

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) No. 88 of 2017**

**Shri Ramesh Chander Goel & Ors.**

**.... Appellants**

**Vs.**

**M/s Dinesh International Ltd. & Ors.**

**.... Respondents**

**Present: For Appellant: - Mr. P.D.Gupta, Sr. Advocate with Mr. Dinesh Sabharwal, Mr. Sameer Rastogi, Advocates**

**28.03.2017-** This appeal has been preferred by appellant/respondent against judgement and order dated 2<sup>nd</sup> February 2017 passed by the National Company Law Appellant Tribunal New Delhi (hereinafter referred to as the 'Tribunal) in Company Petition No. 29 (ND) 2006.

2. Brief fact of the case is that the 1st Respondent Company was incorporated in the year 1990 with its share capital of 10 crores divided into 1 crore equity shares of Rs. 10/- each to carry out the business of export and import of various items. The Company is closely held family Company.

3. Pursuant to a Notification dated 9<sup>th</sup> January 2006 issued by the Indian Railways, 1st Respondent Company along with another company, namely M/s ETA Engineering Pvt. Ltd. entered into collaboration to bid for a contract. For the said purpose, the consortium so formed by both the companies were required to deposit a registration fee of Rs. 50 Crores for the project.

4. As per internal decision the 1st Respondent Company paid share of Rs. 20 Crores towards its 40% of the equity.

5. The respondent, Mr. Daya Kishan Goel & Ors. approached the erstwhile Company Law Board when the appellants intended to increase the 'authorized share capital' of the Company for a new project.

6. Such a decision was taken at an Extra Ordinary General Meeting held on 25<sup>th</sup> April, 2010. The respondent, Mr. Daya Kishem Goel & Ors./petitioners alleged that they were not served with any notice or the explanatory statement and became aware of the same when they received the notice of Extra Ordinary General Meeting fixed on 25<sup>th</sup> April 2006. They alleged that the meeting of 25<sup>th</sup> April 2006, was illegal and void and amounts to oppression on shareholders. They also alleged that at the hands of the appellants, the lucrative business of the Company formed in the 1990s was reduced to a naught.

7. The Tribunal by impugned judgement and order dated 2<sup>nd</sup> February 2017 having noticed the relevant facts and arguments advanced by the parties observed and held as follows: -

*"13. The acts of the respondents were undoubtedly oppressive and prejudicial of the interest of the petitioners' group which held 40% equity. It appears that the lucrative business formed in the 1990's was reduced to a naught, clearly giving strength to allegation of mismanagement. Unfortunately, due to the passage of time, the company's business has come to a standstill and its assets have dissipated and therefore no substantial relief can be granted to the petitioner. The only asset of Rs. 20 crores which was returned to M/s ETA/Railways is lying in*

*custody with Hon'ble High Court of Delhi. This amount is required to reduce the huge liability on account of various Government dues. Increase of the statutory liability to such a high proportion in itself speaks of gross mismanagement of the affairs of the company which vested in the hands of Respondents 3, 4 & 8. The petitioner had sought release of this amount in the Civil Suits which are still pending adjudication but the same was not permitted.*

*15. However, having come to the conclusion that the petitioners suffered unfairly at the hands of the respondents on account of non-compliances of statutory requirements, being prejudicial to the interests of the petitioners, it is basic to jurisprudence that the right to relief must be judged to exist as on the date of the petitioners instituting the proceedings. Ld. Counsel therefore prays that Status quo ante be restored. Accordingly, the two resolutions dated 1<sup>st</sup> April 2006 and 25<sup>th</sup> April 2006 are set aside with the consequential effect of setting aside any decision taken therein being declared void, illegal and non-est.*

*16. The petitioners 1 & 3 are entitled to be signatories to the Respondent Company's Bank account. However, to safeguard the interests of both the parties, the said*

*account shall be operated jointly by a member of the petitioner group and of the respondent group.*

*17. In the unlikely event of release of the sum of Rs. 20 crores, or any part thereof, lying with the Registrar General of the Delhi High Court, the same would be deposited in the account of the respondent Company. The residual amount, if any, after meeting the Company's liabilities shall be shared equally between the two groups as per their original agreement.*

*18. Petition disposed off in terms of the above."*

8. Learned counsel appearing on behalf of the appellants while accepted that the company is not running since April 2006 and is in loss, submits that the appellants have no grievance against the impugned judgement, except the observation as made by the tribunal against the appellant at paragraph 13 of the impugned judgement, as noticed and quoted above.

9. At paragraph 13 of the impugned judgement, the Tribunal observed that the lucrative business formed in the year 1990s was reduced to a naught, clearly giving strength of allegation of mismanagement.

The Tribunal further observed that unfortunately, due to passage of time, the company's business came to standstill and its assets have dissipated and therefore no substantial relief can be granted to the petitioners. While observing so, the Tribunal further observed that increase of the statutory liability to high proportion in itself speaks of gross mismanagement of the affairs of the company which was vested in the hands of 3<sup>rd</sup>, 4<sup>th</sup> and 8<sup>th</sup> Respondents (Appellants herein).

10. Learned counsel for the appellants submitted that during the said period, 2<sup>nd</sup> and 3<sup>rd</sup> appellants who were 3<sup>rd</sup> and 4<sup>th</sup> respondents in the Company Petition were out of India.

11. Having heard learned counsel for the appellants and on perusal of the judgement and record, we are of the view that the mismanagement as observed by the Tribunal with regard to the management of the affairs of the company does not relate to any individual but mismanagement by the directors who were looking into the affairs. If one or other respondents were also the director(s) of the company and dealing with the affairs of the company, the observation of the Tribunal will be equally applicable to all such directors. However, observation against one or the other party will not render the impugned judgement illegal or wrong.

12. For the reasons aforesaid, we are not inclined to interfere with the impugned judgement dated 2<sup>nd</sup> February 2017 and dismiss the appeal. However, in the facts and circumstances there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member(Technical)

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