

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 264 of 2017

IN THE MATTER OF:

Agarpara Jute Mills Ltd.

...Appellant

Vs.

The Agarpara Company Ltd. & Ors.

...Respondents

Present: For Appellant: - Mr. Amit S. Chadha, Senior Advocate with Mr. Atanu Mukherjee, Advocate.

For Respondents: - Mr. Arvind Kumar, Advocate for Respondent No.1

Mr. Sanjeev Sen, Senior Advocate with Mr. Gaurav Kejriwal, Advocate.

Mr. Krishnendu Datta and Mr. Rohan Malik, Advocates for Respondent No.18.

Mr. Gopal Jain, Senior Advocate with Mr. Ashok Jain and Ms. Kriti Awasthi, Advocates.

ORDER

16.08.2017- The Appellant- Agarpara Jute Mills Ltd, has challenged the order dated 26th April 2017 passed by National Company Law Tribunal (hereinafter referred to as "Tribunal"), Kolkata Bench, Kolkata in Company Petition No.364 of 2010.

2. According to appellant, the free certified copy of the order was supplied by Tribunal to the appellant on 9th May, 2017. As per the provision of the Act, the appeal was required to be filed within 45 days i.e. 23rd June, 2017, but that was during summer holidays of the Appellate Tribunal. The appeal was filed subsequently on 1st August,

2017 but being defective the counsel was informed on 2nd August, 2017 to remove the defect and the appeal was represented after curing the defects on 9th August, 2017. Thus there is a delay of 45 days in preferring the appeal.

3. Having heard Mr. Amit S. Chadha, Ld. Senior Counsel for the appellant and Mr. Arvind Kumar, Ld. Counsel for the Respondents and being satisfied with the ground, delay of 45 days of the presentation of the appeal is condoned. Interlocutory Application No. 462 of 2017 stands disposed of.

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.

6. Ld. Counsel for the appellant raised the question of maintainability of the petition under Sections 397 and 398 of the Companies Act, 1956 on the ground that the respondents-petitioners do not qualify in terms of Section 399 of the Companies Act, 1956. 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 judgment, the Tribunal will decide the issue of maintainability and if it is answered in affirmative will decide the petition on merits. In other word while delivering the final judgment, 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.

8. As it is informed that as the Appellant has not filed reply to the Company Petition as ordered by Tribunal because of pendency of this appeal and in effect the respondents-petitioners also could not file any

rejoinder. We allow the appellant-respondent and other respondents to the Company Petition to file their respective reply by 30th August, 2017. The respondents/petitioners in their turn may file rejoinder by 14th September 2017. Parties are also directed not to prefer any further interim application without prior permission of the Tribunal, which is required to decide the main Company Petition expeditiously, preferably by October, 2017.

9. At this stage, it is desirable to note that while Mr. Sanjeev Sen, Ld. Senior Counsel along with Mr. Gaurav Kejriwal, instructing Advocate have appeared on behalf of Respondent-Agarpara Company Ltd. and Mr. Arvind Kumar Gupta, Advocate, submit that he has been authorised by Respondent- Agarpara Company Ltd. to appear. Having heard the counsel, we keep this issue open for determinate by the Tribunal.

10. With the above observations, the appeal stands disposed of. However, in the facts and circumstances of the case there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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