IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION

Company Appeal (AT) No. 55 of 2017

(arising out of Order dated 9th January, 2017 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh in C.A. No. 34 C-11/2016 & RT No. 22A 2016 in CP No. 50 (ND) of 2010).

Maschinen Umwelttechnik Transportanlagen Gesellschaft GmbH **...Appellant**

Vs

M/s Oswal F.M.Hammerle Textiles Limited & Others **...Respondents**

Present:

For the Appellants:- Mr.Arun Kathpalia, Sr. Advocate with Mr. Amit Bansal and Mr. Jayant Goel, Advocates.

For the Respondents- Dr. U.K. Chaudhary, Sr. Advocate with Ms Avanti T. Chandele and Mr Himanshu Vij, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J.

This appeal has been preferred by Appellant/petitioner against impugned order dated 9th January, 2017 passed by the National Company Law Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as Tribunal) in C.A. No. 34 C-11/2016 & RT No. 22A 2016 in CP No. 50 (ND) of 2010. By the impugned order the Tribunal disposed the petition under Regulation 43, 44 and 45 of the Company Law Board Regulation, 1991 for clarification of judgment dated 13th August, 2015 and held that there is no clerical, arithmetical mistake or an error (in the final

order passed by the Company Law Board) arising from any accidental slip or omission for which remedy under Regulation 45 can be sought for and dismissed the Company Application for modification of the said order.

2. The CP No. 50 (ND) of 2010 was filed by the Appellant under Section 397, 398 and 402 of the Companies Act, 1956 before the erstwhile Company Law Board alleging 'oppression and mismanagement'. In the said petition, the Company Law Board passed judgement and order on 13th August, 2015. The Company Law Board while answering the question of 'oppression and mismanagement' in affirmative passed certain direction on 13th August, 2015, the relevant of which is reproduced below:-

> *"104. Since HAHNL GROUP and Oswal Group have not been trusting each other and they are busy running their own business since it has already been held that Oswals set up OFMHT with the technology, technical know-how and with the trade name of FM Hammerle, they shall provide honourable exit to the HAHNL Group on fair valuation to get a fair valuation to the shares of MUT, OFMHT's shares shall be valued taking 31.3.2010 as cut-off date and provide exit within 60 days from the date valuation report come from the valuer to the company.*
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> *105.For valuation of the share of the company, M/s. Ernst and Young has been appointed to value the shares of the company and thereafter to calculate the value of the shares of HAHNL Group, taking 31st March, 2010 as cut-off date. On valuation of those shares, OFMHT shall pay the value of the shares to MUT along with interest at the rate of 15% from 31.3.2010 till the date of realisation. The valuation shall be provided to OFMHT and HAHNL Group within 60 days from the date of receipt of this order. Oswals and HAHNL Group shall bear the remuneration proportionate to their shareholding in the company as agreeable to the valuer."*

3. After about 6 months, the Appellant preferred the Company Application No. 11/C-11 of 2016/RT No. 1/Ex/CHD/2016 on 26th February 2016 under Section 634-A of the Companies Act, 1956 before the Company Law Board for execution of its order dated 13th August, 2015. Another Company Application No. 34/C-11 of 2016/R.T. No. 22A/2016 was preferred by the Appellant for clarification of Company Law Board's final order dated 13th August, 2015. The said Company Application for clarification was filed under Regulation 43, 44 and 45 of the Company Law Board Regulation, 1991. It was pleaded that the Company Law Board had passed the order directing that the Applicant/Appellant herein be given exit from 1st Respondent company on fair valuation of their 18.11 % shareholding on the date of filing of the petition and further appointed M/s. Ernst & Young to value the share of the

company on the date of filing of the petition. Reliance was placed on paragraph 104 and 105 of the order dated 13th August, 2015 passed by Company Law Board, as quoted above, for clarification of the aforesaid order.

4. The Tribunal dismissed the application giving rise to the present appeal.

5. Ld. Counsel for the Appellant referred to the judgement dated 13th August, 2015, particularly paragraph 104 and 105, as noticed above, submitted that there is a confusion as an error had crept in in paragraph 105 inadvertently and or on account of over sight. Instead of requiring Oswal Group or Vardhaman Polytex Limited (2nd Respondent) to pay the value of share of the Appellant, it has been wrongly stated that M/s Oswal F.M.Hammerle Textiles Limited (hereinafter referred to as OFMHT) shall pay the value of the share to the Appellant. Ld. Counsel further submitted that had it been the intention of the Company Law Board that the OFMHT were to buy these shares of the Appellant, this should have been a case of company buying back its own shares and the Company Law Board would have made some observation regarding compliance/pre-conditions or waiver of provisions of Section 77 (A) of the Companies Act, 1956. It was further contended that the clerical mistake or error arising from accidental slip or omission may be corrected under Regulation 45 read with Regulation 44 of the Company Law Board Regulation, 1991.

6. Ld. Counsel for the Appellant also relied on paragraph 89 of the judgment dated 13th August, 2015 wherein the Company Law Board had observed that on the plea of Hahnl group that they were denied information and access to the books and accounts of OFMHT, there being a statement from Oswal group, OFMHT cannot be expected to share sensitive information with a competitor which will lead to losses to the company and further observed that since Hahnl group's director has been on the Board of Oswal and Oswals ought to continue one of the Hahnl group persons as director on the Board on non-rotational basis, OFMHT management has to provide information to the Hahnl group director, which is permitted under the Companies Act.

