

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 09 of 2016

26.10.2016

IN THE MATTER OF:

Pawan Tiwari

.....Appellant

Vs.

Shri Ganga Sheethgrah Pvt. Ltd. & Ors.

....Respondents

Present: Mr. H.L.Tiku, Senior Advocate with Mr. T.D.Sharma and Mr. Sumit, Advocates for the Appellant

Mr. Naresh Kaushik, Advocate for the respondent

ORDER

Admit.

2. This appeal has been preferred by the appellant-petitioner/applicant-Pawan Tiwari against order dated 21st September 2016 passed by the National Company Law Tribunal, Allahabad in Company Application No. 92/2014 (in Company Petition No. 08/2009).

3. By the impugned order, while the Tribunal left the question open about the reports submitted by the Central Forensic Science Laboratory ("CFSL" for short) dated 5th March 2014 and 21st May 2014 observed as follows:-

"Therefore, placing non-reliance upon the expert's opinion is the final outcome of appreciation thereof in the light of other evidence, circumstances etc. to be done at the final stage of the matter. His

report has no value as such without his oral evidence. There is no necessity of expressing an opinion about the reliability of the report at this stage and reject the same at the threshold. If it is done at this stage and the report is expunged from the record, the party in whose favour the opinion is expressed by the expert would be put to disadvantage. If at all the expert is examined by the opposite party to prove the contents of the report, then it is open to the petitioner to raise the same objections raised now, to demolish the reliability of the expert opinion and his evidence. We are, therefore, not impressed with the sustainability of the relief claimed in this petition.

In the result, the petition is dismissed. Both parties shall bear their own costs of the petition."

4. Learned counsel appearing on behalf of the appellant submitted that the "CFSL Reports" dated 5th March 2014 and 21st May 2014 have been submitted pursuant to an application filed by the appellant, therefore, the said reports cannot be relied by the respondents to counter the allegations made by the appellant.
5. We have heard the Learned Counsel for the parties and perused the records. In this case, as the Tribunal has not made any observations about the 'CFSL Reports' and left the matter open for appreciation at final stage after taking into consideration oral evidence, other evidence, circumstances etc., therefore we are not inclined to express any opinion at this stage.
6. If the Tribunal takes into consideration the 'CFSL Report(s)' and give any finding, it is always open to the aggrieved party to challenge the same before the Appellate Tribunal.
7. However, if the appellant feels that the 'CFSL reports' dated 5th March 2014 and 21st May 2014 should not be taken into consideration, it will be open

to the appellant to file an application with a prayer before the Tribunal to allow the appellant to withdraw its earlier application pursuant to which CFSL was directed to submit the Reports. If any such prayer is made, the Tribunal will consider the prayer and may allow the appellant to withdraw the earlier application. In such case the Tribunal will not take into consideration the 'CFSL Reports' dated 5th March 2014 and 21st May 2014 for giving any finding on merit and will decide the case taking into consideration other evidences, circumstances etc. as may be brought on record.

8. The appeal stands disposed of with the aforesaid observations. No cost.

(Justice S.J.Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical