

R.S. India Wind Energy Pvt. Ltd vs Ptc India Fincial Services Ltd. & Ors on 23 December, 2016

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION .

Company. Appeal (AT) No. 15 of 2016

ve "(arising out. of Order dated 22" September 2016 passed by NOLT, New
_ Dethi in C.A.No. 92/C-1/2016 in C.P.No. 60{ND}/2015)..

-"-RiSIndia Wind Energy Private Ltd. -. Appellant

o | Vs.

ae.

-- .» PFC India Financial Services Ltd. & Ors. a ... Respondents

a For Appellant os Mr, 'Salman Khurshid, Senior Advocate with Mr. Arjun
So - Singh Bhati, Ms. Kamna Singh and Ms. Shrishti Singh,

Advocates

_ - For Respondent > Mr. AK. Ganguly, Senior Advocate. with Mr. Mayank .
aE Mishra, Mr. Sidharth Sethi and Ms. Pragya Chauhan,

Advocates

JUDGMENT

INSU JYOTI MUKHOPADHAYA,J.

= "The present appeal arises out of the impugned order dated 2224 iber 2016 passed by the National Company Law Tribunal, New Delhi, . after referred. to as "Tribunal"} in an applicatién bearing C.A.No. {2016 filed by the 1% respondent = PTC india Financial Services' sited & Ors. in Cc. P, No. 60(ND) {2015 under Section 213.of the Companies | ct, 92013, In the ¢ impugned order, the Tribunal observed as follows: -

. "The petitioner has brought out some apparent malpractices

- in | the working' of Respondent 1 Company to show that deeper 'probe is. necessary.
There has been complaint of mismanagement in the affairs of Respondent-1

Company. The applicant has also made out a good case by showing that there... - a. i has: 'been. prima facie violations of the provisions of Companies --

in the maintenance of the minutes of various proceedings of 2 | : the Respondent-1 i company. Apparent misdeeds: and. dishonesty:

a in the maintenance of minutes of the company in contravention of -

. the provisions of the Act cannot be ruled out. Law makes the: investigation comprehensive of all sorts of illegalities. Sub : clause 1 (b) of section 213 is wide enough. to include travention of anij law. There has been prima facie existence : of: malpractices: in tampering of. records, which cannot. be | 6 erlooked. In the facts, it appears that deeper probe in the a affairs. of Respondent No. 1 company is necessary".

he facts irk a riotshell as pleaded by the Appellant are as follows: ~

- The appellant, is a company incorporated under the Companies: 7 Act. 1956 to carry out business in the field of renewable energy. The o : appellant was to setup a 99.45. MW of wind power project at 'Satara, a istrict, Maharashtra by investing Rs. 634 Crores, out of which Power 2 inance : Corporation {hereinafter referred to as PFC") was funding' 'Rs Crores and the remaining Rs. 147 Crores was to be infused by the ;

: appellant by way of equity.

entities.

ne 2M s Vestas RRB Energy" was s supposed to. supply: wind turbine . "generators (WTG for short) for the aforesaid project, however, it backed out inh tween.and the appellant group and the respondent group discussed the | és of entering into the business of manufacturing of WTGs. _ -

_ "Accordingly, a-sister concern of the appellant, namely, RS India 'Global . oe By Pvt. Ltd.- (RSIGEPL, for short) entered. into a Memorandum of Pa | ment (MOR?) dated 10% December 2008 with a sister concern of s.

ioe. Respondent} The two sister concerns were to also set up a oe 80 MW wind project in Tamil Nadu. The said. sister concerns also entered no "Into z a equity subscription agreement whereby PTC Energy Ltd. subscribed 'to 9% equity share capital of RSIGEPL.

oO To begin with, the appellant had 55% stake and RSIGEPL had | 45% in' Proforma 10th Respondent. : | oo "on, {st Respondent and its sister concern PEL failed to. infuse funds into the respective projects which led to delay i in execution of os - 4 "On 30th June 2011, the Board of Directors of. the Appellant --_ 'initia approved grant of corporate guarantee of Rs. 250 Crores and ee pledge of shares in favour of Bankers of Proforma 10th Respondent for 8 | term | loan and

working capital facility by the said, Respondent, The' rhinutes sof the said meeting held on 30% June 2011 were fully' approved oe -

the. Board of Dit ectors of the 'Appellant i in, the theeting held on m 28 "--

the * apjelant "was "present in both meetings | and accorded his "manufactured by Proforma 10 Respondent for the aforementioned projects.

