

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.387 of 2018

[Arising out of order dated 31.07.2018 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in IA No.151 of 2018 in CP No.13/2013 (TP No.97/HDB/2016)]

IN THE MATTER OF:

Mrs. Mallina Bharathi Rao
House No.2-11-1,
Ramarao Peta,
Near Mee Seva,
Peddapuram – 533437,
E.G. Dist., A.P.

Before NCLT
Original Applicant/
Petitioner

Before NCLAT
Appellant

Versus

1. Gowthami Solvent
Oils Limited
PB No.7,
Pydiparru Tanuku
West Godavari
District – 534211

Original Respondents

Respondents

2. Mr. M Ramachandra
Rao
Managing Director of
The Gowthami Solvent
Oils Limited
D-No.23-15-23,
Indira Nilayam
Sajjapuram, Park Road
Tanuku, West Godavari
District – 534211

3. Mr. B. Srimannarayana,
Joint Managing Director
of Gowthami Solvent
Oils Limited
D. No.23-7-6,
Sajjapuram Tanuku,
West Godavari District
Andhra Pradesh

**For Appellant: Shri Nikhil Nayyar and Shri Divyanshu Rai,
Advocates**

**For Respondents: Shri C.V. Narasimham and Shri Savar Mahajan,
Advocates**

ORAL JUDGEMENT
28.02.2019

A.I.S. Cheema, J. : Counsel for Appellants have been heard. This Appeal is arising out of Impugned Order dated 31.07.2018 passed in IA No.151 of 2013 in CP No.13/241/HDB/2013 (TP No.97/HDB/206) whereby the IA has been dismissed by the National Company Law Tribunal, Hyderabad Bench, Hyderabad ('NCLT', in short) and the NCLT held that there was no clerical or arithmetical error in the Order.

2. It appears that earlier the Appellant – Petitioner had filed CP 13/2013 before Company Law Board which was disposed by Judgement and Order dated 14th March, 2017 (hereafter referred as – Primary Order) by NCLT. The said Order referred to the prayers which had been made by the Appellant in the Company Petition in para – 2 of its Judgement. Prayer - A and B related to direction to Respondents to allot or transfer such number of shares so as to entitle the Petitioner to maintain her percentage shareholding which she held at the time of deletion of her name as shareholder of the Company illegally in the year 1999. Prayer – A and B of the petition which were reproduced, are as under:-

“(a) Direct the Respondents to, either allot or transfer, such number of shares so as to entitle the Petitioner to maintain her percentage shareholding at 2.12% (which was percentage

shareholding she held at the time of deletion of her name as a shareholder of the company illegally in the year 1999), upon the receipt of the amount of Rs.13,65,000/- from the petitioner, being the consideration payable in respect of said shares as per the terms of the respective rights issues made by the company in the years 1991-92, 95-96 and 2004-05;

- (b) Direct the Respondents to pay the Petitioner all dividends that would have accrued in respect of shares, that forms subject matter of the rights issues during the period 1991-92, 95-96 and 2004-05 till date, to which the Petitioner would be entitled had the Petitioner been offered the rights issue in accordance with law and had her name not been deleted from the Register of members in the year 1999, together with interest for such dividends at the rate of 12% compounded annually from the date of payment of the dividend to the other shareholders till the date of effecting actual payment to the Petitioner;”

In the Primary Order which was passed, direction – “i” read as under:-

“i. We direct the Respondents to allot all the three rights issues shares comprising a total of 5250 shares i.e. 350 in 1991-1992, 2100 shares in 1995-1996 and 2800 shares in 2004-2005.”

The further directions in the Order related to the Petitioner to pay the amount as mentioned in period specified and direction to the Respondents to allot the shares accrued through three rights issues to the Petitioner and to rectify the members register. The third direction related to payment of costs.

3. The Appellant admittedly did not appeal against this Primary Order. The Respondents filed CA 95/2017 in National Company Law Appellate Tribunal (NCLAT – in short) which came to be disposed on 31st May, 2017. The Respondents had challenged the said Primary Order of NCLT on the ground of delay and this Tribunal heard the Respondent in that Appeal, i.e. the present Appellant with regard to that Appeal and dismissed the Appeal.

