

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 56 of 2017

IN THE MATTER OF:

**Mrs. Rehana Choudhary ... Appellant
Vs.**

**M/s. Poonam Drums & Containers
Pvt Ltd. ... Respondents**

Present: For Appellants - Mr Vimal Gupta, Sr. Advocate, Mr Arjun Gupta, Mr Ravi Raghnuath, and Ms Aakashi Lodha, Advocates.

For Respondents - Mr Mayur Khanda Parkar, Mr Sanjay Dubey and Mr Narender S. Yadav, Advocates

ORDER

21.03.2017 — One day delay in filing this appeal is condoned.

This appeal has been preferred by the Appellant/Petitioner against order dated 21st December, 2016 passed by the National Company Law Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as Tribunal) in C.P. No. 37/241-242/NCLT/Mah/2016 whereby and where under the Tribunal while allowing the Interlocutory Application (C.A. No. 149 of 2016) preferred by Respondents under Section 8 of the Arbitration and Conciliation Act, 1996 referring the matter to Arbitrator, observed that there is no oppression and mismanagement on the part of the Respondents.

In view of the order we intent to pass, it is not necessary to notice all the facts except the relevant one, which are as follows.

The Appellant/Petitioner preferred an application under Section 214 and 242 read with Section 244 of the Companies Act, 2013 alleging 'oppression and mismanagement' on the part of the Respondents. According to the Appellant/Petitioner, she along with family-member shareholders have 51% shareholding of the respondent company M/s. Poonam Drums and Containers Pvt. Ltd (hereinafter referred to as company). The grievance was that the land of the company was sold to a third party through a conveyance deed dated 29th February 2016, without notice to the Appellants and other family-member shareholders and without holding any Board meeting/Extraordinary General Meeting. The Respondents referring to agreement reached between the Appellant/petitioner and R 1 and R 2 dated 2nd November, 2015, filed a petition under Section 8 of the Arbitration and Conciliation Act, 1996 for referring the dispute to Arbitrator. After hearing the parties the

impugned order dated 21st December 2016 was passed by Tribunal allowing the C.A No. 149/2016 and referred the dispute to the Arbitrator with observation that there was no 'oppression and mismanagement' on the part of the Respondents.

The main contention raised on behalf of the Appellant is that the Tribunal has no jurisdiction to decide the question of oppression and mismanagement on merit in a petition under Section 8 of Arbitration and Conciliation Act, 1996. Ld. Counsel appearing on behalf of the Appellant also contended that though it was open to the Tribunal to refer the dispute to the Arbitrator under Section 8 of Arbitration and Conciliation Act, 1996, but it was beyond the jurisdiction of the Tribunal to decide the Company Petition on merit while deciding the petition under Section 8 of Arbitration and Conciliation Act, 1996. Ld. Counsel for the Appellant further contended that the appellant and the family-member shareholders have no objection to raise their grievance and claim before the Arbitrator but in such case the, observation made by the Tribunal with regard to 'oppression and mismanagement' cannot be looked into or relied upon by the Arbitrator or the Respondents.

Ld. Counsel appearing on behalf of the Respondents submitted that they have no objection if the matter is decided by the Arbitrator. According to him, the claim of the Appellant and family-member shareholders can be decided by the Arbitrator uninfluenced by the observation made by the Tribunal.

Prima facie the arguments advanced by the Appellant that the Tribunal has no jurisdiction to decide the question of 'oppression and mismanagement' while disposing of a petition under Section 8 of Arbitration and Conciliation Act, 1996, seems to be attractive. However, we are not deliberating on such issue as the parties have agreed for arbitration.

In the facts and circumstances, without going into the merits of this appeal, and hearing the question open for determination in an appropriate case, direct the parties to raise their claim or counter claim before the Arbitrator. In such case the Arbitrator uninfluenced by the observation made by Tribunal qua 'oppression and mismanagement' will decide the claim/counter claim on merit. The parties also cannot refer the decision dated 21st December, 2016 passed in C.P. No. 27 of 2017, read with C.A. No. 149/2016.

The appeal stands disposed of with aforesaid observation and direction.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)