10. ° Bven the Board of Directors of Proforma 10%. Respondent, 'whose : : chaitinan was Mr. Uddesh Kohli (a Director of -isç Resporident) approved the . pant of the aforementioned corporate guarantee and pledge of shares by the os pellant in favour of Bankers 'of Proforma 10th Respondent in its meeting. ~ eld ron 2 30m June 20 iL. The minutes of the said. meeting were confirmed in next meeting' of 'the Board 'of Directors of Proforma 10% Respondent in sence of and with the concurrence of Mr. Uddesh Kohli. _ Similarly the Board of f Directors of RSIGEPPL also approved grant of 30m. Sly 2012 for the very first time 'raised an objection with respect te | a grant of corporate guarantee.

» years: thereafter ie. on 7th NL ay 201 5, ist " Respondent filed oh

- criminal } "complaint" before: the EOW against: 'the 'Appellant and its .

Promoters/) Directors jevelling allegations of fraud and cheating against Similarly, the. sister concern of. jet Respondent 1g.. PEL also. file an _orit nal' complaint against RSIGEPPL and its Promoters/ Directors 'before een | | k BOW 'The E EOW carried out al | thorough investigation into. the affairs of the cs oa ~ Appellant and RSIGEPPL over' a period of seven -eight inonths and finally oo age closed the aforesaid two complaints as no irregularities were found. in fai t, .

respe ctive 2 'criminal complaints . The 'company petition filed by ist -

nt Or approval of CLB. St was also directed that the aforesaid 'corp rate rported minutes for the said. meeting fled by 1% Respondent its company petition.

ccording to Appellant while: comparing the two, CLB committed an failed to note' that. thémitnates filed by Proforma 10%. * Respondent the: signed: ones: sand they were exactly the sameé as the one filed by the pel ant along with its reply to the company petition, whereas the minutes filed by: ist Respondent were. not even signed. In this background it is oo alleged: that the genuineness and reliability of the minutes filed by 1s Respondent was s extremely doubtful, " 19, "However, as CLB 'had 'noted in the said order dated 16 October 2015 .

a : : inal pinion and that the main petition shall 'be heard uninilenced by the said observations, no appeal was preferred 'by the Appellant against the said ~ - aa ie 1% Respondent is only interested in a fishing and roving enquiry © e affairs of the Appellant Company and nothing else, which is wholly. < 2.

| Co Be cording to "the "Appellant it provided almost" the me eritite: cee cut ents sought by the [st Respondent vide letter dated ist . ; ms ary 2016 with respeatto the Appellant Company. However, 'aS = Fegd : . .

ived the aforesaid documents from the Appellant, the 1s . t filed the application bearing No. CA 92/C-1 /2016 'before 'the anal | which: came: into existence 'since 'Lst une 2016, alleging: that on. .

a aring g the minutes of meetings of the Board of Directors supplied by the. . appellant on, As February 20 16, against the copies of. the thinutes for the ecting supplied by. 'the Appellant to the ist. Respondent: "at. the 7 porancotis period of time, _ were | "different and . there: . are tions / discrepancies i in about ten of those minutes. 'The Ast Respondent ih at there were differences in » the 'two sets of minutes: of meetings of _ 3 oard of D Directors of the Appellant Company Held, on 1 ee F pat Apr 2008, 30% August 2008, 2204 September, 2008, arth.

nibér 2008, gist March 2009, 26% May 2008, 1st October 2009, 18, nd 30% June 2011) The. is Respondent further alleged. that hog ~ there are. fabrication of minutes' and' that the Appellant \ was maintaining L multiple versions of the minutes book.. On hearing the parties Tribunal - | ed. 'the: SHO to. arty out an" investigation : into the - financial pplication v under Section 213 of the Companies Act 2013 was filed in 16 under 'Regulation No. 44 of the Company. Law Board = 2."

