

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) NO.85 OF 2019

In the matter of:

Mahendra C Shah

Appellant

Vs

Champak K Mehta & Ors

Respondents

For Appellant: Mr. Rudreshwar Singh, Mr. Pai Amit, Mr. Diwakar R Singh, Mr Gautam Singh, Advocates.

For Respondents: Mr Vipul Ganda, Ms Shreya Jain, Ms Alkandra Celestine, Advocates R1,2.

ORDER

07.11.2019 – After arguing for a while learned counsel for the appellant offered to withdraw the appeal if liberty to raise the issue of maintainability of petition under Section 244 before the Tribunal is allowed to be raised.

2. We have gone through the impugned order and find that the issue in regard to maintainability in the context of eligibility/locus, raised through M.A., has not been decided by the Tribunal for reasons assigned in the impugned order. However, the fact remains that since the appellant is figuring as Respondent No.3 before the Tribunal and has not filed its counter/reply raising all the pleas including the plea of eligibility/locus, it would be appropriate that the prayer to withdraw the appeal is allowed and liberty is granted to raise the issue of locus/eligibility as a preliminary objection in the counter/reply. The appeal is accordingly disposed off as withdrawn with liberty to appellant to raise the issue of eligibility/locus as a

preliminary objection in the reply/counter which shall be taken up by the Tribunal and dealt with as a preliminary issue. We request the Tribunal to make all endeavours for deciding the issue of eligibility/locus before passing any interim directions. The assurance extended and undertaking given by learned counsel for appellant that the shareholding will not be diluted and no material change will be effected in regard to assets of the company is taken on record. The appeal is accordingly dismissed as withdrawn.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

Bm/nn