

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Review Application No. 04 of 2019
IN
Company Appeal (AT) Nos. 397-399 of 2017**

IN THE MATTER OF:

Meidensha Corporation

...Applicant/ 2nd Respondent

Vs.

Prime Meiden Ltd. & Ors.

...Respondents

Present: For Appellants: - Mr. Ramji Srinivasan, Senior Advocate with Mr. Lalit Bhasin, Mr. Abhijeet Sinha, Mr. Lakshya Khanna, Mr. Avichal Prasad, Ms. Anuradha Sharma, Mr. Inder Raj Gill, Mr. Nikhil Ramdev, Ms. Sylona Mohapatra and Mr. R.P. Singh, Advocates.

For Respondents: - Mr. Rajiv Ranjan, Senior Advocate with Mr. Krishnendu Datta, Mr. Ramanjit Singh, Mr. Robin Dubey, Mr. Sagar Chawla, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The brief facts of the case can be noticed from the earlier decision of this Appellate Tribunal passed on 29th November, 2018 in Company Appeal (AT) Nos. 397-399 of 2017 etc., as extracted below:

“These appeals have been preferred by the Appellants- ‘Surinder Mehta and Ors.’ against three different orders passed by the National Company Law Tribunal (‘Tribunal’ for short), New Delhi Bench, in Company Petition No. 394(ND)/2017 dated 10th November, 2017 and 17th November, 2017 filed by ‘M/s. PCI Limited & Ors.’ and in Company Petition No. 369(ND)/2017 dated 23rd November, 2017 filed by ‘Meidensha Corporation’.

2. By virtue of the order dated 10th November, 2017, passed in Company Petition No. 394/ND/2017, Tribunal, New Delhi, declined to interfere with the decision of the Board of Directors and observed that such decision ultimately to be approved by the shareholders, shall be given effect to.

3. Thereafter, CA No. 306 of 2017 in Company Petition No. 394/ND/2017 was filed by ‘M/s. PCI Limited & Ors.’ (Company)/ ‘Petitioner’ seeking directions that the Respondents be restrained from giving any effect to the resolution passed by the Board of Directors on 12th November, 2017. As regards another CA No. 307 of 2017, the Respondents of the said petition sought

modification of the order dated 10th November, 2017. The Tribunal instead of passing any further order directed to list the matter on 1st December, 2017.

4. On 23rd November, 2017, the first order was passed by the Tribunal on an urgent application before the Bench for immediate directions to make payments towards Custom Duty and payments to other third parties. Keeping in view the urgency, the Tribunal kept the matter for hearing on interim relief at 4.00 p.m.

5. At 4.00 p.m., the Tribunal in its subsequent order on 23rd November, 2017, discussed the relevant facts and passed the following directions:

“8. Resultantly, we direct that there should be proper adherence to the resolution passed by the Board in respect of disbursing payments and/ or procuring material and despatching finished goods to their vendees, till the 1st of December, 2017, when final arguments shall be heard in both the Company Petitions. Should for any reason the aforesaid named officials of the

Respondent Company be unavailable, the Chairman/ Executive Vice Chairman shall nominate any other official to represent them in signing cheques/ documents. It is also being made abundantly clear that should the Respondent's employees/ nominee fail to cooperate in countersigning the required documents, it shall be viewed as a deliberate attempt by the Respondents to thwart the working of the Company.”

6. When the appeal was taken up, taking into consideration that petition under Sections 241 & 242 of the Companies Act, 2013 has been preferred by the Company ('Meidensha Corporation') alleging oppression and mismanagement against it and its members and the Tribunal passed one or other interim orders, this Appellate Tribunal with a view to regulate the conduct of the company affairs in a proper manner, on hearing the parties passed following interim order on 1st December, 2017:

“01.12.2017- *Let notice be issued on Respondents. Ms. Anuradha Sharma, Advocate accepts notice on behalf of 2nd Respondent. Mr. Anuraag Dayal, Advocate accepts notice on behalf of Respondents Nos. 3 to 8. Mr. Ramanjit Singh, Advocate accepts notice on behalf of Proforma Respondents nos.10 and 11. No further notice need be issued to them. Let notice be issued on the rest of the Respondents by Speed Post. Requisite along with process fee, if not filed, be filed by 4th December, 2017. If the Appellant provides the e-mail address of Respondent, let notice be also issued through e-mail.*

Post these appeals on 21st December, 2017.

In the meantime, the National Company Law Tribunal shall not extend the interim order dated 23rd November, 2017 passed at 4.00 p.m. in Company Petition No. 369/ND/2017. However, it may proceed with the hearing of the main petition under

Section 241 of the Companies Act, 2013. It is also made clear that for day-to-day functioning of the Company, the Company may release money, including payment, if any, to be made towards supply of materials, electricity, water, salaries, of officers, wages of the employees/workmen and statutory dues etc. payable. Both the parties will also ensure that the Company remains on-going without any hindrance of its work, including the work as required to be taken from companies officers, employees, workmen, experts etc. It is also made clear that for any purpose if any Form is to be filled up or signed, it should be in the Format as was existing as on the date of the filing of the petition under Section 241 of the Companies Act, 2013 and will be signed by the persons, who were authorised to sign on such format as on the date of filing. In case, any of the signatory, belonging to any of group (Appellants or Respondents) refuse to sign or do not co-operate with the Company, it will

be open to the parties to bring such fact to the notice of this Appellate Tribunal and may request to modify the present order.”

7. The appeal was kept pending with a view to find out whether pursuant to the interim order the affairs of the company are being run in a proper manner. However, time to time applications were preferred by the Respondents alleging non-cooperation on the part of the Appellants, who are authorised to sign within the stipulated period. It was alleged that such non-cooperation on the part of the authorised representative of the Appellant is affecting the proper functioning of the Company.

8. In view of such allegation, on 26th September, 2018, we passed the following order:

*“**26.09.2018**— We have heard the parties with regard to the clarification of the interim order passed on 1st December, 2017.*

Having heard the parties, we make it clear that for the purpose of getting signature of the Appellants and its

representative for day to day functioning if any requisition is made in the old format by the Respondents or any of the Officers, the Appellant or the authority competent to counter sign, it will clear the matter within 48 Hrs. In case of non-clearance, reason should be recorded and should be communicated to the parties who has made the requisition. The rejection of any requisition does not mean that the Appellants have power to audit the requisition made in the interest of the Company. Entry of any material in the premises of the factory for utilisation or commercial production of the company cannot be rejected.

The parties including the Appellants and the Respondents are directed not to create such situation which will be detrimental to the functioning of the Company. This order we have passed in addition to the earlier interim order passed by this Appellate Tribunal.

I.A. No. 1510 of 2018 stands disposed of.

Post the matter on 3rd October, 2018 for compliance.”

9. After the aforesaid clarification of the interim order dated 1st December, 2017, the Company continues to function properly but in some cases, again allegations were levelled by the Respondents against one of the authorised signatories on the part of the Appellants. A Contempt Petition was also filed against Mr. Rohan Mehta & Ors. ('Appellants').

10. On 12th November, 2018, Mr. Rohan Mehta, one of the Appellants who is also authorised to sign pursuant to interim order of this Appellate Tribunal, appeared in person and informed that more than 27 bills have been cleared. Further informed that there is a difficulty in passing a number of bills etc. within short period of 48 Hrs. He prayed for four clear working days for clearing the bills and if so required after negotiation with the parties. The aforesaid statement was recorded by this Appellate Tribunal on 12th November, 2018, as quoted below:

“12.11.2018– Mr. Rohan Mehta, one of the Appellants who is also authorised to sign pursuant to interim order of this Appellate Tribunal, appeared in person and informed the difficulty in passing a number of bills etc. within short period of 48 Hrs. He prays for four clear working days for clearing the bills and if so required after negotiation with the parties.

2. Mr. Rajeev Ranjan, Senior Counsel appearing on behalf of the Appellants submits that if any information is asked from the Respondents they should clarify it within 24 Hrs.

3. According to Mr. Ramji Srinivasan, Learned Senior Counsel, information, if any, is sought for, it should be made at least before the third day so that they may get 24 Hrs for clearance, otherwise it may exceed four working days.

We have heard the parties. Order reserved.”

