

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL
COMPANY APPELLATE JURISDICTION**

Company Appeal (AT) No. 03 of 2017

(arising out of Order dated 6th December, 2016 passed by NCLT, New Delhi in C.P.No. 01/2015)

63 Moons Technologies Ltd.

.....Appellant

Vs.

Union of India & Ors.

.....Respondents

Present: For Appellants: Mr. Salman Khurshid, Sr. Advocate with Mr. Ankur Saija, Mr. Zafar Khurshid, Mr. Nooruddin Dhillal, Mr. Anupam Lal Das Gupta, Ms. Gargi Srivastava and Mr. Aadil Singla Boparai, Advocates

For Respondents: Mr. Navin Chawla, Mr. Kirtiman Singh, Mr. Prateek Dhanda, Advocates for Respondent No. 1

Mr. Abhimanyu Mahajan and Ms. Anubha Goel, Advocates for Respondent No. 20

Mr. S.N.Mukerjee, Sr. Advocate with Mr. Raghav Dwivedi, Advocates for Respondent Nos. 5 and 6

J U D G E M E N T

SUDHANSU JYOTI MUKHOPADHAYA,J.

The question involved in this appeal is whether a petition under Section 388-B of the Companies Act 1956 is to be heard only by the 'Principal Bench' of the National Company Law Tribunal, New Delhi (hereinafter referred to as 'NCLT') or the Bench of the NCLT, having jurisdiction over the area where Registered Office of Company is situated?

2. The brief facts of the case is as follows: -

The Central Government filed the Company Petition No. 01/2015 under Section 397-398 read with Section 388-B, 388-C, 401, 402, 403, 406 & 408 of the Companies Act 1956 along with supporting documents before the erstwhile Company Law Board. Apart from other relief, declaration has been sought for to declare the 2nd to 28th respondents of the 1st respondent company are not "fit and proper" persons to hold the office as directors or any other office connected with the conduct and management of 1st respondent company and 29th respondent company and also not eligible for appointment as directors in any other Company by invoking the provisions of Section 388B(1)(a) to (d) of the Companies Act 1956.

3. The Company Law Board in exercise of power conferred under Regulation 44 of the Company Law Board Regulations 1991(hereinafter referred to as 'Regulations 1991') issued circular that all matters filed under Section 388-B of Act 1956 will be dealt with by the 'Principal Bench' at New Delhi. In this background the Company Petition was filed by the Central Government before the Principal Bench of the Company Law Board, New Delhi and remained pending.

4. After constitution of 'Tribunal' under Section 408 of the Companies Act 2013 w.e.f. 1st June 2016, the appellant company preferred an application before the 'Principal Bench', New Delhi with prayer to transfer the Company Petition to Bench at Chennai, which is having territorial jurisdiction over the Registered Office of the Company.

5. The Principal Bench, New Delhi by impugned order dated 6th December 2016 rejected the prayer and observed as follows: -

"It has also been pointed out that the applicant – respondent themselves filed an application for order before the Principal Bench after 01.06.2016. According to the non-applicant – petitioner this is an attempt to delay the conclusion of the present proceeding and the issue concerning territorial jurisdiction has lost its significance. It has been insisted Rule 64 of the NCLT, Rules would not prevent the NCLT Delhi to adjudicate the present matter. We have heard learned counsel for the parties at a considerable length and are of the view that the instant application is liable to be dismissed. A perusal of the record shows that the applicant – respondent had filed various applications before the Tribunal. It has also appeared before the Tribunal on various dates of hearing as is evident from the interlocutory orders dated 25.06.2016, 27.07.2016, 01.08.2016, 08.08.2016, 12.08.2016, 24.08.2016, 01.09.2016, 18.10.2016 and so on and so forth. Objection, if any, to territorial jurisdiction is required to be taken at the earliest. Moreover, all matters under Section 388-B of the Companies Act, 1956 used to be heard by the

Principal Bench of the erstwhile Company Law Board in accordance with the regulation framed by it. Taking note of the aforesaid facts the Principal Bench comprising of the President and Hon'ble Mr. S.K. Mohapatra, Member (T) have laid down in the case of Union of India Vs. M/s. Panther Fincap & Management Services Ltd. (CP No.122(MB)/2008 that all these matter filed u/s 388-B of the Companies Act shall continue to be heard by the Principal Bench. The aforesaid order is set out below for a ready reference.

