

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

**Company Appeal (AT) No.150 of 2018**

[Arising out of Order dated 21.11.2017 passed by National Company Law Tribunal, New Delhi Bench in CA No.01/73/16]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

Shiv Kumar Agarwal  
Former Director  
M/s. Moongipa  
Investments Limited  
R/o Ansal Sushant City,  
Flat No.401,  
Tower No.16, Kundli,  
District Sonipat, Haryana

Original Respondent No.2

Appellant

**Versus**

1. Sh. Lal Chand Singhal  
R/o BM-72 (WEST),  
Shalimar Bagh,  
New Delhi – 110088

Original Applicant

Respondent

**And**

**Company Appeal (AT) No.151 of 2018**

[Arising out of Order dated 21.11.2017 passed by National Company Law Tribunal, New Delhi Bench in CA No.01/73/16]

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

1. M/s. Moongipa  
Investments Ltd.  
Through its Authorized  
Representative  
Mr. Madhur Agarwal,  
207/3449, 2<sup>nd</sup> Floor,

Original Respondent No.1

Appellant No.1

Delhi Chambers,  
Delhi Gate Darya Ganj,  
New Delhi - 110002

- |  |                          |                |
|--|--------------------------|----------------|
| 2. Madhur Aggarwal,<br>Managing Director,<br>M/s. Moongipa<br>Investments Limited<br>R/o Ansal Sushant City,<br>Flat No.401,<br>Tower No.16, Kundli,<br>District - Sonipat,<br>Haryana | Original Respondent No.3 | Appellant No.2 |
| 3. Sh. Sudhir Aggarwal,<br>M/s. Moongipa<br>Investments Limited<br>R/o Ansal Sushant City,<br>Flat No.401,<br>Tower No.16, Kundli,<br>District - Sonipat,<br>Haryana                   | Original Respondent No.4 | Appellant No.3 |

**Versus**

- |   |                    |            |
|---|--------------------|------------|
| 1. Sh. Lal Chand Singhal<br>R/o BM-72 (WEST),<br>Shalimar Bagh,<br>New Delhi – 110088 | Original Applicant | Respondent |
|---|--------------------|------------|

**For Appellant: Shri Rajnish Kumar Jha, Shri Nishant Kumar Srivastava, Shri R.J. Alva and Ms. Akriti Jai, Advocates**

**For Respondent: Shri Lal Chand Singhal in person**

**J U D G E M E N T**  
**(7<sup>th</sup> February, 2019)**

**A.I.S. Cheema, J. :**

1. These Appeals have been filed by the Appellants being aggrieved by the Impugned Order dated 21.11.2017 passed in CA 1/73/16 by National Company Law Tribunal, New Delhi Bench ('NCLT', in short). The said Application was filed by Respondent – Lal Chand Singhal under Section 73(4) of the Companies Act, 2013. In short, he claimed that he had given a sum of Rs.75 Lakhs to be kept as fixed deposit with Respondent Company – Moongipa Investments Limited. When he sought repayment of his deposit with interest, the Company failed to liquidate the amount. He made various allegations against the Company and its Directors, which have been noted by the learned NCLT.

2. It appears that, in NCLT, when application was filed, Notices were issued to the Company through Directors. The Respondent – original Applicant appears to have made efforts for attachment of properties of the Directors when the matter was before NCLT. In the present Appeals, the Appellants claimed that the original Applicant – Lal Chand Singhal had applied to the Company to register him as a client/constituent member of the Company and that he had mislead the learned NCLT.

3. NCLT in the Impugned Order – paragraphs - 3 and 4 observed and directed as under:-

“3. The non-payment of an amount by the respondent company invites punishment under section 73(4) of the Companies Act, 2013. The ROC is directed to initiate necessary steps for prosecuting the directors of the company. The applicant is also entitled to recover this amount in execution proceedings through a court of competent jurisdiction. It is also alleged that the Directors have siphoned off the funds to speculate and create personal assets thereby causing a wrongful loss to its investors giving rise to breach of its fiduciary duties. However, no specific details are provided to substantiate the same. The prayer with respect to attachment and sale of the personal properties however cannot be directed by this Bench only on averments of fraud and diversion of money from the Respondent Company for purchase of assets in their personal names as the same is not based on any evidence. The prayer that the conveyance of the properties for inadequate consideration, done with the view to avoid attachment by courts, be declared null and void is also outside the jurisdiction and domain of this Bench. Cancellation of conveyance deeds can only be done through a civil court.

4. In view of the facts and circumstances of the case, this petition is disposed off with directions to the ROC to initiate necessary prosecution under section 73(4) of the Companies Act, 2013. The matter be referred by the ROC to the SFIO to make an inquiry into the allegations of siphoning off the funds, specially of inter corporate deposits, and if retrievable, take adequate steps to protect them from further dissipating so as to meet the liability of the applicant herein and to initiate punishment akin to the provisions of Section 74(3) of the Companies Act, 2013. The applicant is also entitled to seek recovery of his principal amount with upto date interest in execution proceedings.

