admittedly subsequent to the order of conviction recorded on 22nd December, 1986. It was, therefore, contended before the Division Bench on behalf of Ramesh Narang that the learned Single Judge had fallen in error in holding that the appointment of the present appellant or his continuation as Managing Director was not *ab-initio* void and was permissible, notwithstanding Section 267 of the Companies Act. Reference was also made to Section 274 of the Companies Act which, *inter alia*, provides that a Director whose conviction has been recorded by a criminal court for an offence involving moral turpitude and in respect of which imprisonment imposed is not less than six months would be disqualified for continuing as a Director of the Company. However, sub-section (2) of Section 274 empowers the Central Government to remove the disqualifica-

tion incurred by any person either generally or in relation to any company or companies specified in the notification to be published in the Official Gazette. Such a power to remove the disqualification is however, not to be found in the case of Managing Director under Section 267 of the Companies Act. Section 283 of the Companies Act provides that the office of a Director shall fall vacant on conviction for an offence involving moral turpitude if the sentence imposed is not less than six months. Sub-section (2) of that section, however, provides that the disqualification shall not take effect for 30 days from the date of imposition of sentence. Thus, the Section keeps the disqualification in abeyance for a period of 30 days to enable the Director to prefer an appeal and further provides that if an appeal is preferred then the disqualification shall not take effect for a period of 7 days from the date of the disposal of the appeal and so on. On a perusal of the scheme of Sections 267, 274 and 283 of the Companies Act the Division Bench was of the opinion that the Legislature dealt with cases of disqualification of a Director differently from that of a Managing Director, in that, in the case of a Director the disqualification was not to operate if the Central Government issued a notification in that behalf or for a period of 30 days to enable the Director to prefer an appeal and if such appeal is preferred for a further period of 7 days after the disposal of the appeal. The Division Bench noted that such a provision was absent when it came to disqualification in the case a Managing Director under Section 267 of the Companies Act. According to the Division Bench this distinction was crucial because the Legislature had made special provisions for relaxing the rigour of the disqualification attaching to a Director but had not made any such provision when it came to the disqualification incurred by a Managing Director. In the view of the Division Bench the provisions of Section 267 were mandatory in nature and it was not permissible to appoint or to continue any person as Managing Director of a company on his being convicted of an offence involving moral turpitude. Dealing with the argument that while the bar imposed by Section 267 was absolute in nature and would have squarely applied in the case of the present appellant had it not been for the interim order passed by the Delhi High Court in appeal by which the impugned order of conviction and sentence came to be suspended. The Division Bench after referring to sub-section (1) of Section 389 of the Code which, *inter alia*, provides that pending any appeal by a convicted person the Appellate Court may order that the execution of the sentence or order appealed against be suspended and that he be released

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A on bail or on his own bond proceeded to observe as under :

B "The powers of the Appellate Court under Section 389(1) of the Code cannot be construed with reference to the expression "order" as suspending the order of conviction itself. The powers of the Appellate Court do not entitle such a Court to direct that the order of conviction should stand suspended. The conviction can only be set aside. The contention of Mr. Cooper that the expression "order" covers even the order of conviction cannot be accepted because the expression used by the Legislature is "execution of the sentence or order". The section makes it clear that the Appellate Court can suspend the execution of the sentence or the execution of the order.....".

D Repelling the argument that even if section 389(1) of the Code did not confer power on the Appellate Court to suspend the conviction, the said power can be gathered from the language of Section 482 of the Code, the Division Bench observed as under :

E "The submission is fallacious and cannot be acceded to. The inherent powers cannot be exercised to find means to pass orders which are not permissible under the Code. We are unable to appreciate how it can be even suggested that conviction can be suspended to secure the ends of justice. In any event, it is not for the Criminal Appellate Court hearing an appeal to decide what are the ends of justice in respect of enforcement of provisions of some other statutes. The powers of the Appellate Court flow from the provisions of the Code and we are not prepared to accept the contention that the Appellate Court hearing the Criminal appeal should pass orders to avoid consequences flowing from the provisions of statutes like Companies Act or Representation of Peoples Act".

