

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No. 153 of 2017

**(Arising out of Order dated 10th February 2017 passed by NCLT,
Principal Bench in C.A. (SB) NO.25/2016 of C.P. No. 36(ND)/2016)**

Vashisht Kumar Goyal

.....Appellant

Vs.

M/s Rishi Infratech Pvt Ltd. & Ors.

.....Respondent

Present: Mr. Sangram Patnaik, Advocate with Mr. Dhrubajit Saikia, Swayamsidha Patnaik, Advocates for the appellant.

**Mr. Ashish Aggarwal with Mr. Gurkamal Hora Arora, Advocates for Respondents No.1 and 2.
Mr. Amit Kumar, Advocate for Respondent No.3 to 6.**

JUDGEMENT

BALVINDER SINGH, MEMBER (TECHNICAL)

1. This appeal has been preferred by the Appellant against the order dated 10th February, 2017 by National Company Law Tribunal, Principal Bench (hereinafter referred as 'Tribunal') in Company Application No.25/2016 in Company Petition No. 36(ND)/2016 filed on 25.2.2016 whereby and whereunder the amendment application filed by the Respondent/Petitioner 1 & 2 has been allowed and allowing the Respondent/Petitioner to implead one Mr. Amit Kumar as Party Respondent No. 6 to the said Company Petition, with following observations.

“.....This is an application filed under Order VI Rule 17 with a prayer for incorporating various amendments. Some amendments have been indicated in para 21. It has been prayed that new paras 20A to 20K be permitted to be incorporated in the petition along with the prayer. There is further prayer for adding para G & H to para 21 of the petition giving further illustrations of facts concerning oppression and mismanagement.

Still further the petitioner has prayed for amendment by adding para E to para 21. Then a consequential prayer has also been sought by seeking to amend the relief clause as per the prayer made in para 24. It has further been represented that Mr. Amit Kumar is also required to be impleaded as party respondent No. 6 as he is necessary party for proper and just adjudication of facts, along with a request for correction of the address of respondent4.

Notice of the application was issued and copy was served on the non-applicant respondents. The pleadings are complete.

Having heard the learned counsel for the parties and keeping in view the fact that the facts and events which are sought to be incorporated in the CP by way of amendment have occurred after filing of the petition. Therefore, such subsequent events are necessary to be brought on record. Accordingly, we allow the application subject to all just exceptions including the issue of delay and laches. The amended petition is already on record.

Notice of the amended petition be issued to all the respondents. The petitioner shall supply a copy of the amended petition to all the respondents including to the newly added one. Learned counsel for the respondent 4 Mr. Kalia accepts notice.

Reply to the amended petition be filed within four weeks with a copy on advance to the counsel opposite. Rejoinder, if any, be filed within two weeks thereafter with a copy in advance to the petitioner's counsel.

List for further consideration on 10.04.2017.”

2. The Company Petition 36(ND)/2016 has been filed by Respondent/Petitioner under Sections 397, 398, 399 read with

Sections 235, 237(b), 402 & 403 of the Companies Act, 1956.

During the pendency of Petition in view of further developments amendment of petition was sought for, on the ground of detailed below:

- a. Petitioner/Respondent No.1 i.e. Rishi Infratech Private Limited alleged that it purchased 22,80,000 equity shares of the Respondent No. 1 Company of the Petition i.e. Mahamaya Exports Pvt. Ltd (Respondent No. 3 in the present Appeal) as on 07.11.2014 and 11,40,000 equity shares of Mahamaya Exports Pvt Ltd were transferred from Respondent No. 5 of the Petition i.e. Atul Bansal (HUF) to the Petitioner as on 27.08.2015. Thus Petitioner/Respondent No. 1 Company pleaded to become owner of 34,20,000 equity shares representing 30% of equity share capital of the Mahamaya Exports Pvt. Ltd.
- b. Petitioner No2/Respondent No. 2 was appointed as additional and nominee director of Petitioner/Respondent No.1 company in Mahamaya Exports Pvt. Ltd.
- c. Further Petitioner Co. Rishi Infratech Pvt Ltd. Asserted in the petition that it did not receive any notice of AGM for the Financial year 2014-2015 and requested the Respondent company and its directors vide its letter dated 16.12.2015 to permit the Petitioner and its professionals for inspection of statutory books, records including register of members, minutes book, financial books and accounts and register of

charges etc of the company. But no intimation was given by the Respondents either for holding of the AGM or for granting permission to the Petitioner to inspect the statutory and other financial records. That on visit on 22.12.2015 to the registered office by the authorised representative of the Petitioner Company no records were found there. Further adducing that the Respondent Company objected to the refusal of the inspection of the records and that no registered office of the company was being run on the alleged address. Its pleaded that it was revealed to Petitioner from the MCA portal that w.e.f. 01.02.2015 the Respondent has changed its place of keeping the statutory books and registers from Registered Office to Corporate Office at 2nd floor, ABW tower, IFFCO Chowk, Gurgaon, m 122002 as per resolution dated 31.01.2015 to which no notice was ever sent to the Petitioners. It was further revealed to the petitioner that several fictitious entries have been made by the respondents so as to misappropriate the amount from the respondent no. 1 company.

