

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 58 of 2018

IN THE MATTER OF:

Dhananjay Krishnanath Gaikwad & Ors.

...Appellants

Vs

Tuljabhavani Cold Storage Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellants: Mr. Rahul Chitnis and Mr. Aaditya A. Pande, Advocates.

For Respondents: Mr. Santosh Mishra, Mr. Kaushik Poddar and Mr. Gautam Singh, Advocates.

ORDER

09.03.2018: 2nd Respondent (Petitioner) Filed C.P. No. 32 of 2016 under Section 241, 242, 59, 246, 337 to 341 of the Companies Act, 2013 before the erstwhile Company Law Board (CLB). It was transferred to the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as 'Tribunal'). In spite of time granted to the appellants, they failed to file reply and also failed to execute the undertaking given earlier to pay the amount in favour of Respondent no.2 (Petitioner) in terms with the settlement reached between the parties. In this background, the Tribunal passed the impugned order dated 11th January, 2018 in T.C.P. No. 32/(MAH)/2016 which reads as follows:

“ORDER

T.C.P. No.32/59, 241-242/NCLT/MB/MAH/2016

- 1. The Learned Representatives of both the sides are present.*

2. *The Respondent failed to execute the Undertaking given on the last occasion.*
3. *No payment has been made. He has also failed to comply the directions of this court. Again a costs of Rs.10,000/- is imposed to be paid to the Petitioner.*
4. *The right to file the Reply by the Respondent is forfeited.*
5. *Since there is no possibility of any Amicable Settlement matter is now listed for Final Hearing on **23.02.2018 at 2.30 PM.** ”*

2. This Appellate Tribunal issued a limited notice to the respondents as to why the appellants be not given another opportunity to file the reply subject to payment of a cost of Rs.20,000/- in addition to the cost of Rs.10,000/- already imposed by the Tribunal.

3. Learned Counsel appearing on behalf of the 2nd Respondent (Petitioner) submits that the opportunity to give reply may be forfeited on the ground that the Undertaking given by the Appellants to pay the amount in terms of the settlement has not yet been paid.

4. We asked the learned counsel for the Appellants as to whether the Appellants will comply with the directions of the Tribunal by paying the amount in terms with the settlement. But no specific reply given on behalf of the Appellants. Appellants state that they are not in a position to pay the amount

in terms of the settlement and thereby could not comply with the directions of the Tribunal.

5. In view of the stand taken by the Appellants and reasons as recorded above, we are not inclined to interfere with the impugned order. The appeal is dismissed. No Cost. Any observations as made above will not come in the way of the Tribunal to pass any appropriate order in accordance with law.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc