

Gireesh Kumar Sanghi vs Ravi Sanghi & Ors on 2 September, 2019

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company	Appeal	(AT)	No.	156	of	2019
Company	Appeal	(AT)	No.	157	of	2019
Company	Appeal	(AT)	No.	158	of	2019
Company	Appeal	(AT)	No.	159	of	2019
Company	Appeal	(AT)	No.	160	of	2019
Company	Appeal	(AT)	No.	161	of	2019
Company	Appeal	(AT)	No.	162	of	2019
Company	Appeal	(AT)	No.	163	of	2019
Company	Appeal	(AT)	No.	164	of	2019
Company	Appeal	(AT)	No.	165	of	2019
Company	Appeal	(AT)	No.	166	of	2019
Company	Appeal	(AT)	No.	167	of	2019

(Arising out of Order dated 22nd April, 2019 passed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad in CA No. 53 of 2016 in C.P. No. 30 of 2008; CA No. 54 of 2016 in C.P. No. 29 of 2008; CA No. 56 of 2016 in C.P. No. 27 of 2008; CA No. 57 of 2016 in C.P. No. 28 of 2008; CA No. 58 of 2016 in C.P. No. 31 of 2008; CA No. 59 of 2016 in C.P. No. 25 of 2008; CA No. 61 of 2016 in C.P. No. 35 of 2008; CA No. 62 of 2016 in C.P. No. 77 of 2008; CA No. 63 of 2016 in C.P. No. 32 of 2008; CA No. 64 of 2016 in C.P. No. 33 of 2008; CA No. 65 of 2016 in C.P. No. 34 of 2008; CA No. 66 of 2016 in C.P. No. 72 of 2008)

IN THE MATTER OF:

Gireesh Kumar Sanghi

...Appellant

Vs.

Mr. Ravi Sanghi & Ors.

...Respondents

Present: For Appellant: - Mr. Yogesh Jagia, Ms. Alisha Chopra, Mr. Hitesh Sachar, Mrs. Anju Jain, Ms. Namita Jose and Ms. Shagun Singh, Advocates.

For Respondents:-

None

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J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J .

In all these appeals as common question of law is involved and common order dated 22nd April, 2019 passed by the National Company Law Tribunal ("Tribunal" for short), Hyderabad Bench, Hyderabad is under challenge, they were heard together and are being disposed of by this common judgment.

2. An application under Section 425 of the Companies Act, 2013 was filed by the Appellant- Mr. Gireesh Kumar Sanghi ("Petitioner" in the main Company Petition) seeking initiation of contempt proceedings against the Respondents for alleged wilful violation of the order dated 23rd October, 2008 passed by the erstwhile Company Law Board, Additional Principal Bench, Chennai.

3. The Tribunal by impugned order dated 22nd April, 2019 while holding that there is no wilful disobedience of order dated 23rd October, 2008 passed by erstwhile Company Law Board also held that there is no sufficient ground shown to come to conclusion that the Respondents committed contempt of the order dated 23rd October, 2008. The Tribunal also held that the application was not maintainable as it was barred by limitation, therefore, the Tribunal had no jurisdiction to entertain the Company Appeal (AT) No. 156 to 167 of 2019 application under Section 425 of the Companies Act, 2013. The Contempt Petition were dismissed along with all the Interlocutory Applications filed therein.

4. These appeals under Section 421 of the Companies Act, 2013 have been preferred against the common order dated 22nd April, 2019 passed by the Tribunal under Section 425 of the Companies Act, 2013.

5. Apart from merits, the question arises for consideration in these appeals is whether an appeal under Section 421 of the Companies Act, 2013 is maintainable against an order passed by the Tribunal in exercise of powers conferred under Section 425 of the Companies Act, 2013 which empowers the Tribunal to initiate contempt proceeding for committing contempt of its own order.

6. Before going into the merits and for deciding the aforesaid issue, it is necessary to notice the relevant provisions of the Companies Act, 2013 as being discussed hereunder.

7. The National Company Law Tribunal ('Tribunal' for short) and the National Company Law Appellate Tribunal ('Appellate Tribunal' for short) have been constituted under Chapter XXVII of the Companies Act, 2013. The Tribunal has been constituted under Section 408 of the Companies Act, 2013 as quoted below:

Company Appeal (AT) No. 156 to 167 of 2019 "408. Constitution of National Company Law Tribunal.□The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and

functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force."

8. In terms of the aforesaid provisions, the Tribunal has been empowered to exercise and discharge such powers and functions as have been conferred on it or under this Act or any other law ('Insolvency and Bankruptcy Code, 2016') for the time being in force.

9. The Tribunal passes order under Section 420 after giving the parties to any proceeding before it, a reasonable opportunity of being heard, as quoted below:

"420. Orders of Tribunal.□(1) The Tribunal may, after giving the parties to any proceeding before it, a Company Appeal (AT) No. 156 to 167 of 2019 reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act. (3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned."

10. Any person aggrieved by an order of the Tribunal is entitled to prefer an appeal to the Appellate Tribunal under Section 421 of the Companies Act, 2013, as quoted below:

"421. Appeal from orders of Tribunal.□(1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal. (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

Company Appeal (AT) No. 156 to 167 of 2019 (3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal."

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11. From the aforesaid provisions, it is clear that if the Tribunal passes order under Section 420 of the Companies Act, 2013, an appeal under Section 421 of the Companies Act, 2013 is maintainable before the Appellate Tribunal.

