

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 274 of 2018

IN THE MATTER OF:

Shri Kalu Masar & Anr.

...Appellants

Versus

Solanki Green Marble Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellants : Mr. M. L. Sharma, Advocate

O R D E R

05.09.2018 The appellants (petitioners) filed an application under Section 397 and 398 of the Companies Act, 1956 (Section 241 and 242 of the Companies Act, 2013) alleging 'oppression and mismanagement' on the part of the respondent. The National Company Law Tribunal, New Delhi Bench (hereinafter referred to as the 'Tribunal') by impugned judgment dated 17th July, 2018 dismissed the same as no case of 'oppression and mismanagement' has been made out by the petitioners.

Learned counsel appearing on behalf of the petitioners (appellants) submitted that 8000 shares of petitioner No. 1 was illegally transferred by forged his signatures which resulted transfer of the mining lease in favour of the company. The allegation of syphoning off the funds has also been made. It is

further submitted that the Tribunal failed to consider the relevant evidence including the fact that total amount out of Rs. 20 lakhs which is alleged to have been paid by the 2nd Respondent is not based on any evidence. It is also submitted that the Petitioner No. 1 never wanted to sell his 8000 shares.

We have heard the learned counsel for the appellants and perused the record. We find that the appellants made the allegation against 2nd respondent of fraudulently transferring the shares in form of the company. The application under Section 397 and 398 was preferred in the year 2015 on the ground that the petitioner came to know the same in the said year.

The Tribunal while accepted that allegation of fraud has no period of limitation, but taking into consideration the allegation that the handwriting and the signature of the petitioner No. 1 to be verified to find out whether it is forged or not and the allegation of forgery, fabrication, coercion, deceit as levelled by the petitioners are all subject matters of the trial and the petitioners have already moved before the Civil Court of competent jurisdiction for same set of allegations which has not been disclosed by the petitioners, the Tribunal dismissed the petition.

Taking into consideration the fact that the allegation of 'oppression and mismanagement' is based on the allegation of forgery, fabrication, coercion etc. as alleged by the petitioners for which they have already moved before the Civil Court of competent jurisdiction, we agree with the finding of the Tribunal that in such case the allegations are to be substantiated on the basis of evidence, no finding can be given on the question of 'oppression and mismanagement' based

on such allegation. We find no merit in this appeal. The appeal is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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