"Regulationis ' 1991, when Section 213 + was . not, in force. tt came into effect SS eu! - 1 June 2016. In spite of the same 'the. impugned order. .

been. 'passed 'by Tribunal uinder sub- clause (ia of Section 213 of the :

8 Act, 20 13. "The said sub- clause (b)6) of Section 213 confers the upon Tribunal to > pass orders: for investigation into the: affairs of ae wh 10°

- It is further content ied that an ordét can be e passed by the Tribunal :

r sub. Section {b) of Section 213, "otherwise" than } an 'application filed pembers o of the Company « or any other person, if the ingredients laid ~ in, ithér oné 'or. Hore of the: sub-clauses () to Gil)) thereof is satisfied, -- a a ling te Learned Senior Counsel for the Appellant, the ingredients I laid 967 sc 205 wherein the Apex. Court held that. the essential "Ingredients se hat: need to be satisfied before: directing investigation into the affairs ofa scretionary power conferred upon the Tribunal by. virtue of sub Section (by Section 213 can. be exercised only on being satisfied about 'the éxistence oo ee of circumstances suggesting any one or more of the ingredient{s) specified in | " gab- clause, ae to > fit. But the Tribunal in the instant case has recorded only oo co c : tended that there 3 is ino o jurisdiction o outside the section which empowers ee eo the | "Tribunal initiation of investigation. A action, "riot "based on "circumstances suggesting an inference of the ertumerated kind, will net be. .

Learned Senior Counsel for' the Appellant placed reliance 'on a tabular . a led" om "behalf of 'the 'Appellant regarding alleged variance in minutes Therein. discrepancies as. were , alleged before the Tribunal by. the Spc dent have been explained by the Appellant to justify the 'fiinutes of meeting. For example, 'with: regard to minutes of meeting dated 1 i"

ruary 2008, the discrepancy pointed out by the {st Respondent related Pe "ha : of last two pages supplied en 'ist February 2016. Stan a of the -

a nit: 1s. that it was inadvertently missed out while photocopying the ages. Simian, with regard to. proceeding dated qe April 2008, it 'was that: 'the: minutes allegedly supplied by Appellant at. th oo mporaneous period of: time are hot. even signed. Hence, their oe : udineness i is extremely doubtful.

tors of the Appellant and were duly reflected in the Audited | Balance: 2 f fhe Appellant which were approved by the Board of Directors and ae € spective AGM meeting.

; also. contended that the "Tribunal erroneously held that j / is whether ithe alleged alterations/i improper "recording. of the a Soy 12s extended any advantage to the Appellant Company or: not", or Wee -

ether such alterations were not within the knowledge. of ist Respondent' = satisfied. -may. | order. investigation 'by -an Inspector or - Inspectors "the C Central Government.

WAS. alleged that despite giving" undertaking before the cl cl slant 'Company failed to provide | or refused to provide » most of "the itioned documents/ information. It is also. alleged that some minute ing provided by the Appellant company, or: 1st February 2016 arince from the minutes, of the "meeting which were. provided to irectors of the is Respondent. Referring the Tabular Char ant, Learned. Senior Counsel. of the ist Respondent pointe o k - discrepancies/ alterations "irr 'the minutes of the 'meeting. hel 1h February 2008 and Sob June 2011. .

re Similar submission was : also madeé on behalf of: the rst Respondent.

before the Tribunal, which having gone through the minutes of mec a We ba eas & Learned counsel "for the | Barties and "pemnea. the :

rom minutes of meeting. dated 22-4 September 2008, we find tha ign atures of CMD" 'appears: to be different ° in two" 'sets of minutes. The.

flerent..in . tore 'sets of minutes.

Similar § is | the: Position with" "regard :

regarding: 'review project activities. is: missing' in the minutes 'supp tef.on.. There are' other infirmities which are not required to be highlight 'he questions atise for determination are:

whether. the 2 Tribunal. was correct in observing that. sub-clause i, use ") of Secti 213 is is s wide enough to inchide' contravention of

a) whether the 'Tribunal was bound to refer the ingredients mentioned ne | in 1 sub-clause (i) to >i) of clause (b). of Section 213, and Gi). whether 'the ingredients as 'referred in "sub- clause a to (i). of / . oS

- "clause (o) of Section 213 only cari be looked into on an application -

to hie" 'Tribunal by ' any other person' ie. other than members o or se' even if the circumstances sO suggest.

other words whether .the Tribunal can rely on the ingredients a as mentioned in sub- clause @ to fii) of clause (b) of Section 213- in an pplication made e by the: members under clause (a) of. Section 2 13?

that the 'offence appears to have' been committed.

fore discussing and interpreting the provision: Sec. 213, it is 16 to notice the basic principle ¢ of interpretation of statute.

