

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 117 of 2019

IN THE MATTER OF:

Mukesh Goel

...Appellant

Versus

Goel Entrade Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant :

Ms. Shweta Bharti, Mr. J.K. Chaudhary, Mr. Avinash Singh and Ms. Katyani Mahendru, Advocates

O R D E R

15.05.2019 The Appellant alleged violation of order of ‘*status quo*’ dated 29th November, 2017 in I.A. No. 46 /2017 and moved an application under Section 425 of the Companies Act, 2013 for initiation of contempt proceedings against the ‘Contemnor – Respondents’. The National Company Law Tribunal, Guwahati Bench (for short, the “**Tribunal**”) on hearing the parties dismissed the application by impugned order dated 17th December, 2018 with the following observations:

“12. *However, such a mistake, although appears to be quite clerical in nature, cannot be viewed liberally and lightly in a contempt proceeding, more so, when the petitioner/applicant in C.P. No. 25/2017 never made any request to rectify such mistake –although--- such a*

mistake in the order aforesaid, was quite apparent. Rather, they chose not to rectify such a mistake having enormous implications on the outcome of the petition under consideration.

13. *This is because of the fact that before being found a person guilty of wilfully and intentionally violating the direction of the court/tribunal, it must be proved beyond any doubt that the contemnors were duly communicated such an order requiring them to maintain status quo etc. in respect of Goel Entrade Private Limited. The applicant must also show that such direction was violated wilfully and intentionally showing utter disdain to such direction rendered by this Bench.*

13. *However, in the present case, there was no proof whatsoever that contemnors had ever been communicated with the aforesaid status quo order--- much lees--- their producing some evidence showing that the condemners, having been posted with the status quo order, requiring them to maintain status/quo in respect of the assets, shareholdings and composition of the*

Bard of Goel Entrade Private Limited, violated the same.

In the face of such revelations, there cannot be any escape from the conclusion that allegation made against the contemnors remains far from being established.”

2. The present appeal has been preferred by the Appellant under Section 421 of the Companies Act, 2013 on the ground of being aggrieved by the order as passed by the Tribunal is in violation.

3. Section 420 of the Companies Act, 2013 empowers the Tribunal to pass order after giving the parties to any proceedings before it, a reasonable opportunity of being heard. The order passed under Section 420 of the Companies Act, 2013 is appealable under Section 421 of the Companies Act, 2013.

4. The power to punishment to the contemnor is vested with the Tribunal under Section 425 of the Companies Act, which reads as follows:

“425. Power to punish for contempt

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act,

1971, which shall have the effect subject to modifications that—

(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and

(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.”

5. From the aforesaid provision, we find for the purpose of initiation of contempt proceedings the Tribunal is empowered with the same power as that of High Court and for the purpose power under the provisions of the Contempt of Court Act, 1971 is applicable subject to modification as shown therein.

6. As per Contempt of Court Act, 1971, the appeal lies under Section 19.

7. In the circumstances, the question arises for consideration is whether the appeal under section 421 is maintainable or not.

8. The other question is that if the Tribunal rejected the application for initiation of contempt proceedings under section 425 of the Companies Act, 2013, the person who alleged violation of the order if he is entitled to file the appeal under Section 421 of the Companies Act, penal order of punishment having not been passed.

9. In the present case, as we find that the Tribunal, after taking into consideration the relevant facts, has come to a definite conclusion and refused to initiate contempt proceedings, we are not deciding the issue aforesaid on merit as we do not want to interfere. The appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc