

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
COMPANY APPELLATE JURISDICTION**

**Company Appeal (AT) No. 24 of 2017**

**(arising out of Order dated 10<sup>th</sup> January, 2017 passed by  
National Company Law Tribunal, Kolkata Bench, in C.P.  
No. 163/2015)**

**IN THE MATTER OF:**

**Mr. Pramod Khosla**

**... Appellant**

**Vs**

**M/s. Khosla Steel Industries  
Pvt Ltd. & Ors.**

**... Respondents**

Present:

For Appellant :-

Mr A.K. Srivastava alongwith  
Ms Manjulika Pal, Advocates

For Respondents:-

Mr Rajiv Ranjan, Senior  
Advocate alongwith Mr  
Sanjay Kumar Gupta and Mr  
Sanjay Grover, Practising  
Company Secretaries.

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

This appeal has been preferred by Appellant - Respondent - Pramod Khosla against order dated 10<sup>th</sup> January, 2017 passed by the National Company Law Tribunal, Kolkata Bench (hereinafter referred to as Tribunal) in C.P. No. 163/2015 whereby and where under the Tribunal allowed the petition filed by Respondents/Petitioners under Section 397 and 398 of the Companies Act, 1956 and passed the following direction:-

***“ORDER***

*Company Petition is hereby allowed and the respondent nos. 2,3 and 4 are restrained from representing themselves as directors of the company and the Registrar of Companies is also directed to delete the names of the*

respondent nos. 2 to 4 from the Signatory details of MCA portal of R-1 company and further direction is being issued to allow the four Directors nominated by the holding company to file the form No. 32/DIR-12 using the digital signature of any of them and to reflect the correct position in the signatory details of MCA portal by showing the names of all four nominee directors of the holding company. The respondent Nos. 2,3 and 4 are also being directed to hand over the register, records, returns, books, documents pertaining to the affairs of the company which are in their possession. The respondent nos. 2,3 and 4 are further restrained from dealing with, disposing of, encumbering, alienating and/or transferring the properties, assets, investments of the company in any manner whatsoever.

*There will be no order as to costs."*

2. The Ld. Counsel for the Appellant assailed the impugned order on the ground(s) that the impugned order is perverse, not based on evidence and no reasons have been shown as a result of non-application of mind; and that the Tribunal exceeded its jurisdiction by reviewing an earlier order and judgment passed by erstwhile Company Law Board.
3. Ld. Counsel for the Appellant further submitted that the power exercised by Tribunal amounts to sitting in appeal over the decision of the High Court which has already passed an interim order in a case preferred by Mr Bishender Singh against the order and judgment passed by Company Law Board.
4. In this regard it is submitted that the Jharkhand High Court vide order dated 2<sup>nd</sup> May 2013, has already ordered for investigation by the Income Tax Department, without deciding the case on merit concerning the dispute of purported ownership and membership rights of the appellant with respondents i.e., between the Khosla family members on the one hand and some rank outsiders on the other in connivance with some of the members of Khosla family.
5. Ld. Counsel appearing on behalf of Respondents refuted the allegations and submitted that the present subject matter of the petition under Section 397 and 398 of the Companies Act, 1956 was not the subject matter of the earlier case.

6. The brief fact of the case is that the appellant - Pramod Khosla & Anr., filed one Company Petition No. 216/2012 before the Company Law Board alleging oppression and mismanagement against Respondent Mrs. Neelam Khosla who is the sister-in-law of the Appellant & others. It was pleaded that the Appellant and others were entitled for one third share capital of Respondent No.1 company - M/s. Khosla Steel Industries Private Limited. It was also pleaded that the Respondent No. 1 company was a family company of Khosla family. The appellant - Pramod Khosla, his wife Mrs Sarita Khosla, younger brother Kishore Khosla and his wife Mrs Veena Khosla, were eligible as directors after Mrs Neelam Khosla left Jharkhand in 2004 and settled down at Delhi.

7. As the company was in financial crunch, the Appellant - Pramod Khosla, along with Kishore Khosla approached one Mr Bishendar Singh for a temporary loan of Rs.14 lakhs to tide over the temporary financial crunch. However, Mr Bishendar Singh put a condition to appoint him as a director in the company till the loan is repaid. In that background he was appointed as Additional Director of the company on 10<sup>th</sup> August, 2011. It is alleged that one Company Secretary in connivance with Mr Bishendar Singh filed Form 32 showing him as a promoter director rather than as Additional Director. The said Mr Bishendar Singh took the factories of the company located at Adityapur Industrial area, Jharkhand in his illegal possession and control. He took control of the factory with the help of criminals and in connivance with Mrs Neelam Khosla for which FIR has been lodged.

