

# Registrar Of Companies vs Bhagyodayam Company on 24 February, 2022

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, CHENNAI BENCH  
CHENNAI

COMPANY APPEAL (AT)(CH) NO. 11/2022

&

I.A. No. 114 of 2022

(Arising out of the Order dated 11.03.2020 in IA/29/KOB/2020 in  
TCP/21/KOB/2019 passed by the Hon'ble National Company Law  
Tribunal, Kochi Bench)

In the matter of:

The Registrar of Companies, Kerala

..Appellant

Vs

Bhagyodayam Company & 12 Ors.

..Respondents

Present:

For Appellant

:

Mr. Avinash Krishnan Ravi, Advocate

## ORDER

(VIRTUAL MODE) 24.02.2022 Heard the Learned Counsel Mr. Avinash Krishnan Ravi appearing for the Appellant and the instant 'Appeal' is disposed of at the Admission stage itself.

2. According to the Learned Counsel for the Appellant, the 1st Respondent/Company filed the 'Statutory Returns' viz., Annual Returns and 'Financial Statements' upto the 'Financial Year ended 31.03.2017' and that the total number of 'Promoters'/'Members of the Company' are '57' (Fifty Seven) and that the net worth of the 'Company' is Rs. 1,23,87,566.43 and the turnover was of Rs. 15,49,421/-, as per the latest 'Annual Returns' for the Financial Year ended on 31.03.2017, filed by the 'Company'.

3. It is represented on behalf of the Appellant that in CP No. 29/2017, was filed by Alexander Correya, Henry Peter and V R Jude Jose (R2 to R4) before the National Company Law Tribunal, Chennai Bench against 1st Respondent/ Bhagyodayam Company & Ors. and the Petitioners therein had alleged numerous 'acts' of 'Oppression and Mismanagement' of the affairs of the 1st Respondent/Company by the then Managing Director V J Paul Joseph.

4. It is brought to the fore that the 'Tribunal', on 28.08.2018 had passed order inter alia to the effect that 'since the company is incorporated for charitable purpose, the affairs of the Company are to be

put on right track so that the object of the charity could be saved. Therefore, it is proper to appoint an Interim Administrator to look into the affairs of the Company'.

5. The Learned Counsel for the Appellant points out that the National Company Law Tribunal, Chennai on 31.10.2018 had appointed Hon'ble Mr. Justice Narayana Kurup (Retd.) as an 'Administrator' superseding the 'Board' in existence, to carry on the 'Functions' of the 'Company' until further orders. Moreover, with the formations of the 'National Company Law Tribunal, Kochi Bench', the case was transferred to the said Bench and the petition was renumbered as TCP/21/KOB/2019.

6. The Learned Counsel for the Appellant proceeds to point out that the Hon'ble Administrator' submitted an 'Interim Application' before the 'Tribunal' Kochi Bench and in I.A. No. 29/KOB/2020, it was mentioned that, in order to comply with the directions of the 'National Company Law Tribunal, Chennai', the 'Hon'ble Administrator' had requested the then Managing Director, to make available all the 'Documents' required for the purpose of complying with the directions of the 'Tribunal' Chennai and that despite several requests and even after the directions of the 'National Company Law Appellant Tribunal', New Delhi, and the Hon'ble 'Tribunal', the Respondent Nos. 4 to 8 had not bothered to submit the required documents to the 'Hon'ble Administrator'.

7. It is the version of the Appellant that the 'Hon'ble 'Administrator', because of the fact that the then 'Managing Director' and 'other Directors' were not cooperating with him, he appointed Sri Babu A Kallivayalil, Kochi, Chartered Accountant' firm, to review the available 'Books of Accounts' and other available Records in the 'Registered Office of the Company', with a view to identify the statutory compliance, apparent diversion of funds, and other irregularities etc. In fact, an 'Inventory' of the available 'Books of Accounts' and Records in the Registered Office of the Company, in the presence of 'Hon'ble Administrator' and 'Staff of the Company' was done and after reviewing the available 'Books of Accounts' and Records in the Registered Office of the Company, a 'Preliminary Report' was submitted by the 'Chartered Account' listing out the irregularities noticed, to the 'Hon'ble Administrator' and the same was placed before the 'Tribunal, Kochi Bench, Kerala'.

