

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 22 of 2017

IN THE MATTER OF:

Mr Vinod Kumar Sharma ... Appellant

Vs.

M/s. Bhawani Cold Storage Pvt. Ltd. & Ors. ... Respondents

**Present: For Appellants:- S/Shri Dhananjay Garg,
Abhishek Garg and Deepak Mishra, Advocates**

ORDER

09.02.2017 – The Appellant has preferred this appeal against the order dated 18th November, 2016 passed by National Company Law Tribunal (hereinafter referred to as Tribunal), Allahabad Bench, Allahabad in C.A No. 223 of 2016 (in C.P. No. 68/ND/2010). By the impugned order, the Tribunal allowed the C.A preferred by Respondent and held that the petitioner (Appellant herein) to the appeal do not possess requisite shareholding in the company on the date when the acts of oppression and mismanagement was complained of and thereby allowed the C.A and dismissed the C.P preferred by the appellant.

2. On perusal through the record, we find that the Appellant has 0.5 % of the shareholding of the total shareholding of the company. He filed the petition under Section 397 and 398 of the Companies Act, 1956 alleging, *inter-alia*, 'oppression & mismanagement' by the Respondents.

3. The Respondents brought to notice of the Tribunal the provisions of Section 399 of the Companies Act, 1956 which reads as follows:-

“399. Right to apply under Sections 397 and 398 – (1) The following members of a company shall have the right to apply under section 397 or 398:-

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.”

4. Admittedly, the petition was not filed by 100 members of the company. The Ld. Counsel of the Appellant also accepts that on the date of filing the C.P, there were total 16 members in the company. Therefore, the petition preferred by the Appellant was less than 1/10th of the total number of its members. It is also not in dispute that the Appellant was not holding 1/10th of the total share capital of the company to maintain the petition under Section 397 and 398 of the Companies Act, 1956.

5. In the aforesaid circumstances, the C.P having dismissed as non-maintainable, we find no reason to interfere with the same. The appeal is accordingly dismissed.

Sd/-

(Justice S.J. Mukhopadhaya)
Chairperson

Sd/-

(Mr. Balvinder Singh)
Member (Technical)