3. (a) That the erstwhile Company Law Board, New Delhi vide its order dated 03.03.2016 in the aforesaid Petition had directed the respondents to provide certified copies of the following list of documents to the petitioner, which are as follows:

- (i)** Financial statements of the company for the Financial Year 2014-2015.
- (ii)** Provisional Financial Statements of the company for the period 01.04.2015 to 31.12.2015 along with trial balance and inventory of stock in hand as at 31.12.2015.
- (iii)** Details regarding all loans taken in the name of the company.
- (iv)** Copy of Register of Charges.
- (v)** Copy of Register of contracts.
- (vi)** A list of all freehold land and buildings held by the company with short description along with copies of relevant title deeds, sale/conveyance deeds. Also provide confirmation that the freehold and leasehold properties disclosed above represent all the properties owned and/or occupied by the company.
- (vii)** Full bank account statements of all Bank accounts, profit and loss statements and all other accounts of the respondent No.1 company from the date of incorporation till date.

b. It is further adduced that in furtherance of the above order passed by the Board, the bench officer was directed to get hold of the documents mentioned in order dated 3.03.2016 and deposit the same with the Company Law Board. The Respondents therein deposited following documents to Bench Officer as on 23.05.2016 as it is pleaded in amendment application:

- i. Register of Contracts under Section 189(1) of the Companies Act, 2013;
 - ii. 10 Sale Deeds in favour of the respondent No. 1 Company
 - c. The Petitioners/Respondents No.1 and 2 alleged that the agreements entered into between the Respondent No. 1 Company and Mr. Amit Kumar (Brother of Vashisht Goyal) as shown in the Register of Contract submitted by the Respondent and which were approved in the meeting held on 21.12.2015 for which no notice was received by the Petitioners. Thus on the basis of the documents submitted in furtherance of interim order of the Company Law Board, the Petitioners moved the impugned application for amendment of the Company Petition by adding some paragraphs and for relief, such as cancellation of the agreements approved in meeting held on 21.12.2015 and impleadment of Mr. Amit Kumar as party respondent No 6 in the petition which was allowed vide impugned order supra dated 10th February, 2017.
4. Learned Counsel on behalf of the Appellant has moved the argument that as relevant provisions of the Companies Act, 1956 i.e. Section 397/398 read with Company Law Board Regulations, 1991 (CLB Regulation for short) were discontinued so

application for amendment under Regulation 44 of the CLB Regulations was not maintainable and the judgement dated 10.02.2017 under Regulation 44 of CLB Regulations is without jurisdiction on that day, void in law. The Counsel has further submitted that the amendment is filed on a completely different, distinct and separate cause of action, particularly when the Respondents 1 & 2 asking for termination of the agreements placing the allegations in amendment application which were not at all found or referred in the original petition, in any case same is time barred and beyond limitation. Further for the first time fraud and forgery has been alleged in the amendment application which was not mentioned in original petition. Thus, if the amendment is allowed which is based on new cause of action and changed the nature of petition will affect the rights of appellant adversely. Further, Learned counsel for the appellants submitted that when the CLB Regulations and the NCLT Rules has specific powers under the Regulation or Rules as the case may be the inherent power of the Tribunal could not have been invoked. Further, the appellant has alleged that the original petition filed itself is not maintainable then how the amendment in the said petition could be maintainable.

5. This Appellate Tribunal in the matter of Company Appeal (AT) No. 25/2017 (IVRC Ltd Vs M/S IOT Utkal Energy Services Ltd & Others) has dealt with the similar question and has passed the order, the relevant portion is produced as below:

“5. In this regard we may observe that if the facts relate to the period prior the filing of the company petition, and the appellant had no knowledge of the same and came to know after filing of the company petition then the Tribunal should allow the appellant to bring such facts to the notice of the Tribunal.

6. on the other hand, if the act of ‘oppression and mismanagement’ relates to earlier period, including both the meeting dated 31st December, 2012, and the appellant had knowledge of the same directly or through its representative, the same cannot be allowed to be pleaded.

7. Similarly, if during the pendency of the company petition further acts of ‘oppression and mismanagement’ taken place and is connected with the allegations already made, such as consequential action taken by Respondent, the Tribunal should allow the appellant to bring development to the notice of the Tribunal.

8. on the other hand, if the subsequent acts of ‘oppression and mismanagement’ is a fresh cause of action, such plea cannot be raised in the pending company petition, though it is always open to the aggrieved party to move before the NCLT under Section 241 and 242 of the Companies Act, 2013 by filing a separate petition.

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10. The Tribunal in its turn will take into account the additional facts, if it is in consonance with the observations made in the preceding paragraphs, otherwise will ignore the other facts by deleting such paragraphs from the additional affidavit.”

6. The information which the petitioner has been asking for has been made available to it now cannot be treated to be in the knowledge of the petitioner at the time of filing of the petition. Therefore, amendment to incorporate the relevant fact in the petition, on the basis of information now available, required to be noticed for substantive justice and proper disposal of the Company Petition. Having gone through the records and reasons recorded by the Tribunal, we are not inclined to interfere with the impugned order. In absence of any merit the Appeal is dismissed. Both parties to bear their own cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Balvinder Singh)
Member (Technical)

New Delhi
Dated: 28th July, 2017