G Lastly it was submitted before the Division Bench that as a matter of fact the Delhi High Court had, after admission of the appeal ordered suspension of conviction, right or wrong, and once such an order is passed the consequences of the conviction under Section 267 of the Companies Act cannot be visited. This contention was also spurned by the Division H Bench in the following terms :

"In the first instance, we do not read the order of the Delhi High Court as suspending the order of conviction and, secondly, even assuming it to be so, in our judgment, the Delhi High Court had no power to suspend the order of conviction."

That is because according to the Division Bench the consequences flowing from the provisions of Section 267 of the Companies Act do not depend upon the passing of the order by the Appellate Court since the right to hold the post of Managing Director comes to an end by the thrust of the statute the moment the order of conviction is recorded. With regard to the submission that by the withdrawal of the earlier petition the grievances had come to an end on the filing of the consent terms, the Division Bench repelled the argument holding that the doctrine of estoppel could not be attracted to a case of violation of a statutory provision. The Division Bench, therefore, concluded that the view taken by the learned Single Judge in this behalf was erroneous and consequently the learned Single Judge had committed an error in granting relief in terms of prayer (b) of the notice of motion. Accordingly the appeal came to be partly allowed as stated hereinbefore. Being aggrieved by the said view taken by the Division Bench, the appellant Rama Narang has preferred this appeal by special leave.

The above resume would show that the principal question which falls for our determination is whether the appellant is liable to be visited with the consequence of Section 267 of the Companies Act notwithstanding the interim order passed by the Delhi High Court while admitting the appellant's appeal against his conviction and sentence by the Additional Sessions Judge, Delhi. As we have said earlier the factum of his conviction and the imposition of sentence is not in dispute. Section 267 of the Companies Act, to the extent it is relevant for our purposes, may be set out :

"267. No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of any person as its managing or whole-time Director who

(a) .....

(b) .....

- A (c) is, or has at any time been convicted by a court of an offence involving moral turpitude."

B On a plain reading of this Section it seems clear to us from the language in which the provisions is couched that it is intended to be mandatory in character. The use of the word 'shall' brings out its imperative character. The language is plain, simple and unambiguous and does not admit of more than one meaning, namely, that after the commencement of the Companies Act, no person who has suffered a conviction by a court of an offence involving moral turpitude shall be appointed or employed or continued in appointment or employment by any company as its managing or whole-time

C Director. Indisputably, the appellant was appointed a Director in 1988 and Managing Director in 1990 after his conviction on 22nd December, 1986. On the plain language of Section 267 of the Companies Act, the Company had, in making the appointments, committed an infraction of the mandatory prohibition contained in the said provision. The Section not only

D prohibits appointment or employment after conviction but also expects discontinuance of appointment or employment already made prior to his conviction. This in our view is plainly the mandate of Section 267. As rightly pointed out by the Division Bench of the High Court, Section 274 of the Companies Act provides that a disqualification which a Director incurs on conviction for an offence involving moral turpitude in respect of which

E imprisonment of not less than six months is imposed, the Central Government may, by notification, remove the disqualification incurred by any person either generally or in relation to any company or companies specified in the notification to be published in the Official Gazette. Such a power is, however, not available in the case of a Managing Director.

F Secondly, Section 283 of the Companies Act provides that the office of a Director shall become vacant if convicted and sentenced as stated hereinabove but sub-section (2) thereof, *inter alia*, provides that the disqualification shall not take effect for thirty days from the date of sentence and if an appeal is preferred during the pendency of appeal and till seven days after the disposal of the appeal. This benefit is not extended in the

G case of a Managing Director. The Companies Act has, therefore, drawn a distinction between a Director and a Managing Director; the provisions in the case of the latter are more stringent as compared to that of the former. And so it should be because it is the Managing Director who is personally responsible for the business of the Company. The law considers it unwise

