

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 236 of 2017

IN THE MATTER OF:

Bishnudeo Prasad & Ors.

...Appellants

Versus

Bihar Janta Cold Storage Pvt. Ltd.

...Respondent

**Present: For Appellants : Shri Devendra Singh and Shri Ratnakar Malhyar,
Advocates**

ORDER

11.08.2017 We have heard the learned counsel for the appellant and perused the record. Taking into consideration the ground as shown and being satisfied with the same, the delay of 30 days in filing of the appeal is condoned.

2. This appeal has been preferred by the appellants through petitioner No. 1 against order dated 16th May, 2017 passed by the National Company Law Tribunal, Kolkata Bench (hereinafter referred to as the 'Tribunal') in C.P. No. 08/CLB/2016 whereby and whereunder the company petition has been dismissed for the reasons as quoted below:

"From the perusal of the record, it appears that the Advocate appearing on behalf of the Petitioner, namely, Shri Satadeep Bhattacharjee/Shri Sagnik Basu is making mockery with the judiciary and with the Bench and has given complete fare well to all judicial norms and thereafter, trying to suppress the Court with loud voice justifying his dictates.

Be that as it may, the Advocate for the Petitioner(s), named above, ultimately realized on seeing the Court record, and submitted that the CP may be dismissed. Since the Company Petition has not been corrected/amended from 10-12-2015, I found no reason to continue with the said Company Petition and as such the Company Petition is dismissed with cost of Rs. 50,000/- (Rupees Fifty thousand only) to be paid to the respondent as compensatory cost within a week without fail.”

3. From the impugned order, we find that because of the behaviour of the lawyer in his unruly loud voice and behaviour in the Court, the Tribunal to ensure that such unruly behaviour do not took place in future and because of suggestion of the Lawyer, dismissed the petition and impose cost on appellant.

4. On 26th July, 2017, when the matter was taken up by the Appellate Tribunal, learned counsel appearing on behalf of the appellants submitted that because of the behaviour of the appellant’s counsel the appellants should not suffer. It is informed that the appellant has already taken steps to lodge a complaint against the counsel. Such submission appeared to be attractive. Initially, we thought that the matter should be remitted back to the Tribunal for decision on merits by allowing the appellants to engage some other lawyer. However, from the impugned order, we find that the Company Petition and affidavit were notarised by one Mr. Satya Sankar Sur, but the said affidavit is full of cuttings and over writing and few places are even left blank without any

initial of the appellants and / or Notary Public whereas, as per usual practice whenever the Notary Public detects any mistake or cutting or over writing, they underline the same with red ink but in the present case they were left without any such mark, giving rise to doubt of the affidavit. This is one of the reason for the Tribunal to doubt the petition as also the affidavit filed by the appellants. In view of such incomplete affidavit, we are also not inclined to remit back the case to the Tribunal.

5. However, in the facts and circumstances of the case and as we find that the Company Petition was defective and because of Lawyers suggestion the petition was dismissed, to do substantive justice, we allow the appellant to file another Company Petition under Section 241 and 242 of the Companies Act, 2013, if there is continuous alleged acts of 'Oppression and Mismanagement' on the part of the respondent. If such petition is filed and is complete the Tribunal will hear the same after notice to the parties uninfluenced by the impugned order dated 16th May, 2017 passed by the Tribunal, as it has not decided the case on merit.

6. The appeal stands disposed of with the aforesaid liberty. However, in the facts and circumstances there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Balvinder Singh]
Member (Technical)