

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Company Appeal (AT) No. 291 of 2017

IN THE MATTER OF:

Niranjanlal Agarwal and 3 Ors. Appellants

Vs

Durga Liquor India Private Limited & 4 Ors. Respondents

Present:

For Appellant: - Mr. Y Suryanarayana, Advocate.

ORDER

07.09.2017 – This Company Petition has been preferred by the Appellants before the erstwhile Company Law Board (hereinafter referred to as CLB) in the year 2012 under Section (s) 397, 398 and 402 of the Companies Act, 1956. The matter is pending for more than five years though the National Company Law Tribunal (hereinafter referred to as Tribunal) was required to dispose of the petition preferably within 3 months since its constitution. The then CLB in the meanwhile heard the case and disposed of the matter on 31st March 2013 in terms of the Memorandum of Compromise dated 23.3.2013 subject to retaining the jurisdiction of the Tribunal in respect of two Fixed Deposits (hereinafter referred to as FDs) deposited in the case and parties were at liberty to apply only in respect of the two FDs.

2. At this stage, one C.A was filed by Respondents/Durga Liquor India Private Limited & Ors., seeking certain direction (s). Two other applications were filed by the Appellant (Company Application No. 1 & 2 of 2016) seeking direction to release an amount of Rs.31 lacs and Rs.62 lacs deposited. The two Company Applications were disposed of by the Tribunal by order dated 19th October 2016 with the following directions: -

“Para 15. In view of the above facts and circumstances of the case, and in order to put an end to the litigation in question, we do hereby direct the Applicants/Petitioners herein to ask the AAPL to lodge a police complaint with the concerned police station about the loss of original share certificates of 36,443 shares of Respondent No. 1 company (DLIPL), beyond recovery and, get a certificate to that extent and also submit it along with necessary indemnity bond as required under applicable rule/law in the present situation, to the Respondents. The Applicants are also directed to take appropriate action to withdraw all.”

3. Thereafter, another application was filed by the Appellant for seeking release of mandatory conditions prescribed in the order dated 19th October 2016. In the meantime, the Tribunal having noticed that a police complaint was filed on 15th September 2017, certain other developments had taken place to settle the dispute. However, taking into consideration the fact that the parties have settled the dispute before the CLB, the Indemnity Bond dated 5.2.2016 along with an undertaking for withdrawal of the case (s) and two other cases, E.P.O.S No. 49, pending before the Chief Judge, City Civil Court, Hyderabad was submitted by the Appellant before the Tribunal and the Tribunal refused to grant any relief to the applicant in the I.A wherein the appellant requested for release of mandatory conditions prescribed in the order dated 19.10.2016. The reason for not allowing the same is contained in para 8 to 9 of the impugned order.

4. Ld. Counsel appearing on behalf of the Appellant submits that all these suits have been withdrawn and the suit which is still pending against the Respondent is unrelated to the present case. The question of withdrawal of the same does not arise.

5. We have heard Ld. Counsel of the appellant and perused the order enclosed with the appeal. Admittedly it appears that all the direction (s) of the Tribunal passed in C.A 1 & 2 of 2016 dated 19.10.2016 has not been complied in letter and spirit. The Tribunal having noticed that there is no ambiguity in the direction, refused to modify the order dated 19.10.2017 as prayed for by the Appellant. In the circumstances were not inclined to interfere with the impugned order dated 8.5.2017 passed by the Tribunal, Hyderabad Bench in C.A No. 77 2017 in C.P No. 84 of 2012. In the absence of any merit, the appeal is dismissed.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)