8. Advancing his argument, the Learned Counsel for the Appellant brings it to the notice of this 'Tribunal' that in the 'Interim Application' filed by the Administrator, the 'National Company Law Tribunal' Kochi Bench had passed the impugned order dated 11.03.2020 in I.A. No. 29/KOB/2020 in TCP No. 21/KOB/2019, directing 'Serious Fraud Investigation Office', Chennai to investigate the affairs of the 1st Respondent/ Bhagyodayam Company and submit a 'Report', within two months before the 'Tribunal' and that Mr. Babu A Kallivayalil was appointed as an 'Auditor' of the 1st Respondent/Company by the 'Tribunal'.

9. Assailing the validity, correctness, propriety and the legality of the 'impugned order' dated 11.03.2020 passed by the National Company Law Tribunal, Kochi Bench in I.A. No. 29/KOB/2020 in TCP No. 21/KOB/2019, the Learned Counsel for the Appellant contends that the 'Impugned Order' is bad in law, because of the fact that the 'Tribunal', without considering the ingredients of Sections 210 & 212 of the Companies Act, 2013 and also not taking note of the 'Judgment of the National Company Law Appellate Tribunal, New Delhi', had passed the same, which requires

interference in the hands of this 'Tribunal' in 'Appeal'.

10. The Learned Counsel for the Appellant projects an argument that only the 'Central Government' is authorised to accord 'sanction' to initiate an 'Investigation' against the 'Company and its Officers', who are in 'Default' as per section 210(2)(3) of the Companies Act, 2013. In this connection, the Learned Counsel for the Appellant refers to the Judgment of this 'Appellate Tribunal' dated 02.12.2019 (3 Member Bench) in Union of India, Through Serious Fraud Investigation Office (SFIO) v. Maharashtra Tourism Development Corporation & Anr. [vide Company Appeal (AT)(INS) No. 964/2019 with Company Appeal (AT)(INS) No. 965/2019] wherein it was held that an 'Adjudicating Authority' was not competent to straightway direct any investigation to be conducted by the 'Serious Fraud Investigation Office'. However, the 'Adjudicating Authority' being empowered to pass an order under Section 213 of the Companies Act, 2013, it is always open to the 'Adjudicating Authority'/'Tribunal' to issue a Notice in regard to the aforesaid Charges to the Promoters and others (including) Union of India Through SFIO and after following the procedure laid down in Section 213 of the Companies Act, 2013, if a prima facie is made out, it can refer the matter to the 'Central Government', for investigation by the 'Inspector' or 'Inspectors' and on such investigation if any actionable material is made out and if the 'Central Government' feels that the matter requires an 'Investigation' through 'SFIO' it can proceed in accordance with the provision.

11. The Learned Counsel for the Appellant adverts to the Division Bench Judgement of the Hon'ble High Court of Delhi reported in 2018 SCC online Del 13052: (2019) 256 DLT 493 (DB) wherein it was observed and held that as per Section 211 of the Companies Act, 2013, the 'Central Government' has the power to direct the investigation by the 'Serious Fraud Investigation Office'. This is further clear from Section 212(1) of the Companies Act, 2013 that the Investigation by the 'Serious Fraud Investigation Office' is conducted at the instance of the 'Central Government' and that the 'Investigation' is conducted where the 'Central Government' is of the opinion that it is necessary to conduct an 'Investigation' into the affairs of the Company and it also specifically enumerates the case under which such an 'Investigation' can be ordered etc.

12. The Learned Counsel for the Appellant urges before this 'Tribunal' that the 'impugned order' dated 11.03.2020 was passed without hearing the 'Central Government'/Primary Competent Authority and added further, the 'Impugned Order' had granted more relief than what was envisaged in I.A. No. 29/KOB/20 in TCP/21/KOB/2019.

13. While rounding up, the Learned Counsel for the Appellant prays for allowing the instant 'Appeal' by setting aside the 'impugned order' passed by the 'Tribunal', to secure the ends of justice.

