

NATIONAL COMPANY LAW APPELLATE TRIBUNAL NEW DELHI

COMPANY APPEAL (AT) No. 126 of 2019

In the matter of:

K.V. Brahmaji Rao

Address: B-76,

Vasant Kunj Enclave,

Vasant Kunj,

New Delhi - 110070

...Appellant

Vs

Union of India,

Ministry of Corporate Affairs,

Through Regional Director (Western Region),

Everest 5th Floor,

100, Marine Drive,

Mumbai- 400002

...Respondent

Present:-

For Appellant: Ms. Rajul Jain, Advocate

**For Respondent: Mr. Sanjib K. Mohanty, Sr. Panel Central
Government Counsel.**

JUDGEMENT

(17th August, 2020)

Jarat Kumar Jain. J

The Appellant K.V. Brahmaji Rao has preferred this Appeal under Section 421 of the Companies Act, 2013 (In Short 'the Act') against the order dated 31.01.2019 passed by National Company Law Tribunal, Mumbai Bench, at Mumbai (In Brief 'Tribunal') in M.A. No. 406 of 2019 and M.A. No. 407 of 2019 in CP No. 277 of 2018. Whereby impleaded the Appellant in CP No. 277 of 2018 as Respondent No. 83 and passed the order of attachment of Appellant's Assets.

2. Brief facts of this Appeal are that the Respondent herein had initiated aforesaid Petition against the persons who had been named as accused in the FIR dated 31.01.2018 and further on 15.02.2018 filed by Punjab National Bank (In Short 'PNB'). FIRs were registered against some known and unknown accused who had been alleged to be perpetration of the huge Financial Scam against the PNB. The Respondent ordered investigation into the affairs of 107 Companies and 7 LLPs under the provisions of the Act and LLP Act, 2008 and also sought to supplement the investigation by seeking indulgence of the Tribunal as per the provisions of Sections 221, 222, 241, 242 and 246 r/w Section 339 of the Act. The CBI has filed charge sheet in the case of Nirav Modie's case and Gitanjali Group cases. The investigation by the CBI has revealed that 19 persons (including the Appellant and Ms. Usha Ananthasubramanian) named in the Application M.A No. 407 of 2019 have also acted dishonestly and fraudulently with the other persons already arrayed as Respondents in the aforesaid Company Petition. Therefore, Respondent filed the Application M.A 407/2019 that these 19 persons be impleaded as Respondents and filed another Application M.A No. 406/2019 with the prayer to order for frizzling their Assets.

3. At the relevant time the Appellant was Executive Director, PNB, Head Office, New Delhi and Ms Usha Ananthasupramanian was Managing Director of CEO, PNB, Head Office, New Delhi. Learned Tribunal by the impugned order allowed the Applications and also passed the order for frizzling Assets of these persons and injuncted from disposing

movable and immovable Properties/Assets which belong to them. Being aggrieved with this order, the Appellant preferred this Appeal.

4. Learned Sr. Panel Central Government Counsel raised an objection that the Appeal is time barred. The impugned order was passed on 31.01.2019, as per the Appellant he received the copy on 11.02.2019 and as per website of this Appellate Tribunal the Appeal was filed on 16.08.2019, thus, the delay in filing the Appeal is more than statutory period of 90 days. Hence, may be dismissed in *limine*.

5. In this regard, Learned Counsel for the Appellant submits that the Appellant received the certified copy of 11.02.2019 and Appeal was filed on 09.05.2019. There is delay of 41 days in filing the Appeal, the delay is occurred as after receiving copy of the impugned order the Appellant obtained the copy of the Company Petition, the same required examination of volumes documents for preparation of Appeal. Thus, the delay of 41 days is bona fide hence, considering this fact, this Appellate Tribunal vide order dated 20.05.2019 condoned the delay and allowed the Application. Therefore, this issue cannot be agitated again at this stage.

6. We have gone through the record, there is delay of 41 days in filing the Appeal and we have already condoned the delay vide order dated 20.05.2019. We found no ground to reconsider this order.

7. Learned Counsel for the Appellant submits that the impugned order has been passed in violation of Principle of Natural Justice since the Appellant was not served with advance copy of the said Application and without giving opportunity of hearing impugned order has been

passed. The Appellant is neither necessary nor a proper party for the adjudication of Company Petition No. 277 of 2018.