7. Ld. Counsel appearing on behalf of the Respondents opposed the prayer and contended that the erstwhile Company Law Board or National Company Law Tribunal has no jurisdiction to review its judgment. According to him what the Appellant preferred amounts

to review of the judgement and not any clerical or arithmetic mistake or error other than arising from any accidental slip or omission. He placed reliance on Hon'ble Supreme Court decision in 'Smt. Meera Bhanja vs Smt Nirmala Kumari Choudhury' (1995) 1SCC 170 and Hon'ble Supreme Court decision in 'Bijay Kumar Saraogi vs State of Jharkhand' (2005) 7SCC 748.

8. We have heard Ld. Counsel for the parties and perused the records. The Company Application was filed by the Appellants under Regulation 43, 44 and 45 of the Company Law Board Regulation, 1991, as reproduced below for ready reference:-

> "**43. Enlargement of time** - Where any period is fixed by or under these regulations or granted by a Bench, for the doing of any act, or filing of any documents or representation, the Bench may, in its discretion, from time to time, enlarge such period, even though the period fixed by or under these regulations or granted by the Bench may have expired.
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> **44. Saving of inherent power of the Bench** - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.
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> **45. Amendment of order** - Any clerical or arithmetical mistakes in any order of the Bench or error therein arising from any accidental slip or omission may, at any time, be corrected by the Bench either on its own motion or on the application of any party."

9. The corresponding Rule 154 of the NCLT Rules 2016 which corresponds to Rule 44 of the CLB Regulations, 1991 reads as follows:

> "**154. Rectification of Order**.- (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.
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> (2) An application under sub-Rule (1) may be made in Form No. NCLT.9 within two years from the date of the final order for rectification of the final Order not being any interlocutory order."

10. From the aforesaid Regulation 45 and Rule 154, we find that only clerical or arithmetic mistake in any order of the Tribunal (erstwhile Company Law Board) or error other than arising from any accidental slip or omission may, at any time, be corrected by the Tribunal (erstwhile Company Law Board) on its own motion or on an application of any party by way of rectification.

11. On the question of power to review under Order 47, Rule 1, C.P.C, 1908, in its earlier decision, the Hon'ble Supreme Court in Satyanarayan Laxmi Narayan Hegde & Ors., vs Mallikarjun Bhavanappa Tirumale (1960) 1 SCR 890, made certain observation, which was followed by Hon'ble Supreme Court, in 'State of Punjab vs Darshan Singh' (AIR 2003 SC 4179), relevant portion of which is quoted herein:-

> *"An error which has to be established by a long drawn process of reasoning on point where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self-evident and if it can be established, it has to be established by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the power of the Superior Court to issue such a writ."*

12. In 'Bijay Kumar Saraogi vs State of Jharkhand' (2005) 7SCC 748 the Hon'ble Supreme Court dealt with similar provision of Section 153 of the Code of Civil Procedure and held that the said provision can be invoked for limited purpose of correcting clerical errors or arithmetic mistake in the judgment. This section cannot be invoked for claiming a substantive relief which was not granted under the decree or as a pretext to get the order which has attained finality, reviewed.

13. In 'State of Punjab vs Darshan Singh' (AIR 2004 1 SCC 328), the Honble Supreme Court dealt with provisions of Section 152 of the Code of Civil Procedure and observed as follows:-

> " Section 152 provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission. The exercise of this power contemplates the correction of mistakes by the Court of its ministerial actions and does not contemplate of passing effective judicial orders after the judgment, decree or order. The settled position of law is that after the passing of the judgment, decree or order, the same becomes final subject to any further avenues of remedies provided in respect of the same and the very Court or the tribunal cannot, on mere change of view, is not entitled to vary the terms of the judgments, decrees and orders earlier passed except by means of review, if statutorily provided specifically therefor and subject to the conditions or limitations provided therein. The powers under Section 152 of the Code are neither to be equated with the power of review nor can be said to be akin to review or even said to clothe the Court concerned under the guise of invoking after the result of the judgment earlier rendered, in its entirety or any portion or part of it. The corrections

contemplated are of correcting only accidental omissions or mistakes and not all omissions and mistakes which might have been committed by the Court while passing the judgment, decree or order. The omission sought to be corrected which goes to the merits of the case is beyond the scope of Section 152 as if it is looking into it for the first time, for which the proper remedy for the aggrieved party if at all is to file appeal or revision before the higher forum or review application before the very forum, subject to the limitations in respect of such review. It implies that the Section cannot be pressed into service to correct an omission which is intentional, however erroneous that may be. It has been noticed that the courts below have been liberally construing and applying the provisions of Sections 151 and 152 of Code even after passing of effective orders in the list pending before them. No Court can, under the cover of the aforesaid sections, modify, alter or add to the terms of its original judgment, decree or order."

14. In the present case, we find that there is no clerical or arithmetic mistake in the order dated 13th August, 2015 of the Company Law Board. There is no error arising from any accidental slip or omission for correction or amendment of the order under Regulation 45 of the C.L.B. Regulations, 1991 or Rule 154 of the NCLT Rules, 2016.

15. The long argument advanced by Ld. Counsel for the Appellant also suggest that he practically wants to review the impugned judgement dated 13th August, 2015 for which he has already preferred an application for execution without questioning any mistake. As review of the judgement of the Company law Board is not permissible either under Regulation 45 of the CLB Regulations, 1991, nor under Rule 154 of the NCLT Rules, 2016, we are of the opinion that the Tribunal rightly held that in the absence of clerical or arithmetic mistake or error therein arising from any accidental slip or omission, the application preferred by Appellant was fit to be dismissed.

16. We find no merit in this appeal. It is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
31st March, 2017