H to appoint or continue the appointment of a person guilty of an offence

involving moral turpitude to be entrusted or continued to be entrusted with the affairs of any company as that would not be in the interests of the share-holders or for that matter even in public interest. As a matter of public policy the law bars the entry of such a person as Managing Director of a company and insists that if he is already in position he should forthwith be removed from the position. The purpose of Section 267 is to protect the interest of the shareholders and to ensure that the management of the affairs of the company and its control is not in the hands of a person who has been found by a competent court to be guilty of an offence involving moral turpitude and has been sentenced to suffer imprisonment for the said crime. In the case of a Director, who is generally not in-charge of the day to day management of the company affairs, the law is not as strict as in the case of a Managing Director who runs the affairs of the company and remains in overall charge of the business carried on by the company. Such a person must be above board and beyond suspicion.

That brings us to the next question, namely, whether the interim order passed by the Delhi High Court has the effect of staying the operation of Section 267 of the Companies Act? Admittedly, the appellant before us, on conviction and sentence, preferred an appeal under Section 374(2) of the Code in the Delhi High Court. The learned Judge of the said High Court while admitting the appeal passed an interim order purporting to be one under Section 389(1) of the Code to the following effect :

"Accused be released on bail on his furnishing a personal bond in the sum of Rs. 10,000/- with one surety in the like amount to the satisfaction of the trial judge. The operation of the impugned order shall remain stayed."

Section 389 of the Code is entitled "suspension of sentence pending the appeal, released of appellant on bail". Sub-section (1) then provides that pending any appeal by a convicted person the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond. On a plain reading of sub-section (1) of Section 389 of the Code it becomes clear that pending an appeal by a convicted person, the Appellate Court may order that the execution of the sentence or order appealed against be suspended.

Chapter XVIII relates to trial before a Court of Sessions. Sections

- A. 225 to 227 relate to the stage prior to the framing of charge. Section 228 provides for the framing of charge against the accused person. If after the charge is framed the accused pleads guilty, Section 229 provides that the Judge shall record the plea and may, in his discretion, convict him thereon. However, if he does not enter a plea of guilty, Sections 230 and 231 provide for leading of prosecution evidence. If, on the completion of the prosecution evidence and examination of the accused, the Judge considers that there is no evidence that the accused committed the offence with which he is charged, the Judge shall record an order of acquittal. If the Judge does not record an acquittal under Section 232, the accused would have to be called upon to enter on his defence as required by Section 233. After the evidence-in-defence is completed and the arguments heard as required by Section 234, Section 235 requires the Judge to give a judgment in the case. If the accused is convicted, sub-section (2) of Section 235 requires that the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence and then pass sentence on him according to law. It will thus be seen that under the Code after the conviction is recorded, Section 235(2) *inter alia* provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. The trial, therefore, comes to an end only after the sentence is awarded to the convicted person.
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- E Chapter XXVII deals with judgment. Section 354 sets out the contents of judgment. It says that every judgment referred to in Section 353 shall, *inter alia*, specify the offence (if any) of which and the Section of the Indian Penal Code or other law under which, the accused is convicted and the punishment to which he is sentenced. Thus a judgment is not complete unless the punishment to which the accused person is sentenced is set out therein. Section 356 refers to the making of an order for notifying address of previously convicted offender. Section 357 refers to an order in regard to the payment of compensation. Section 359 provides for an order in regard to the payment of costs in non-cognizable cases and Section 360 refers to release on probation of good conduct. It will thus be seen from the above provisions that after the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 374 of the Code.
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- H The provisions contained in the Companies Act have relevance to

the management of the affairs of Companies incorporated under that law. The operation of Section 267 would take effect as soon as conviction is recorded by a competent court of an offence involving moral turpitude. Sections 267, 274 and 283 referred to earlier constitute a code whereunder a Director, Managing Director and the whole-time Director are visited with certain disqualifications in the event of conviction. As already pointed out above, the Companies Act itself makes a distinction in the matter of fixation of the point of time when the disqualification becomes effect in the case of a Director and a Managing Director. That is because of the fiduciary nature of the relationship, vide *Needle Industries India Ltd. v. Needle Industries Ltd.*, [1981] 3 SCR 698.

