

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Dated: 19.10.2016

Company Appeal (AT) No. 12 of 2016

IN THE MATTER OF:

Shri Fidaali Moiz Mithiborwala & Anr. ... Appellant

Vs.

M/s.Aceros Fortune Industries Pvt. Ltd & Ors ...Respondents

Present:

Ms Tasneem Ahmedi, Mr Sujit Gupta, Mr Rahul Kumar Singh and Ms Shubhi Khare, Advocates for Appellants

Mr. Saurabh Kalia, Advocate for Respondents

ORDER

Heard the parties.

This appeal has been preferred by the appellant Shri Fidaali Moiz Mithiborwala & Anr., against the common order dated 23.8.2016, passed by the National Company Law Tribunal (hereinafter referred to as Tribunal), Mumbai Bench, Mumbai in C.P No. 64 to 68 of 2015. By the impugned order, the Tribunal rejected CA 12/2016 was rejected without costs. However, the Tribunal directed the appellant to nominate a member from their side, within 15 days after the order has been communicated to the appellant or the appellant's counsel or else the Chairman is at liberty to proceed with the sale of the assets with the assistance of respondent's side and also to ensure that the sale proceeds are put in an escrow account till the same is paid towards one time settlement agreed upon. The chairman has been directed to ascertain the real value of the property before confirming the sale, if any, takes place.

2. C.P No. 64 to 68 of 2015 were filed by the appellant under (old) Section 397 and 398 of the Companies Act, 1956 (Section 241 of the Companies Act, 2013) alleging mismanagement and oppression by the respondents. By one common order dated 9th November 2015, the Tribunal, Mumbai Bench, Mumbai, allowed the appellant/petitioner to carry out the inspection of the documents of the respondent group of companies and gave liberty to the respondents to proceed further to sell the Survey No. 609, Rangpar village, Morbi taluka, Rajkot District in the name of M/s. Majolica Impex Pvt. Ltd; survey No. 626, Paikki-1, Rangpar village, Morbi Taluka, Rajkot district in the name of M/s. Majolica Properties (India) Pvt Ltd., & and ors. and survey No. 626, Paikki-2, Rangpar village, Morbi Taluka, Rajkot district in the name of M/s. Aceros Fortune Industries Pvt. Ltd., & Ors. to make payment towards the loans pending against these companies against the notice issued under SARFASI Act.

3. By another order dated 25.1.2016, Mr. Mukesh Trivedi, Chartered Accountant, was appointed as mediator-cum-facilitator to resolve the issue between appellants and respondents. It appears that Mr Mukesh Trivedi, Chartered Accountant, a common family friend, submitted his preliminary report-cum-opinion wherein he requested the Hon'ble Bench to recuse him from the assignment. Thereafter, the Tribunal, with the intention to resolve the dispute, directed the parties to form a committee by nominating one of their representatives and for that purpose to name a retired Judge of the High Court to chair the Committee with joint consensus. But no agreement was reached. Subsequently, Mr Rohit Chowksi, Chartered Accountant, partner of M/s. G.K. Chowksi & Co., was appointed as Facilitator. According the appellant, the said Mr. Rohit Chowksi was appointed by the Tribunal without the consent of the parties. The appellant has raised objection with regard to the appointment of said Mr. Rohit Chowksi. In the meantime, one or other application were filed before the CLB. Since 1.6.2016, after the constitution of the Tribunal, the matter was taken up by the Tribunal. The Tribunal by detailed impugned Common Order dated 23.8.2016, while referring to one or other order passed by the CLB and history and background of the case, observed that parties have agreed to sell the properties and there was no question to recall any earlier order.

4. Earlier when the matter was taken up by this Appellate Tribunal on 3.10.2016, Mr Saurabh Kalia, Advocate, appearing on behalf of the respondents, accepted the notice. He was asked to produce the consent order for sale of properties if any, passed by the C.L.B or the Tribunal in the impugned order. However, we find that there is no such consent order passed by the CLB or by the Tribunal appointing Mr Rohit Chowksi, Chartered Accountant, as Facilitator or Consent Order to sell any property.

5. The grievance of the appellant is that there is mismanagement and oppression by the respondents. We have noticed that the appellant is the elder brother of respondents or in-laws. Though five companies are there, it is essentially family business. On hearing the parties, we find that there is less chance of any settlement between the parties. One of the grievance of the appellant is that the two companies had never taken any loan, therefore there was no occasion to sell the properties of those companies to settle the debt amount of a third company. However, we are not inclined to decide the question whether such sale is permissible or not or whether any such action on the part of the respondents amounts to oppression and mismanagement, which may be decided by the Tribunal.

6. As one of the party do not want to settle the dispute and have never agreed to sell any property of the company through the Facilitator, we are of the view that the Tribunal should not force the party to facilitate sale of company properties by an interim order.

7. Further, Section 422 of the Companies Act, 2013 deals with expeditious disposal of Petitions by Tribunal or Appellate Tribunal. As per the new law, every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal **within three months from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.**

8. Under sub-section (2) of Section 422, where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

9. That means if the reason shown by Tribunal is not satisfactory, then in that case it is open to the President or the Chairperson to place the case before any other Bench for its expeditious disposal.

10. Now more than three months have passed, there is nothing on record to suggest that sub-section (2) of Section 422 of the Companies Act, 2013 has been complied with by the Tribunal (Mumbai Bench) Mumbai. In this background, while we set aside the totality of impugned Common Order dated 23.8.2016 passed in C.P No. 64 to 68 of 2015 and remit the matter to the Tribunal,

Mumbai Bench, Mumbai for final disposal of the Company Petitions, direct the Bench to act in terms of sub-section (2) of Section 422.

11. In the meantime, the respondents are directed not to sell any immovable property of the respondent companies till the final disposal of all the Company Petitions.

12. Parties are also directed to cooperate with the Tribunal for early disposal of the Company Petitions and will not ask for unnecessary adjournment of the case. If the parties do not cooperate, the Tribunal may proceed with the matter *ex-parte* and pass final judgement. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)