11. *In view of the stand taken by the parties, the interim order passed on 1st December, 2017, as clarified by order dated 26th September, 2018, are made absolute which is to continue till the final disposal of the Company Petition pending before the Tribunal. However, in place of 48 Hrs, we allow Mr. Rohan Mehta and the other signatory Appellant(s) four clear working days for clearing the bills as may be submitted and in case of any defect they may negotiate with the Directors and other authorised officer. If any clarification is sought for, it should be informed at least before the third day from the date of production of the bill(s) and other requisites so that the other group (Respondents) may get clear 24 hours to explain their stand to ensure that the total period do not exceed four working days.*

In case bills or other requisition are not cleared by the representatives of the Appellants within four working days without giving valid reason and intimation to the other group (Respondents), the bills or other requisition, as may be submitted by the management will be deemed to have been cleared by the other group (Appellants).

12. As ordered, aforesaid arrangement will continue till final decision of the Company Petition No. 394 (ND)/2017. In view of the aforesaid arrangement, the interim orders passed by the Tribunal stand superseded.

13. Appeals and Interlocutory Applications stand disposed of with aforesaid observations and directions.

Contempt Case (AT) Nos. 11 of 2017; 01 of 2018 and 16 of 2018

14. Having heard learned counsel for the Appellants and taking into consideration the final order passed in Company Appeal (AT) Nos. 397-399 of 2017, we are not inclined to proceed in the contempt proceedings. They are closed.”

2. This Review Application has been filed by Applicant- ‘Meidensha Corporation Japan’ (2nd Respondent to the appeal) (hereinafter referred to as “Applicant”) in Company Appeal (AT) No. 397-399 of 2017 for exercising power under Rule 11 of the National Company Law Appellate

Tribunal Rules, 2016, wherein following facts have been brought to our notice.

3. In view of the incessant impediments being created by and at the behest of Mr. Surinder Mehta and Mr. Rohan Mehta – (1st and 2nd Appellants in the appeal) (hereinafter referred to as “Contesting Respondents”) in the smooth functioning of the Company *inter-alia* by preventing the handover of the corporate and statutory records of 1st Respondent- ‘Prime Meiden Limited’ to the Company Secretary, HR-Head and Manager —IT duly appointed by the board of the Company, thereby preventing them from discharging their duties towards the Company, the Applicant prays for review of the order dated 29th November, 2018 passed by this Appellate Tribunal while disposing of Company Appeal (AT) Nos.397-399 of 2017 and issue directions for reinstatement of the simplified procedures/new formats adopted by the Company pursuant to the resolution dated 12th November, 2017 passed by the Board of Directors of the Company.

4. It was submitted by the Applicant that at present it holds 76% equity shares and 100% preference shares issued by the Company. For acquiring the aforesaid shareholding in the Company, the Applicant has expended a sum of Rs. 525 Crores (Approx.). In addition, the Contesting Respondents have served upon the Applicant notice dated 18th February, 2019 offering to sell another 8% equity interest in the Company pursuant to which the Appellant's equity shareholding will increase to 84%. Till date the Applicant has also secured debt facilities amounting to Rs.410 Crores availed by the Company. Having committed a sum of Rs. 935 Crores (Approx.) in the Company, the Applicant still finds itself unable to smoothly manage the affairs

of the Company owing to the repeated and incessant impediments being perpetrated by and at the behest of Contesting Respondents.

5. Learned counsel for the Applicant submitted that this Appellate Tribunal while passing the order dated 29th November, 2018 had protected the Appellants (i.e. minority shareholders in the Company) by allowing 2nd Appellant (Mr. Rohan Mehta) four days to sign the approval formats required to be signed for the day to day functioning of the Company. This Appellate Tribunal had vide the aforementioned order apart from prescribing a timeline for the Contesting Respondents to sign formats, also made absolute its earlier interim order dated 1st December, 2017 in terms whereof the Parties were directed to ensure that the operations of the Company remain on-going and unhindered. However, the Respondents and more particularly Contesting Respondents deliberately overreaching in disregard of the unequivocal directions passed by this Appellate Tribunal have caused and continue to cause grave impediments in the smooth functioning of the Company.

