

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

**COMPANY APPEAL(AT) NO.263 OF 2018**

(ARISING OUT OF IMPUGNED ORDER DATED 12.3.2018 PASSED BY THE NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, CHENNAI IN C.P. NO.29/2016 (C.P. NO.78/2008))

**IN THE MATTER OF:**

**Before NCLT**

**Before NCLAT**

S.P. Perumal  
Mr. Sell Thevar,  
R/o 9/28M,  
Sakthi Nagar,  
Siruvani Main road,  
Kalampalayam Post,  
Coimbatore,  
Tamil Nadu

4<sup>th</sup> Respondent

Appellant

Vs

01.V. Ramasamy  
S/o Veerappagounder,  
R/o Komarayanur Village,  
Bhavani Taluk,  
Erode Distt.  
Tamil Nadu.

1<sup>st</sup> Petitioner

1<sup>st</sup> Respondent

02.V.Kuppusamy  
S/o Veerappagounder,  
R/o Komarayanur Village,  
Bhavani Taluk,  
Erode Distt  
Tamil Nadu

2<sup>nd</sup> Petitioner

2<sup>nd</sup> Respondent

03.S. Muthusamy  
S/o Sellappa Gounder,  
R/o Mettur  
Saminathapuram Post,  
Erode Distt  
Tamil Nadu through  
POA V Ramasamy

3<sup>rd</sup> Petitioner

3<sup>rd</sup> Respondent

04.M. Sakthivel  
S/o Muthusamy  
R/o Mettur  
Saminathapuram Post,

Erode Distt Tamil Nadu through POA V Ramasamy	4 <sup>th</sup> Petitioner	4 <sup>th</sup> Respondent
05.R. Sellammal, W/o Lata Ramasamy, R/o Mettur Saminathapuram Post, Erode Distt Tamil Nadu through POA V Ramasamy	5 <sup>th</sup> Petitioner	5 <sup>th</sup> Respondent
06.Mrs N. Rukumani W/o Late P Nallappa Gounder R/o Chinnamuthu Main Street, Edaiyankattu Valasu, Erode, Tamil Nadu through POA holder V Ramasamy.	6 <sup>th</sup> Petitioner	6 <sup>th</sup> Respondent
07.Mrs C. Kannammal, W/o Mr.Chinnasamy, R/o 17, Karuppanasamy Koll II Street, Erode Distt Tamil Nadu Through POA V Ramasamy	7 <sup>th</sup> Petitioner	7 <sup>th</sup> Respondent
08.Mrs E. Kanchana Devi, W/o Mr. L.E. Elango R/o Patel Road, Erode Distt Tamil Nadu Through POA holder V Ramasamy	8 <sup>th</sup> Petitioner	8 <sup>th</sup> Respondent
09.K.M. Viswanathan, S/o Late Marappagounder R/o 5/98, Karukkampalayam, Unjalur Post, Erode Distt Tamil Nadu Through POA holder V Kuppusamy	9 <sup>th</sup> Petitioner	9 <sup>th</sup> Respondent
10.Mr. V. M. Ponnusamy S/o Late Marappagounder,		

- R/o 50, Theppakulam Street,  
Verapanchatram,  
Erode Distt,  
Tamil Nadu  
Through POA holder  
V Kuppusamy 10<sup>th</sup> Petitioner 10<sup>th</sup> Respondent
- 11.Mrs C. Sasikala Devi  
W/o K Chinnusamy  
R/o 31, Patel Road,  
Erode Distt  
Tamil Nadu  
Through POA holder  
V Kuppusamy. 11<sup>th</sup> Petitioner 11<sup>th</sup> Respondent
- 12.Mr C Kandasamy  
S/o Late Chennimalai Gounder  
R/o Semmandampalayam  
Vadamugam Vellode Village,  
Perundurai R.S. Post,  
Perundurai Taluk  
Erode Distt  
Tamil Nadu  
Through POA holder  
V. Kuppusamy. 12<sup>th</sup> Petitioner 12<sup>th</sup> Respondent

**For Appellant:-** Mr. Sriram. P, Mr. Sarath S. Janardanan, Advocates.

**Respondents:** - Ms Malavika Jayanth and Mr. Sureshan. P, Advocates.

### **JUDGEMENT**

This appeal is filed by original Respondent No.4 of TCP No.29/2016 (C.P. No.78 of 2008) which was before the National Company Law Tribunal, Chennai Bench, Chennai (NCLT in short) and which was filed by the present respondents (original petitioners) complaining of oppression and mismanagement. The company concerned is Raji Feeds Private Ltd-(Original Respondent No.1). A copy of the Company Petition at Annexure-8 shows that there were total 29 respondents in the company petition. Only Respondent No.4 on being aggrieved by the

impugned order has filed this appeal without making the other respondents party to this appeal except arraying the original petitioners.

