

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 237 of 2018

[Arising out of Order dated 31st May, 2018 passed by the National Company Law Tribunal, Allahabad Bench in Company Petition No. 80/ND/2015]

IN THE MATTER OF:

1. Dr. Anurag Dikshit

R/o J 112/102-A, Brij Villas,
Dhoopchandi,
Varanasi (U.P.) – 221010.

2. Mr. Deepak Kumar Bahal,

R/o 35, Jawahar Nagar,
Bhelupur,
Varanasi (U.P.) – 221010.

...Appellants

Vs

1. Galaxy Life Care Services Pvt. Ltd.

Having its Registered office at:
Plot No. 4, 5, 6 & 7 Dayal Enclave,
Mehmoor Ganj,
Varanasi (U.P.) – 221010.

2. Dr. V. D. Tiwari (Director)

Galaxy Life Care Services Pvt. Ltd.
Plot No. 4, 5, 6 & 7 Dayal Enclave,
Mehmoor Ganj,
Varanasi (U.P.) – 221010.

....Respondents

Present:

For Appellants: Mr. Abhay K. Das, Advocate.

For Respondents: Mr. Rajnish Sinha and Ms. Shreya Kohli, Advocates.

J U D G M E N T

BANSI LAL BHAT, J.

Judicial complicity in procrastination of proceedings, judicial or quasi-judicial in nature, is both undesirable and unwarranted. It is perhaps more so when the material facts are overlooked or glossed over. The instant case presents a typical instance of a flawed approach adopted in declining the Appellant to amend relief clause in his petition filed under Section 397/398 of the Companies Act, 1956 which was purely innocuous and sought a cosmetic change which was necessitated due to an event occurring post filing of the petition. The view taken by the Tribunal in passing the impugned order dated 31st May, 2018 in C.P. No. 80/ND/2015 is erroneous and cannot be sustained.

2. Having heard learned counsel for the parties briefly, we are of the considered view that the impugned order suffers from legal infirmity as well as factual frailty. Admittedly, the petition under Section 397/398 of the Companies Act, 1956 filed on 23.09.2015 was pending consideration when Shri Shashi Kant Dikshit was removed from Directorship in 2016. The event of removal of Shri Shashi Kant Dikshit from Directorship occurred after filing of the petition at a stage when the petition is being heard. The Appellant appears to have moved the application to amend the relief clause of the petition attributing such necessity having arisen on account of subsequent

events. It is queer that despite noticing the factum of removal of Shri Shashi Kant Dikshit from Directorship having occurred in 2016 well past the filing of original petition on 23.09.2015, the Tribunal observed that “*the proposed amendment is not on account of subsequent event*”. The observation, being factually incorrect, cannot be supported. Reliance placed by the Tribunal on Order 6 Rule 17 of Civil Procedure Code is of little value as proceedings under the Companies Act have no comparison with the trial of a suit. The proviso to the Rule is not attracted even if it is held that the aforesaid provision has application to proceedings under the Companies Act. It cannot be disputed that there is some delay on the part of Appellant in bringing the subsequent development to the notice of the Tribunal but that would not justify declining the proposed amendment more particularly as it seeks amendment in the relief clause without making any change or alteration in the body of the petition. In fact allowing of such amendment would enable the Tribunal to grant appropriate relief and spare it the exercise of modeling the relief to incorporate the relief as per subsequent events.

3. The impugned order, in the light of foregoing discussion, cannot be sustained and the same is set aside. The proposed amendment is allowed. The Tribunal is directed to allow the Appellant to incorporate the proposed amendment in the relief clause of the Company Petition pending consideration before it.

4. The appeal is allowed. The Tribunal is informed of the same.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

24th August, 2018

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