

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 265 of 2018

IN THE MATTER OF:

Yogendra Pal Jain

SCO-44, Old Judicial Complex,
Civil Lines
Gurgaon-110001

...Appellant

Vs

1. South Eastern Carriers Pvt. Ltd.

2nd Floor, 10 Phears Lane,
Kolkata-700012

....Respondents

2. Ravindra Kumar Gupta

4-D, Gee Gee Towers,
11, Herders Road, first Street,
Chennai, Tamil Nadu-600006

3. Tanmay Gupta

4-D, Gee Gee Towers,
11, Herders Road, first Street,
Chennai, Tamil Nadu-600006

4. Veena Gupta

4-D, Gee Gee Towers,
11, Herders Road, first Street,
Chennai, Tamil Nadu-600006

5. Arun Gupta

A-115, Sushant Lok Phase-I,
Gurgaon, Haryana-122002

6. Savita Gupta

A-115, Sushant Lok Phase-I,
Gurgaon, Haryana-122002

7. Manisha Mehta

Panch Complex,
Fatehpur, Bedia Road,
Udaypur-313004

8. Care Go Logistics Private limited

Flat no. 402, Baroda House Apartment,

Group Housing Society,
Sector-10, Dwarka, New Delhi-110075

9. Siddharth Jain

SCO-44, Old Judicial Complex,
Civil Lines
Gurgaon-110001

For Appellant(s): Mr. Jayant Mehta, Mr. Ajay Gaggar, Mr. Robin Sirohi and Ms. Drishti Karpalani, Advocates

For Respondent(s): Mr. Kumarpal R. Chopra (R-2 to 4) and Ms. Vineeta Singh Rathor(R-9), Advocates.

Oral Judgement

A.I.S. CHEEMA, J. :

24.09.2018: Heard learned counsel for the Appellant and Advocate Mr. Kumarpal Chopra for Respondent No. 2, 3 and 4 and Ms. Vineeta Singh Rathor for Respondent No. 9. The counsel for Appellants states that the other Respondents have been served and affidavit in that regard has been filed.

2. Perused the Impugned order dated 14th June, 2018 passed by learned National Company Law Tribunal, Kolkata (NCLT in short) . The Impugned order reads as under:-

“Order

Ld. Counsel for the petitioners and the respondent nos. 1, 5 and 6 is present.

Ld. Counsel appearing for the petitioners submits affidavit of service proving delivery of notice to the respondent nos. 3, 4, 8 and 9. They were called, absent and declared exparte.

Respondent nos. 1, 5 and 6 are directed to file reply affidavit to be filed within 3 weeks.

List it on 23/08/2018.

Interim order will continue till next date of hearing.”

3. Learned counsel for the Appellant is submitting that the Appellant is original Petitioner and has filed the company petition in 2016 claiming Oppression and Mismanagement at the hands mainly of Respondent No.5 and 6 in the Company *South Eastern Carriers*. Counsel submits that in the Petition the Petitioner has been perusing his remedies before the NCLT Kolkata Bench, Kolkata but, according to the counsel, the Respondents for one reason or the other have been protracting the matter. It is stated that even during pendency of the Company Petition the Oppression of the Appellant is continued and thus the Appellant was forced to file applications pointing out the Oppression and Mismanagement on the part of Respondents. The Counsel submits that Section 422 of the Companies Act 2013 itself mandates expeditious disposal of Company Petition within 3 months and the pendency of this petition has been prolonged because of the approach of the Respondents.

4. Counsel for Respondents 2 to 4 submits that Respondents 2 to 4 were earlier not served in the Petition and now they have come to know about the Petition and would be approaching the NCLT.

5. The Impugned Order has marked respondents 3, 4, 8 and 9 as ex parte. We will not comment on this aspect.

6. As regards the submissions made by the counsel for Appellant, we find it is not a matter in which the Appeal should be filed before us looking to the fact that Impugned Order is an interim, transitory order. According to us no case is

made out for entertaining the Appeal. As such we are not entertaining this appeal any further. However, considering Section 422 of the Companies Act, 2013, we only request the learned NCLT to expedite the disposal of the main Company petition itself and if the NCLT has pending applications filed by parties, NCLT may, if deemed fit, take up the applications for disposal together with the Company Petition itself at the time of final disposal.

7. With such expectations we do not pass any directions as such in this matter and dispose the Company Appeal.

Further Order:

8. As per daily cause list published on website this matter has been/ was listed today at 10:30 AM. We dictated the above order in open court in the first half of today. Later on, Advocate Mr. Fanish Kr. Rai contacted Registry claiming he appears on behalf of Respondents 1,5, and 6 and pointed out that the notice issued by the Registry stated that the matter would be taken up at 2'o' clock. As such on mentioning the matter is taken up again at 2:00 PM in the presence of the learned counsel for Appellant. The other two Advocates of other Respondents have already left.

8.1. We have seen the copy of the notice which has been issued by Registry on 5th September, 2018. It is seen that the Registry sent the notice calling upon the Respondents to appear in this Tribunal on "24th September, 2018 at 2:00 AM". There are no earlier directions of this Tribunal to post this matter at "2:00 AM". The error is not merely regarding the mentioning of time but also wrong time. Surely the Registry does not want us to sit at 2'o'clock in the night. The

Joint Registrar/ Registrar to look into the matter and ensure that such error does not recur.

9. This further order is being passed keeping in view sub-Section 2 of Section 420 of the Companies Act. We mark the presence of the learned counsel for Respondents 1, 5 and 6. The operative order has been read out to the counsel present on behalf of Respondents 1, 5, and 6. On hearing him, no change is necessary in the order which we have already dictated in the morning. Recorded.

10. The Appeal stands disposed as per our Orders passed in the first half of the session today.

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

(Balvinder Singh)
Member (Technical)

sh/nn