8. Learned Counsel for the Appellant submits that vide impugned order 19 persons (including Appellant and Ms. Usha Ananthasubramanian) were impleaded as Respondents. At the relevant time Ms. Usha Ananthasubramanian was Managing Director and CEO of PNB, whereas the Appellant was Executive Director of PNB, Head Office, New Delhi. Ms. Usha Ananthasubramanian has challenged the impugned order before this Appellate Tribunal and thereafter, before Hon'ble Supreme Court in Civil Appeal No. 7604 of 2019 titled as Ms. Usha Ananthasubramanian Vs. Union of India, Hon'ble Supreme Court vide Judgment dated 12.02.2020 allowed the Appeal. The case of the Appellant is at par with the Ms. Usha Ananthasubramanian. Therefore, the Appeal deserves to be allowed.

9. Learned Sr. Panel Central Government Counsel has not opposed the prayer.

10. After hearing Learned Counsel for the parties, we have gone through the record and also the Judgment passed by the Hon'ble Supreme Court in the case of Ms. Usha Ananthasubramanian (Supra). It is apparent that vide impugned order dated 31.01.2019, 19 persons were proposed to be impleaded as Respondent, Ms. Usha Ananthasubramanian and the Appellant K.V. Brahmaji Rao are included in the list of 19 persons. The allegations against the Ms. Usha Ananthasubramanian and K.V. Brahmaji Rao (Appellant) are the same, at the relevant time. Ms. Usha Ananthasubramanian was Managing

Director and CEO of PNB, Head Office, New Delhi, whereas the Appellant was the Executive Director of PNB, Head Office, New Delhi. Hon'ble Supreme Court by the aforesaid order has allowed the Appeal of Ms. Usha Ananthasubramanian, the relevant Paras read as under:-

“6. Under Section 241(2), the Central Government, if it is of the opinion that the affairs of the Company are being conducted in a manner prejudicial to public interest, may apply itself to the Tribunal for orders under this Chapter, which is headed “prevention of oppression and mis-management”. Apart from the vast powers that are given to the Tribunal under Section 242, powers under Section 337 and 339 are also given in aid of this power, which will apply *mutatis mutandis*.

7. Section 337 refers to penalty for frauds by an officer of the company in which mis-management has taken place. Likewise, Section 339 refers to any business of the company which has been carried on with intent to defraud creditors of that company. Obviously, the persons referred to in Section 339(1) as persons who are other than the parties “to the carrying on of the business in the manner aforesaid” which again refers to the business of the Company which is being mismanaged and not to the business of another company or other persons.

8. This being the case, it is clear that powers under these Sections cannot possibly be utilized in order that a person who may be the head of some other organization be roped in, and his or her assets be attached. This being the case, we set aside the impugned order passed by the NCLAT and well as the NCLT. The Appeal is allowed in the aforesaid terms.

9. We may clarify that nothing stated in this Judgment will have any effect insofar as the investigation conducted by the CBI or the investigation by the SFIO is concerned.”

11. Hon’ble Supreme Court held that the person who may be the head of some other organizations cannot be roped and his or her Assets cannot be attached in exercising the powers under Sections 337 & 339 of the Act. Admittedly, the Appellant was the Executive Director of PNB, Head Office, New Delhi i.e. employee of other organization. Therefore, he cannot be impleaded as Respondent in the Company Petition NO. 277 of 2018. Which is against the Nirav Modi Group and Gitanjali Group of Companies. The Case of Appellant is on same footing as of Ms. Usha Ananthasubramanian (Appellant before Hon’ble Supreme Court in Civil Appeal No. 7604 of 2019).

12. Thus, the impugned order is set aside with the terms as indicated in the aforesaid Judgment of Hon’ble Supreme Court.

The Appeal is allowed. No costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Balvinder Singh)
Member (Technical)

(Kanthi Narahari)
Member (Technical)

NEW DELHI

SC

Note:- In compliance of the order dated 19.02.2021 in Para 9 of the Judgment word 'Not' has been omitted. Judgment corrected on 19.02.2021.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Kanthi Narahari)
Member (Technical)

SC