"All matters pending under section 388-B of the Companies Act 1956 used to be heard by the Principal Bench as per Regulations framed by the erstwhile Company Law Board.

Before the notification of NCLT on 1.6.2016 all matters pertaining to section 388-B of 1956 Act used to be heard by the Principal Bench of Company Law Board at New Delhi. Accordingly, these matters same shall be continued to be heard by the Principal Bench. List for arguments on 9.8.2016 at 2.00 PM."

We are also inclined to agree with the submission made by learned counsel for the non-applicant - petitioner that transfer of the proceeding to Chennai Bench of the NCLT would result in delay. Therefore,

in the interest of justice also such a transfer should be avoided.

For all the reasons stated above the application fails and the same is dismissed. The matter shall continue to be heard by the Bench of NCLT, New Delhi.”

6. The stand taken by the appellant is summarized as follows: -

- i. Jurisdiction of a bench of the NCLT to decide or adjudicate a proceeding would be solely dependent on whether the registered office of the concerned company is located in the area over which such Bench exercises jurisdiction, i.e. **territorial jurisdiction** as specified in the Notification.
- ii. The location of the registered office of the concerned company has always determined jurisdiction for proceedings under the provisions of the Companies Act, 1956 (the **1956 Act**) prior to its amendment by the 1988 Amendment Act which came into effect from 1991. The same would show that proceedings under Sections 155, 388B to 388E, 391 to 396, 397 to 406 of the 1956 Act had to be instituted in the High Court within whose jurisdiction the registered office was situated. In other words, it was such High Court which exercised **territorial jurisdiction**. The 1956 Act made no provision for filing of such proceedings where a part of the cause of action arose. The “jurisdiction High Court” was determined solely on the basis of the location of the registered office of the concerned company.

- iii. Under the 1956 Act, an appeal also lay from the orders of the CLB under Section 10F of the 1956 Act. The High Court to which such appeal lay was determined solely by the location of the registered office of the company concerned. Reliance has also been placed on Supreme Court decision in **Stridewell Leathers (P) Ltd. Vs. Bhankerpur Shimbhaoli Beverages (P) Ltd.** reported in (1994) **1 SCC 34;**

7. According to respondents, appellant had already appeared before the Principal Bench at New Delhi on different dates between 1st August 2016 and 18th October 2016. It is also submitted that even otherwise the Principal Bench, New Delhi has territorial jurisdiction to entertain Company Petition under Section 388-B of Act 1956 in terms of order dated 25th July 2016 passed by Principal Bench of NCLT in "Union of India Versus M/s Panther Fincap and Management Services Limited" in Company Petition No. 122(MB) 2008.

8. It is further submitted that the appellant is attempting to delay the present proceedings and cannot have any objection for entertainment and adjudication of the petition by the Principal Bench of NCLT, New Delhi.

9. Senior Learned counsel appearing on behalf of Respondent Nos. 5 and 6 rightly pointed out that by reason of the amendment to the 1956 Act by the Amendment Act 1988, which came into effect in 1991 the required proceedings under Sections 388B to 388E and Sections 397 to 406 of the 1956 Act had to be filed before the Company Law Board (the "**CLB**")

constituted under the provisions of the said Act as amended. However, other proceedings particularly those for winding-up of companies and for merger, reconstruction and reorganization could only be filed in the concerned High Court solely on the basis of location of the registered office of the concerned company. Thus it was only such High Court which had **territorial jurisdiction.**

10. The CLB framed its regulations under Section 10E of the 1956 Act and Regulation 7 of the CLB Regulations, 1991 also determined **territorial jurisdiction** on the basis of the location of the registered office of the concerned company. However, by Regulation 4 of the CLB Regulations, 1991, an exception was created for certain proceedings including Section 388B of the 1956 Act where if so ordered by the Chairman of the CLB, the Principal Bench would hear such proceedings rather than the Regional Bench which had **territorial jurisdiction.** It is also significant to note that the Principal Bench of the CLB could hold its sittings all over India and thus exercise jurisdiction all over India.

11. **In “Stredewell Leathers (P) Limited Vs. Bhankerpur Shimbhaoli Beverages (P) Ltd.”** reported in (1994) Volume I SCC 34, the Hon’ble Supreme Court notices that no clear indication was found in Section 10-F of the Companies Act 1956 to indicate which High Court is meant as the Forum of appeal against the order passed by the Company Law Board. In the said case the Hon’ble Apex court observed as follows: -

“6. *The Companies (amendment) Act, 1988 which has inserted Section 10-F with effect from May 31, 1991 and has also made some simultaneous changes in Section 10-E brings about the establishment of an independent Company Law Board to exercise the judicial functions exercised earlier by the courts or the Central Government while providing an appeal to the High Court under Section 10-F against such orders of the Company Law Board. The power under Sections 397 and 398 of the Companies Act, exercised earlier by the court is one such power now exercised by the Company Law Board so constituted. In short, the original jurisdiction of the High Courts in respect of the matters under Sections 397 and 398 of the Companies Act is now transferred to Company Law Board.*

7. *Earlier when the original jurisdiction was in the High Court determined by Section 10(1)(a) of the Act as the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, admittedly the appeal from any order passed by the Company Judge of the High Court in exercise of the original jurisdiction was to a Division Bench of the same High Court. The question, therefore, is whether with the transfer of the original jurisdiction of High Courts to the Company Law Board in such matters, there is a similar substitution of the*

appellate forum to a centralised High Court having jurisdiction over the place of sitting of the Company Law Board where the order under appeal is made or the forum of appeal remains unaffected by the change of the forum of original jurisdiction. This is the precise point for determination in the present case.

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18. *For the aforesaid reason, we are of the opinion that the expression "the High Court" in Section 10-F of the Companies Act means the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate as indicated by Section 2(II) read with Section 10(1)(a) of the Act. Accordingly, in the present case, the appeal against the order of the Company Law Board would lie in the Madras High Court which has jurisdiction in relation to the place at which the registered office of the company concerned is situate and not the Delhi High Court merely because the order was made by the Company Law Board at Delhi. This appeal is allowed and the impugned order made by the Delhi High Court is set aside resulting in acceptance of the preliminary objection raised by the appellants in the Delhi High Court. The Delhi High Court will now make the consequential order. No costs."*

12. Section 2(29) of the 2013 Act also determines **territorial jurisdiction** on the basis of where the registered office of the concerned company is located for matters covered under section 2(29) (i) and (ii) of the 2013 Act.

13. Section 419 of Act 2013 deals with "Benches of Tribunal", which reads as follows: -

"419. Benches of Tribunal. -(1) *There shall be constituted such number of Benches of the Tribunal, as may, by notification, be specified by the Central Government.*

(2) The Principal Bench of the Tribunal shall be at New Delhi which shall be presided over by the President of the Tribunal.

(3) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit."

14. In exercise of powers conferred by sub-section (1) of Section 419 of the Companies Act 2013, the Central Government constituted the Benches vide Notification dated 1st June 2016, as shown below: -

NOTIFICATION

New Delhi, the 1st June, 2016

S.O. 1935(E).- In exercise of the powers conferred by sub-section (1) of Section 419 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the following Benches of the National Company Law Tribunal mentioned in column (2) of the table below, located at the place mentioned in column (3) and to exercise the jurisdiction over the area mentioned in column (4), namely:-