Under the provisions of the Code to which we have already referred there are two stages in a criminal trial before a Sessions Court, the stage upto the recording of a conviction and the stage post-conviction upto the imposition of sentence. A judgment becomes complete after both these stages are covered. Under Section 374(2) of the Code any person convicted on a Trial held by a Sessions Judge or an Additional Sessions Judge may appeal to the High Court. Section 384 provides for summary dismissal of appeal if the Appellate Court does not find sufficient ground to entertain the appeal. If, however, the appeal is not summarily dismissed, the Court must cause notice to issue as to the time and place at which such appeal will be heard. Section 389(1) empowers the Appellate Court to order that the execution of the sentence or order appealed against be suspended pending the appeal. What can be suspended under this provision is the execution of the sentence or the execution of the order. Does 'Order' in Section 389(1) mean order of conviction or an order similar to the one under Sections 357 or 360 of the Code? Obviously the order referred to in Section 389(1) must be an order capable of execution. An order of conviction by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. Since the order of conviction does not on the mere filing of an appeal disappear it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a 'final' order of conviction. Such an interpretation may defeat the very object and purpose for which it came to be enacted. It is, therefore, fallacious to contend that on the admission of the appeal by the Delhi High Court the order of conviction had ceased to exist. If that

A be so why seek a stay or suspension of the Order?

In certain situations the order of conviction can be executable, in the sense, it may incur a disqualification as in the instant case. In such a case the power under Section 389(1) of the Code could be invoked. In such situations the attention of the Appellate Court must be specifically invited to the consequence that is likely to fall to enable it to apply its mind to the issue since under Section 389(1) it is under an obligation to support its order 'for reasons to be recorded by it in writing'. If the attention of the Court is not invited to this specific consequence which is likely to fall upon conviction how can it be expected to assign reasons relevant thereto? No one can be allowed to play hide and seek with the Court; he cannot suppress the precise purpose for which he seeks suspension of the conviction and obtain a general order of stay and then contend that the disqualification ceased to operate. In the instant case if we turn to the application by which interim 'stay' of the operation of the impugned judgment was secured we do not find a single the effect that if the operation of the conviction is not stayed the consequence as indicated in Section 267 of the Companies Act will fall on the appellant. How could it then be said that the Delhi High Court had applied its mind to this precise question before granting 'stay'? That is why the High Court order granting interim stay does not assign any reason having relevance to the said issue. By not making a specific reference to this aspect of the matter, how could the appellant have persuaded the Delhi High Court to stop the coming into operation of Section 267 of the Companies Act? And how could the Court have applied its mind to this question if its pointed attention was not drawn? As we said earlier the application seeking interim stay is wholly silent on this point. That is why we feel that this is a case in which the appellant indulged in an exercise of hide and seek in obtaining the interim stay without drawing the pointed attention of the Delhi High Court that stay of conviction was essential to avoid the disqualification under Section 267 of the Companies Act. If such a precise request was made to the Court pointing out the consequences likely to fall on the continuance of the conviction order, the Court would have applied its mind to the specific question and if it thought that case was made out for grant of interim stay of the conviction order, with or without conditions attached thereto, it may have granted an order to that effect. There can be no doubt that the object of Section 267 of the Companies Act is wholesome and that is to ensure that the management of the company is not in soiled hands. As we have

pointed out earlier the Managing Director of a company holds a fiduciary position qua the company and its shareholders and, therefore, different considerations would flow if an order is sought from the Appellate Court for staying the operation of the disqualification that would result on the application of Section 267 of the Companies Act. Therefore, even on facts since the appellant had not sought any order from the Delhi High Court for stay of the disqualification he was likely to incur under Section 267 of the Companies Act on account of his conviction, it cannot be inferred that the High Court had applied its mind to this specific aspect of the matter and had thereafter granted a stay of the operation of the impugned judgment. It is for that reason that we do not find in the order of the High Court a single reason relevant to the consequence of the conviction under Section 267 of the Companies Act. The interim stay granted by the Delhi High Court must, therefore, be read in that context and cannot extend to stay the operation of Section 267 of the Companies Act.