Justice G. P. > Sinigh in ia Book PrInCiples o of statutory Interpretation"

- "Wher the: question' arises as to the meaning ofa in provision in a Statute, it is riot only legitimate but © reper to read that provision in its context. The context here" ote the, statute as a whole, the previous, state oft the. law, 7 ther s statutes it pari material, 'the general. seope of the statite "the: mischief that it was. intended to remedy. This a as tatement of the rule was slater fully adopted by the Supreme po : fogs a pile now firmly established that the: interition of - a the Legislature must be found by. reading the statute as a | 'whole. The rule is referred to as an "elementary rule" by COUNT SIMONDS; a "compelling "rule" by LORD SOMERVELL. OF HARROW; 'and a "settled rule" by BK.

MUKHERJEE, J ay agree", said LORD HALSBURY, "that you --

ook at: the: whole instrument fiesinuch as there may be naccuracy and d inconsistency; you must if you. can, ascertain " what is thé: meaning of the instrument taken | as a whole im er to give « effect, if it be possible to.d6 so, to the intention of | . oe the framer of it? And said-LORD DAVEY: "Every clause of a 'statute should 'bé construed with reference to the context and ther clauses of the Act, 'SO as,

as: "far as possible, to make a consistent enactment of the whole statute or - series of statutes relating to the subject-matter." It is: 'spoken of construction "ex p. actus". - Et is the natural and genuine exposition of a statute, laid down LORD COKE: "to construe .

by a statute by 'another part of the same statute, for - :

in, the meaning of a clause in a statute the court must.

~ took at the whole statute, at what precedes: and at what -

- succeeds and not merely at the clause itself, and, "the method of construing statutes that I prefer" said LORD GREENE, M. R. to read the statute as a whole and ask oneself the : -

'question: In this state, in this context, relating to this subject. " so as to find the true meaning of that word?" As stated by -

SINHA, C. J. I: "The court must ascertain the intention "of the Legislature by directing its attention not merely to the clauses but to the entire statute; it must compare the clause: with the other parts of the law, and the setting in ~ "which: the clause to be interpreted occurs."

. A Constitution Bench of the Supreme Court in "Padma Sundry Rao.

of Tamil Nadu TN)" (2002) } 3 SCC 533, while dealing with the construction observed: -

Phrases regarding rewriting of statute and cases' - __

-emphasize need careful consideration. It is well-settled"

as principle in law that the court cannot read anything into provision 'which is plain and unambiguous.

Section 4 A statute is an edict of the legislature, The language :

employed in a statute is the 'determinative factor of legislative intent, The first and primary rule of construction is that the intention of the legislation must be found in, the words used by the legislature itself

- question is not what may be supposed. and has been ; as intended but what has been said. "Statutes should be a : ; "

~ construed, not. as theorems of Euclid". Judge Learned 4 oe _ Hand 'said, "but words must be construed with some oe a "imagination of the purposes which. lie behind them". {.

& See Lenigh Valley Coat Co. V. Yensavage.} The. view was reiterated | in Union of India v. Filip. Tiago De. Gama i | s of Vedem Vasco De Gama. a

13). om DR. Venkatchalam v. Dy. 'Transport Commr: it was:

observed that. courts must' avoid the danger of a priori ri - ee : determination of the. meaning of a provision based on.

oe their own _ preconceived notions ef ideological structure 7 'or Scheme into which the provision to be interpreted in : i ae

- Somewhat : "fitted. "They are not entitled © fo° tisurp e 'legislative function under the disguise of interpretation. .

