

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 350 of 2018

IN THE MATTER OF:

Surinder Mehta & Ors.

...Appellants

Versus

Prime Meiden Ltd. & Ors.

...Respondents

Present:

For Appellants : **Mr. Krishnendu Dutta, Mr. Ramanjit Singh and Mr. Sagar Chawla, Advocates**

For Respondent : **Mr. Ramji Srinivasan, Senior Advocate with Mr. Lalit Bhasin, Mr. Abhijit Sinha, Mr. Inder Raj Gill, Ms. Anuradha Sharma, Mr. Avichal Prasad and Mr. Lakshya Khanna, Advocates**

O R D E R

06.02.2020 The Appellant moved an application under Section 45 of the ‘Arbitration and Conciliation Act, 1996’ before the Judicial Authority (National Company Law Tribunal) in the pending proceedings under Section 241 and 242 of the Companies Act, 2013. The Judicial Authority (National Company Law Tribunal), New Delhi Bench by impugned order dated 10th September, 2018 refused to refer the matter for arbitration.

2. Being aggrieved, the Applicant/Appellant preferred the appeal under Section 421 of the Companies Act, 2013, which reads as under:

“421. Appeal from orders of Tribunal

- (1) *Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.*

- (2) *No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.*
- (3) *Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*
- Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.*
- (4) *On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.*
- (5) *The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.”*

3. The question arises for consideration in this appeal is whether the order of refusal passed by the Judicial Authority (National Company Law Tribunal) under Section 45 of the 'Arbitration and Conciliation Act, 1996' is appealable under Section 421 of the Companies Act, 2013.

4. Similar issue fell for consideration before this Appellate Tribunal in '**Thota Gurunath Reddy & Ors. vs. Continental Hospitals Pvt. Ltd. & Ors.**' – 'Company Appeal (AT) No. 160 of 2017' decided on 18th July, 2018' – [(2018) 209 Comp Case 518]. In the said case, this Appellate Tribunal observed and held :

“30. Similarly, the NCLT though constituted under Section 408 of the Companies Act, 2013, while passes an order under Sections 43 (sic – Section 8) and 45 of the Arbitration Act, 1996, such order is not passed as a Tribunal constituted under Section 408 but in the capacity of 'judicial authority'.

31. From the aforesaid provisions, it is clear that under Section 420 of the Companies Act, 2013, the National Company Law Tribunal passes an order as a 'Tribunal', whereas under the provisions of Section 7 or Section 9 or Section 10 or sub-section (5) of Section 60, the same very Tribunal passes an order as an 'Adjudicating Authority' and the same Tribunal in the capacity of 'judicial authority' passes order under Section 8 or Section 45 of the Arbitration Act, 1996. As the Tribunal is

empowered to pass orders in different capacities under different provisions of the Act, we are of the view that the appeal will lie before the competent forum under the said very Act under which the Tribunal passes the order. If it passes order under Section 420 of the Companies Act, the appeal will lie under section 421 before the National Company Law Appellate Tribunal. If the Tribunal passes order under the capacity of the 'Adjudicating Authority' under the 'I&B Code', the appeal will lie under section 61 of the 'I&B Code' before the National Company Law Appellate Tribunal. If the Tribunal passes order in the capacity of 'judicial authority' under Section 45 of the Arbitration Act, 1996, the appeal will not lie under Section 421 of the Companies Act but before an appropriate forum.

32. *In view of the aforesaid observations, we hold that the impugned order dated 20th April, 2017 having passed by the Tribunal in the capacity of 'judicial authority' under Section 45 of the Arbitration Act, 1996, the present appeal under Section 421 of the Companies Act, 2013 is not maintainable before this Appellate Tribunal."*

5. Referring to the decision of the Hon'ble Supreme Court in '**Sumitomo Corporation vs. CDC Financial Services (Mauritius) Ltd. & Ors.**' – (2008) 4 SCC 91, learned counsel for the Appellant submits that the appeal under Section 421 of the Companies Act is maintainable before this Appellate Tribunal.

6. In the aforesaid case 'Sumitomo Corporation' (Supra) heard by the Hon'ble Supreme Court on the issue of jurisdiction it was observed that in the event order under Section 45 of the 'Arbitration and Conciliation Act, 1996' is passed by the Company Law Board under the Companies Act, 1956, the power to hear the appeal against the order of the Company Law Board is vested with the Hon'ble High Court under Section 10-F of the Companies Act, 1956.

7. Since promulgation of the Companies Act, 2013, the power of the Hon'ble High Court vested under different provisions stands transferred to 'National Company Law Tribunal' in terms of Section 434 of the Companies Act, 2013 and the appeal power is not vested with the Hon'ble High Court but before this Appellate Tribunal.

8. Even in 'Sumitomo Corporation' (Supra), the Hon'ble Supreme Court, while dealing with the question of jurisdiction, observed :

“24. *In the light of the said conclusion, in order to ascertain the correctness of the same, it is useful to refer to the provisions of Section 50 of the Arbitration Act and Section 10(1)(a) and Section 10-F of the Companies Act:*

“50. Appealable orders.—(1) An appeal shall lie from the order refusing to—

(a) refer the parties to arbitration under Section 45;

(b) enforce a foreign award under Section 48;

to the court authorised by law to hear appeals from such order.

*(2)***”*

“10. Jurisdiction of courts.—(1) The court having jurisdiction under this Act shall be—

- (a) the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any District Court or District Courts subordinate to that High Court in pursuance of sub-section (2); and*
- (b) where jurisdiction has been so conferred, the District Court in regard to matters falling within the scope of the jurisdiction conferred, in respect of companies having their registered offices in the district.*

10-F. Appeals against the order of the Company Law Board.—Any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies (Second Amendment) Act, 2002 may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the

Company Law Board to him on any question of law arising out of such order:

Provided that the High Court, may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”

The above provisions make it clear that the forum shall be court authorised by law to hear the appeals from such order. In this regard, it is useful to reproduce the Explanation to Section 47 of the Arbitration Act which reads thus:

*“47. Evidence.—(1)-(2)****

Explanation.—In this section and all the following sections of this Chapter, ‘court’ means the Principal Civil Court of Original Jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction over the subject-matter of the award if the same had been the subject-matter of a suit, but does not include any civil court of a grade inferior to such Principal Civil Court, or any Court of Small Causes.”

9. The Hon’ble Supreme Court further observed in paragraph 25 of the said judgment that the expression ‘court’ not simpliciter but qualified by the wording “authorised by law to hear appeals from such order”. The order having passed

by the Judicial Authority under Section 45 of the 'Arbitration and Conciliation Act, 1996' and in absence of any power delegated under the 'Arbitration and Conciliation Act, 1996', we hold that the appeal is not maintainable. The case is covered by this Appellate Tribunal's decision in '*Thota Gurunath Reddy & Ors.*' (*Supra*), we also hold that the appeal is not maintainable. However, this order will not come in the way of the applicant to move an application before the appropriate Court/Court authorised under the law under Section 50 of the 'Arbitration and Conciliation Act, 1996'.

The appeal stands disposed of with aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/