6. It was also alleged that even after passage of the order dated 29th November, 2018, the Respondents by utilising their muscle power prevented the duly appointed employees of the Company (including the HR-Head and Company Secretary) from entering into the corporate office of the Company. Such deliberate overreach of the orders passed by this Appellate Tribunal compelled the Applicant to file Contempt Petition No. 21/2018 in Company Appeal (AT) Nos.397-399/2017 which petition is presently pending adjudicating by this Appellate Tribunal. It was only pursuant to the stern warning issued to the Respondents by this Appellate Tribunal that

the duly appointed company employees were allowed to enter into the corporate office, which is presently located in a building owned by the Respondents and ingress and egress thereto is controlled exclusively by the Respondents. However, despite warnings and in clear abuse of the indulgence accorded by this Appellate Tribunal to the Respondents, they have prevented the corporate and statutory records of the Company to be handed over to such duly appointed employees, thereby hindering the Company's operations.

7. The specific instances of impediments in the operations of the Company which justify and necessitate review of the order dated 29th November, 2018 have been highlighted as under:

Preventing the duly appointed HR Head of the Company from assuming charge and discharging his responsibilities: -

- (i) Mr. Abhijeet Prakash (erstwhile HR Consultant for the Company) had been deputed as the HR Consultant for the Company *vide* an HR Services arrangement dated August 19, 2016 executed between the Company and PPIL (Planet PCI Infotech Limited; a company owned and controlled by the Respondents).
- (ii) The said HR arrangement has been terminated by the Company as far back as November 1, 2017 and the said termination has not been stayed by any judicial forum.
- (iii) The Company *vide* board resolution passed during the Board

meeting of November 12, 2017 resolved to appoint Mr. Mazhar Hussain as the new HR Head of the Company and took on record termination of the aforementioned HR services arrangement.

- (iv) However, in clear overreach of the resolutions passed by the Board of the Company, Mr. Abhijeet Prakash continues to usurp the role as HR Head of PML. Despite numerous requests from the Managing Director and the duly appointed HR - Head of the Company (Mr. Mazhar Hussain), Mr. Abhijeet Prakash has failed to hand over the corporate HR records of the Company.
- (v) The failure to hand over the corporate HR Records of the Company to Mr. Mazhar Hussain has resulted in grave difficulty as the HR Head of the Company cannot function without records. He is prevented from providing inputs relating to annual salary appraisal of the Company's employees or oversee the legal compliances to be undertaken by the Company.

Preventing the duly appointed Company Secretary from assuming charge and discharging his responsibilities: -

- (i) The Company *vide* resolution passed during the Board meeting dated November 12, 2017 had resolved to terminate the services of the erstwhile Company Secretary & CFO of the Company i.e. Mr. Ashok Jain as he failed to discharge his responsibilities and the board of the Company had lost confidence in him. Accordingly, the Company issued a termination letter

dated November 13, 2017

- (ii) Mr. Rajnish Kumar was appointed as the Company Secretary of PML *vide* resolution passed during the Board meeting dated November 12, 2017.
- (iii) However, till date, Mr. Ashok Jain continues to represent himself as the Company Secretary and CEO of the Company. Despite repeated requests from the Managing Director and the duly appointed Company Secretary (Mr. Rajnish Kumar) to hand over the statutory records of the Company, Mr. Ashok Jain has obstinately refused to oblige.
- (iv) On the contrary, Mr. Ashok Jain continues to abuse the liberty granted to him by this Appellate Tribunal *vide* order dated January 30, 2019 to jointly sign requisite statutory documents.
- (v) Mr. Ashok Jain circulated a purported notice dated February 20, 2019 for a board meeting of the Company to be held on February 21, 2019 despite such notice having been dispatched to all directors of the Company by the Company Secretary Mr. Rajnish Kumar. This illegal notice was circulated to the erstwhile independent directors of the Company even though they were validly removed during the EGM of the Company held on December 13, 2017 and which removal has also been duly notified to the Registrar of Companies. It is relevant to mention that the order of this Appellate Tribunal dated 2nd August, 2018 specifically mentions that the existing Board of Directors excludes those who had already been removed as there is no order of stay passed by any court. Further, Mr. Ashok Jain deliberately omitted to circulate the said notice to

validly appointed directors of the Company namely Mr. Haruo Hirakawa and Mr. Lalit Bhasin. In addition, Mr. Ashok Jain also carried out changes to the minutes of the board meeting held on 21st February, 2019 as circulated by the Company Secretary Mr. Rajnish Kumar and vide e-mail dated 28th February, 2019, he also circulated the revised minutes which not only inaccurately reflect the proceedings of the said meeting but also reflect him as the Company Secretary of the Company in violation of this Appellate Tribunal's order dated 30th January, 2019. Further, Contesting Respondents unabashedly continue to assert that Mr. Ashok Jain is a joint company secretary.