14. It is relevantly pointed out that IA No. 29/KOB/2020 in TCP/21/KOB/2019, the 'Administrator' of 1st Respondent/ Bhagyodayam Company had sought for (1) a direction for an Order being issued to the Respondent No. 13 (ROC Kerala & Lakshadweep) herein or other Competent Authority to investigate the instances of the non-compliances and violation of the provisions of the Companies Act, 2013 and also contravention of the MOA and AOA, (2) in directing the Respondent No. 13 to prosecute the Offenders and take appropriate action Section 439(2) of the Companies Act, 2013, (3) to appoint an 'Auditor' of the Company from Annexure- A2 list.

15. The Learned Counsel for the Appellant points out that on 25.06.2020, the 'Ministry of Corporate Affairs', Headquarters, after obtaining the legal advice had instructed the 'Appellant' to file an 'Appeal' against the impugned order dated 11.03.2020 in I.A. No. 29/KOB/2020 in TCP/21/KOB/2019 and to furnish a Report to be placed before the 'Internal Committee' appraising it, of the facts to take 'considered view' in regard to the desirability of 'SFIO Investigation'.

16. According to the Learned Counsel for the Appellant, the request of the 'Regional Director', Southern Region, Chennai, in November-December, 2020, to modify the instruction for an 'Appeal' into one of a 'Review Petition' in order to avoid travel to Delhi, during Pandemic was not acceded to. Further, because of the establishment of National Company Law Appellate Tribunal, at Chennai, the instant 'Appal' came to be filed.

17. To be noted, Section 210 of the Companies Act, 2013 deals with 'Investigation into affairs of Company'. Section 211 of the Companies Act, 2013 speaks of 'establishment of Serious Fraud Investigation Office. Section 212 of the Companies Act, 2013 pertains to 'Investigation into affairs of Company by 'Serious Fraud Investigation Office'. Section 213 of the Companies Act, 2013 'Investigation into Company's Affairs in other cases'.

18. It must be borne in mind that in terms of Section 210(2) and (3) of the Companies Act, 2013, the 'Central Government'/Competent Authority is authorised to sanction to commence an investigation against the Companies and its Officers, who had committed Default. The Settled Law is that an 'Adjudicating Authority' is not empowered to order an Investigation in a straightway manner, to be carried out by the 'Serious Fraud Investigation Office'.

19. Section 214 of the Companies Act, 2013 deals with 'Security for Payment of Costs and Expenses of Investigation'. Section 216 of the Companies Act, 2013 relates to 'Investigation of Ownership of Company'.

Section 420 of the Companies Act, 2013, runs as under:

(1) "The Tribunal may, after giving the parties to any proceeding before it, a 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."

20. Section 421(1) of the Companies Act, 2013 enjoins that 'Any person aggrieved by an order of the 'Tribunal' may prefer an 'Appeal' to the 'Appellate Tribunal'. An 'error apparent on the face of the proceedings' is an error based on clear ignorance or overlooking the existing provisions of Law, as opined by this 'Tribunal'. At this stage, this 'Tribunal' worth recalls and recollects the decision of the Hon'ble Supreme Court in T.C. Basappa v. T. Nagappa, AIR 1954 Supreme Court 440 wherein it is held that 'such an error is a patent error' and not a mere 'wrong decision'.

21. Further, in the decision of Hon'ble Supreme Court in Hari Vishnu Kamath v. Ahmad Ishaque, reported in 1995 1 SCR 1104 wherein it is held that 'it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of record'.

22. What is an error 'apparent on the face of record' cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature and it must be left to be decided judiciously, on the facts of each case.

23. It is to be remembered that the Companies Act, 2013 does not clothe the 'Tribunal' to 'Review its own order and Judgment'. But Section 420(2) of the Companies Act, 2013 is empowering the 'Tribunal' to act any time within two years from the date of the order in order to rectify any mistake apparent from the record, amend any order passed by it and to make such amendment, if a mistake is brought to its notice by the Litigants/Stakeholder. Undoubtedly, a 'Tribunal' has no inherent power of review as per Civil Procedure Code. However, the 'Tribunal' has the requisite power to set right/rectify any mistake apparent from record and to amend an order accordingly, as per decision APC Credit Rating (P) Ltd. v. Registrar of Companies, NCT New Delhi reported in (2017) 205 Comp Cas 492 at pages 494 & 495.

