

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI
Company Appeal (AT) No.39 of 2019

IN THE MATTER OF:

Prakash Pralhad Chhabria & Anr

...Appellants

Vs

Deepak Kishan Chhabria & Ors

...Respondents

**Present: Mr. Sudipto Sarkar, Sr. Advocate, Mr. S.N. Mukherjee, Sr Advocate, Mr Ashish Kamat, Mr Kunal Mehta, Mr Shikhil Suri, Ms Shilpa Saini, Advocates for appellants.
Mr Ramji Srinivasan, Sr. Advocate, Mr. Arun Kathpalia, Mr. Amit Jajoo, Mr. Rohit Gupta, Mr. Bhargav Kosuru, Ms Sylona Mohapatra, Mr Nikhil Ramdev Mr. Sagar Chakravroty, Advocates for Respondents.**

ORDER

13.03.2019- Mr Deepak Kishan Chhabria and Ms Vini Deepak Chhabria (respondents herein) filed an application under Section 241, 242, 243(b), 244 of the Companies Act, 2013 alleging oppression and mismanagement against Orbit Electricals Pvt Ltd and Prakash Pralhad Chhabria (appellants herein) and others. Some other parties were also impleaded as respondents. For the said reasons Deepak Kishan Chhabria and Vini Deepak Chhabria are being referred to as petitioners and Orbit Electricals Pvt Ltd and Prakash Pralhad Chhabria are referred to as Respondents in this appeal.

2. The respondents (appellants herein) filed an application being MA No.645/2017 to dismiss the petition on the ground that it is a family dispute and not a case of oppression and mismanagement. Earlier when they moved before this Appellate Tribunal, this Appellate Tribunal asked the NCLT Mumbai Bench (hereinafter referred to as the 'Tribunal') to decide the main application. By the impugned order dated 5.12.2018 the MA No.645/2017 as was preferred by the respondents (appellants herein) has been rejected.

3. Learned counsel appearing on behalf of the respondents (appellants herein) referred different pleading to suggest that it is a family dispute and do not relate to oppression and mismanagement. However, as the question of
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oppression and mismanagement is pending before the Tribunal, we are not inclined to deliberate on such issues which are required to be determined by the Tribunal on the basis of the pleadings and other evidences on record. Therefore, we are not inclined to interfere with the impugned order dated 5.12.2018.

4. However, taking into consideration the fact that the company petition is pending since November, 2016 and more than 2 years have passed, we direct the parties to appear before the Tribunal for early hearing of CP No.47/2016 on 27th March, 2019 and pursue their claim without asking for unnecessary adjournment. The Tribunal while considering the main petition will pass order uninfluenced by impugned order dated 5.12.2018 and observations made therein. It will be open to the respondents (appellants herein) to re-agitate the issue that no case of oppression and mismanagement has been made out and thus a family dispute.

5. At this stage learned counsel for the petitioners (respondents herein) submitted that the impugned order is a detailed order. However, if that be so then we have to set aside the impugned order. However, as we have not interfered with the impugned order, we have directed the Tribunal to decide the case on merit uninfluenced by impugned order dated 5.12.2018.

6. All contentions raised by the parties including contentions raised by respondents are left open for determination by the Tribunal. However, as cost of Rs.25000/- imposed was uncalled for the said part of the impugned order dated 5.12.2018 in so far as the imposition of cost is set aside. The appeal stands disposed off with the aforesaid observations and directions. No costs.

4. Prayer to file addition affidavit is rejected.

(Justice S.J. Mukhopadhaya)
Chairperson

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

Bm/sk