

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) No. 255 of 2019

IN THE MATTER OF:

Mackintosh Burn Ltd & Ors.

...Appellants

Vs

Sarkar & Chowdhury Enterprises Pvt Ltd & Ors.

....Respondents

Present:

For Appellants: Mr. Jayant Mehta, Mr. Suhaan Mukerji, Mr. Ravinder Singh, Mr. Abhishek Manchanda, Ms. Smiti Verma and Mr. Raj Shukla, Advocates

For Respondents: Mr. Abhijeet Sinha, Mr. Vikrant Pachnanda, Mr. Debayan Sen and Mr. Saikat Sarkar, Advocates for Respondent No. 1

ORDER

25.09.2019 Learned Counsel for the Appellant submits that in absence of any appeal preferred before this Appellate Tribunal against the order dated 18.09.2018 passed by National Company Law Tribunal, Kolkata Bench, Kolkata (hereinafter referred to as Tribunal), within two years of filing of application, is maintainable under Section 420(2) of the Companies Act, 2013 if there is error apparent on the face of the record. According to him, if the said provision of Section 420(2) of the Companies Act, is read with Rule-11 of NCLT Rules, 2016, it empowers the Tribunal to review its order within aforesaid period. It is stated that the Appellant has filed a Review Application in terms of the aforesaid provision, there being conflicting observation made in paragraph -2 in the order dated 18.09.2018 and the matter is pending. It is for the said reason, request was made before the Tribunal for review of the order but impugned order to execute decree was passed in exercise of power conferred under Section 424(3) & (4) of the Companies Act, 2013.

Learned Counsel for the Appellant, after some arguments and in view objection raised by the learned Counsel for the 1st Respondent about raising question of maintainability on the ground that the Tribunal has power under Section 424(3) & (4) of the Companies Act, 2013, learned Counsel for the Appellant sought permission to withdraw the appeal enabling the Tribunal to decide the Review Application.

Having heard the learned Counsel for the parties and taking into consideration the prayer made by learned Counsel for the Appellant, we are not raising the question of merit of order dated 18.09.2018 which is not under challenge nor inclined to interfere with the impugned order dated 27.08.2019. However, to give liberty to pursue the Review Application, if filed but not yet decided by the Tribunal. In such a case, the Tribunal will consider the same in accordance with law expeditiously after notice to the parties.

The appeal stands disposed as withdrawn with the aforesaid observations.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Sk