2. I have heard the learned counsel for the appellant, and, learned counsel for respondents who has appeared for all except Respondent No.6 and 10. Learned counsel stated that Respondent No.6 and 10 of this appeal, who were original petitioners have expired. The Learned counsel for the appellant did not dispute the statement at the time of argument.

3. The impugned order is dated 12<sup>th</sup> March, 2018. The appeal has been filed based on certified copy which has the stamp of certification dated 14<sup>th</sup> March, 2018. The appellant claimed in para 6 of the Appeal that he came to know of the impugned order only on 02.07.2018. The impugned order shows that the original Respondents No.1 to 4, 6, 7, 9 to 10, 12 to 22 and 23 to 29 earlier appeared in the NCLT but thereafter they remained absent and were proceeded against ex parte on 19.9.2016. Thus the appellant has claimed that he had been proceeded against ex parte and he came to know of the impugned order on 2.7.2018. However, the appellant himself has relied on copy which is certified on 14<sup>th</sup> March, 2018, I thus do not accept the bald statement of the appellant that he came to know about the impugned order only on 2.7.2018. At the time of arguments the counsel submitted that the appellant had come to know of the impugned order in June, 2018. He was unable to show pleading on that count. Now as is noticed from the appeal, the appellant claims that he came to know only 2.7.2018 which cannot be accepted. The appeal was presented on 6.7.2018 in this Appellate Tribunal. By this time about 113 days had been consumed by the appellant if the certified copy is seen. Under Section 421 of the Companies Act, 2013, ("Act" in brief), the appeal has to be filed within 45 days from the date on which the copy of the order of the

Tribunal is made available to the person aggrieved. The Proviso to sub-section (3) states that the Tribunal may entertain an appeal after the expiry of the said period of forty five days from the date aforesaid, but within a further period not exceeding 45 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period. Proviso of Section 421 of the Act are quite clear. After the first 45 days which is period given to file the appeal, the next 45 days would require sufficient cause to be shown. This Appellate tribunal has no power to condone beyond this second slab of time. In the present matter the appeal has been presented much beyond the period of 90 days and I am not required to go into the question whether there was sufficient cause for delay. The appeal is clearly time barred and is required to be dismissed on this ground itself.

4. However, before passing the dismissal order, I am recording my views and findings with regard to the grounds raised in the appeal in support of which submissions have been made by the learned counsel for the parties, in case at any future point of time it becomes necessary to have the views of this Appellate Tribunal.

5. It has been argued by the learned counsel for the appellant that the original Respondent No.4 (appellant) had been proceeded against ex parte on 19.9.2016 as the impugned order itself shows. The counsel argued that the appellant has a right to be heard on merit and there were serious allegations in the Company Petition against the present appellant and he needs to be given another chance to be heard on merits and the impugned order needs to be set aside and to give liberty to the appellant to put up case in NCLT. The counsel was asked to show as to what are grounds made out to seek setting aside of the ex parte order. When I

wanted to see as to what happened for NCLT to proceed ex-parte, the counsel was unable to show even copy of the order dated 19.9.2016 which is referred to in the impugned order, as no copy of the said order has been filed. The counsel argued that the appellant had handed over all his documents to an Advocate he had engaged for appearing in the NCLT. The Advocate for appellant submitted that in NCLT junior of that Advocate had filed Vakalatnama but that Advocate himself did not appear. The counsel was unable to show any steps taken by the appellant to contact his said Advocate or follow up with his Advocate regarding the matter which was pending. The learned counsel for the appellant submitted that appellant has mentioned in the appeal as a ground para 9(c) that the appellant had entrusted the papers but further dates and information were not shared with him by the Advocate. The learned counsel for the appellant submitted that the Advocate to whom the papers were entrusted has now become a Judge of the High Court and thus his client has instructed him not to disclose the name of the advocate. It has been argued that the appellant was unable to get back the papers entrusted to the Advocate and the appellant has various grounds and documents to be raised but the appellant is unable to show the same for want of documents. Ground 9(e) of the appeal claims that the petitioner (should be appellant) has more ground and more documents than can be raised in this appellate stage to be raised in the Tribunal in Chennai. The grounds claim that the appellant should be given opportunity to place his case before the Appellate Tribunal or set aside the impugned order and allow him to place the same before this Tribunal. This Tribunal has not stopped appellant from putting up his case and filing documents and raising grounds. Appellant on his own has not put up grounds and documents to show why the ex-parte proceeding should be interfered with. What I find from

the record and on considering the arguments of the learned counsel for appellant and also the respondent is that the appellant except for taking a vague stand in pleading is not disclosing anything other than making oral submission without material that he had entrusted his papers to an Advocate, name of which also he does not want to disclose and does not want to disclose any action taken to get back the papers and with such vague stand the appellant is trying to make me believe that he has got grounds to raise and documents to show in his favour which also he will disclose only in NCLT, and so I should set aside the impugned order. I find that the appellant does not make out any real ground which would justify setting aside of the ex parte proceeding. The impugned order shows that it was a matter which was pending earlier before Company Law Board and then before the NCLT from 2008 till 2018 when the impugned order was passed. There is no material to show that in such period of almost a decade the appellant made any effort to bring on record of NCLT what case he wants to put up or that he be give a chance. It is very easy to blame an Advocate (whose name is also not disclosed) and saying that the Advocate did not do anything and did not inform the appellant. It is also the duty of the client (appellant here) that the client should follow up at the Tribunal/Court and keep in touch and contact the Advocate to know the progress in his matter.