- (vi) Mr. Ashok Jain's obstinate conduct and deliberate overreach of the liberty granted to him by this Appellate Tribunal vide order dated 30th January, 2019 is also exemplified by his refusal to sign the board meeting notice dated 7th May, 2019 for convening meeting of the Board of Directors of the Company on 29th May, 2019. After having failed to sign the said notice, Mr. Ashok Jain raised baseless and unreasonable objections on the validity of the notice for board meeting.

Refusing to acknowledge Mr. Ramesh Chandra as the plant head of the Company and Denying his salary increment:

- (i) Mr. Rohan Mehta has refused to acknowledge the promotion of Mr. Ramesh Chandra (in place of Mr. Krishna Iyer who had tendered his resignation on 14th September, 2018) to the position of Plant Head

which is detrimental to the smooth and efficient functioning of the plant. Initially Mr. Rohan Mehta delayed signing the proforma note dated 28th September, 2018 for promotion of Mr. Ramesh Chandra on the excuse that he would like to meet Mr. Ramesh Chandra personally before signing. However, Mr. Rohan Mehta deliberately did not schedule any meeting with Mr. Chandra for about eighteen days (i.e. from September 28, 2018 till October 17, 2018) and finally met with Mr. Ramesh Chandra on 17th October, 2018 at the manufacturing plant of the Company.

- (ii) Despite having met with Mr. Ramesh Chandra, the Mr. Rohan Mehta did not sign the said proforma note, thereby indefinitely delaying his appointment as the Plant Head of the Company. It was only on November 30, 2018 (i.e. 62 days after the proforma note was circulated on September 28, 2018) that the Mr. Rohan Mehta mischievously raised certain purported reservations on the promotion of Mr. Ramesh Chandra. The Managing Director of the Company vide email of December 05, 2018 responded to the issues raised by Mr. Rohan Mehta and also informed him that since much more than four working days had elapsed post circulation of the proforma note, the “promotion of Mr. Ramesh Chandra to the position of plant head is deemed to be approved in accordance with the directions/ orders passed by this Appellant Tribunal on 29th November, 2018.

(iii) Further, the Managing Director vide a separate email dated 5th December, 2018 also circulated to Mr. Rohan Mehta for his signature, a proforma note relating to the increment in the salary of Mr. Ramesh Chandra on account of his promotion to the position of plant head. Once again, the Mr. Rohan Mehta vide email dated 6th December, 2018 addressed to the Managing Director cast baseless aspersions of mismanagement against him and even returned the requisition for salary increment “as *premature* and *pre-emptory*”.

(iv) Mr. Rohan Mehta’s mischievous refusal to sign the aforesaid Proforma Note dated 5th December, 2018 coupled with the fact that the corporate HR Records of the Company remain in the custody of Mr. Abhijeet Prakash (erstwhile HR Consultant of the Company) has resulted in a situation wherein Mr. Ramesh Chandra despite being promoted to the position of the Plant Head has been denied increment in his salary.

8. Learned counsel appearing on behalf of the Contesting Respondents, who are minority shareholders, submitted that the Review Application cannot be treated like an appeal in disguise. Whether the Judgment is correct or valid in law cannot form the subject matter of the Review Application, so long as the Judgment has not been set aside or declared void by the competent authority. The Review Application is therefore not maintainable in the eyes of law and should be dismissed outright.

