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

**Company Appeal (AT) No. 36 of 2016 along with Company Appeals (AT) Nos. 43 to 47 of 2016.**

**(arising out of Orders passed by NCLT, New Delhi Bench in C.P.No. 114/2007 in CA No. 50/C-III/2016 dated 20th October 2016 and in C.A.No. 51, 52, 53 and 54 /C-III/2016 dated 15th November 2016 and in C.A.No. 59/C-III/2016 dated 5th December 2016)**

**Mrs. Sonia Khosla** **.....Appellant**

**Vs.**

**Mr. Sameer Kudsia & Ors.** **.....Respondents**

**Present:** **For Appellants: Mr. Deepak Khosla, Advocate**

**For Respondent: Mr. P.Nagesh, Advocate**

**J U D G E M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA,J.**

These appeals have been preferred by appellant Ms. Sonia Khosla (Through L.R.) against 7 Orders passed by National Company Law Tribunal, New Delhi (hereinafter referred to as the 'Tribunal) in different Company Applications, which were filed between the year 2007 and 2008 for different purpose, as detailed below: -

| Sl.No. | Date | CA No. | Filed by | Purpose |
|---|---|---|---|---|
| 1. | 18.09.2007 | 411/2007 | R-1(through R-4) | *Status quo on lands of R-10* |
| 2. | 19.09.2007 | 412/2007 | R-1(through R-4) | Transpose R-10-22 as Petitioners |
| 3. | 25.09.2007 | 451/2007 | R-5 | Vacate stay order dated 22.08.2007 |
| 4. | 06.12.2007 | 571/2007 | R-1(through R-4) | *Status quo on lands of R-10* |
| 5. | 25.01.2008 | 69/2008 | R-1 + R-2 | Initiate contempt proceedings |
| 6. | 12.02.2008 | 107/2008 | R-1(through R-2) | *Status quo on lands of R-10* |
| 7. | 12.02.2008 | 108/2008 | R-1(through R-2 | Appoint auditor, EGM, etc. |

2. Prayer has also been made to dismiss CA No. 362 of 2007 in limine on different grounds.

3. If the pleadings of the appeal are looked into, we find that haphazard pleadings have been made and a number of unrelated facts, including the present and past have been highlighted. For the said reasons, we requested the learned counsel for the appellants and respondents to limit their arguments to the extent of genuine grievance, if any.

4. At this stage it is pertinent to note that the Company Petition No. 114 of 2007 was filed by appellant before erstwhile Company Law Board under Section 397, 398, 402 and 403 of the Companies Act 1956 alleging respondents guilty of the following grave acts of oppression and mis-management: -

"i. excluding the Petitioner from the management of the Company, despite her being a Director on the Board;

ii. Not holding any Board meetings and/or at least not issuing any notices to the Petitioner in respect of any Board meetings.

iii. Denying and depriving the Petitioner access to accounts and other information and records of the Company.

iv. Illegally opening bank accounts and operating the same without the joint mandate of the Petitioner in violation of the Agreement dated 31.3.2006, and perhaps also amending the mandate with regard to the existing accounts.

v. Not placing the balance sheet for the year ended 31.3.2006 before the Board of Directors or the shareholders, in violation of statutory obligations and exposing the Company and its Directors to prosecution.

vi. Illegally and wrongfully issuing 10,000 equity shares of Rs. 10/- each to Respondent No. 2 and his immediately family members (his wife and daughters) without any valid Board meeting and in violation of the Agreement dated 31.3.2006.

vii. Siphoning away funds and assets of the Company in breach of faith and trust reposed by the Petitioner in Respondent No. 2.

viii. Assigning interests held by the Respondent Company in lands in Village Mashobra/Chattiyan in favour of Respondent No. 2 and/or his close associates to the

detriment of the Respondent Company and its minority shareholders.

ix. Acquiring lands abutting/adjacent to the project land in Village Mashobra, in favour of entities other than the Respondent Company, and which entities are owned and controlled by Respondent No. 2 which is in breach of all fiduciary duties as also the Agreement dated 31.3.2006.