24. The power of 'Review' is not an 'Inherent Power' and Rule 11 of the National Company Law Rule, 2016 cannot be pressed into service. Furthermore, there is no express provision that showers 'Power of Review' upon the National Company Law Tribunal either in an express fashion or by means of necessary implications, as the case made be.

25. As far as the present case is concerned, even though the 'Appellant' has preferred the instant Company Appeal (AT)(CH) 11 of 2022 before this 'Tribunal', as against the 'impugned order dated 11.03.2020 in IA No. 29/KOB/2020 in TCP/21/KOB/2019, under Section 421 of the Companies Act, 2013, since the 'Central Government' has established the Serious Fraud Investigation Office to investigate fraud relating to a Company and that the 'Central Government' is to assign the investigation into affairs of a Company by 'Serious Fraud Investigation Office' and its 'Director' may designate such numbers of Inspectors, as he may consider necessary, for the purpose of such investigation vide Section 212 of the Companies Act, 2013 by following the procedure under Section 213 of the Companies Act, 2013, in stricto sense of the term, 'Union of the India through Serious Fraud Investigate Office' is an 'Aggrieved Person' against the 'impugned order' dated 11.03.2020 in IA No. 29/KOB/2020 in TCP/21/KOB/2019 proper and competent authority to prefer an 'Appeal' and not the 'Appellant'/Registrar of Companies, Kerala, (notwithstanding the fact that Section 421(1) of the Companies Act, 2013 speaks of 'Any person aggrieved by an order of the 'Tribunal' may prefer an 'Appeal' to the 'Appellate Tribunal'.

26. Really speaking, the words 'Any person aggrieved by the order of the 'Tribunal' occurring in Section 421(1) of the Companies Act, 2013 mean only a Person who has suffered a legal grievance. In this regard, this 'Tribunal' aptly points out in Company Appeal (AT)(INS) No. 964 of 2019, the Appellant is 'Union of India, through 'Serious Fraud Investigation Office' (SFIO) v. Maharashtra Tourism Development Corporation and Anr. Besides this, the Administrator of the 1st Respondent/M/s Bhagyodayam Company who filed IA No. 29/KOB/2020 in TCP 21/KOB/2019 on the file of 'National Company Law Tribunal', Kochi Bench has not preferred the 'Appeal'.

27. When the Prime Grievance of the 'Appellant' is that the 'impugned Order' dated 11.03.2020 in IA No. 29/KOB/2020 in TCP 21/KOB/2019 on the file of the 'National Company Law Tribunal', Kochi Bench that the said Order was passed without hearing the 'Central Government' being the 'Primary Competent Authority' then, the 'Central Government'/Union of India (through Serious Fraud Investigation Office) ought to have preferred the 'Appeal' against the 'impugned order' dated 11.03.2020. However, such recourse has not been resorted to. Viewed in that perspective, this 'Tribunal' unresistingly comes to a consequent conclusion that the Appellant/Registrar of Companies, Kerala is not the proper and competent person to prefer the instant Company Appeal (AT)(CH) No. 11 of 2022. Per contra, the 'Central Government (Union of India, through Serious Fraud Investigating Office) is the appropriate person/Primary Authority to prefer an 'Appeal', as an 'Aggrieved Person', as per Section 421(1) of the Companies Act, 2013. Therefore, the 'Appeal' as framed and filed by the 'Appellant' is per se not maintainable in the eye of law, it is an 'otiose' one and it fails.

28. In view of the foregoing detailed discussions and reasons, the instant Company App (AT)(CH) No. 11/2022 is dismissed. No costs. I.A. No. 114/2022 is closed. It is made quite clear that the dismissal of the instant Company Appeal (AT)(CH) No. 11/2022 will not preclude the 'Central Government' (Union of India through Serious Fraud Investigation Office) in assailing the impugned order dated 11.03.2020 in IA No. 29/KOB/2020 in TCP 21/KOB/2019, passed by the National Company Law Tribunal, Kochi Bench, Kerala before the 'Competent Forum', of course in the manner known to Law and in accordance with Law, if it so desires/advised.

(Justice M. Venugopal) Member(Judicial) (Kanthi Narahari) Member (Technical) AKC/MD