Petition disposed off in terms of the above.”

4. The original Applicant – Lal Chand Singhal in spite of the above Order of NCLT, filed Company Appeal (AT) No.38/2018 making various

grievances. The present Appeals were then filed by the original Respondents. When the three Appeals came up before us, the parties on 4<sup>th</sup> September, 2018, stated that they had settled the matter between them.

The following Order came to be passed by us on 4<sup>th</sup> September, 2018:-

**“04.09.2018** These Appeals arise out of Impugned Order dated 21.11.2017 passed in CA No.01/73/16 by NCLT, New Delhi Bench. These Appeals are part-heard. When these appeals were called out today, the Appellant and Respondents 2 to 4 (See CA 38/2018) for themselves and representing Respondent No.1 along with Advocate – Shri Rajnish Kumar Jha submitted that the parties have settled the matter between them and they want to file joint application. We have permitted the parties to file joint application.

2. Perused joint application Diary No.6857. The joint application signed by the parties along with Affidavits and original MOU dated 27.08.2018 perused. The parties – Shiv Kumar Aggarwal, Madhur Aggarwal and Sudhir Aggarwal are present and identified by Shri Rajnish Kumar Jha. The Appellant Lal Chand Singhal is party in person. The Respondents 2 to 4 – Shiv Kumar Aggarwal, Madhur Aggarwal and Sudhir Aggarwal also represent Respondent No.1 Company – M/s. Moongipa Investments Ltd.

3. The counsel for Respondents states that Respondent No.5- Subhash Chander Singhal is no more associated with the Company and he is not party to the MOU.

4. Respondents 2 to 4 as arrayed in CA 38/2018 (for themselves and for Respondent No.1) and the Appellant – Lal Chand Singhal state that they have gone through the MOU dated 27.08.2018 executed between them and that they have understood the contents and agreed to the contents and have accordingly signed the MOU. The Appellant and Respondents 2 to 4 (for themselves and Respondent

No.1) state that they admit contents of MOU and will remain bound by this MOU.

5. The application para – 3 is now in Court, with permission corrected by the counsel for Respondents – Nishant Srivastava by substituting the words “agreed to execute” by the word “excuted” (to read “executed”). The parties have countersigned the correction.

6. The Appellant party in person states that he has received drafts towards Rs.10 Lakhs and has also encashed them. Both the parties state that the remaining amounts Respondents will pay in instalments as mentioned in para – 4 of the MOU. They state that by following the said schedule, the remaining amounts would get paid by 31<sup>st</sup> December, 2018. Both the parties request us to stay the Impugned Order till further hearing and request that matter may be posted in first week of January, 2019.

7. Adjourn the matter. List the same on 8<sup>th</sup> January, 2019.

8. The Impugned Order dated 21.11.2017 is hereby stayed till 8<sup>th</sup> January, 2019.

9. List the Appeal on 8<sup>th</sup> January, 2019. Dasti allowed, to parties.”

5. Subsequently, when the three Appeals came up before us on 8<sup>th</sup> January, 2019, the parties represented and the following order was passed by us:-

**“08.01.2019** - Heard the appellant, Mr. Lal Chand Singhal who is appearing in person in Company Appeal (AT) No.38/2018 and is respondent in the other two appeals. Heard the learned counsel in the appeals in Company Appeal (AT) No.150 and Company Appeal (AT) No.151/2018. Perused the joint application filed vide Diary No.6857 and MOU dated 27.08.2018 filed with the joint application and which is at Page 17 of the Diary No.6857. The

appellant, Mr. Lal Chand Singhal is present before us and he submits that he has received all the money which he had to receive back from the respondents and he has no grievance left against the respondents in his Company Appeal (AT) No.38/2018. He submits that the Tribunal may pass suitable orders and that in the matter, from his side there is nothing remaining which would require execution.

2. Counsel for the appellant in Company Appeal (AT) No.150/2018 and Company Appeal (AT) No.151/2018 submits that these appeals have been filed in view of the directions of the NCLT in the impugned order dated 21.11.2017 directing the ROC to initiate necessary prosecution under Section 73(4) of the Companies Act, 2013 and that ROC should refer the matter to SFIO to make an inquiry into the allegations of siphoning off the funds, specially of inter corporate deposits. The counsel submits that the direction was given as to meet the liability of the Appellant, Lal Chand Singhal and thus the directions need to be quashed.

3. Going through the impugned order it appears that the allegations made before NCLT were that the Directors have siphoned off the funds to speculate and create personal assets thereby causing a wrongful loss to its investors giving rise to breach of its fiduciary duties. The NCLT itself observed that no specific details are provided to substantiate these allegations. The appellant of Company Appeal (AT) No.151 of 2018 do not appear to have participated in the proceedings when the same were before NCLT.

