

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 47 of 2019**

**IN THE MATTER OF:**

**Amsar Goa Pvt. Ltd. & Anr.**

**...Appellants**

**Vs**

**Amsar Pvt. Ltd.**

**....Respondent**

**Present:**

**For Appellants: Mr. Sudhanshu Batra, Sr. Advocate with Mr. Shiv Kumar Suri, Mr. Aditya Mishra, Mr. Shikhil Suri and Ms. Sushma Nagaraj, Advocates.**

**For Respondent:**

**ORDER**

**25.02.2019:** The Respondent/ Petitioner filed application for interim relief in the petition under Section 241-242 of the Companies Act, 2013 (Old section 397, 398 and 402 of the Companies Act, 1956) wherein taking into consideration the forensic report, the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as 'Tribunal') made following observations:

*“4. On this short issue heard the submissions of both the sides. At the outset it is worth to place on record that an opinion of the expert dated 15.06.2017 is already on record. An expert opinion of IFS : Forensic Science Department, Forensic Experts of Maharashtra Regd.), Off. No. 51, 'B' Wing, Third Floor, K. K. Market, Near Pune – Satara Road, Dhanakawadi, Pune, (Maharashtra), Pin-411 043 of 15.06.2017 is perused and noticed that certain dis-similarities have been pointed out in the impugned signatures. The analysis and findings as recorded therein are :-*

a) “{S-1: Provided is the Scan copy of the **BALANCE SHEET AS AT 31<sup>ST</sup> MARCH, 2011 OF AMSAR PRIVATE LIMITED** and seen to be dated on **02-09-2011**. At upper middle portion of the document “Xerox of original document” is seen to the handwritten. The encircled signature is taken for verification from right lower portion and above the wording **P. Naharwar** of the document. (Copy of the page is attached with the opinion); S-2: Provided is the photocopy of the letter issued by **P. P. Naharwar**, titled as “**TO WHOM SOEVER IT MAY CONCERN**” and dated on **March 15<sup>th</sup>, 2012**. At the right upper corner of the document “Annexure-2” is seen to be handwritten. The signature id taken for verification from left lower portionadn above the working of **P. P. Naharwar** of the document (Copy of the page is attached with the opinion)}”

b) “OPINION

On the cumulative effect of all the 3 above reasons and observations taken together, we are of the opinion that, **The signature sample marked as (S-2) seems that has not been written by the same writer who have written the signature sample marked as (S-1) or Vice versa**. More accurate/ definite opinion can not be provided due to insufficient sample size, sample length, and quality of signatures. Complete stability should be prove if more admitted signatures available from different sources, having similar date/ interval and from original document etc, these results may be affected by the certain factors as stated in observations, time interval, analysis etc. For more accuracy various chemical tests etc. can be performed in forensic labs of original documents. It is always suggested

*that: opinion of other two-three experts on same samples should be taken for maximum accuracy and strong opinion (Not examined for digital Forgery).*

*4.1 In a situation when a Forensic Report is already on record analysing the signature of late Mr. Peter Naharwar and given verdict that the signatures were not tallying with the original signatures, hence the Prayer of the Applicant stood answered. It is also evident on perusal of the reply that the Respondent has not commented on merits but merely raised a technical objection. The said objection does not stand in the eyes of law due to the reason that the Companies Act has prescribed wide powers of adjudication to do the justice to the Litigants. Even otherwise, it is not sustainable in the eyes of law that the proceedings before NCLT are summary proceedings, as pleaded by the Respondent. This objection of the Respondent is rejected. Further, the Respondent has raised a legal question that the documents which were to be examined by an expert are not the documents which are permissible for such an examination under the provisions of the Companies Act. This legal objection is also not acceptable because those documents are said to be the bone of contention hence necessary to examine their authenticity so as to arrive at the correct result. Few case laws, as cited by the Ld. Counsel of the Respondent, on the question of forgery are also not applicable under the present facts and circumstances.*

*4.2 In the light of the above factual position, in my opinion, this Miscellaneous Application stood disposed of, however, the*

*opinion expressed hereinabove shall not be construed as an opinion on the main issue raised in the main Petition. It is informed by the Parties that the Pleadings have already been completed, therefore, the main Petition is now adjourned for final hearing on 20.12.2018.*

2. Learned senior counsel appearing on behalf of the Appellant (Respondent before the Tribunal) submitted that the observations made in Para 4 tantamount to findings of fact which cannot be relied for deciding the petition filed by the Respondent/Petitioner.

3. On hearing learned senior counsel for the Appellant regarding the observations made by the Tribunal while we appreciate the submission that some people may find them as final finding but in view of the clarification made in Para 4.2, no intervention is required in the matter. We make it clear that finding of the Tribunal in an IA cannot be relied for deciding the main petition on merit. The main petition may be decided on the basis of records and pleading of the parties uninfluenced by impugned order. The appeal stands disposed of with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/sk*