S.No. (1)	Name of Bench (2)	Location (3)	Territorial Jurisdiction of the Bench (4)
1	(a) National Company Law Tribunal, Principal Bench. (b) National Company Law Tribunal, New Delhi Bench.	New Delhi	(1) State of Haryana. (2) State of Rajasthan. (3) Union territory of Delhi.
2	(a) National Company Law Tribunal, Ahmedabad Bench.	Ahmedabad	(1) State of Gujarat. (2) State of Madhya Pradesh. (3) Union territory of Dadra and Nagar Haveli. (4) Union territory of Daman and Diu.
3	National Company Law Tribunal, Allahabad Bench.	Allahabad	(1) State of Uttar Pradesh. (2) State of Uttarakhand.
4	National Company Law Tribunal, Bengaluru Bench.	Bengaluru	(1) State of Karnataka.

5	National Company Law Tribunal, Chandigarh Bench.	Chandigarh	(1) State of Himachal Pradesh. (2) State of Jammu and Kashmir. (3) State of Punjab. (4) Union territory of Chandigarh.
6	National Company Law Tribunal, Chennai Bench.	Chennai	(1) State of Kerala. (2) State of Tamil Nadu. (3) Union territory of Lakshadweep. (4) Union territory of Puducherry.
7	National Company Law Tribunal, Guwahati Bench.	Guwahati	(1) State of Arunachal Pradesh. (2) State of Assam. (3) State of Manipur. (4) State of Mizoram. (5) State of Meghalaya. (6) State of Nagaland. (7) State of Sikkim. (8) State of Tripura.
8	National Company Law Tribunal, Hyderabad Bench.	Hyderabad	(1) State of Andhra Pradesh. (2) State of Telangana.
9	National Company Law Tribunal, Kolkata Bench.	Kolkata Bench	(1) State of Bihar. (2) State of Jharkhand. (3) State of Odisha. (4) State of West Bengal. (5) Union territory of Andaman and Nicobar Islands.
10	National Company Law Tribunal, Mumbai Bench.	Mumbai Bench	(1) State of Chhattisgarh. (2) State of Goa. (3) State of Maharashtra.

15. Sub-section (a) of Section 434 deals with 'transfer of pending proceedings' including the proceedings or cases pending before the Company Law Board, which reads as follows: -

“434. Transfer of certain pending proceedings. -*(1) On such date as may be notified by the Central Government in this behalf, -*

(a) All matters, proceedings or cases pending before the Board of company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act 1956 (1 of 1956) immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act.”

16. The 'Rule 64' of the National Company Law Tribunal Rules 2016, which deals with procedure in respect of matters earlier dealt by other quasi-judicial bodies (Company Law Board), mandates transfer of the pending proceedings with the Company Law Board to the respective Benches of Tribunal exercising corresponding territorial jurisdiction and reads as follows: -

“PART- VII***Procedures in respect of matters earlier dealt by other quasi-judicial bodies, courts and tribunals******64. Matter earlier dealt by Company Law Board.- (1)***

Notwithstanding anything contained in any other law for the time being in force, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act dealing with the Tribunal have been given effect, or the Company Law Board has been dissolved in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective Benches of the Tribunal exercising corresponding territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred:

Provided that the Tribunal shall consider any action taken under the regulations of the Company Law Board as deemed to have been taken or done under the corresponding provisions of these rules and the

provisions of the Act, and shall thereupon continue the proceedings, except in a case where the order is reserved by the Company Law Board or its Bench and in such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:

Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice."

17. The Constitutional Bench of Hon'ble Supreme Court in **"Election Commission Versus Venkata Rao"**, AIR 1953 SC 210 was deciding whether the rule that cause of action attracts jurisdiction is applicable to writs issuable under Article 226 of the Constitution of India which makes no reference to any cause of action but insists on the territorial jurisdiction in relation to which the High Court exercises jurisdiction. In the said case the Hon'ble Supreme Court held as follows: -

"The rule that cause of action attracts jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Art. 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority "within the territories" in relation to which the High Court exercises jurisdiction."