There is, however, substance in the argument that the Bombay High Court whilst dealing with the interim stay order of the Delhi High Court in collateral civil proceedings could not have held that the latter had no power or jurisdiction to suspend the order of conviction. If the Delhi High Court had 'consciously' passed an order even in purported exercise of power under Section 389(1) of the Code granting stay of the order of conviction so as not to result in the disqualification envisaged by Section 267 of the Companies Act, it would not be open to the Bombay High Court in collateral civil proceedings to overlook it on the ground that the scope of Section 389(1) of the Code did not extend to granting of such a stay order. However, it was open to the Bombay High Court to interpret the order in the background of the fact that in the application seeking the interim order there was no mention whatsoever that stay of conviction was sought to avoid the disqualification under Section 267 of the Companies Act. It was perfectly open to the Bombay High Court, without questioning the legality and validity of the interim order passed by the Delhi High Court, to examine it in the context of the averments in the application by which the interim order was sought. We are, therefore, of the opinion that the Bombay High Court in collateral civil proceedings could not overlook the interim order passed by the Delhi High Court on the ground that the latter had no power or jurisdiction to grant such an order having regard to the scope and ambit of Section 389(1) of the Code. However, it was perfectly open to the Bombay High Court to interpret the scope of the

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A interim stay granted by the Delhi High Court in the context of the averments made in the application seeking such an order.

Be that as it may, we have, on interpretation of the interim order passed by the Delhi High Court in the context of the averments made in the application seeking such an order, come to the conclusion that the Delhi High Court while granting stay of the impugned judgment did not and could not have intended to stay the operation of the the disqualification under Section 267 of the Companies Act consequent upon conviction. To that extent the interpretation put by the Bombay High Court on the interim stay is unassailable. We are afraid the appellant did not approach the Delhi High Court with clean hands if the intention of obtaining the stay was to avoid the disqualification under Section 267 of the Companies Act. That is why we have said that a litigant cannot play hide and seek with the court and must approach the court candidly and with clean hands. It would have been so if the intention of the appellant in obtaining the interim stay was to avoid the disqualification he was likely to incur by the thrust of Section 267 of the Companies Act. If that was his intention he was clearly trying to hoodwink the court by suppressing it instead of coming clean. If he had frankly and fairly stated in his application that he was seeking interim stay of the conviction order to avoid the disqualification which he was likely to incur by virtue of the language of Section 267 of the Companies Act, the Delhi High Court would have applied its mind to that question and would have, for reasons to be stated in writing, passed an appropriate order with or without conditions. We are, therefore, satisfied that the scope of the interim order passed by the Delhi High Court does not extend to staying the operation of Section 267 of the Companies Act.

F That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of

the Code the appeal is against both the conviction and sentence and therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction. Although that issue in the instant case recedes in the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code. We are, therefore, of the opinion that the Division Bench of the High Court of Bombay was not right in holding that the Delhi High Court could not have exercised jurisdiction under Section 482 of the Code if it was confronted with a situation of there being no other provision in the Code for staying the operation of the order of conviction. In a fit case if the High Court feels satisfied that the order of conviction needs to be suspended or stayed so that the conviction person does not suffer from a certain disqualification provided for in any other statute, it may exercise the power because otherwise the damage done cannot be undone; the disqualification incurred by Section 267 of the Companies Act and given effect to cannot be undone at a subsequent date if the conviction is set aside by the Appellate Court. But while granting a stay of suspension of the order of conviction the Court must examine the pros and cons and if it feels satisfied that a case is made out for grant of such an order, it may do so and in so doing it may, if it considers it appropriate, impose such conditions as are considered appropriate to protect the interest of the shareholders and the business of the company.

For the above reasons we are of the opinion that since the interim order of stay did not specifically extend to the stay of conviction for the purpose of avoiding the disqualification under Section 267 of the Companies Act, there is no substance in the appeal and the appeal is, therefore, dismissed. The appellant will pay the costs of this appeal which is quantified at Rs. 25,000/-.

R.P.

Appeal dismissed.