

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 233 of 2018

IN THE MATTER OF:

S.Muruganadham

...Appellant

Vs.

Chicko Foods

...Respondent

Present: For Appellant: - Advocate

ORDER

20.07.2018— The appellant, an Ex-Director of the Company in his individual capacity filed an application under Section 213(b)(i) & (ii) r/w Section 447 of the Companies Act 2013 against the impugned order dated 1st March 2018 in C.P. No. 17A of 2017, wherein following allegations were levelled, as noticed by the National Company Law Tribunal (“Tribunal” for short): -

“The company has availed loans from the R4 bank from the year 1986 and 1989 and as on date of filing the petition the cumulative total amount repayable by the Company to R4 is Rs. 78,29,039/- (page 4 of the petition). The Company has not submitted any board resolution to the R4 to borrow money and the R4 has also failed to adhere with the norms for sanctioning the loan amount to a defunct company. The R4 bank has completely ignored all the norms to be followed to

sanction loans to a company and also completely ignored to note the credit worthiness of the company and the various circulars including master circulars issued by R6. The Company has availed those loans on the basis of invalid documents and the R4 bank has also sanctioned the same without verifying the loan application and other documents of the Company. M/s Pondicherry Industrial Promotion Development and Investment Corporation, Pondicherry (PIPDIC) lent an amount of Rs. 28,96,637/- to the Company and on failure of repaying the said amount by the Company, they have auctioned the properties of the Company and recovered an amount of Rs. 27,50,000/-. Therefore, even at the time of loans granted by the R4, the Company wa a defaulter and the assets were NPA.”

2. The Tribunal taking into consideration the fact that the appellant was appointed as Additional Director on 1st October 1990 and he ceased to be a Director of the Company as the Company did not convene the AGM during his period i.e. for the year ending 31st March 1991 and that the 4th Respondent Bank had obtained the signatures of the appellant in an Agreement of Guarantee for the loans availed by the Company and subsequently filed a case in OS No. 37 of 1994 before the Debt Recovery Tribunal (DRT) for recovery of a sum of Rs. 1,07,23,927 with interest against 1st Respondent to 3rd

Respondent and also against the appellant and 11 others the same refused to entertain the application.

3. Learned counsel for the appellant submitted that the Company has not followed any norms to avail the loans during the year 1986 – 1989 and thereby Company committed fraud against the 4th Respondent (Indian Bank). It is also alleged that the 4th Respondent (Indian Bank) has also not followed due procedure before sanctioning the loans to the Company which is a failure on its part.

4. We have taken into consideration the allegation levelled by the appellant and find that he has raised stale allegations against the Company for the year 1986-89 after long delay in the year 2017 that too when the appellant himself was the Director of the Company and during said period had not raised these issues in the meeting of the AGM on 31st March 1991. In fact, recovery proceeding in the year 1991-94 against the appellant and 11 others having initiated by the Bank alleging fraud against the Company, the appellant moved much thereafter.

5. Apart from the fact that the appellant, Ex-Director is now facing recovery proceeding filed by the Bank in the provisions of the Debt Recovery Tribunal Act 1985, we find that no evidence has been brought on record to suggest that the business of the Company was being conducted with intent to defraud its creditors or members or any other person.

6. The appeal at the instance of appellant being frivolous, and as the petition was filed after long delay without explaining the laches after initiation of recovery proceedings by the Bank, apart from the fact that there is no merit,

we dismiss the appeal with cost of Rs. 50,000/- to be paid by the appellant in favour of the Registrar of Companies, Chennai within two months.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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