6. Thus I do not find that even prima facie case is made out by the appellant that he has good case and grounds for setting aside ex parte orders.

7. Learned counsel for the appellant claimed that there were serious allegations against him in the Company Petition. Perusal of the impugned order does show that the respondents-original petitioners had filed the Company Petition making

serious allegations against the erstwhile Managing Director and Director and claimed that they had handed over blank letterhead papers signed by them as security given to officials of M/s Godrej Agrovet Ltd to which company the original respondent company M/s Raji Feeds Pvt Ltd owed some dues. The impugned order shows that the NCLT considered the company petition which had been filed by the shareholders and also considered the report which was called by Company Law Board from Mr I.S. Venkatesh partner with K.S.G. Subramanyam & Co, Chartered Accountants appointed Commissioner. The Commissioner was appointed on 27.7.2011 to investigate into the ownership and shareholding of the company and to file report. NCLT considered the report. It also considered counter statement filed by original respondent No.2 and 3 (Annexure A-9). These original respondents No.2 and 3, it appears, were erstwhile Managing Director and Director. It also considered the counter statement filed by Respondent No.29 (Appeal Page 158) and kept in view the material which was before NCLT and concluded in para 32 of the impugned order as under:-

***“From the above, it is clearly established that the Respondent Nos 4 to 29 have never contributed to the capital of the 1<sup>st</sup> respondent company. They have allotted shares of the 1<sup>st</sup> Respondent Company to themselves and became the Directors by excluding the actual shareholders by forging the documents on the letter head papers of the 1<sup>st</sup> respondent company, which were given as blank for keeping with the Respondent Nos.4 and 5, as security for dues owed by the 1<sup>st</sup> respondent company to them. The Respondents have also violated the Order dated 19.02.2008 passed by then CLB by which the status quo***

***regarding the shareholding pattern was ordered to be maintained till further orders.”***

8. I do not find any force in the arguments of the learned counsel for appellant that the impugned order should be set aside and chance be given to the appellant to go back to NCLT so as to raise grounds and filing documents (What are those documents? Even that is not disclosed) because the allegations are serious. The allegations were serious in the company petition itself. If the appellant had defence to make, nothing prevented him from contesting the petition which was pending for almost 10 years. Admittedly the appellant had taken over the Management of the company from erstwhile Directors and inspite of the impugned order this position is admittedly continuing. Having caught hold of the management of the company for so many years he is holding on. When the petition was filed he appeared and later failed to contest. He preferred to keep silent for almost a decade. When impugned order is passed he gets a copy and does not still take steps. When impugned order becomes final, he files a time barred appeal. He has no equity to stand on. I do not find that such appellant should be given any sympathy to protract and prolong the litigation. He just wants to continue to hold on to management of the company without a shread of any legally recognizable document to support directorship or shares.

9. Even if it was to be accepted for a moment that the appellant handed over his documents to the Advocate for defending him in NCLT, looking to the manner in which filings are done before ROC, nothing prevented the appellant from getting the necessary certified copies from the office of the ROC to prima facie show as to how he came to be put in charge of the management of the affairs of the company. The appointment of the directors are required to be confirmed in the General Body

Meeting. If shares are transferred, there is procedure prescribed for the same. Nothing is shown how original shareholders transferred shares. In the present matter what the NCLT has found from the filing done was that the shareholders as seen from the AGM of 25.9.1997 were simply replaced by fresh list of shareholders as shown in the AGM of 30.9.1998. The respondents-original petitioners claim that they had never transferred any shares of theirs. If the appellant was serious he could have got the concerned documents from ROC. As the appellant has been holding on to the management of the company he is unable to give the excuse that the company is not sharing documents with him. As such the appellant has conveniently taken a lame excuse that all his papers are with Advocate and that he has become a Judge and he cannot get them. I do not find any substance in the submissions made by the appellants' counsel and the grounds which are being raised so as to interfere in the impugned order.

**ORDER**

10.(A) For the above reasons the appeal is dismissed on the ground of same being time barred. Even if the merits were to be considered, for reasons recorded there is no substance. Respondents are free to get orders of NCLT acted upon

(B). The appellant from his own funds shall pay costs of Rs.50,000/- to each of the Respondents No.1 to 5, 7 to 9, 11 and 12.

(Justice A.I.S. Cheema)  
Member (Judicial)

New Delhi

Dated:08-01-2019