

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
COMPANY APPELLATE JURISDICTION**

**Company Appeal (AT) No. 143 of 2017**

**(arising out of Order dated 16<sup>th</sup> February, 2017, passed by National Company Law Tribunal, Allahabad Bench, Allahabad in C.P. No. 38 (ND) of 2016)**

**IN THE MATTER OF:**

**Safedabad Cold Storage & Allied Industries  
Pvt. Ltd. & Ors.**

**...Appellants**

**Vs**

**Shabbir Ahmed & Ors.**

**...Respondents**

**Present: For the Appellants: - Mr. Saurabh Kalia and Ms. Samridhi Gogia, Advocates.**

**For the Respondents: - Mr. Ratnanko Banerji, Senior Advocate with Mr. Pankaj Bhatia, Mr. Shaunak Mitra, Mr. Debjani, Mr. Dhruv Surana, Mr. Nipun Goel, Advocates.**

**J U D G E M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA,J.**

This appeal has been preferred by appellants against order dated 16<sup>th</sup> February 2017 passed by National Company Law Tribunal (hereinafter referred to as "Tribunal"), Kolkata Bench, Kolkata and I.A.No. 20/2016 in C.P. No. 38/2016 whereby and whereunder the Tribunal rejected the Interlocutory Application preferred by appellants and held that Company Petition was maintainable at Kolkata Bench.

2. The brief facts of the case are as follows: -

The Company Petition No. 38/2016 was filed by respondents/petitioners, namely Shabbir Ahmed and others on 12<sup>th</sup> April 2016 before erstwhile Company Law Board at Kolkata under Section 235, 397, 398, 402, 403 and 406 of the Companies Act 1956. After constitution of the National Company Law Tribunal w.e.f. 1<sup>st</sup> June 2016, the Interlocutory Application No. 20/2016 was preferred by appellants for transfer of the case from Kolkata Bench to Allahabad Bench on the ground that Registered Office of the Appellant No. 1 Company is situated at Safedabad, Barabanki, U.P.

3. In support of prayer for transfer, the following facts were brought to the notice of the Tribunal by the appellants which were also not disputed by the respondents: -

- (i) On 17<sup>th</sup> February 2015, the Extra Ordinary General Meeting of the Company was convened for taking decision to shift the Registered office from Kolkata to Barabanki, U.P.
- (ii) The application for shifting of Registered Office was filed on 5<sup>th</sup> August 2015 before Ld. Regional Director, Eastern Region Kolkata.
- (iii) The application for shifting of Registered Office from Kolkata to Barabanki, U.P. was allowed by Ld. Regional Director Eastern Region, Kolkata by its order dated 11<sup>th</sup> February 2016.
- (iv) Form No. INC 22 i.e. Notice for situation of change of place of Registered Office and INC 28, a notice of order of the Court or Tribunal or any other competent authority was filed by appellant company on 17<sup>th</sup> February 2016 in the Ministry of Corporate Affairs Portal.

- (v) The Certificate of shifting of Registered Office at Kolkata to U.P. was issued by Registrar of Companies, Kanpur on 18<sup>th</sup> March 2016.
- (vi) It was only thereafter the Company Petition was filed on 19<sup>th</sup> April 2016 by the respondent inter alia challenging the various action including the shifting of Registered Office from Kolkata to U.P. before erstwhile Company Law Board.

4. Learned counsel for the appellants submitted that the Company Petition should have been preferred before a Bench of the Company Law Board/Tribunal where the Registered Office of the Company is situated as on the date of filing, which is at Barabanki, U.P. Thereby, the Company Law Board, at New Delhi had the jurisdiction and not the Kolkata bench. Further according to appellants, after constitution of the Tribunal since 1<sup>st</sup> June 2016, it was required to be transferred and heard by Bench of Tribunal at Allahabad.

5. Further, according to Learned counsel for the appellants, any territorial jurisdiction of any Bench cannot be decided based upon cause of action. In this regard, learned counsel for the appellants relied on decision of the Appellate Tribunal dated 9<sup>th</sup> March 2017 in “63 Moons Technologies Ltd. Vs. Union of India & Others” Company Appeal (AT) No. 03/2017.

6. It was also contended by Learned counsel for the appellants that the matter ought to have been dismissed by Kolkata Bench for want of jurisdiction as the original matter itself was filed before the Bench which had no jurisdiction to entertain the said petition. Reliance was placed on Hon’ble Supreme Court decision in “Stridewell Leathers (P) Ltd. Vs. Bhankerpur Shimbhaoli Beverages (P) Ltd.” (1994) 1-SCC 34.