x. Attempts to clandestinely change the nature of the project in "Mashobra", from real estate to tourism without any valid Board approval and behind the back of the Petitioner.

xi. Illegally appointing respondent No. 2 as a Director, without any valid Board meeting and in violation of the Agreement dated 31.3.2006.

xii. Seeking to commercially exploit the 21 bighas 10 Biswas of land in Village Mahobra through an entity other than the Respondent Company.

xiii. Not holding and calling General Meetings.

xiv. Not taking any steps towards implementation of the project, which was the very basis on which the Respondents were inducted as shareholders into the Respondent Company, and/or deliberately not taking them timely so as to jeopardize the interest of the Company and, therefore, the petitioner."

5. The petition is pending for last 10 years now stands transferred under Section 434 (i)(a) of the Companies Act 2013 w.e.f. 1st June 2016 before the Tribunal, New Delhi.

6. During the pendency of the petition before the erstwhile Company Law Board, a number of applications (Interlocutory in nature) were filed by one or other party. Against some of such orders, the parties moved before the Hon'ble High Court of Delhi and in some cases up to Hon'ble Supreme Court. This resulted in the pendency of the appeal for the last ten years.

7. As the matter is pending since long and there are number of Interlocutory Applications are still pending consideration by NCLT, we directed the parties to provide the list of other Company Applications (Interlocutory Applications) which are pending consideration before the Tribunal. For the said reasons, instead of arguing the Tribunal to dispose of 49 pending Company Applications separately, we heard in regard to each of such Company applications and justification of their pendency.

8. From the list submitted by parties, we find that approximately 49 Company Applications are pending for consideration since 2007 onwards. Some of the Company Applications were filed recently in the year 2016.

9. To sort out the issue and to ensure early disposal of the Company Petition, we requested the parties to suggest the applications they intend to pursue. On behalf of the appellant a summary of important pending

applications has been filed, with remarks "the applications the appellant intends to withdraw". Some of the remarks are conditional withdrawal, as detailed therein. The same has been kept on record.

10. Taking into consideration all the facts, we decided to hear the question of pendency of Petition under Section 8 of the Arbitration and Conciliation Act, 1996 with regard to which the impugned order, dated 15th November 2016 has been passed by the Tribunal in C.A.No. 52/2016. We have also heard the parties on the number of amendment petitions by the appellant between 2008 to 2016.

11. We have also perused the impugned orders dated 20.10.2016, 15.11.2016, 5.12.2016. Order dated 20th October 2016 passed in C.A.No. 50 of 2016 wherein the appellant requested to issue Interrogatories against one Mr. Sameer Kudsia, Chartered Accountant, Mr. Vini Ahuja, Ex Director and Mr. Vikas Gera, Ex Company Secretary. The appellant made such request in support of the allegation relating to illegal allotment of additional 10,000 shares by 3rd and 4th respondents in favour of 6th to 8th respondents who are the wives of 2nd respondent and his immediate family members.

12. Learned Tribunal while dealing with the matter rightly noted that the appellant has also asked for communications, remunerations, reasons for decisions, telephonic conversations etc. of certain persons which are nothing short of putting a person to an exhaustive trial. The Tribunal further

observed that the appellant has raised roving questions in a bid to seek answers to nail the respondents. Besides many of the questions being vague and irrelevant, the Tribunal refused to issue interrogatories against the aforesaid persons. On hearing the parties, we find no reason to differ with such findings.

13. The appellant, thereafter, preferred Company Application No. 51 of 2016 for review and recall of Order dated 20th October 2016. The Tribunal by order dated 15th November 2016 dismissed the same. We agree with the finding of the Tribunal that the Tribunal has no jurisdiction to review and recall an Order passed by it.

14. Thereafter, the appellant filed another Company Application No. 53 of 2016 praying for summoning three witnesses, viz. Mr. Sameer Kudsia, Chartered Account, Mr. Viny Ahuja, an ex-member of the company and Mr. Vikas Gera, Company Secretary who were earlier named as interrogatories and with regard to whom applications were rejected. The Tribunal having noticed that it was a 3rd attempt made by the appellant to call for same persons, first as Interrogatory and then as witness, rightly rejected the application by impugned order dated 15th November 2016.

