

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 29 and 30 of 2016

**Mr. Surojit Kumar, Mr. Lakhi Chand
And Mr. Anil Singh**

.... Appellants

Vs.

Registrar of Companies, Kolkata

.... Respondents

Present: For Appellant: - Mr. Anil Murarka, PCS

ORDER

06.01.2017 - The appellants have filed the Company Appeal No. 29 of 2016 for following relief: -

"In view of the facts mentioned in para 7 above, facts in issue and questions of law set out in Para 8, the Appellants prays for the following relief(s):

- (a) Stay of operation of Order dated 31st August 2016;*
- (b) Stay of all further proceedings against the Appellants in respect of the alleged violations of Section 209(3)(b) of the Companies Act 1956 as mentioned in the Compounding Applications in relation to Financial Statement of Kiev Finance Ltd. from 31st March 2011 to 31st March 2014;*
- (c) An Order of injunction restraining the RoC and/or MCA from taking steps or further steps on the basis of the impugned Order dated 31st August 2016;*
- (d) The Compounding Applications filed by the Appellants being the Directors of the Company u/s 209(3)(b) of the*

companies Act 1956 in respect of the Financial Statement of the Company as at 31st March 2011 to 31st March 2014 be considered only under the provisions of Companies Act 1956;

(e) The Compounding Amount in respect of Compounding Applications of the Appellants for alleged violations of Section 209(3)(b) of the Companies Act 1956 in respect of the Financial Statement of the Company as at 31st March 2011 to 31st March 2014 be considered in light of the provisions contained in Companies Act 1956;

(f) Circular issued by MCA on 4th April 2014 be considered while hearing of the Appeal in respect of the Compounding Applications of the Appellants in respect of Financial Statement of Kiev Finance Ltd. as at 31st March 2011 to 31st March 2014;

(g) Ad-interim Order in terms of prayers above;

(h) Such further or other Order or Orders be passed and/or a direction or directions be given as this Hon'ble Appellate Tribunal may deem fit & proper."

2. The other Company Appeal No. 30 of 2016 has been preferred by the appellants for similar relief, which reads as follows:

"In view of the facts mentioned in para 7 above, facts in issue and questions of law set out in Para 8, the Appellants prays for the following relief(s):

(a) Stay of operation of Order dated 31st August 2016;

(b) Stay of all further proceedings against the Appellants in respect of the alleged violations of Section 217(3) of the Companies Act 1956 as mentioned in the Compounding Applications in relation to Financial Statement of Kiev Finance Ltd. from 31st March 2011 to 31st March 2014;

- (c) *An Order of injunction restraining the RoC and/or MCA from taking steps or further steps on the basis of the impugned Order dated 31st August 2016;*
- (d) *The Compounding Applications filed by the Appellants being the Directors of the Company u/s 217(3) of the companies Act 1956 in respect of the Financial Statement of the Company as at 31st March 2011 to 31st March 2014 be considered only under the provisions of Companies Act 1956;*
- (e) *The Compounding Amount in respect of Compounding Applications of the Appellants for alleged violation of Section 217(3) of the Companies Act 1956 in respect of the Financial Statement of the Company as at 31st March 2011 to 31st March 2014 be considered in light of the provisions contained in Companies Act 1956;*
- (f) *Circular issued by MCA on 4th April 2014 be considered while hearing of the Appeal in respect of the Compounding Applications of the Appellants in respect of Financial Statement of Kiev Finance Ltd. as at 31st March 2011 to 31st March 2014;*
- (g) *Ad-interim Order in terms of prayers above;*
- (h) *Such further or other Order or Orders be passed and/or a direction or directions be given as this Hon'ble Appellate Tribunal may deem fit & proper."*

3. On 16th December 2016 when the matter was taken up, the Court noticed that in the Index wherein the appellant has enclosed a so called copy of the impugned Order dated 30th September 2016 passed in C.P.No. 120/2015, which reads as follows: -

"Ld. Pr CS is present for the applicants.

Mr. Anil Murarka, Pr. CS representing the applicants submitted that compounding application under Section 209(3)(b) of the Companies Act, 1956 was heard and

decided on 5th August 2016. The Pr. CS has stated that his application for review of the order be admitted and the error in the order be rectified.

The impugned order has been passed on merit. NCLT does not have any power to review its order. However, if applicants have any grievance they may prefer appeal before the appropriate Court. The application for review is not maintainable, hence dismissed.”

4. The same very Order alleged to have been impugned in the analogous appeal.

5. Earlier the appellants were allowed time to file the copy of the Order dated 5th August 2016 which they wanted for review.

6. Two copies of the Order both dated 5th August 2016 have been filed, one passed in C.P. No. 119 of 2015 and the other passed in C.P.No. 120 of 2015.

7. From the perusal of both the Orders dated 5th August 2016 we find that on two separate applications both under Section 621 A of the Companies Act 1956, the NCLT, Kolkata Bench were filed for compounding offence. Therein lesser penalty has been imposed. However, both the Orders dated 5th August 2016 are not under challenge.

8. In the aforesaid background and as no substantive relief has been sought for in both the appeals as quoted above, which are interim in nature or a question of law raised which can be determined only on challenge of the Orders dated 5th August 2016, we find no reason to entertain these two incomplete appeals. Accordingly, both Company Appeal No. 29 of 2016 and Company Appeal No. 30 of 2016 are dismissed.

9. However, liberty is given to the appellants to challenge the Orders dated 5th August 2016 passed in C.P.No. 120 of 2015 and 119 of 2015 passed by

NCLT, Kolkata Bench if they are aggrieved, along with petition for condonation of delay if any, explaining the delay.

(Justice S.J. Mukhopadhyaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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