9. According to learned counsel for the Contesting Respondents, it is settled law that the power to review is not an inherent power of the Court. It must be conferred by law specifically or by necessary implication which in the instant case, has neither been provided under the Companies Act, 2013 nor in the NCLAT Rules, 2016. In fact, the Appellate Tribunal in a similar matter in Review Application No. 2 of 2018 in Company Appeal (AT) No. 12 of 2018 titled as **“Dr.M.A.S Subramanian & Ors Vs. Mr. TS. Sivakumar & Ors”**, while dismissing the Review application has stated that *the inherent powers cannot be invoked so as to confer on this Appellate Tribunal powers of review which* have not been conferred by the Legislature. The Review Application must therefore fail in light of the settled judicial precedent of this Appellate Tribunal.

10. Learned counsel for the Contesting Respondents also challenged the power of review referring the decision of the Hon'ble Supreme Court in **“Lily Thomas vs. Union of India, AIR 2000 SC 1650”**.

11. It was submitted that Section 420 (2) of the Companies Act, 2013, clearly states that the Tribunal, with a view to rectify any mistake apparent from the record, may amend any order passed by it and shall make such amendment if the apparent mistake is brought to its notice. The Hon'ble Supreme Court of India in **“Syed Yakoob Vs K.S. Radhakrishnan”** has discussed at length that an error apparent on the face of record means an error which strikes on mere looking and does not need long drawn out process of

reasonings on points where there may conceivably be two opinions, as to what would be an error of law which is apparent on the face of record and which can be corrected, but not an error of fact.

12. Without prejudice to the foregoing grounds of maintainability, it was submitted that while considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent which is laid down by the Hon'ble Supreme Court in "***State of West Bengal & Ors. Vs. Kamal Sengupta & Anr. (Civil Appeal No. 1694 of 2006)***".

13. Further, according to Contesting Respondents, so-called facts and circumstances relied on by the Applicant in the Review Application were never part of the record before this Hon'ble Appellate Tribunal and therefore it cannot be said that this Appellate Tribunal has made any mistake apparent from the record.

14. Learned counsel for the Contesting Respondents highlighted compliance of the Judgment and brought following facts:

MORE THAN 800 PROFORMA NOTES/FORMATS SIGNED

- (i) The Contesting Respondents have complied with the directions issued by this Appellate Tribunal in its entirety. Since the Judgment, they have signed more than 800 notes/formats including HR approvals, approvals for purchase of raw materials/ machinery from different vendors, approvals concerning Letter of Credit and approvals concerning extension of performance bank guarantees. They have not created any hindrances as alleged in the review application.
- (ii) On 14th September, 2018. Mr. Krishna Iyer resigned as Plant Head of the Company due to constant threats from the 3rd and 4th Respondents and disallowing him from discharging his functions. Accordingly, Mr. Abhijeet Prakash circulated a proforma note to Mr. Kazumi Ikarashi, seeking his signature to officially discharge Mr. Iyer from service. Mr. Ikarashi signed the note on 16th November, 2018, after repeated reminders and requests for almost two months. Simultaneously, Mr. Ikarashi circulated a proforma note for appointment of Mr. Ramesh Chandra to the position of Plant Head. In compliance of Judgment, the Contesting Respondents exercised their right to seek information on the requisition and also raised certain objections to the promotion of Mr. Ramesh Kumar as Plant Head and accordingly sought clarifications in this regard. However, in complete disregard to the directions issued by the Hon'ble

Appellate Tribunal, on 05th December, 2018, Mr. Ikarasih unilaterally declared Mr. Ramesh Kumar as the new Plant Head of the Company. The decision of unilaterally claiming the appointment of Plant Head without addressing the objections and providing necessary information to the Contesting Respondents is a clear violation of the Judgment. Instead of complying the directions issued by the Appellate Tribunal, the Applicant is now seeking a review of the Judgment by falsely alleging that the Contesting Respondents have not complied with the mandate of the Appellate Tribunal, whereas the Applicant is itself guilty of wilful disobedience of such orders.