18. There is no provision in the Companies Act 2013 conferring any **territorial jurisdiction** on a High Court or any Bench of the NCLT on the basis of cause of action. In other words, there is no statutory enactment conferring **territorial jurisdiction** on the basis of where the cause of action has arisen.

19. The Notification dated 1st June 2016 merely prescribes the territories over which the different Benches of the NCLT will have **territorial jurisdiction**. It does not provide that such Benches will have **territorial jurisdiction** where cause of action has arisen within its territorial limits. There is no Rule in the NCLT Rules which provides that **territorial jurisdiction** of any Bench of the NCLT can be invoked on the basis of cause of action. In other words, the Benches of the NCLT within its **territorial jurisdiction** can only exercise jurisdiction over the concerned company which is present within its **territorial jurisdiction** i.e., where the company having its registered office.

20. 'The Company Law Board Regulation 1991' were framed by Company Law Board in exercise of powers conferred by sub-section (6) of Section 10-E of the Companies Act 1956. Under the said provision, the Company Law Board empowered its Chairman to specify matters which may be dealt with by a Bench, as quoted below: -

“ 4. Power of the Chairman to specify matters which may be dealt with by a bench. – (1) It shall be lawful for the Chairman to provide that matters falling under sections 247, 250, 269 and 388B of the Act and under section

2A of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) shall be dealt with by the Principal Bench consisting of one or more Members.

(2) The Principal Bench shall be at New Delhi but it may sit at any other place in India at its discretion or at the joint request of all the parties.

(3) It shall be lawful for the Chairman to provide that matters falling under all other sections of the Act shall be dealt with by regional Benches, namely, New Delhi Bench, Chennai Bench, Kolkata Bench and Mumbai Bench, consisting of one or more Members:

Provided that matters pending before the Principal Bench and Additional Principal Bench as on 1st day of April 2008 shall continue to be disposed of in the name of Principal Bench and Additional Principal Bench respectively:

Provided further that notwithstanding anything contained in regulation 7, it shall be lawful for the Chairman to transfer any matter pending before the Regional Benches to the Principal Bench either at the joint request of all the parties or for other reasons to be recorded in writing"

21. The President of the NCLT has not been empowered to decide which Bench will hear the matter, if a petition under section 388-B of Act 1856 is filed

22. Even if it is presumed, though not accepted that the Notification issued by the President under Regulation 4 of Company Law Board Regulations 1991 deemed to be continuing, it cannot override the Notification dated 1st June 2016 issued by Central Government in exercise of power conferred by sub-section (1) of Section 419 of the Companies Act 2013.

23. The circular issued by Company Law Board, under Regulation 4 also cannot override Rule-64 of NCLT Rules 2016.

24. Sub-section (1) of Section 434 mandates transfer of proceedings pending before the Company Law Board to respective Tribunal having territorial jurisdiction. The circular issued under Regulation 4 of 1991 Regulation cannot be given effect in view of the aforesaid mandate under the Act.

25. Section 434(a) read with sub-section (1) of Section 419 of Companies Act 2013 and Notification dated 1st June 2016 issued by Central Government under sub-section (1) of Section 419 and the Rule 64 of NCLT Rule it is clear the Benches, including Principal Bench have territorial jurisdiction on the Companies exclusively on the basis of location of the registered office of such company. In fact, this law is also being followed by the Principal Bench of NCLT, New Delhi for placing all the petitioners before one or other Bench and that Section 488-B of Act 1956, cannot be exception of the same.

26. For the reasons aforesaid we set aside the impugned order dated 6th December 2016 passed by the "Principal Bench" of NCLT, New Delhi in C.P.No. 01/2015 with the direction to the Registry of the Principal Bench,

NCLT, New Delhi to transfer the C.P.No. 01/2015 to the NCLT Bench at Chennai, where registered office of the appellant company is situated.

27. As about two years passed after the filing of the Company Petition, the NCLT Bench at Chennai will ensure early disposal of the Petition after notice and hearing the parties, in accordance with law.

28. The appeal is allowed with the aforesaid observations and directions.

Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
9th March, 2017

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