

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 167 of 2017

IN THE MATTER OF:

Rachit Suresh Gangar & Ors.

... Appellants

Versus

**Triveni Bialleti Industries Private
Limited & Ors.**

... Respondents

Present: For Appellants : Appellant No. 1 in person.

**For Respondents Nos. 1 & 5: Shri Arun Kathpalia, Senior
Advocate with Shri Sahil Narang and
Ms. Suriti Chowdhary, Advocates**

ORDER

26.07.2017 The appellants have challenged the order dated 8th March, 2017 passed by the National Company Law Tribunal (hereinafter referred to as 'Tribunal'), Mumbai Bench, Mumbai in C.P. No. 48/397-398/NCLT/MAH/2011, whereby and whereunder the application preferred by the appellants/petitioners under Sections 397, 398, 402, 403 and 406 of the Companies Act, 1956 has not been entertained on the ground that the appellants/petitioners have failed to prove their case in all respects with the following observations and directions :

“62. Though the petitioners have failed to prove their case in all respects, since the company is in losses and not making anything, and since many

years have gone by and the demerger process is pending before the Hon'ble High Court of Bombay, this Bench being conferred with the jurisdiction to pass orders which are just and equitable to bring the dispute to a logical end and in the interest of justice, the respondents are hereby directed to provide exit to the petitioners on fair valuation taking 31st March 2016 as cut-off date within 15 days from the date order is made available. Accordingly, this petition is disposed of."

2. 1st Appellant, present in person, while assailing the impugned order, submits that apart from the fact that the appellants were removed as Directors of the first Respondent Company in 2011, during the pendency of the petition before the Tribunal i.e. on 1st June, 2016, the appellants could come to know further act of 'oppression and mismanagement' on the part of the respondents they having sold the property of the first Respondent Company without any notice to the appellants or calling for any Extra Ordinary General Meeting. However, it is accepted that the aforesaid fact was not brought to the notice of the Tribunal and that the facts as now highlighted arises out of subsequent cause of action than the cause of action as taken place in their removal as Directors of the Company

for which company petition under Sections 397 and 398 of the Companies Act, 1956 was preferred.

3. Learned counsel for the respondent submits that no act of 'oppression and mismanagement' has been committed even during the pendency of the petition and the appellants/petitioners had the knowledge about all the actions at all relevant point of time. However, we are not inclined to give any finding in regard to such allegations as the aforesaid facts were not brought to the notice of the Tribunal and no such pleading was made in the petition as was preferred before the Tribunal.

4. However, from the last portion of the impugned order, we find that the Tribunal while held that the appellants/petitioners have failed to prove their case in all respects giving reference to a demerger process pending before the High Court of Bombay, the Tribunal exercised its powers conferred under Section 242 of the Companies Act, 2013 in passing order on 'just and equitable ground' to bring so called dispute to a logical end and directed the respondents to provide exit to the appellants/petitioners on fair valuation taking 31st March, 2016 as cut-off date.

5. We are of the view that the Tribunal has no jurisdiction to pass such directions under Section 242 once it comes to a definite

conclusion that there was no oppression and mismanagement, and merely stating “just and equitable ground to bring the dispute to logical end”. In a petition preferred by the petitioners once the Tribunal hold that the petitioners have failed to prove their case, in all respects, no power is vested with the Tribunal under Section 242 of the Companies Act, 2013 to pass any direction under Section 242 of the Companies Act. Learned counsel for Respondents Nos. 1 and 5 also accepts such legal proposition and submits that the respondents have no objection if the last portion of the direction given by the Tribunal is deleted from the impugned order.

6. In such circumstances, while we uphold the order passed by the Tribunal to the extent that the appellants/petitioners have failed to prove their case in all respects, rest part of the observations and directions given in paragraph 62 of the impugned order and quoted above are set aside.

7. Appellant No. 1, who is present in person, representing Appellants Nos. 2 and 3, sought liberty to file a separate Company Petition on the basis of fresh cause of action of which they came to know after 1st June, 2016. In this regard, we may observe that no such liberty is required to be given to any member of a Company as it is always open to the aggrieved member(s), if they feel that they have

been oppressed and the Company is mismanaged, to prefer a petition under Sections 241 and 242 of the Companies Act, 2013 for a fresh cause of action, subject to qualifying under Section 244. However, the aforesaid observation as made by us should not be treated as an observation in favour of either of the parties or a liberty granted to the appellants to file a petition under Sections 241 and 242 of the Companies Act, 2013.

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

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)