1. While interpreting a@ provision the court only interprets | the law and cannot legislate it. fa provision of law is in misused and d subjected to the abuse eof process of law, it me _ PNB Capital Services Lid). The legislative CASUS | ae omissus | carina be supplied by judicial 'interpretative J - process. -- _ Language of Section 6(1 } is lain: and oo unambiguous. There is no scape for reading something ----

s into" "it as: Was done' un Narasimhaiah & case. Sons _ Nanjudaiah case 'the period was further stretched to - : have the time period run from date of, service of the High / ;

Court's order, Such « a.view cannot be reconciled with the language of | Section 61) FF the i view Ss. accepted it o - would mean that a-case can be covered, by. 'not only : clause @ana/ or clause ii) of the proviso to Section 611) 7

- but aise o by. anon -prescribed period. Same can never be» . "Tio p principles of construction. ~- one relating to casus : omissus and the other in regard to reading the. statute : -- > as a whole appear to" be well settled. Under the first "prindipte- a casus ; omissus cannot be supplied "tg the oe cotirt except in the aise of clear necessity and: when on for it is: found in the four corners of the statute a statute or section must 'be construed together and 7 a " every clause. of | a section should be 'construed with

- + ref 2 fice to the context and- other clauses thereof So / that the construction to. be put on a particular prot A - makes a@ consistent enactment of the whole: st

- This would. be: ore. so if literal construction of ao a slause leads: fo. manifestly 'absurd or Lees anomalous results which could not have been intended :

w by 'the. legislature. : an intention to produce. "an oe "unreasonable result?, said Danckiverts, 'Led, vin Ce a Artemiou v. 'Procopiou (at All ER} p. 544- D, "is not to be ~ iniputed to a statute if there is. some: other construction .

"available", Where' too apply words literally woul d a i efeat- the 'obvious "intention. of the legislation and : produce | a wholly. unre ason able result" we must "do Be é nie 'viblerice to the words" and SO' achiewe that obvious - . intention and produce: a rational construction. [Per tord % Reid | in Luke v, IRC where at AC. p. 57 7 he also "

observed: fA ER p. 664-) "This is not a new problem, "

"though our standard of drafting 'is such that it rarely a Ce ot . / emerges Pp : - foe. Lo. : . Tat owing the aforesaid principles; df the intention. of the legislature i ibunal i is also empowered, under Seo. . 213 to investigate into > the § affairs i in. other cases--

- On an application made: by. the. certain | pumber: of merib ie company; and/or ..-

n an application made by: any y other persons or otherwise.

Section 2 13 of the Companies Act, 20 13 reads | as. follo 9 } 3. The Tribunal.may, _

- (a) on an application made by-- ' fy not less than one:.hundred members or "members holding not less than one-tenth of the | "total. voting power, in the Case of a company :

me having a-share capital or a . (i Avot le ss than one ann of the persons om the | company's register of members, in the case.of a - o ' 7 company having no share capital, and stipported by such evidence as may be necessary for the -

: purpose of showing that the applicants have good a * reasons, for seeking are order for conducting an | 7 investigation into-ihe:-affixirs of the company; or a2.

ec on an appiication made to it by a any other 'Dirson' or. Bae ~ "otherwise, if it is satisfied that there are circumstances -

~~ stiggesting that--

"fii the business of the company is being condhic e with intent to > defrend its creditors, members or any j other person of otherwise for a | franidulent or"

oe imlawful 'purpose, or in a. manner oppressive 'to

- any of its members or that the company was formed for art oy i 'person: ons : -- in the formation "y 'the: .

- company or the management of its affairs have t in ce connection therewith heen gti i feasance. or other. misconduct towards: the ao company 'or towards any of its members; or a fii o 'the members of the company have not spoon - oe given all the information with respect to its. affairs | "which they might reasonably expect, including . "piformation relatirig to. the écileuilation "of the . ~ commission payable to a managing or. other ba _ director, or the manager; of the company, -

order, ox a fer . giving a reasonable opportunity of. being _ ard t to: ' the 'parties concemed, that t

-company ough, to be investigated by an inspector. or. Cg ; offers of the "cnr stich an order i is passed, the Central Governinent ae | ; Lone shall. appoint. one er. more | competent persons: as inspe tors toi investigate into 'the affairs of the company Oa respect of such matters and to réport thereupon, to # 6 :

such 1 manner as: the ¢ Cenirat Government may direct:

Provided. thea 7 afiér investigation it is proved that. -

Whe business ofthe he company is being conducted: = any other persons ¢ or otherwise for ¢ a freudtulent or. a cn untavofil purpose, 'or that the company was formed, for any fraelulent or unlawful Purpose; or:

oy fii) any person concemed in the formation of the : : company o or the management of its affairs have. in oe connection therewith been ? guilty of. fraud, then every y officer of the' company whois in: defeat anal = company or: the management of its affairs: shall be an punishable for fraud | in, the manner as provided in -

. section 447, uo axt. we! find as follows: - - _ .