15. CA No. 52 of 2016 and CA No. 54 of 2016 relate to petition under Section 8 of the Arbitration & Conciliation Act 1996 preferred by the respondents. In CA No.54 of 2016, prayer was made to dispose of some other CA No. 70 of 2008 ( restraining the respondents from acting as Directors ), CA No. 171 of 2008 ( striking down all their applications as being preferred

without lawful authority), CA No. 163 of 2008 ( Recall order dated 21st January 2008 ), CA No. 270 of 2009 (Order 1 Rule 10 CPC to implead others) though CPC is not applicable, CA No. 418 of 2009 (under Section 340 CrPC regarding CA No. 1 of 2008), CA No. 566 of 2009 ( under Section 340 CrPC regarding CA No. 362 of 2007), CA No. 573 of 2009 to restrain Mr. Vinod Surha from acting as a Director. The Tribunal observed that the prayer for disposal of the pending applications prior to adjudicating the petition under Section 8 of Arbitration and Conciliation Act is not possible and, therefore, rejected the C.A.No. 54 of 2016 by Order dated 15th November 2016.

16. In this background, we have heard learned counsel for the parties with reference to pendency of Section 8 applications since 2008 which was filed by respondents (CA No. 362 of 2007) is pending for about 10 years. Only because of such pendency, a large number of Company Applications has been filed and not been disposed of.

17. From the record, we find that an agreement was reached between the parties on 31st March 2006, which contains the following clause relating to arbitration: -

> *"29. ARBITRATION*
>
> *a). All disputes or differences which shall at any time arise between the parties whether during the term or afterwards, touching or concerning this Agreement or its construction or effect or the rights duties or liabilities of the parties under, or by virtue of it, or otherwise, or any other matter in any way connected*

*with or arising out of the subject matter of this Agreement, the parties shall in the first instance try and amicably resolve them by mutual negotiations. In the event such disputes or differences are not resolved amicably, they shall be referred to a single arbitrator to be agreed upon by the parties or in default of such agreement, by three arbitrators, one to be nominated by each party and the third (acting as President of the Tribunal) to be nominated by the two parties nominated as arbitrators. The arbitration shall be governed by the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment of it for the time being in force.*

b) *Where the dispute involves multiple parties, whether as claimed or as respondent, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator each. In this agreement, Khosla Family are one party, VB and the company are the other party.*

c) *In the absence of such a joint nomination and were all parties are unable to agree to a method for the construction of the Arbitral Tribunal, any party may approach the Delhi High Court for the Arbitration and Conciliation Act, 1996."*

18. From the record we find that an Order dated 29th February 2008 was passed by the Hon'ble High Court of Delhi under Section 11 of the Arbitration and Conciliation Act 1996 in Arbitration Application No. 93 of 2008. In the said case, the High Court appointed one Hon'ble Justice R.C.Chopra and another Hon'ble Justice Usha Mehra the two arbitrators who were nominated by each of the parties. The arbitrators were allowed to nominate a third arbitrator to act as the President of the tribunal. It is informed that pursuant to the order passed by the Hon'ble Delhi High court, the Tribunal started functioning but for the reasons best known to the parties, the Hon'ble Judges/arbitrators left the proceeding. Now the Hon'ble High Court is to nominate fresh arbitrators.

19. From the aforesaid fact what we find is that though the petition under Section 8 of Arbitration and Conciliation, 1996 Act is pending since 2007, but in the meantime parties moved before the Hon'ble Delhi High Court under Section 11 of the Arbitration and Conciliation Act, 1996 and pursuant to Order dated 28th February 2008, the arbitrators were appointed and Tribunal started functioning. In view of such appointment of arbitrators already made under section 11, the petition under Section 8 which was filed in the year 2007 prior to filing of petition under Section 11 of the Arbitration and Conciliation Act, 1996 has become infructuous. For the reasons aforesaid, it was not necessary for the Tribunal to pass an order under section 8 of the Arbitration and Conciliation Act, 1996.