- (iii) Allegation of the Applicant is that the Contesting Respondents are refusing to sign the Proforma Note dated 09th April, 2019 for shifting of corporate office. Vide email communications dated 12th April, 2019 and 15th April, 2019, Mr. Rohan Mehta has repeatedly asked the other Contesting Respondents to provide all necessary documentation and information, to him to make an informed decision on the issue. The Contesting Respondents were to provide such information before the third day from the date of production of the note in compliance of the Judgment passed by this Appellate Tribunal, so that the Contesting Respondents may get clear 24 hours to explain their stand. The Contesting Respondents in blatant disregard of the final judgment passed by this Appellate Tribunal

have failed to furnish the requisite information sought by the Contesting Respondents and are therefore deliberately violating the directions issued by this Appellate Tribunal.

HR AND CS ARE OPERATING SMOOTHLY AND IN TANDEM WITH EACH-OTHER FROM THE PREMISES OF THE COMPANY

- (iv) That, in compliance of the Judgment, Mr. Rajnish Kumar and Mr. Mazar Hussain have been duly permitted and are operating from the premises of the Company since February, 2019, without any obstruction or complaint whatsoever, even though Mr. Mazar Hussain has filed criminal complaints against the owners of the building, the Chairman and Executive Vice Chairman of the Company. The allegation that the Contesting Respondents are physically restraining these people from entering the premises of the Company is completely and utterly false and such allegations are being tendered by the Applicant without any evidence whatsoever so mislead this Appellate Tribunal.
- (v) It is being repeatedly alleged that Mr. Abhijeet Prakash and Mr. Ashok Jain are refusing to handover all company and original statutory records to Mr. Mazar Hussain and Rajnish Kumar respectively. It is submitted that neither he nor the Contesting Respondents are in possession of any records as is being alleged by the Respondents. On the contrary, it is very hard to believe that Mr. Mazhar Hussain has been regularly signing HR approvals without

having any access to the HR records, as is being alleged by the Applicant. Similarly, the allegation that Mr. Ashok Jain is not handing over original statutory records and registers to Mr. Rajnish Kumar falls flat on its face. It is submitted that Mr. Ashok Jain vide emails dated 08th February, 2019, 14th February, 2019; February 15, 2019; has provided Mr. Rajnish Kumar with all the information that he has sought. Mr. Ashok Jain is not in possession of original statutory records of the Company, which information is anyways in electronic form.

***STALLING THE MEDIATION/ SETTLEMENT DISCUSSIONS
DESPITE THE APPELLANT'S OFFER TO SELL 100%
SHAREHOLDING IN THE COMPANY***

- (vi) Pursuant the directions of this Appellate Tribunal both Parties have exchanged their respective proposals for settling all disputes pending before the Hon'ble Tribunal and Appellate Tribunal. The Contesting Respondents proposal, to transfer their entire residual shareholding in the Company to the Applicant, which makes them 100% owner of the Company, fully and absolutely meets the Applicant's sole prayer in its Company Petition No. 369 (ND) of 2017 to its complete satisfaction. It is inconceivable that upon declining the Contesting Respondents offer of sale of 100% shareholding at pre-determined value, the Applicant is able to maintain its petition before the Hon'ble Tribunal. The Applicant has raised several

traverse issues in its counter proposal, which would all become academic if the Contesting Respondents shares are acquired by the Applicant. On the one hand the Applicant is refusing to acquire and arrive at a settlement of purchasing the entire shareholding of the Contesting Respondents, which would completely meet all their requirements and on the other hand they are attempting to file such frivolous applications on misconceived and unsubstantiated notions. The Review Application is nothing else but regretful attempt to alter the equities against the Contesting Respondents and force the Contesting Respondents to agree to unreasonable and oblique settlement terms.

DISPUTES RAISED BY RESPONDENT NO. 2 IN COMPANY PETITION NO. 369 (ND) OF 2017 ARE SUBJECT MATTER DIRECTLY COVERED BY THE ARBITRATION AGREEMENT DEFINED UNDER CLAUSE 17 OF SPSHA

