

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 356 of 2017

IN THE MATTER OF :

Vijay Kumar Arora

... Appellant

Versus

Jaswant Rai Arora & Ors.

... Respondents

**Present: For Appellant : Shri Kumar Sudeep and Shri Prasanna S.,
Advocates**

**For Respondents : Shri K. Datta and Shri Rohan Malik,
Advocates**

O R D E R

25.10.2017 This appeal has been preferred by the appellant against order dated 1st September, 2017 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as 'Tribunal') in Company Petition No. 40 of 2013, whereby and whereunder the Tribunal passed the following order:

“ORDER

“C.P. No. 40/2013 is allowed with costs. The preliminary decree is being passed for an investigation into the affairs of the company w.e.f. 8/9/2008, i.e., from the date when R2 recovered back the possession of R1 company from the Official Liquidator by order of the Hon’ble High Court.

Central Government is directed to take appropriate steps for appointment of one or more persons as Inspectors to investigate into the affairs of the company and to call for report thereon in such manner as the Central Government may direct within three months from the date of order.

Cost and expenses of the investigation may be provided by petitioner which shall be reimbursed from R-1 Company's account.

Investigation report may be called for within three months from the date of order.

Let a copy of the order be sent to the Regional Director for compliance with above direction.”

2. The brief fact of the case is that the respondents, Mr. Jaswant Rai Arora (deceased) and others, preferred an application under Sections 397 and 398 read with Sections 402 and 403 of the Companies Act, 1956 complaining several causes of 'oppression and mismanagement' precipitated by the respondents including 2nd Respondent (Appellant herein). A declaration was sought for that the sale of moveable and immovable assets by the 2nd Respondent (Appellant herein) after 28th August, 2008 is null and void and to appoint a retired High Court Judge

as a Liquidator of the Respondent Company directing him to liquidate the Respondent Company.

3. The Tribunal taking into consideration the submissions made by the parties and the evidence on record, noticed that due to different factors and the report under Section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as 'SICA') submitted before the Board for Industrial and Financial Reconstruction (BIFR), by order dated 28th August, 1997, a direction was issued for winding up of the Company and the report was sent to Hon'ble Patna High Court under Section 20 of the SICA. Taking into account the fact that 1st Petitioner (deceased) had remained a silent spectator during his lifetime and subsequent other factors and the resolution passed between the years 2008 and 2009 as also sale of assets took place between July and November, 2009 and other relevant factors, the Tribunal thought it proper to order for an investigation into the affairs of the Company with effect from 8th September, 2008 i.e. the date from which the 2nd Respondent (Appellant herein) recovered back the position of the Company from the Official Liquidator by the order of the Hon'ble High Court.

4. Learned counsel appearing on behalf of the appellant submits that the matter related to 8th September, 2008 and the Company Petition was filed after long delay in the year 2013. He further submits that the alleged act of 'oppression and mismanagement' relates to year 1995 and,

therefore, petition under Sections 397 and 398 of the Companies Act, 1956 filed after long delay in the year 2013 was not maintainable. It is also submitted that the laches and negligence on the part of the respondents have also been noticed by the Tribunal.

5. Learned counsel for the respondents submits that there was no laches as the Company was under liquidation and the assets were surreptitiously sold in favour of the 2nd Respondent (Appellant herein) and the investigation relates to the period from 8th September, 2009 onwards i.e. till today has been ordered.

6. Having noticed the rival contentions made by the learned counsel of the parties, we do not find any reason to interfere with the impugned order as it is always open to the Tribunal, even *suo motu*, to order for investigation into the affairs of the Company, in view of the powers conferred upon it under clause (b) of Section 213 of the Companies Act, 2013, as quoted below :

“213. Investigation into company’s affairs in other cases

The Tribunal may,—

(a) xxx xxx xxx

(b) *on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—*

- (i) *the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;*
- (ii) *persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or*
- (iii) *the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,*
order, after giving a reasonable opportunity of being heard to the parties concerned, that the

affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or*
- (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud,*

then, every officer of the company who is in default and the person or persons concerned in the

formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.”

7. According to us, if an investigation into the affairs of the Company is made and the appellant, who was 2nd Respondent before the Tribunal, if otherwise not involved, he should not fear the investigation.

8. In so far as certain observations as made by the Tribunal with regard to the 2nd Respondent (Appellant herein) are concerned, the same are merely passing observations for the purpose of the investigation and cannot be construed to be an allegation substantiated against the appellant.

9. For the reasons aforesaid, we have no option but to dismiss the appeal. It is accordingly dismissed. However, on the facts and in the circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)