

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.18 of 2018

IN THE MATTER OF:

Agarpara Jute Mills Limited
Through its Authorized Representative
Sh. Ajay Kumar Mandal
28, B.T. Road,
Kolkata – 700 001

...Appellant

Versus

1. The Agarpara Company Ltd.
15, Braburne Road,
Kolkata – 700 001
2. Lake View Agencies Pvt. Ltd.
6B, Bentinck Street,
1st Floor,
Kolkata – 700 001
3. Foreever Vyapar Pvt. Ltd.
6B, Bentinck Street,
Aloka House, 1st Floor,
Kolkata – 700 001
4. Abhinav Dadhich,
24 Pollock Street,
Kolkata – 700 001
5. Shyam Sunder Bagri
4F, 1st Ram Sett Road,
Kolkata – 700 006
6. Ankit Kumar Bajaj,
Doctors S Bld,
Garden Reach Road,
80 West Port,
Kolkata – 700 043
7. Ajay Kumar Golcha,
D/72 Bangur Avenue,
Block – B, Kolkata – 700 055
8. Sajjan Kumar Dhanuka
29/3 Dayal Banerjee Lane,
Shibpur, Howrah – 711 103

9. Subhro Banerjee,
206/1, Rashbehari Avenue,
Kolkata – 700 029
10. Rajesh Sethi,
15, Brabourne Road,
Kolkata – 700 001
11. Anil Kumar Bhansali
77, G. T. Road,
Howrah – 711 106
12. Shyam Binani,
22A, Kali Krishna Tagore Street,
Kolkata – 700 007
13. Saurav Banerjee,
1/58B, Ashok Nagar,
3rd Floor, Regent Park,
Kolkata – 700 040
14. Jitendra Nath Choubey,
5, Srinath Das Lane,
Bowbazar, Kolkata – 700 012
15. Suresh Kumar Tibrewal,
10, Narsingh Bose Lane
Howrah – 711 101
16. Saroj Kumar Shaw,
25, Narsingh Bose Lane,
Howrah – 711 102
17. Om Prakash Thard,
Loomtex Engineering Pvt. Ltd.
Titagarh, Jute Mills No.2,
Titagarh, District North 24 Parganas
18. Beltas Merchants Pvt. Ltd.
Pekon Building, 4th Floor,
Plot – Y 13, Block – EP,
Sector – V, Kolkata – 700 091
19. Yashdeep Trexim Pvt. Ltd.
Pekon Building, 4th Floor,
Plot – Y 13, Block – EP,
Kolkata – 700 091

20. Srikanta Dutta,
P – 26B, C.I.T. Road,
Kolkata – 700 014
21. Saroj Kabra,
7, Tilak Road, Ground Floor,
Kolkata – 700 029
22. Jagdhatri Vyapar Pvt. Ltd.
14/2, Judges Court Road,
Alipore, Kolkata – 700 027
23. Evershine Barter Pvt. Ltd.
7A, Bentinck Street, 2nd Floor,
(Old Wing) Kolkata – 700 001
24. Gajrajya Properties Pvt. Ltd.
3A, Shakespeare Sarani,
Kolkata – 700 071
25. Concord Suppliers Pvt. Ltd.
7A, Bentinck Street, 2nd Floor,
(Old Wing), Kolkata – 700 001
26. Chitravali Dealers Pvt. Ltd.
7A, Bentinck Street, 2nd Floor,
(Old Wing), Kolkata – 700 001
27. Millenium Securities Pvt. Ltd.,
174C, Bhupen Roy Road,
Kolkata – 700 034
28. S.B. Marine Products Ltd.
Milanpur, Rehabari,
Guwahati, Assam – 781 008
29. Neeta Sarda, Wife of Ghanshyam Sarda,
187, Rabindra Sarani,
Kolkata – 700 007
30. Ghanshyam Sarda, Son of Late Sri Shiwlal Sarda,
187 Rabindra Sarani,
Kolkata – 700 007
31. Mahendra Saraswat,
187, Rabindra Sarani, Room No.47,
Kolkata – 700 007

