

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) No. 83 of 2017**

**IN THE MATTER OF:**

**Fidaali Moiz Mithiborwala & Anr ... Appellant (s)**  
**Vs.**  
**M/s. Aceros Fortune Industrive Pvt. Limited & Anr**  
**.. Respondents**

**Along with Company Appeal (AT) No. 84  
of 2017**

**Fidaali Moiz Mithiborwala & Anr ... Appellant(s)**  
**Vs.**  
**M/s. Majolica Impex Pvt. Limited & Ors ..**  
**Respondents**

**With Company Appeal (AT) No. 85 of 2017**

**Fidaali Moiz Mithiborwala & Anr ... Appellant (s)**  
**Vs.**  
**M/s. Majolica Properties (India) Pvt. Limited & Anr**  
**..**  
**Respondents**

**With Company Appeal (AT) No. 86 of  
2017**

**Fidaali Moiz Mithiborwala & Anr ... Appellant (s)**  
**Vs.**  
**M/s. Angel Exim Pvt. Limited & Ors**  
**.. Respondents**

**and Company Appeal (AT) No. 87 of 2017**

**Fidaali Moiz Mithiborwala & Anr ... Appellant (s)**  
**Vs.**  
**M/s. STMPL Enterprises Pvt. Limited & Ors**  
**..**  
**Respondents**

**Present: For Appellant:- Ms Tasneem Ahmedi, Mr Sujeet Gupta, Ms Deepti Bhargava and Mr Rahul Singh, Advocates.**

**ORDER**

6.4.2017 - The Appellants have challenged similar order both dated 6<sup>th</sup> February 2017 passed by National Company Law Tribunal, Mumbai Bench, Mumbai (hereinafter referred to as Tribunal) in different Company Applications which was preferred by Appellants for amendment of pleading of corresponding Company Petitions. By three orders dated 6<sup>th</sup> February 2017, the Tribunal partly allowed the amendment and rejected the rest. In rest of the impugned orders dated 6<sup>th</sup> February, 2017, the Tribunal rejected the petitions seeking amendment.

While rejecting the application, the Tribunal noticed the decision of the Hon'ble Supreme Court in 'Revajeetu Builders & Developers vs Narayana Swamy & Sons & Ors. ' (2009) 10 SCC p.84, wherein the Hon'ble Apex Court observed as follows:-

*" Para 29 ..... We have no hesitation in also observing that this is one of the most misused provisions of the Code for dragging the proceedings indefinitely, particularly in the Indian Courts which are otherwise heavily overburdened with the pending cases. All Civil Courts ordinarily have a long list of cases, therefore, the Courts are compelled to grant long dates which causes delay in disposal of the cases. The application for amendment lead to further delay in disposal of the cases.*

From the record, we find that the Company Petitions No. 64 to 68 of 2015 are pending for about two years. Earlier, against common order dated 3<sup>rd</sup> August 2016, the Appellant (s) moved before this Appellate Tribunal in Company Application (AT) No. 12 of 2016. This Tribunal vide order dated 19<sup>th</sup> October, 2016 disposed of the appeal with following observation:

*" Para 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 endeavor 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 3 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 90 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 Chairperson to place the case before any other Bench for its expeditious disposal.*

*10. Now more than 3 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 CPs, 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 CPs.*

*12. Parties are also directed to cooperate with the Tribunal for early disposal of the CPs 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 judgment. However, in the facts and circumstances of the case, there shall be no order as to cost.*

It appears that after order dated 19<sup>th</sup> October 2016 the Appellants preferred the amendment petitions which were heard and dismissed by Tribunal by orders all dated 6<sup>th</sup> February, 2017.

In view of the fact that this Appellate Tribunal had directed the Tribunal to dispose of the Company Petition immediately and the subsequent amendment petitions were filed by the Appellant (s) without leave of the Tribunal or this Appellate Tribunal, and as the amendment petitions goes against the spirit of order dated 19<sup>th</sup> October 2016, passed by this Appellate Tribunal, we are of the view that the Tribunal rightly rejected the amendment petitions.

For the reasons aforesaid, we are not inclined to interfere with the impugned order. The parties are directed to appear before the Tribunal on the next date and conclude their hearing. The parties may rely on their pleading and other documents placed on record(s) by parties. The Tribunal will conclude the hearing and pass final order by 31st May, 2017. The appeals are dismissed. No cost.

SD/-  
(Justice S.J. Mukhopadhaya)  
Chairperson

Sd/-  
(Mr. Balvinder Singh)  
Member (Technical)

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