24 -

Under 'Section 213 the Tribunal a "entertain. an application only if itis made by = a. not less. than one . "hundred members or " members holding not less than one-tenth of the re otal voting power, in 'thes "case of a company « a having a share capitals Ore.

. iii) not less than one-fifth of the 4 persons on. the' oS! "company's. register of members, in the case-ofa

- ~ company having no share capital, and 'supported a by such: evidence as may be necessary for the

- purpose of showing that the applicants: have

- . good. reasons for seeking an order for conducting an investigation into the affairs of the company: : i or 'any | 6ther person', who may include: ian _

- éndividual whoever is aggrieved, including a

- Member who otherwise do not come within clause (ajfi} and ~ (i) above, the creditors, Ys depositors.etc.; and | .

oo 'otherwise'-that means the "Tribunal - "ean herwise: also may look into" any 'matter suo oe moto, if it comes to its riotice: while dealing with

- any case.» ° 'Satisfaction of Tribunal'. -

: ee and/ or r (iii) of clause e.

Rules of Natural Justice: - - . -

"The Tribunal i is required to pass order, after giving - 3 a8 reasonable opportunity, of being heard to the . parties concerned, that the affairs of the. company inspectors appointed by the Central Government.

The rest part of the provision relates to. the action, thereafter hl by the Central Government.' "On investigation by the. Insp . is: proved, the: officer(s) of. the company in default or A able' 'for fraud: in: the: tanner. as - provided in: Secti ies 'Act,201 3.

26° r conducting o an investigation into the affairs of the. company" wo as mentioned below clause fa) of Section 213 is applicable i im all cases 'and | . the applicant(s); 'whoever 'prefers application under Section 213, 'whether . belong to. 'category, as "mentioned in: clause (@) or. clause: , such 7 _ ce. 8: required to: be relied upon not only to justily the allegations, but shea' that, there i is a. good 1 reason for seeking an order, to enable the Soe

50. wor 'the reason aforesaid, we hold that the sentence "if it is satisfied' a there. are circumstances suggest" mentioned in clause {b) of Section 21 3° plicable to all cases, irrespective of the category to which the r 8) belong i is e. - clause {a} or clause(b) of Section 213 of the. Act.

he - provision pediatres 'the Tribunal to form' opinion on = to dients as mentioned i in sub clause (i, (i arid (ii) of clause (b of Section:

ut the Tribunal is not required: to form opinion objectively, and is .

ave good grounds to order investigation. The mmiat in satigation. "Detailed evidence etc., "thereafter, req

27.

/ collected by the Inspector(s) during the investigation to hold an accuse guilty . "for or r one or other offence i.€. fraud.

52. ae edo is not expected to refer all the evidence to form opinion | p a ctice or for fraud mentioned in: sub-clause co "i) 'and b of the. Inspecting Authority, (inspector to gO through the. ie ence . before cotning to" al conclusion and: forming opinion that 7 oe ipractice of or fraud meritioned under sub clause: rt or {ii) or (iii) has been. oe 2 committed "by one or other member or director(s} or person(s) or the swomipa . 53. | Sn case the Tribunal fail to disclose any material and does not record : "the reasons for its satisfaction, it is always open for the Appellate Tribunal 40 intertere with such decision.

54. _In the present case as we find that the Tribunal has relied on certain - :

, / record/' evidence, applied it mind, satisfied itself and given good grounds Ons. . i a 'order investigation, we find tro Treason to interfere with the irnpugned order.

mo For-the reason aforesaid and in absence of any merit, we dismiss the appeal.

i "However; ih-the facts and circumstances there shall be no order as to cost. ~ ree "Mr. Balvinder Singh) © (Justice S.J. Mukhopadhaya) few DELHI -

: DECEMBER 23" 2016