

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**CHENNAI BENCH**

**Company Appeal (AT) (CH) (Ins) No. 222 of 2023**

**IN THE MATTER OF:**

**Bharat Sanchar Nigam Limited**  
**Versus**

**...Appellant**

**M.S. Viswanathan & Anr.**  
**Present**

**...Respondent**

**For Appellant** : Mr. R. Vidhya Shankar, Advocate

**For Respondent** : Mr. D. Ganesh Raj, Advocate for R1

**O R D E R**  
**(Virtual Mode)**

**24.11.2023:** This appeal is directed against the order dated 01.05.2023 by which application filed by the appellant in IA/1498 (CHE)/2022 filed in IA/1215 (CHE)/2021 in CP/699/IB/2017 has been dismissed.

Counsel for the Appellant has submitted that the Tribunal has committed a patent error in misunderstanding the relief prayed for while dismissing the application. In this regard the prayer made by the appellant was that the appellant may be allowed to continue with the prosecution of the arbitration claim before the arbitrator and in case any such award is passed in favor of the applicant then the said award is liable to be enforced against the corporate debtor and the auction purchaser but the prayer made by the appellant has been declined by the tribunal by observing that the appellant is seeking a direction to be issued to the Arbitral Tribunal to pass an order in their favour.

The Tribunal has observed that it cannot grant such kind of relief to the appellant and thus the application was dismissed.

We have heard Counsel for the parties and perused the record. In order to appreciate the controversy, it would be relevant to refer to the relief sought in the application which is reproduced as under:

*“i. Issue a direction that further to the order of the NCLT Division Bench –I, Chennai in IA/1215/CHE/2021 in CP/699/IB/2017, the proceedings in A.F. No: 46 of 2018 before the Arbitration Tribunal of Justice (Retired) K.N. Basha can be continued to be prosecuted in respect of claim of the Applicant against Corporate Debtor and that award if any as may be passed in favour of the Applicant is liable to be enforced against the Corporate Debtor and Auction Purchaser in as much as the Sale of the Corporate Debtor as a Going Concern.*

*ii. Pass such further or other orders as it may deem fit and necessary and thus render justice”.*

The Tribunal passed a very short order which is also reproduced for a quick reference as under:

*“The factum of an arbitral proceedings pending is also disclosed in the sale notice which is mentioned at page No. 43 and more particularly at page no. 45 in para no. 6. By virtue of the relief as above the applicant BSNL wants a direction to be issued to that the Arbitral Tribunal to pass award in favour of the Applicant and that it should be imposed against the corporate debtor and the auction purchaser in view of the sale of the corporate debtor as a going concern as indicated above.*

*We find that such relief cannot be granted because no direction can be issued by this Tribunal to the Arbitral Tribunal to pass an award in favour of one party without there being a proper adjudication in the manner required by Law.*

*The prayer is apparently misconceived and cannot be granted.*

*Accordingly, IA/1498 (CHE)/2022 in IA/1215 (CHE)/2021 stands dismissed”.*

After going through the relief sought and the finding recorded, we are of the considered opinion that there is total misunderstanding on the part of the Tribunal while considering the relief and dismissing the same on the analogy that the appellant is seeking a direction to the Arbitral Tribunal to pass the order in its favour. As a matter of fact, the appellant has only sought a direction for prosecuting the arbitration matter which is pending before the Arbitral Tribunal and has also submitted in the prayer that it want be prosecute the arbitral proceedings because if any award is passed in their favour then they would be in a position to enforce the said award against the corporate debtor and auction purchaser because the corporate debtor has been sold as a going concern. The Tribunal has erred in not appreciating the true import of the relief prayed for and passed the impugned order which is totally unwarranted.

In such circumstances, we allow the appeal, set aside the order and remand back the matter to the Tribunal to reconsider the application filed by the appellant vis a vis the relief prayed for, mentioned herein above in this order and decide the same after hearing all the parties to the lis as early as possible but within a period of 15 days from the date of their appearance. The parties are directed to appear before the Tribunal on 13.12.2023.

**[Justice Rakesh Kumar Jain]**  
**Member (Judicial)**

**[Shreesha Merla]**  
**Member (Technical)**

sr/rr/kr