20. The Company Law Board/Tribunal both have failed to notice the aforesaid development and kept the CA No. 362/2007 pending for about 10 years.

21. For the reasons aforesaid we hold that the petition under Section 8 of the Arbitration and Conciliation Act 1996 filed by the respondent (CA No. 362 of 2007) has become infructuous and the Tribunal should closed the same and connected Company Applications.

22. We have the amendment petitions filed by the appellant on 31st January 2008 for correcting erroneous averments made in Company Petition. The CA No. 270 of 2009 has been preferred by appellant for Impleading respondents and others, under Order 1 Rule 10. Learned counsel for the appellants submits that if CA No. 47 of 2016 and CA No. 46 of 2016 are allowed, amending the pleading without notice to the respondent, the appellant will not press the affidavit filed on 30th January 2008 and CA No. 270 of 2009.

23. In this connection, we are of considered view that if any party has made erroneous averments in the Company Petition, the party may suffer for the same, but cannot take advantage of his own mistake, by filing affidavit and amendment petition and then to make conditional prayer for withdrawal of one or other petition. In this background, the amendment of pleading as prayed for at this belated stage, in the year 2016 in CA No. 46 of 2016 and CA No. 47 of 2016 i.e. after 9 years of filing of the Company

Petition cannot be allowed. The Tribunal will close the CA No. 46 of 2016 and CA No. 47 of 2016 preferred by the appellant.

24. For similar ground, the petition for Impleading the persons, who were not as party respondent at the in vivid as sought after 2 years in CA No. 270 of 2009, is fit to be rejected. The question of conditional withdrawal of such application does not arise. The Tribunal will close the CA No.270 of 2009.

25. In so far CA No. 64 of 2016 and the petition filed by appellant on 13th February 2017 (Counter Reference No. 4837), as they relate right to file reply to CA No. 46 and 47 of 2016, Learned counsel for the appellant submitted that the appellant will not press the said CA No. 64 of 2016 and the petition (counter reference No. 4837) filed on 13th February 2017. Therefore, the Tribunal should also dismiss the both petition as not pressed.

26. CA No. 667 of 2008 relate to audio recording of the proceeding. The Learned Counsel for the appellant submitted that the appellant will not press the same. Similar stand has been taken with regard to CA No. 166 of 2008 that the appellant will not press the same. Therefore, the Tribunal dismiss both the C.A. No.667/2008 and L.A. No.166 of 2008 as not pressed.

27. The CA No. 421 of 2009 has been filed by appellant for clarification of ambit of status quo order passed on 22nd August 2007. We are of the view that after 10 years of passing of such order no further clarification of such order is required to be given. Therefore, the Tribunal will close the CA No. 421/2009. CA No. 163 of 2008 and CA No. 418 of 2009 relate to recall of

Order dated 31st January 2008, on the ground of fraud played by the Bakshi Group. Tribunal having no jurisdiction to re-view or recall its own order, the CA No. 163 of 2008 and CA No. 418 of 2009 are misplaced and are fit to be rejected. Therefore, the Tribunal will close both the C.A. No.163 of 2008 and C.A. No.418 of 2009.

28. In so far proceeding under Section 340 of CrPC are concerned, as raised in CA No. 373 of 2008, CA No. 566 of 2009, CA No. 573 of 2009 and CA No. 165 of 2008 alleging perjury, the Tribunal may consider the question whether the Tribunal will decide such issue at this stage or at the time of final hearing. It is desirable that the Tribunal will hear all those applications relating to perjury at the time of final hearing of the case and may deliver the judgment together and not separately. This also disposes of appeal in CA No. 59 of 2016.

29. CA No. 81 of 2014 has been filed by appellant to summon certain persons to depose in regard to AGM held on 30th September 2006. CA No. 114 of 2014 has been filed by the appellant for placing the materials on record for deposition. Another CA No. 130 of 2014 has been filed by the appellant to summon some other persons to depose. CA No. 44 of 2016 has been filed by appellant to summon one Mr. Bakshi, Mr. Gera, who were earlier named as witnesses which was not allowed. On going through the records it is not clear as to why after 7 to 9 years of filing of the Company Petition, the appellant is filing one after another Interlocutory applications

to summon witnesses, when similar applications filed by appellant were earlier rejected.

