

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 349 of 2019

[Arising out of Order dated 09th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench-III in CP-IB-158/ND/2018]

IN THE MATTER OF:

Mrs. Sonia Khosla (Through L.R),

...Appellant

Vs

M/s Montreaux Resorts (P) Ltd. & Ors.

....Respondents

Present:

For Appellant: Mr. Deepak Khosla, Advocate

**For Respondents: Mr. Jay Savla, Sr. Advocate with Mr. Anand M.
Mishra for Respondent Nos. 2 to 4 & 6 to 8.
Mr. Rishi Sood, Advocate for Respondent No. 5.**

J U D G M E N T

JARAT KUMAR JAIN, J.

The Appellant – ‘Mrs. Sonia Khosla (through L.R)’ preferred this appeal against the order dated 21.11.2019 passed by the National Company Law Tribunal, Court No. IV, New Delhi (“Tribunal” for short) whereby the Tribunal decided Interim Applications CA No. 46/C-III/ND/2016, CA No. 844/C-II/ND/2019, CA No. 381/ND/2019/IV and CA No. 450/IV/ND/2019 in Company Petition No. 114/2007.

2. Mrs. Sonia Khosla (since deceased) filed CP No. 114/2007 before the erstwhile Company Law Board, New Delhi under Sections 397 & 398 read with Sections 402 and 403 of the Companies Act, 1956, seeking various reliefs against the Respondents for the acts of oppression and mismanagement.

3. The said petition is now being prosecuted by her husband Mr. Deepak Khosla as legal representative. There are various other proceedings between the same parties are pending before different Courts.

Brief description of the applications filed by the Appellant:

A) Application CA No. 46/C-III/ND/2016 filed on 17.10.2016

In this application, it is prayed that the Respondents have not filed reply of the application (C.A No. 47/2016) for amendment in the main petition CP No. 114/2007. Therefore, the application for amendment be heard ex-parte.

B) Application CA No. 381/ND/2019/IV filed on 26.09.2019

In this application, Appellant seeking relief that the Respondents have refused to file reply of amendment application (C.A No. 47/2016) and interrogatories application (C.A No. 23/2019). Therefore, either close the defence of the Respondents for amendment application or in the alternative exercise powers under Order XI Rule 11 of the Code of Civil Procedure and summon

Respondent Nos. 2 to 4 and 6 to 8 to appear in the Tribunal to depose in person for viva voce examination.

C) CA No. 844/C-II/ND/2019 filed on 03.07.2019

In this application, it is prayed that to give last and final opportunity to the Respondents to comply the directions of this Appellate Tribunal order dated 02.11.2018.

D) CA No. 450/IV/ND/2019 filed on 15.10.2019 :

In this application, it is prayed to enlarge the order dated 10.10.2019 passed by NCLT.

4. The Tribunal has decided above referred applications by the impugned order, being aggrieved the Appellant has filed this appeal.

5. Learned counsel for the appellant pointed out five errors in the impugned order. However, according to the learned counsel for the Respondents there is no error in the impugned order and the tribunal has granted all the relief in favour of the Appellant.

6. Learned Counsel for the Appellant submits that in para 4 and para 16 of the impugned order Tribunal has wrongly mentioned that no notice has been issued to the Respondents till date for CA No. 47/2016, whereas notice has been served on Respondents for this application. However, notice has not been issued for main petition No. CP No. 114/2007.

7. For consideration of this submission it is useful to reproduce relevant portion of Para 4 and Para 16 of the impugned order which reads as under:-

“Para 4:

*In 2016 the petitioner filed an application being CA No. 47 of 2016, seeking amendment of the main petition C.P. No. 114/2007, **wherein also no notice is issued till date.**”*

“Para 16:

*Prayers 2 and 3 are granted thereby ordering to proceed ex parte against respondents in CA No. 46/2016 and in CA 47/2016 while preserving their rights to challenge veracity of facts **without issuing formal notice in CA 47/2016.** CA 46/2016 is allowed and disposed of in terms of above order.”*

8. It is undisputed fact that the notice for amendment application (CA No. 47/2016) has been served on the Respondent. It seems that inadvertently this fact has been mentioned in the para 4 and para 16 of the impugned order. However, such mistake is inconsequential.