4. It appears that after the said Appeal was disposed by this Tribunal, the Appellant paid Rs.13,65,000/- as was directed in the Primary Order and the Respondents issued the shares, but by communication dated 9th November, 2017 (Page - 102) they declined payment of dividend claiming that the Appellant had paid the amount in pursuance to the direction of NCLT and there was no direction from NCLT to pay any dividend except to allot the rights shares which she was entitled to. The Counsel for Appellant is submitting that after such refusal by the Respondents, the Appellant filed Rectification Application IA 151/2018 (Page – 108) on 22nd February, 2018 invoking Section 154 of the National Company Law Tribunal Rules, 2016 (Rules - in short) and in the application, the Appellant mentioned that the NCLT had inadvertently not given directions with regard to the consequential relief of dividends and interest on the dividends with respect to the three rights issues which resulted in an error by omission and so NCLT should rectify the error.

5. It appears that the learned NCLT heard the parties and has passed the present Impugned Order dated 31.07.2018 and come to a conclusion that there was no clerical and arithmetical error and secondly the Appeal has been preferred against the Order to NCLAT and so its Order merged with the Order of NCLAT and that it has no powers of review.

6. The learned Counsel for Appellant is submitting that if the above factors are kept in view, it is apparent that inadvertently, the NCLT did not pass Orders in the Primary Order regarding grant of dividends and interest on the dividends when NCLT passed orders that the Respondents are liable to allot the three rights issue shares to the Appellant. The learned Counsel submitted that the Appellant in fact also sent another letter dated 23.08.2018 (Page – 154) to the Respondents offering to pay interest on the money of the shares so that the Respondents could issue the dividends to her but the same was not accepted by the Respondents. It is argued that the NCLT erred in rejecting the IA for rectification which occurred due to omission.

7. Against this, the learned Counsel for the Respondents is raising various grievances which relate to what occurred during the pendency of the Petition and trying to justify the acts of Respondents as to why the shares were not issued earlier. On the legal aspect, the learned Counsel referred to Section 420 of the Companies Act, 2013 to submit that when the Appeal had been preferred against Primary Order, the NCLT would not even otherwise have right to rectify. It is also argued that when the relief

was specifically sought in the Company Petition, if no order had been passed with regard to the relief sought, the same would have to be treated as declined.

8. Having heard Counsel for both sides and going through the matter, although it appears that if the relief was being granted to the Appellant as was directed in the primary Order directing Respondents to allot all the three rights issue shares, the consequential relief should also have been considered and granted by the NCLT. However, Appellant preferred no Appeal and now the position happens to be that after the primary Order was passed by NCLT, the Respondents preferred Appeal and even that has been decided. Section 420 of the Companies Act, 2013 reads as under:-

“420. Orders of Tribunal.—(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 the 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.”

It is apparent from above that the Tribunal can rectify any mistake apparent from the record, if the mistake comes or is brought to its Notice by the parties within two years. The Sub-Section (2) as can be seen above, has a proviso which puts an embargo on this power of NCLT by directing that no such amendment shall be made in respect of any Order against which Appeal has been preferred under this Act. Undisputedly, the appeal was filed. Even in the Appeal although the Appellant appeared as Respondent, the Appellant does not appear to have raised this grievance that the further or consequential relief was not granted. The Appellant did not file the Appeal on its own also, if she had grievances regarding part of relief not being granted.

The Counsel for Respondents have referred to Explanation – 5 of Section 11 of the Code of Civil Procedure, 1908 relating to res judicata which reads as under:-

“Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.”

It is stated that though C.P.C. does not apply, general principles and good practices need to be applied.

Admittedly, relief on the count of consequential relief had been sought in the Company Petition and when the NCLT did not say anything about it in the final operative Order which was passed, keeping the above

general principle of law in view, it amounted to refusing to grant the relief. If at that time, the Appellant did not file Appeal and even when the other side filed the Appeal, did not raise grounds to seek relief, we do not think that the NCLT has now committed any error in the present Impugned Order whereby the application of the Appellant has been dismissed.

9. We do not find any substance in this Appeal. The Appeal is rejected. no orders as to costs.

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

/rs/nn