30. In this connection, we may refer the decision of Hon'ble Supreme Court in "National Counsel for Cement & Building Materials (1996) 3 SCC 206". In the said case, Hon'ble Supreme Court having noticed that the parties with a view to delay the adjudications many times while preparing preliminary issue. In the said case, Hon'ble Supreme Court observed as follows:

> *"12. We, however, cannot shut our eyes to the appalling situation created by such preliminary issues which take long years to settle as the decision of the Tribunal on the preliminary issue is immediately challenged in one or the other forum including the High Court and proceedings in the reference are stayed which continue to lie dormant till the matter relating to the preliminary issue is finally disposed of.*
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> *14. Again in S.K. Verma v. Mahesh Chandra this Court strongly disapproved the practice of raising frivolous preliminary objections at the instance of the employer to delay and defeat the purpose of adjudication on merits.*

*15. In D.P. Maheshwari v. Delhi Admn. This Court speaking through O. Chinnappa Reddy, J. Observed that the policy to decide the preliminary issue required a reversal in view of the "unhealthy and injudicious practices resorted to for unduly delaying the adjudication of industrial disputes for the resolution of which an informal forum and simple procedure were devised with avowed object of keeping them from the dilatory practices of civil courts". The Court observed that all issues whether preliminary or otherwise, should be decided together so as to rule out the possibility of any litigation at the interlocutory stage. To the same effect is the decision in Workmen v. Hindustan Lever Ltd.*

*16. The facts in the instant case indicate that the appellant adopted the old tactics of raising a preliminary dispute so as to prolong the adjudication of industrial dispute on merits."*

31. Similar view was expressed by Hon'ble Supreme Court in ***Revajeetu Builders Vs. Narayanaswamy and Sons and Others (2009) 10 SCC 84*** wherein Hon'ble Court observed: -

*"29. We are tracing the legislative history, objects and reasons for incorporating Order VI Rule 17 not because it is necessary to dispose of this case, but a large number of*

*applications under Order VI Rule 17 are filed and our 5 AIR 1922 PC 249 courts are flooded with such cases. Indiscriminate filing of applications of amendments is one of the main causes of delay in disposal of civil cases. In our view, clear guideline may help disposing off these applications satisfactorily.*

*30. We deem it appropriate to give historical background of Rule 17 of Order VI corresponds to section 53 of the Old Code of 1882. It is similar to Order 21 Rule 8 of the English Law. Order VI Rule 17 CPC reads as under:*

> *"Amendment of Pleadings.-- The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> *Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."*

*31. In our considered view, Order VI Rule 17 is one of the important provisions of the CPC, but we have no hesitation in also observing that this is one of the most misused provision*

*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 applications for amendment lead to further delay in disposal of the cases.*

*32. It may be pertinent to mention that with a view to avoid delay and to ensure expeditious disposal of suits, Rule 17 was deleted on the recommendation of Justice Malimath Committee by the Code of Civil Procedure (Amendment) Act, 1999 but because of public uproar, it was revived. Justice C.K. Thakker, an eminent former Judge of this Court in his book on Code of Civil Procedure (2005 Edition) incorporated this information while dealing with the object of amendment."*

32. In the present Company Petition a large number of Interlocutory applications were filed by appellant and some of the Interlocutor application by the respondents. This petition also reminds us the observation of Hon'ble Supreme Court as was made in D.P.Maheshwari Vs. Delhi Administration, (1983) 4 SCC 293, that unhealthy and injudicious practices have been resorted to by the parties for unduly delaying the adjudication of for the resolution for which an informal forum and simple procedure has been devised with the avowed object of keeping them free from the dilatory practices of civil

courts. This case is also covered by Hon'ble Supreme Court's observation in ***Revajeetu Builders Vs. Narayanaswamy and Sons and Others (2009) 10 SCC 84.***

33. We cannot ignore the mandate of law under Section 422 of the Companies Act wherein Tribunal has been requested to dispose of the petitions within 3 months and if not possible, then to record a reason and obtain consent of Hon'ble President to proceed with extended period.