4. It appears that some criminal prosecution has already be initiated. Counsel for Appellants in CA No.150/2018 tenders for perusal at the Bar 151/2018 have a copy of CT 525/2018 which is appearing to have been filed in Sessions Court, Dwarka, New Delhi. The same may be filed on record.

5. **Company Appeal (AT) No.38/2018 is hereby disposed treating the same as withdrawn by the appellant.** The appellant, Mr. Lal Chand Singhal submits that as respondent in Company Appeal (AT) No.150/2018 and Company Appeal (AT)

No.151/2018 he does not want to contest those appeals. Recorded.

6. In Company Appeal (AT) No.150/2018 and Company Appeal (AT) No.151/2018 the appellants to file copy of the prosecution which has been filed by the ROC. Appellants of Company Appeal (AT) No.150 and 151 of 2018 shall also not only file a copy of the prosecution mentioned above but also file affidavits if there are any other proceedings filed against them in consequence of impugned order NCLT. Same be filed before next date.

7. Let Company Appeal (AT) No.150/2018 and 151/2018 be listed for hearing appellants and directions on **16.1.2019.**”

6. Accordingly, the Company Appeal 38/2018 filed by the original Applicant – Lal Chand Singhal came to be withdrawn and the present two Appeals remained. On 16<sup>th</sup> January, 2019, we heard the Counsel for the Appellants. The following Order was passed:-

**“16.01.2019** - Counsel for appellant in both these appeals submits that the appellants who were respondents in Company Appeal (AT) No.38/2018 have already compromised with the present respondent, Mr. Lal Chand Singhal in Company Appeal (AT) No.38/2018 which has been disposed as withdrawn. The counsel states that the present appellants have filed copy of the complaint with annexures which were filed by ROC as CT-525 of 2018 in the Court of Distt. & Sessions Judge, Special Court, Dwarka, New Delhi as a consequence of the directions in the impugned order. He says that the appellants have filed affidavit and stated that there is no other prosecution pending against these appellants as a consequence of impugned order. On instructions the counsel makes a statement at bar that no other investigation or enquiry is also pending against the appellants. He says that his clients are present with him in the Court.



2. Heard learned counsel for the appellants. Respondent has already stated on the earlier date that he does not want to contest these appeals.”

7. We have gone through the copy of complaint filed by ROC – CT/525/2018 (copy of which has been filed with Diary No.9007), in Court of District & Sessions Judge, Special Court, Dwarka, New Delhi. Perusing the same, it appears to be a complaint based on the Impugned Order of NCLT relying on the case as was put up by the original Applicant – Lal Chand Singhal. In view of the fact that the original Applicant – Lal Chand Singhal has compromised with the Appellants and has received his dues and has no more grievances against the Appellants, we intend to quash the Impugned Order. As the original Applicant has compromised with the Appellants, any action purely on the basis of the grievances of the Respondent – original Applicant – Lal Chand Singhal of failure to pay deposit, should not survive. However, if after the Impugned Order was passed, if the ROC has collected any other material against the Appellants, relating to any other similar failure to repay deposits or any other failures on the part of the Appellants under the Companies Act, we do not intend to protect the Appellants from action on the basis of any such other material. Annexure – 4, which is part of CT/525/2018 (Diary No.9004) shows that the ROC had written to the Regional Director that the matter may also be referred to the Ministry in regard to enquiry to be done by SFIO into the allegations of siphoning of funds. We record that if the matter has been referred to SFIO and SFIO has collected any other material (other

than the material brought forth by the original Applicant – Lal Chand Singhal regarding failure to repay his deposit), we do not wish to protect the Appellants from any action based on such other material.

8. For the above reasons, in view of the compromise entered into by the Appellants with the Respondent, we quash and set aside the last sentence of para – 4 of the operative part of Impugned Order which stated that the Applicant was entitled to recover his principal amount with up-to-date interest in execution proceedings.

8.1 As the Appellants have compromised the matter with the Respondent – original Applicant relating to his grievances under Section 73(4) of the Companies Act, 2013 and now the Respondent – original Applicant has been repaid his deposits with interest, we give liberty to the Appellants to request the District Sessions Court, Dwarka or to move any other authority before which any enquiry or action is pending for suitable relief, if, in case the same is purely founded on the basic grievance of Respondent – Applicant that the Company had failed to repay his deposit.

8.2 We make it clear that if the ROC or the SFIO have initiated any other enquiry and investigation into the allegations of siphoning of funds, especially of inter corporate deposits and taken any steps in view of the other directions in the operative part of Impugned Order, the ROC and SFIO would be free to proceed if they have any other material for action

under the Companies Act, other than the grievance made by original Applicant which was that the Company had failed to repay his deposits.

9. With these directions, the present Appeals stand disposed of.

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

[Balvinder Singh]  
Member (Technical)

*/rs/nn*