32. Rabindra Kumar Walia,
18, Rabindra Sarani, Liluah,
Howrah – 711 204

33. Ramawatar Ashopa,
C/o, Sunbio Manufacturing Pvt. Ltd.
Daharia Mills, Katihar,
Bihar – 854 105

...Respondent Nos.1 to 33

Present: Shri Amit S. Chadha, Senior Advocate with Shri Atanu Mukherjee, Advocate for the Appellant

Ms. Purti Marwaha, Advocate for Respondent Nos.1 & 32

WITH

Company Appeal (AT) No.19 of 2018

IN THE MATTER OF:

The Agarpara Company Limited
Through its Authorized Representative
Sh. Shankar Sharma
21A, Shakespeare Sarani,
3rd Floor, Kolkata - 17

...Appellant

Versus

1. Agarpara Jute Mills Ltd.
28 B.T. Road,
Kolkata – 700 001
2. Lake View Agencies Pvt. Ltd.
6B, Bentinck Street,
1st Floor,
Kolkata – 700 001
3. Foreever Vyapar Pvt. Ltd.
6B, Bentinck Street,
Aloka House, 1st Floor,
Kolkata – 700 001
4. Abhinav Dadhich,
24 Pollock Street,
Kolkata – 700 001

5. Shyam Sunder Bagri
4F, 1st Ram Sett Road,
Kolkata – 700 006
6. Ankit Kumar Bajaj,
Doctors S Bld,
Garden Reach Road,
80 West Port,
Kolkata – 700 043
7. Ajay Kumar Golcha,
D/72 Bangur Avenue,
Block – B, Kolkata – 700 055
8. Sajjan Kumar Dhanuka
29/3 Dayal Banerjee Lane,
Shibpur, Howrah – 711 103
9. Subhro Banerjee,
206/1, Rashbehari Avenue,
Kolkata – 700 029
10. Rajesh Sethi,
15, Brabourne Road,
Kolkata – 700 001
11. Anil Kumar Bhansali
77, G. T. Road,
Howrah – 711 106
12. Shyam Binani,
22A, Kali Krishna Tagore Street,
Kolkata – 700 007
13. Saurav Banerjee,
1/58B, Ashok Nagar,
3rd Floor,
Regent Park,
Kolkata – 700 040
14. Jitendra Nath Choubey,
5, Srinath Das Lane,
Bowbazar, Kolkata – 700 012
15. Suresh Kumar Tibrewal,
10, Narsingh Bose Lane
Howrah – 711 101

16. Saroj Kumar Shaw,
25, Narsingh Bose Lane,
Howrah – 711 102
17. Om Prakash Thard,
Loomtex Engineering Pvt. Ltd.
Titagarh, Jute Mills No.2,
Titagarh, District North 24 Parganas
18. Beltas Merchants Pvt. Ltd.
Pekon Building, 4th Floor,
Plot – Y 13, Block – EP,
Sector – V, Kolkata – 700 091
19. Yashdeep Trexim Pvt. Ltd.
Pekon Building, 4th Floor,
Plot – Y 13, Block – EP,
Kolkata – 700 091
20. Srikanta Dutta,
P – 26B, C.I.T. Road,
Kolkata – 700 014
21. Saroj Kabra,
7, Tilak Road,
Ground Floor,
Kolkata – 700 029
22. Jagdhatri Vyapar Pvt. Ltd.
14/2, Judges Court Road,
Alipore, Kolkata – 700 027
23. Evershine Barter Pvt. Ltd.
7A, Bentinck Street,
2nd Floor,
(Old Wing) Kolkata – 700 001
24. Gajrajya Properties Pvt. Ltd.
3A, Shakespeare Sarani,
Kolkata – 700 071
25. Concord Suppliers Pvt. Ltd.
7A, Bentinck Street, 2nd Floor,
(Old Wing), Kolkata – 700 001
26. Chitravali Dealers Pvt. Ltd.
7A, Bentinck Street, 2nd Floor,
(Old Wing), Kolkata – 700 001

