

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) No. 170 of 2018**

**IN THE MATTER OF:**

**JP Financial Services Pvt. Ltd.**

**...Appellant**

**Versus**

**Golden Tobacco Ltd.**

**...Respondent**

**Present:**

**For Appellant :**           **Mr. Sudipto Sarkar, Senior Advocate assisted by  
Ms. Sushmita Banerjee and Mr. Aniket Aggarwal,  
Advocates**

**For Respondent :**       **Mr. Brij Kishor Mishra and Mr. Dhaval Deshpande,  
Advocates**

**O R D E R**

**18.07.2018**       On 29<sup>th</sup> May, 2018 when the matter was taken up, this Appellate Tribunal passed the following order :

*“The Appellant has raised limited grievance with regard to the last paragraph of the order dated 14th May, 2018 passed by National Company Law Tribunal (hereinafter referred to as “Tribunal”), Kolkata Bench, Kolkata in I.A. No. 423/KB/2018 in C.P.No. 543/KB/2018, which reads as follows:*

*“At this stage, we are not entering into that controversy. We observe that let SEBI to proceed with its programme relating to the open offer. However, any outcome of that proceedings shall be subject to decision in*

*IA No. 423/KB/2018 and C.P. No. 543/KB/2018. The parties are to file affidavit-in-reply and rejoinder against pleadings of each other.”*

2. *Learned Senior Counsel appearing on behalf of the Appellant submits that once SEBI proceeds with the programme related to the open offer and decides the matter, the Tribunal will have no jurisdiction to make any observation against the decision of the SEBI and thereby the outcome of SEBI decision cannot be subject to the decision of the Interlocutory Application.*

3. *Issue notice. Mr. Dhaval Deshpande, Advocate accepts notice on behalf of the Respondent. No further notice need be issued to him. He may file reply along with vakalatnama within fifteen days. Rejoinder, if any, be filed by the Appellant within two weeks thereof.*

4. *Post the case on 18<sup>th</sup> July, 2018 before this Bench. The appeal may be disposed of on the next date.”*

Mr. Brij Kishor, learned counsel appearing on behalf of respondent submitted that the Tribunal has jurisdiction to direct investigation under the provisions of the Companies Act, 2013 but accept that thereafter the SEBI may proceed with the order, if any, *prima facie* case is made out. Further, we find that the appellant has raised the question of maintainability of petition under Section 216 of the Companies Act, 2013 which is also required to be determined by the Tribunal. In the circumstances, we are of the view that the Tribunal was not required to make any observation for SEBI though it is open to SEBI to act in

accordance with law. The order dated 14<sup>th</sup> May, 2018 to the extent of direction or observation given to SEBI is set aside. The Tribunal will decide the petition on an early date including the question of maintainability after hearing the parties. The appeal stands disposed of. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/sk/