- (vii) It would further be relevant to state here that the disputes raised by Applicant in Company Petition No. 369 (ND) of 2017 are subject matter directly covered by the Arbitration Agreement contained in clause 17 of SPSHA. Indeed, the entire object of the Company Petition No. 369 (ND) of 2017 is to circumvent the Arbitration Agreement and is merely dressed up to evade Arbitration and confer jurisdiction on the Hon'ble Tribunal even when the disputes are subject matters of SPSHA and the Arbitration Agreement. It is

submitted that the Arbitration Tribunal has been formally constituted on 16.05.2018 which has been seized of the disputes under the SPSHA and the proceedings are continuing. In fact, on 01.06.2018 the Respondent No. 2 itself invoked arbitration bearing SIAC Arbitration No. 130/18 under the Arbitration Agreement and referred matters to arbitration in relation to disputes under the SPSHA which disputes were also the subject matter of Company Petition No. 369 (ND) of 2017. In the meanwhile, on 30.11.2018, both the parties have also filed their Statement of Claims before the Arbitral Tribunal constituted under SPSHA and foreign arbitration proceedings are continuing. The parties have further filed their witness statements on 30th May, 2019. The further and final hearings of in the Arbitration proceedings are already scheduled for September and October, 2019.

15. In a petition under Sections 241-242 of the Companies Act, 2013, the Tribunal is empowered to pass interim order in terms of Section 242 (4), which reads as follows:

“242. Powers of Tribunal.— (4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the

conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable."

16. Therefore, an interim order can be passed in the interest of the Company.

17. Earlier, when the appeal was taken up on 1st December, 2017, this Appellate Tribunal passed following interim order:

"In the meantime, the National Company Law Tribunal shall not extend the interim order dated 23rd November, 2017 passed at 4.00 p.m. in Company Petition No. 369/ND/2017. However, it may proceed with the hearing of the main petition under Section 241 of the Companies Act, 2013. It is also made clear that for day-to-day functioning of the Company, the Company may release money, including payment, if any, to be made towards supply of materials, electricity, water, salaries, of officers, wages of the employees/workmen and statutory dues etc. payable. Both the parties will also ensure that the Company remains on-going without any hindrance of its work, including the work as required to be taken from companies officers, employees, workmen, experts etc. It is also made clear that for any purpose if any Form is to be filled up or signed, it should be in the Format as was existing as on the date of the filing of the petition under Section 241 of the Companies Act, 2013 and will be signed by the persons, who were

authorised to sign on such format as on the date of filing. In case, any of the signatory, belonging to any of group (Appellants or Respondents) refuse to sign or do not co-operate with the Company, it will be open to the parties to bring such fact to the notice of this Appellate Tribunal and may request to modify the present order.”

18. Subsequently, on 26th September, 2018, the parties including the Appellants and the Respondents were directed not to create such situation which will be detrimental to the functioning of the Company.

19. From the record, we find that number of times, complaints were made by the Applicant that Mr. Rohan Mehta, his father and persons nominated by them (Respondents), who are minority members are creating hindrance and therefore, number of times one or other interim orders were passed and finally matter was disposed of.

20. In a petition under Sections 241-242 of the Companies Act, 2013, interim order can be passed under Section 242(4) for regulating the conduct of affairs of the Company which is just and equitable and in the interests of members of the Company. It was in this background, the interim order was finally passed on 29th November, 2018.

21. Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 empowers this Appellate Tribunal to exercise inherent powers as follows:

“11. Inherent powers.- Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.”

22. In **“Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— Writ Petition (Civil) No. 99 of 2018”**, the Hon’ble Supreme Court held that the Tribunal can exercise its inherent powers under Rule 11 of the NCLAT Rules, 2016 which is *pari materia* same.

23. In the present case, as number of times allegations and counter allegations and Contempt Petitions were filed and matter was taken up more than ten days, in the interest of members and proper running of the Company, we in exercise of powers conferred under Rule 11 of the NCLAT Rules, 2016 modify the order dated 29th November, 2018 and allow the Company to follow the simplified procedures/ new formats adopted by the Board of the Company vide resolution dated 12th November, 2017 for all matters including processing payments; procurement of materials; mobilization of personnel for training and/ or visits to offices of vendors customer and other third parties; appraisal, promotion and transfer of employees of the company; and ingress into

and egress from the company's corporate office and manufacturing plant of the employees and customers of the company as well as the technical experts and office bearers deputed by the Applicant/2nd Respondent.

However, the members and the Board of Directors are also directed not to misuse the interim order as modified by this order to grant any benefit to one or other member (group) and parties including the Respondents to the appeal/ Petitioners.

Review Application is allowed.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

23rd January, 2020

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