27. Millenium Securities Pvt. Ltd.,
174C, Bhupen Roy Road,
Kolkata – 700 034
28. S.B. Marine Products Ltd.
Milanpur, Rehabari,
Guwahati, Assam – 781 008
29. Neeta Sarada, Wife of Ghanshyam Sarada,
187, Rabindra Sarani,
Kolkata – 700 007
30. Ghanshyam Sarada, Son of Late Sri Shiwlal Sarada,
187 Rabindra Sarani,
Kolkata – 700 007
31. Mahendra Saraswat,
187, Rabindra Sarani, Room No.47,
Kolkata – 700 007
32. Rabindra Kumar Walia,
18, Rabindra Sarani, Liluah,
Howrah – 711 204
33. Ramawatar Ashopa,
C/o, Sunbio Manufacturing Pvt. Ltd.
Daharia Mills, Katihar,
Bihar – 854 105
- ...Respondent Nos.1 to 33

Present: Shri Gaurav Kejriwal and Shri Arjun Aggarwal, Advocates for the Appellant

Ms. Purti Marwaha, Advocate for the Respondent No.32

WITH

Company Appeal (AT) No.37 of 2018

IN THE MATTER OF:

Ghanshyam Sarada
Son of Late Sh. Shiwlal Sarada
21A, Shakespeare Sarani
3rd Floor, Kolkata – 700 017

...Appellant

Versus

1. The Agarpara Company Ltd.
21A, Shakespeare Sarani,
3rd Floor, Kolkata – 700 017
2. Lake View Agencies Pvt. Ltd.
6B, Bentinck Street,
1st Floor, Kolkata – 700 001
3. Foreever Vyapar Pvt. Ltd.
6B, Bentinck Street,
Akola House, 1st Floor,
Kolkata – 700 001
4. Abhinav Dadhich,
24 Pollock Street,
Kolkata – 700 001
5. Shyam Sunder Bagri
4F, 1st Ram Sett Road,
Kolkata – 700 006
6. Ankit Kumar Bajaj,
Doctors S Bld,
Garden Reach Road,
80 West Port,
Kolkata – 700 043
7. Ajay Kumar Golcha,
D/72 Bangur Avenue,
Block – B, Kolkata – 700 055
8. Sajjan Kumar Dhanuka
29/3 Dayal Banerjee Lane,
Shibpur, Howrah – 711 103
9. Subhro Banerjee,
206/1, Rashbehari Avenue,
Kolkata – 700 029
10. Rajesh Sethi,
15, Brabourne Road,
Kolkata – 700 001
11. Anil Kumar Bhansali
77, G. T. Road,
Howrah – 711 106

12. Shyam Binani,
22A, Kali Krishna Tagore Street,
Kolkata – 700 007
13. Saurav Banerjee,
1/58B, Ashok Nagar,
3rd Floor, Regent Park,
Kolkata – 700 040
14. Jitendra Nath Choubey,
5, Srinath Das Lane,
Bowbazar, Kolkata – 700 012
15. Suresh Kumar Tibrewal,
10, Narsingh Bose Lane
Howrah – 711 101
16. Saroj Kumar Shaw,
25, Narsingh Bose Lane,
Howrah – 711 102
17. Om Prakash Thard,
Loomtex Engineering Pvt. Ltd.
Titagarh, Jute Mills No.2,
Titagarh, District North 24 Parganas
18. Beltas Merchants Pvt. Ltd.
Pekon Building, 4th Floor,
Plot – Y 13, Block – EP,
Sector – V, Kolkata – 700 091
19. Yashdeep Trexim Pvt. Ltd.
Pekon Building, 4th Floor,
Plot – Y 13, Block – EP,
Kolkata – 700 091
20. Srikanta Dutta,
P – 26B, C.I.T. Road,
Kolkata – 700 014
21. Saroj Kabra,
7, Tilak Road, Ground Floor,
Kolkata – 700 029
22. Jagadhatri Vyapaar Pvt. Ltd.
14/1, Judges Court Road,
Alipore, Kolkata – 700 027

