

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 206 of 2017

&

Company Appeal (AT) No. 221 of 2017

IN THE MATTER OF:

APC Credit Rating Pvt. Ltd.

...Appellant

Versus

ROC, NCT of Delhi & Haryana

...Respondents

Present: For Appellant :- Shri Pankaj Jain, Advocate

ORDER

19.07.2017 The appellant having violated different provisions of the Companies Act, 1956 filed two separate petitions under Section 441 of the Companies Act, 2013 for compounding the offence(s). The Tribunal vide two separate orders both dated 26th September, 2016 dismissed the petitions for the reasons mentioned therein. Thereafter, the appellant preferred two separate applications under Rule 154 of the National Company Law Tribunal Rules, 2016(hereinafter referred to as 'Rule, 2016) for review of both the orders dated 26th September, 2016 on the grounds that there are omissions the Tribunal having not taken into consideration the judgment of the National Company Law Appellate Tribunal (hereinafter

referred to as "Appellate Tribunal") dated 28th February, 2016 in ***M/s. Viavi Solutions India Private Limited & others vs. Registrar of Companies, NCT Delhi and Haryana - Company Appeal (AT) 49 etc. of 2016*** whereunder the Appellate Tribunal laid down the factors to be taken into consideration for compounding the offences. The Tribunal by two different impugned orders, both dated 28th April, 2017 while holding that the review cannot be confused with the appeal wherein one order can be replaced by another, further held that the imposition of compounding fee was considered as per judicial discretion of the Tribunal, taking into consideration of long period of defaults and dismissed both the review applications.

2. Faced with the aforesaid situation, in these appeals, the appellant has challenged both the orders dated 28th April, 2017 passed in review applications and the original order, dated 26th September, 2016. However, we find that the appellant has deposited lesser fee. However, on the assurance made on behalf of the appellant that appellant will deposit further fee of Rs.5,000/- within 15 days, we heard the Appeal.

3. In these appeals, one of the question arises is whether National Company Law Tribunal (hereinafter referred to as 'Tribunal') had the jurisdiction to review its order passed in a petition under Section 441 of the Companies Act, 2013.

4. The Companies Act, 2013, do not empower the Tribunal to review its own order and judgment. Under sub-Section (2) of Section 420, the Tribunal has been empowered to act any time within two years from the

date of the order, with a view to rectify any mistake apparent from the record, amend any order passed by it and to make such amendment, if a mistake is brought to its notice by the parties, which reads as follows :

“420. Orders of Tribunal.—

“(1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.”

5. The Tribunal has inherent power under Rule 11 of NCLT Rules, 2016, in terms of which the Tribunal may make such orders as may be

necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal, as quoted below:

“11. Inherent powers.-

Noting in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.”

6. Rule 154 of NCLT Rules, 2016, empowers the Tribunal to rectify its order, if there is any clerical or arithmetical mistake in the order of the Tribunal or error therein arises from any accidental slip or omission of its own motion or an application of any party by way of rectification, as quoted below:

“154. Rectification of Order.-

- (1) Any clerical or arithmetical mistakes in any order of the Tribunal or error therein arising from any accidental slip or omission may, at any time, be corrected by the Tribunal on its own motion or on application of any party by way of rectification.*
- (2) An application under sub-Rule (1) may be made in Form No. NCLT. 9 within two years from the date of the final order for rectification of the final order not being an interlocutory order.”*

7. The Tribunal has general power to amend within the period of 30 days from the date of completion of the pleadings, any defect or error in its proceeding before it but if the same relates to determination of the real question or issue raised or depending on such proceeding, as shown below:

“155. General power to amend.-

The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.”

8. From the aforesaid provisions, it is clear that there is no inherent power to review, as is under Order 47 Rule 11 of the Code of Civil Procedure, 1908 but the Tribunal has power conferred by sub-section (2) of Section 420 of the Act, 2013 to rectify any mistake apparent from the record and to amend the order accordingly.

9. The present case of the appellant do not fall within the meaning of ‘mistake apparent on the face of the record’ of appellant and therefore, there was no occasion for Tribunal to exercise power conferred by sub-section (2) of Section 420 of Act, 2013.

10. The inherent power, as provided under Rule 11, is for making such order for meeting the ends of justice or to preventing abuse of justice, or if necessary for meeting the end of justice or abuse of process of Tribunal.

But such power can be exercised during hearing of an application/appeal and not after disposal or for review of its own order.

11. The appellant(s) filed the petition under Rule 154, which relates to rectification of order, if there is clerical or arithmetical mistakes in the order or error arising from any accidental slip or omission, as may occur. But such power cannot be exercised to review an order or judgment, in absence of clerical or arithmetical mistakes.

12. We do not agree with the submission made on behalf of the counsel for the appellant that non-reference to any one or other judgment passed by the Appellate Tribunal or any court of law falls within the category of "omission" by the Tribunal. For the purpose of rectification of any order under Rule 154, the omission must be such, which should be related to the case. In absence of any evidence to show that a judgment of Appellate Tribunal or Court was referred, it cannot be accepted to be an "omission" by Tribunal. Further no Court or Tribunal is bound to refer all or any judgment cited by anyone or other party, whether relevant or irrelevant.

13. For the reasons aforesaid and as the Tribunal has no general power to review its own order or judgment, we uphold the impugned orders dated 24th April, 2017 passed by Tribunal.

14. In so far as the original orders both dated 26th September, 2016 is concerned, we are not inclined to decide the case on merit in respect to the aforesaid orders, which are reached finality in view of Section 421 of the Companies Act, as quoted below:

“421. Appeal from orders of Tribunal.—

- (1) *Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.*
- (2) *No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.*
- (3) *Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:*

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

- (4) *On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.*
- (5) *The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.”*

15. As per sub-section (3) of Section 421, every appeal is required to be filed under sub-Section (1) within 45 days from the date on which the copy of the order of the Tribunal is made available to the person aggrieved. As the Appellate Tribunal is empowered to entertain an appeal after expiry of

the said period of 45 days from the date of receipt of the order but such power can be exercised only within a further period not exceeding 45 days that is total 90 days. If order(s) dated 26th September, 2016 were communicated the appellant(s) in October, 2016 [actual date not supplied by the appellant(s)], even then, we find that now more than 9 ½ months have passed and thereby the Appellate Tribunal has no power to condone the delay. For the said results, we express our inability to interfere with the impugned orders both dated 26th September, 2016 and reject such prayer.

16. We find no merit in these appeals. They are accordingly dismissed. However, in the facts and circumstances, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)