12. Section 425 of the Companies Act, 2013 empowers the Tribunal and the Appellate Tribunal to punish for contempt of themselves, as quoted below:

"425. Power to punish for contempt.□The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that--

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Company Appeal (AT) No. 156 to 167 of 2019 Central Government may, specify in this behalf."

13. From the aforesaid provision, it will be evident that the Tribunal as also the Appellate Tribunal have been empowered with the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the 'Contempt of Courts Act, 1971', which shall have the effect subject to modifications that in place of High Court, it should be read as Tribunal or the Appellate Tribunal; and in place of Advocate-General, it is to be read as Law Officers as may be specified by the Central Government.

14. Article 215 of the Constitution of India makes it clear that the High Courts are courts of record and shall have powers of such a court including the power to punish for contempt of itself, as quoted below:

"215. High Courts to be courts of record.□Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

15. However, Section 425 of the Companies Act, 2013, the Tribunal or the Appellate Tribunal has not been delegated with all the power of a Courts of record. Under Section 425, the Tribunal and the Appellate Company Appeal (AT) No. 156 to 167 of 2019 Tribunal are only empowered with powers under 'Contempt of Courts Act, 1971' in respect of contempt of itself as the High Court.

16. Section 7 of the 'Contempt of Courts Act, 1971' makes it clear that the said Act is not to imply enlargement of the scope of the contempt. The High Court is empowered to punish contempt of subordinate courts under Section 10 but such question does not arise in the case of Tribunal in absence of any court subordinate to it. Section 12 prescribes 'punishment for contempt of court' whereas Section 14 has laid down the procedure where contempt is in the face of the Hon'ble Supreme Court or a Hon'ble High Court.

17. From the aforesaid provisions, it is clear that the Tribunal and the Appellate Tribunal are empowered to punish a person for violation of its own order under the 'Contempt of Courts Act, 1971' and are required to follow procedure prescribed under Section 14 of the 'Contempt of Courts Act, 1971' before holding a person guilty of having committed contempt of the Tribunal or the Appellate Tribunal.

18. No appeal is maintainable under Section 421 of the Companies Act, 2013 once the Tribunal exercises its power under 'Contempt of Courts Act, 1971' read with Section 425 of the Companies Act, 2013. Company Appeal (AT) No. 156 to 167 of 2019

19. There is a provision of appeal under Section 19 of the 'Contempt of Courts Act, 1971', as distinct from Section 421 of the Companies Act, 2013, as quoted below:

"19. Appeals (1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the court;

(b) where the order or decision is that of a Bench, to the Supreme Court:

PROVIDED that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court (2) Pending any appeal, the appellate court may order that-

(a) the execution of the punishment or order appealed against be suspended;

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(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed-

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

20. Limitation for actions for contempt has also been prescribed under Section 20 of the 'Contempt of Courts Act, 1971', as quoted below:

Company Appeal (AT) No. 156 to 167 of 2019 "20. Limitation for actions for contempt. □ No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

21. In view of the aforesaid provisions, we hold that for non-exercising of powers for initiation of contempt proceeding by the Tribunal in exercise of powers conferred by the 'Contempt of Courts Act, 1971' read with Section 425 of the Companies Act, 2013, the appeal under Section 421 of the Companies Act, 2013 is not maintainable before this Appellate Tribunal.

This apart, the petition for initiation of Contempt proceeding was also barred by limitation as prescribed under Section 20 of the 'Contempt of Courts Act, 1971'.

22. So far as the merit is concerned, the Tribunal noticed that the Appellant (Petitioner) alleged that order dated 23rd October, 2008 passed by the erstwhile Company Law Board, Additional Principal Bench, Chennai, has been violated by Respondents with an intention to safeguard the interest of the Sanghi Group of Companies, the relevant of which is quoted below:

Company Appeal (AT) No. 156 to 167 of 2019 ".....Therefore with a view to ensure amicable solution for the disputes and in the paramount interest of Sanghi Group of Companies, it is hereby directed that (a) both parties shall maintain the present status quo in regard to their shareholding and also fixed assets of all companies in Sanghi Group of Companies until further orders; and (b) any transfer of shares in Sanghi Group of Companies by either parties, in the interregnum period, would be null and void."

23. The Tribunal after notice and hearing the parties has come to a definite conclusion that the transfer was made as a step towards reaching possible settlement between the parties which is also the spirit behind the order dated 23rd October, 2008.

24. According to the Tribunal, the spirit behind the order was to enable the parties to enter into amicable settlement with regard to shareholding and assets in all the group Companies. Therefore, order was passed by the erstwhile Company Law Board for benefit of all the Group Companies. The

Tribunal also observed that the order was passed to facilitate the parties to enter into settlement. In view of the fact that the order dated 23rd October, 2008 can be looked from two different Company Appeal (AT) No. 156 to 167 of 2019 angles, the Tribunal came to a conclusion that if the order is capable of interpreting in two ways, then it cannot be alleged that there is a patent disobedience of the order of the erstwhile Company Law Board. Therefore, on merit also in absence of any wilful disobedience of the order dated 23rd October, 2008, the Tribunal came to a conclusion that no Contempt of Court is committed by any of the Respondents.

25. Apart from the fact that the appeals under Section 421 of the Companies Act, 2013 is not maintainable, the petition being barred by limitation under Section 20 of the 'Contempt of Courts Act, 1971', all the appeals are dismissed. No cost.

(Justice S.J. Mukhopadhaya) Chairperson (Justice A.I.S. Cheema) Member(Judicial) (Kanthi Narahari) Member(Technical) NEW DELHI 2nd September, 2019 AR Company Appeal (AT) No. 156 to 167 of 2019