8. It appears that with regard to fraudulent filing of Form 32, the Appellant along with another registered an FIR at Jhamshedpur and thereafter filed the Company Petition No. 216 of 2012 before the Company Law Board. In the said case, the Company Law Board by judgment dated 20<sup>th</sup> March 2014 declared the company - M/s. Khosla Steel Industries Private Limited is being owned by the members of Khosla family and directed the Appellant along with Mrs Neelam Khosla to carry on the business. At the same time, Mr Bishendar Singh was directed to leave the company.

9. Against the said order of Company Law Board, Mr Bishendar Singh and Mrs Neelam Khosla preferred an appeal before the Jharkhand High Court, Ranchi in C.A No. 4/2014. The Appellant also filed another appeal against the said

order. In the appeals filed by both the parties before the Jharkhand High Court, an interim order was passed on 2<sup>nd</sup> May 2014 directing investigation into the claim of Mr Bishendar Singh and Mrs Neelam Khosla about payment made in cash for allotment of shares in the company claiming themselves as owner of the company having 90.70% of shares in their control.

10. In the present appeal, the Appellant have not filed the copy of the Company Petition No. 163 of 2015 preferred by Respondents, M/s. Khosla Steel Industries Private Limited and Mrs Neelam Khosla. Therefore, it is not clear as to what was the reasons and grounds taken by them in preferring the said Company Petition.

11. However, from the impugned judgment we find that the Respondent - Khosla Steel Industries Private Limited and Mrs. Neelam Khosla had earlier filed one Company Petition 647 of 2012 with Company Law Board on 23<sup>rd</sup> July 2012 alleging acts of 'oppression and mismanagement' of M/s. K India Private Ltd by Mr Pramod Khosla, Mr Kishore Khosla etc., one of whom is the Appellant. The said petition was dismissed by the Company Law Board not on merit but on the ground that the winding up case was pending before the Jharkhand High Court. Since the winding up petition was dismissed, the Respondent - Khosla Steel Industries Private Limited and Mrs Neelam Khosla re-agitated the dispute and prayer in the (present) Company Petition 163 of 2015. It was in this background the Tribunal noticed the claim made by the Respondents who sought for declaration that the Board's meeting held by nominated directors i.e., the holding company, are legal and correct. Necessary declaration was also sought for that Board's meeting of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents (Appellants herein) after 27<sup>th</sup> February 2012 are illegal and incorrect. Necessary declaration was also sought to direct the Registrar of Companies to delete the name of Respondent 2 to 4 from the Signatory List of MCA portal, some of whom are appellants herein.

12. From the aforesaid facts it would be clear that the present Company Petition was filed with similar prayer as was made in earlier Company Petition No. 647 of 2012 which was not entertained in view of pendency of the winding up case. However, in view of the dismissal of the winding up petition, the Respondents re-agitated their claim as was made in Company Petition No. 647 of 2012. We find nothing wrong in moving such application re-agitating the matter.

13. Curiously, the Appellant has highlighted only the facts which are to their advantage. The other relevant facts including the allegation of 'oppression and mismanagement' as was alleged against the Appellant and others by the Respondents in their Company Petition No. 647 of 2012, has been suppressed. Even the copy of the Company Petition No. 647 of 2012 has not been enclosed to compare with the prayer as made in Company Petition no. 216 of 2012 preferred by Appellant and to find out whether there is any conflicting decisions of the Company Law Board and the Tribunal.

14. Further, we find that while the appellant and others alleged oppression and mismanagement against one Mr Bishender Singh, such prayer was not made by the Respondents in their Company Petition, where oppression and mismanagement has been made against the appellant and Mr Kishore Khosla. Therefore, the prayer seems to be different.

15. As the Appellants have suppressed the material fact, including the prayer and fact relating to Company Petition No. 647 of 2012, which was re-agitated in Company Petition No. 163 of 2015 and prayer seems to be different in the two different Company Petitions, it is not possible for the Appellate Tribunal to hold that the impugned order dated 12<sup>th</sup> January 2014 amounts to review of earlier order dated 20<sup>th</sup> March 2014 passed by Company Law Board in Company Petition No. 216/2012. For the same reason it is also not possible for this Appellate Tribunal to hold that the impugned order is conflicting with the order passed by the Hon'ble Jharkhand High Court.

16. The appeal is accordingly dismissed. However, there shall be no order as to cost.

(Mr. Balvinder Singh)  
Member (Technical)

(Justice S.J.Mukhopadhaya)  
Chairperson

NEW DELHI  
3<sup>rd</sup> May, 2017

rc