23. Evershine Barter Pvt. Ltd.
7A, Bentinck Street, 2nd Floor,
(Old Wing) Kolkata – 700 001
24. Gajrajya Properties Pvt. Ltd.
3A, Shakespeare Sarani,
Kolkata – 700 071
25. Concord Suppliers Pvt. Ltd.
7A, Bentinck Street,
2nd Floor,
(Old Wing), Kolkata – 700 001
26. Chitravali Dealers Pvt. Ltd.
7A, Bentinck Street, 2nd Floor,
(Old Wing), Kolkata – 700 001
27. Millenium Securities Pvt. Ltd.,
21A, Shakespeare Sarani,
3rd Floor, Kolkata – 700 017
28. S.B. Marine Products Ltd.
Milanpur, Rehabari,
Guwahati,
Assam – 781 008
29. Neeta Sarada, Wife of Ghanshyam Sarada,
187, Rabindra Sarani,
1st Floor,
Kolkata – 700 007
30. Agarpara Jute Mills Ltd.,
28, BT Road,
Kolkata – 700 058
31. Mahendra Saraswat,
187, Rabindra Sarani, Room No.47,
Kolkata – 700 007
32. Rabindra Kumar Walia,
18, Rabindra Sarani, Liluah,
Howrah – 711 204
33. Ramawatar Ashopa,
C/o, Sunbio Manufacturing Pvt. Ltd.
Daharia Mills, Katihar,
Bihar – 854 105

...Respondent Nos.1 to 33

Present: Shri Ashok Jain and Shri Aniket Bhattacharya, Advocates for the Appellant

Ms. Purti Marwaha, Advocate for the Respondent Nos.1 & 32

ORAL JUDGEMENT

16.02.2018

1. These 3 appeals arise out of same impugned order dated 7th December, 2017 passed by National Company Law Tribunal, Kolkata Bench, Kolkata ('NCLT' in short). The order is passed in CP No. 364 of 2010. Learned counsel for the Appellant, however, has referred to earlier orders of this Tribunal passed in Company Appeal (AT) 264 of 2017 on 16.08.2017. The learned counsel points out that after these orders were passed, Respondent No.1 in spite of directions that no interim application be filed in NCLT without prior permission, did file an application - CA No. 529 of 2017 seeking injunction and the NCLT after hearing the parties for such application went ahead to pass the present impugned order.

2. It would be appropriate to first refer to the order dated 16.08.2017 of this Tribunal. It was mentioned in para – 4 and 5 as under:

“4. The Appellant - 1st Respondent - Agarpara Jute Mills Ltd. ('Company' for short) filed an Interlocutory Application being Company Application No.69 of 2010 in main Company Petition No.364 of 2010 questioning the maintainability of the Company Petition under sections 397 and 398 of the Companies Act, 1956. According to appellant, the respondent – petitioners do not qualify

in terms of Section 399 of the Companies Act, 1956 (Section 244(1) of the Companies Act, 2013).

5. The Tribunal by impugned order dated 26th April 2017, ordered that the objection raised in Company Application No. 69 of 2010, shall be considered and decided along with the main Company Petition No. 364 of 2010. The respondents, including the appellants were directed to file reply within two weeks and petitioners (respondents herein) were allowed another two weeks' time to file rejoinder.”

3. The above gives a background as to how these parties came up to this Tribunal in the earlier round. On that occasion, after hearing the parties, this Tribunal passed the following orders:

“6.However, taking into consideration the fact that Tribunal has not decided such issue and has ordered to decide the same at the time of hearing the main Company Petition, this Appellate Tribunal is not inclined to decide such issue at this stage. Let the issue of maintainability be decided by Tribunal simultaneously at the time of hearing of the Company Petition. After hearing the parties and at the time of delivering the judgement, the Tribunal will decide the issue of maintainability and if it is answered in affirmative will decide the petition on merits. In order word while delivering the final judgement, if the maintainability is decided against the petitioners-respondents, the Tribunal may not decide the petition on merit.