9. Learned counsel for the Appellants submits that the impugned order, on the one hand declares as closed the right of the Respondents to raise any defence to CA No. 47 of 2016, and, on the other hand, keeps open their right to challenge veracity of facts without issuing formal notice in CA 47/2016, even when it is a

well-settled proposition of law that a rebuttal can be mounted provided the rebuttal has been pleaded on affidavit.

10. Tribunal has allowed the prayer of the Appellant and close the right of the Respondents to file reply of the amendment application (CA No. 47/2016). The Respondents have been served with the notice of CA No. 47/2016. Therefore, Tribunal granted liberty that they may make the submission on the application CA No. 47/2016. Thus, there is no contradiction in the impugned order.

11. Learned counsel for the Appellant submits that the impugned order proceeds on the premise that in Company Appeal (AT) No. 36 of 2016, two judgments were delivered and that both are concurrently in force i.e. one on 12.04.2017 and one on 02.11.2018. The error lies in not appreciating that the earlier judgment dated 12.04.2017 stood reviewed and recalled and replaced by the subsequent judgment dated 02.11.2018.

12. Earlier, in the same CP No. 114/2007 the interim orders dated 20.10.2016, 15.11.2016 and 05.12.2016 passed by NCLT have been challenged before this Appellate Tribunal in Appeal CA (AT) No. 36/2016, CA (AT) Nos. 43 to 47 of 2016. These appeals were decided by this Appellate Tribunal vide Judgment dated 12.04.2017. Thereafter, Respondent No. 10, Mr. R.P Khosla filed an application I.A. No. 189/2017 with the following prayers:

- (i) Recall (Simpliciter) the order dated 12.04.2017 on the grounds of breach of audi alterum partum, lack of jurisdiction, and fraud.

(ii) Consequently, set down the appeal for fair hearing on its merits.

13. It is apparent that this Appellate Tribunal has passed the earlier judgment on 12.04.2017 and when Respondent No. 10 – Mr. R.P Khosla has filed the application that he has not been heard then after hearing him passed the judgment on 02.11.2018. The Tribunal in the impugned order rightly proceeded on the premise that in Company Appeal (AT) No. 36 of 2016 both judgments are in force.

14. We are unable to convince with the argument of learned counsel for the Appellant that the judgment dated 12.04.2017 has been replaced by the subsequent judgment dated 02.11.2018. Thus, the Tribunal has not committed any error.

15. Learned counsel for the Appellant further submits that at para 16(b), neither CA No. 844 of 2019 was allowed nor dis-allowed. It has left open then issue, and unnecessarily so, meaning, whether or not the Respondents have forfeited the right to file documents in support of their position in terms of the liberty previously granted by Hon'ble NCLAT in its judgment dated 2nd November, 2018 delivered in Company Appeal (AT) No. 36 of 2016.”

16. In this regard, we have minutely perused the record. In the application, Appellant prayed to give last and final opportunity to Respondents for compliance of the directions of the NCLAT order dated 02.11.2018 whereas the Tribunal decline to grant further opportunity to comply with the said order of

NCLAT. Thus, it is incorrect that the Tribunal has not passed any speaking order in CA No. 844/2019.

17. Learned Counsel for the Appellant submits that while deciding the application CA No. 450 of 2019, the Tribunal has passed the strictures on the appellant which were not warranted.

18. We are of the view that NCLT has not passed any strictures on the appellant, however, only reproduces the observations of this Appellate Tribunal made in the judgment dated 12.04.2017.

19. With the above discussion, we find no ground to interfere in the impugned order. Hence, the appeal is dismissed. No costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

NEW DELHI

16th December, 2019

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