34. We have noticed that 10 years have passed and the matter remain pending before the Company Law Board and now for more than 10 months before the Tribunal. In this background we deprecate the unhealthy and injudicious practices resorted in this case (CP) by both the parties.

35. The Companies Act specifically stipulates that Code of Civil Procedure will not be applicable, but majority of the petitions have been preferred by the appellant under one or other provisions of CPC.

36. In this background, we are of the view that all the Benches of the Tribunals should ensure that dilatory tactics are not adopted by one or other party and wherever an application is find at belated stage, except exceptional cases, the Interlocutory Applications should not be entertained, and if filed should be either rejected, and if there is a prima facie merit to take up the applications at the time of final hearing.

37. In this background, the CA No. 81 of 2014, CA No. 114 of 2014, CA No. 113 of 2014, CA No. 44 of 2014 are also to be rejected. The Tribunal will pass appropriate order closing the aforesaid Company application.

38. In so far as CA No. 362 of 2007 preferred by Respondent No. 2, and related CA No. 171 of 2008, CA contained in counter reference No. 822 and CA No. 52 of 2016 are concerned, as all relates to application under section 8 of the Arbitration Act, they stand disposed of in view of the finding as recorded in the preceding paragraph. The Tribunal will close all the aforesaid CA's.

39. The appellant has stated that the appellant will not press CA No. 324 of 2007, an Application for Interim Relief. In any case after 10 years of filing of Comp. Petition interim relief cannot be granted as prayed for in CA No. 572 of 2007, CA No. 70 of 2008 and CA No. 164 of 2008. The appellant has prayed either to restrain the respondent from holding as Directors or shareholders, or to declare 3rd and 4th respondents having vacated the office of Director by operation of law and to declare that Mr. Vikram Bakshi is not a Director. As mentioned above, such declaration should not be given in an Interlocutory Application if not granted earlier, after 9 to 10 years of the filing of such application. If the Company Petition is allowed in favour of appellant, the Tribunal has jurisdiction under Article 242 of the Companies Act 2013 (Section 402 of Companies Act 1956) to grant an appropriate relief. Therefore, the Tribunal will close the aforesaid Interlocutory Application.

40. Similar is the position in regard to CA No. 170 of 2011 wherein appellant prayed to strike down alleged transfer of 6,350 shares and 10,000 shares and

freeze voting rights as interim measures. No Bench having granted during last 6 years, it is not the stage to grant such interim relief when the Company Petition is matured for hearing.

41. Whether the transfer of the shares or voting right freezed or not can be decided by the Tribunal during the final hearing, if Company Petition is allowed. Therefore, CA No. 170 of 2008 should not be taken up individually and be taken up at the time of hearing.

42. In so far as CA No. 33 of 2016, CA No. 50 of 2016 and CA No. 53 of 2016 are concerned, the impugned orders in these appeals, we have already upheld the orders passed by the Tribunal. No separate relief can be granted.

43. In view of the findings recorded above, we direct the Tribunal to close all the Company Applications, as individually discussed above and to take up the other Company Applications at the time of hearing, as discussed and observed in the preceding paragraphs.

44. The Tribunal is directed to complete the hearing of Company Petition expeditiously and close the proceedings preferably within one month. No separate hearing of the pending CA No. 373 of 2008, CA No. 566 of 2009, CA No. 573 of 2009 and CA No. 165 of 2009 and CA No. 170 of 2008 are to be given which may be heard at the time of final hearing, except those which have been rejected by us and ordered to be closed.

45. The parties are directed to cooperate with the Tribunal and should not ask for unnecessary adjournment. On failure, it will be open to the Tribunal to pass appropriate order, in accordance with law.

46. The appeal stands disposed of with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to cost.

Mr. Balvinder Singh)
Member (Technical)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
12th April, 2017