

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 186 of 2017

IN THE MATTER OF:

Concast Steel & Power Ltd.

.....Appellant

Vs.

Regional Director, Eastern Region & Ors.

...Respondents

Present: For Appellant:- Mr. Saurabh Kalia and Mr. Palash Agarwal, Advocates. Mr. Deepak Kr. Khaitan, Company Secretary.

ORDER

14.07.2017- The appellant/petitioner has challenged the order dated 6th April, 2017, passed by National Company Law Tribunal (hereinafter referred to as 'Tribunal'), Kolkata Bench, Kolkata, whereby and whereunder the Tribunal dismissed the Company Petition No. 137/2017 preferred by appellant as not maintainable.

2. The appellant, the transferee company filed application under section 231 of the Companies Act, 2013 for the direction to rectify the errors crept in the order dated 26th November 2015 passed by the Hon'ble Calcutta High Court in CP No. 1054/2014 and in CA No.552/2014.

3. By order dated 12th April, 2016, the Hon'ble Calcutta High Court ordered for dissolution of all transferor companies without winding up to the transferee company. According to appellant, some errors have been detected now in the Schedule appended to the order passed by

the Hon'ble Calcutta High Court dated 26th November, 2015 and 12th April, 2016. However, as power of the Hon'ble Calcutta High Court has been taken away pursuant to the notification dated 7th December 2016, the appellant moved before the Tribunal for rectification of the errors. The Tribunal dismissed the same on the ground that the petition was not maintainable as orders have been passed by the Hon'ble Calcutta High Court.

4. Ld. Counsel for the appellant relied on sub-section (3) of Section 231 of the Companies Act, 2013 to suggest that the provision also applies in case orders have been made by the Hon'ble High Court, which reads as follows:

“231. Power of Tribunal to enforce compromise or arrangement.—

(1) & (2) xxx xxx xxx

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.”

5. Notices were issued to the respondents but in spite of service of the notice, nobody has appeared on behalf of the respondents.

6. In the present case, we find that the Tribunal has not noticed the provision of sub-section (3) of Section 231 and not decided the issue taking into consideration the provision of the law. We are of the

view that the matter has to be remanded back to the Tribunal to decide the question whether the Tribunal in exercise of power conferred by sub-section (3) of Section 231, can modify the orders passed by the Hon'ble Calcutta High Court.

7. For the reasons aforesaid, we set aside the order dated 6th April, 2017, passed by Tribunal in C.P.No. 137 of 2017 and remit the matter to the Tribunal to decide the question in light of the provision as referred to above.

8. We make it clear that we have not expressed any opinion on the question as to whether the Tribunal is empowered to correct the errors referred to in the order passed by the Hon'ble Calcutta High Court under sub-section (3) of Section 213 of the Companies Act, 2013, which is to be decided by Tribunal uninfluenced by its earlier order or this order of the Appellate Tribunal.

9. With the above observations the appeal stands disposed of. However, in the facts and circumstances of the case there shall be no order as to costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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