7. Per contra, according to Learned counsel for the respondents as the respondents has challenged the acts of illegal shifting of Registered Office on the basis of alleged Extra Ordinary General Meeting held on 17<sup>th</sup> February 2017 without notice to the respondents/petitioners, such act of illegal shifting being illegal, null and void the Registered Office deemed to be continuing at Kolkata and thereby the petition is maintainable at Tribunal Kolkata Bench.

8. Learned counsel for the respondent relied on the decision of this Appellate Tribunal dated 24<sup>th</sup> January 2017 in "Crystal Thermotech Ltd" Company Appeal (AT) No. 17 of 2016 to suggest that where an applicant alleges that Registered office has been illegally shifted by oppression and mismanagement without notice and knowledge then the petition is maintainable at the place where original Registered office was situated.

9. We have heard Learned counsel for the parties and perused the impugned order

10. It is not in dispute that wrongly or rightly the Registered Office of the 1<sup>st</sup> appellant company was transferred from Kolkata to Barabanki, UP, which was also approved by the competent authority and appropriate orders were passed much prior to filing of Company Petition. The appellants have challenged the jurisdiction of the Kolkata Bench, as the Principal Bench of Company Law Board, New Delhi had jurisdiction in respect of State of U.P.

11. Once the question of jurisdiction of the Kolkata Bench was challenged by the appellants/respondents, though it was open to the Tribunal, Kolkata Bench to decide the question of its jurisdiction and maintainability of the Company Petition before erstwhile Company Law Board, it was not open to the Tribunal to decide the main issue as to whether the transfer of the Registered Office from

Kolkata to Barabanki, U.P. was illegal or not and whether there is any act of 'Oppression and Mismanagement' on the part of any one or other member including the appellants as has been observed by Tribunal.

12. It is not in dispute that with regard to the companies having its Registered office in the State of U.P., Principal Bench of erstwhile Company Law Board, New Delhi had the jurisdiction and not with the Kolkata Bench.

13. Once the respondents challenged the transfer of the Registered Office from Kolkata Bench to Barabanki, U.P., it was well within the domain of Principal Bench of erstwhile Company Law Board to decide the case on merit i.e. legality and propriety of transfer of Registered Office from one State to another. The judgement of this Appellate Tribunal in "Crystal Thermotech Ltd.", as referred by respondents is not applicable in the present case.

14. In the case of "63 Moons Technologies Limited", Appellate Tribunal held as follows:-

*"24. Sub-section (1) of Section 434 mandates transfer of proceedings pending before the Company Law Board to respective Tribunal having territorial jurisdiction. The circular issued under Regulation 4 of 1991 Regulation cannot be given effect in view of the aforesaid mandate under the Act.*

*25. Section 434(a) read with sub-section (1) of Section 419 of Companies Act 2013 and Notification dated 1<sup>st</sup> June 2016 issued by Central Government under sub-section (1) of Section 419 and the Rule 64 of NCLT Rule it is clear the Benches, including Principal Bench have territorial*

*jurisdiction on the Companies exclusively on the basis of location of the registered office of such company. In fact, this law is also being followed by the Principal Bench of NCLT, New Delhi for placing all the petitioners before one or other Bench and that Section 488-B of Act 1956, cannot be exception of the same.”*

15. In view of the aforesaid discussion and of decision in “63 Moons Technologies Limited”, we hold that the petition preferred by respondents/petitioners before erstwhile Company Law Board, Kolkata Bench was not maintainable and the Tribunal, Kolkata Bench has no jurisdiction to decide the Company Petition on merit. We, accordingly, set aside the impugned order dated 16<sup>th</sup> February 2017 passed by the Tribunal, Kolkata Bench and dismiss the Company Petition preferred by Respondents/Petitioners as not maintainable before Kolkata Bench with liberty to respondents/petitioners to file a fresh petition before the Bench of Tribunal at Allahabad under relevant provisions with same and similar allegations, as has been made in the Company Petition. If such petition is filed within one month from the date of this order, the Tribunal will decide the case on merit and will not dismiss the petition on the ground of limitation or delay. The appeal is allowed with the aforesaid observations. However, there shall be no order as to cost.

(Balvinder Singh)  
Member (Technical)

(Justice S.J. Mukhopadhaya)  
Chairperson

NEW DELHI  
21<sup>st</sup> July, 2017  
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