7. It is informed that there are other Interlocutory Applications including Company Application No. 74 of 2010 etc. are also pending before the Tribunal. We are of the view that the Tribunal will hear all those Interlocutory Applications (CAs) at the time of final hearing and will decide after final hearing.”

Emphasis we have supplied. In fact, last sentence of para – 6 made it more than enough clear.

4. When the matter went before NCLT and the application as pointed out by learned counsel for the appellant is stated to have come up, strangely the order passed by NCLT reads as under:

“Ld. Counsel for the petitioners and the respondent nos.1, 13, to 16, 25, 26, 27 and 37 are present.

Hon’ble NCLAT has passed an order dated 16/08/2017 whereby direction has been issued for deciding the issue of maintainability and if it is answered in affirmative will decide the petition on merits. So in compliance of the said directions we have to decide the issue on maintainability first and thereafter if it is found that the petition is maintainable then the petition will be decided on merit.

Both the parties are directed to file written submissions within 2 weeks from today regarding the maintainability of the petition. Till then in the interest of justice both the parties are directed to maintain *status quo* regarding the fixed assets of the company as on today.

List on 18/01/2018 for disposal of I.A.”

5. The submissions of the learned counsel for the Appellant are that the NCLT could not have passed such order in the face of directions of the Appellate Tribunal which clearly required that the pending interim applications would be decided at the time of final hearing and the dispute raised about maintainability under Section 399 of the old Companies Act would also be decided simultaneously. According to the learned counsel, the Respondent No.1 – Petitioner could not have filed such application which had the effect of prolonging the matter further.

6. Advocate Ms. Purti Marwaha is present and she claims that she is representing the Respondent – The Agarpara Company Ltd. She accepts that CA 529 of 2017 referred above was moved by her client. Interestingly, advocate Shri Gaurav Kejriwal is also present and he claims that it is he who represents the Agarpara Company Ltd. He says that the Appeal No.19 of 2018 has been filed by him. Both the counsel claim to be instructed by different Directors of the Company. Both are not in-sink with each other.

It appears that similar contentions were raised before this Tribunal in the earlier round also which find reference in para – 9 of the order dated 16.08.2017 of this Tribunal. As directed earlier, the issue is left open to be determined by the Tribunal as to who represents Respondent No.1 – original Petitioner.

7. The parties are trying to raise disputes regarding the contents of the affidavit in reply filed in CA 37 of 2018 making grievances regarding what has

been mentioned and trying to raise disputes. We are not entering those fields as we find that to decide the present appeals, it is not necessary.

8. Reading the direction of this Tribunal as recorded in para-6 which we have reproduced above, it is shocking as to how the NCLT could have recorded in the present impugned order that in compliance of the directions of this Tribunal, it has to decide the issue on maintainability first. It is apparent misreading of directions, tearing portion out of context. We are refraining from recording further displeasure regarding such impugned order passed as we find that it is totally opposite to what was directed by this Tribunal. The present impugned order cannot be maintained for a minute.

9. The parties are now raising disputes regarding the directions of status quo directed in impugned order. The learned counsel Ms. Purti Marwaha is trying to refer to order of CLB dated 11th July, 2013 and observation in para – 8 of that order. She is trying to say that only because in that order words used were that the order would be effective “till the next date of hearing” will not mean that they are not to be followed without the same being set aside. We find that for deciding the present appeals, we are not required to deal with these issues in the matter. The present impugned order needs to go as a whole. It would be appropriate for NCLT to concentrate on the directions given by this Tribunal in para – 6 of the order dated 16.08.2017 and make serious efforts to dispose the matter at the earliest, as per directions in Order dated 16.08.2017.

10. Impugned order is set aside. NCLT may carefully re-examine the orders passed by this Tribunal in CA (AT) 264 of 2017 on 16.08.2017 and proceed in accordance with the same. All the above 3 appeals are disposed accordingly.

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

[Balvinder Singh]
Member (Technical)

/rs/nn