

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 374 of 2017

IN THE MATTER OF:

1. **Iberchem S.A.,
Avda Del Descubrimiento,
Parcela 9/9, 30820,
Alcantarilla (Murcia).**

2. **Iberchem India Limited,
38/A, Radhe Industrial Estate,
Tajpur Road, Tal. Sanand,
Changodar,
Ahmedabad – 382 213.**

... Appellants

- Versus -

1. **Yatin Chandulal Davda,
17, Mandar Bunglows,
Nr. Surdhara Circle,
Thaltej, Ahmedabad.**

2. **Beena Yatin Davda,
17, Mandar Bunglows,
Nr. Surdhara Circle,
Thaltej, Ahmedabad.**

3. **Marco Manlio Ciccarelli,
APT Blk 14 Marine,
Terrace # 10-182m
Singapore – 440 014.**

4. **Samir Sumanlal Modi,
C-203, Prerna Tower,
Opp. Sunrise Park,
Bodakdev,
Ahmedabad -380 054.**

- C. Jacobo De Las,
Leyes 12 PO 1 F,
Murcia – 380 001 ES.**

6. **Jose Escribano Balibrea,
C. Juan De La Clerva,
73B Guadalupe,
Murcia – 30107 ES**

**7. Alvin Kai Wah Ho,
28, Jalan Ketumbit,
Singapore 808881 SG.**

... Respondents

Present : Shri Rituajay Gupta, Advocate for the Appellants.

Shri Rakesh Parikh, Advocate for Respondents Nos. 1 & 2.

ORDER

28.11.2017 Heard the learned counsel for the appellants and the learned counsel for Respondents Nos. 1 and 2.

2. This appeal has been filed against the impugned order passed in I.A. No. 317/2017 in C.P. No. 172/241-242/NCLT/AHM/2017, where the National Company Law Tribunal, Ahmedabad Bench ('NCLT' in brief) passed orders as under :

“Learned Senior Advocate Mr. Saurabh Soparkar with Learned Advocate Mr. Bijal Chhatrapati i/b. J. Sagar & Associates present for Applicant/original Respondent. Learned Advocate Mr. Ramesh Parikh with Learned PCS Mr. Hitesh Buch present for Respondent/Original Petitioner in IA 317/2017.

Learned Advocate Mr. Sujal Shah present of Original Respondents no. 3 to 7.

Heard Learned Counsel for applicant and Respondents in IA 317/2017.

Applicants herein already filed IA 316/2017 under section 8 of Arbitration and Conciliation Act, 1996 and it is pending for hearing before this Tribunal. Hence there is no impediment for the applicants herein to file their reply in main petition without prejudice to their Contention in their application in IA 316/2017 and IA 318/2017.

Hence, Applicants herein/ Respondents shall file reply on or before 09.11.2017 after serving copy in advance to the other side.

Application IA 317/2017 is disposed of accordingly.”

3. Learned NCLT passed further order (which is also impugned) below the Company Petition as under :

“Learned Advocate Mr. Rasesh Parikh with Learned PCS Mr. Hitesh Buch i/b Learned Advocate Ms. Bhoomi Brahmakshatriya present for Original Petitioner. Learned Senior Advocate Mr. Saurabh Soparkar with Learned Advocate Mr. Bijal Chhatrapati i/b J. Sagar present for Original Respondents No. 1 to 3. Learned Advocate Mr. Sujal Shah present for Original Respondents No. 4 and 5.

In view of the order in IA 317/2017 Respondents shall file reply on or before 09.11.2017.

List the matter on 09.11.2017.”

4. Against these impugned orders, the appellants have filed this appeal and at the time of issuing notice on 9th November, 2017, this Tribunal passed further order as mentioned below :

“In the meantime, the Appellants may file reply to the Company petition pending before the Tribunal and the Respondents may also file their rejoinder. Pendency of the appeal will not come in the way of Tribunal to decide the Application under Section 8 of the Arbitration & Conciliation Act, 1996 uninfluenced by the order passed by the Tribunal.”

5. Now it appears that the appellant has already filed affidavit in reply in the Company Petition and the learned NCLT has also heard the arguments below I.A. No. 316/2017, which was filed under Section 8 of the Arbitration and Conciliation Act, 1996. Learned counsel for the Respondent says that he has just received the affidavit in reply and he will soon be filing rejoinder in the main Company Petition. The learned counsel for the appellant has tendered across the Board copy of the orders dated 10th November, 2017, which is taken on record and marked as ‘X’ for identification. The order reads as under :

“Learned Senior Advocate Mr. Saurabh Soparkar with Learned Advocate Mr. Bijal Chhatrapati with Learned Advocate Mr. Siddharth Sinha i/b J Sagar &

Associates present for Applicant. Learned Advocate Mr. Rasesh Parikh with Learned Advocate Mr. Kisan Dave with Learned PCS Mr. Hitesh Buch present for Respondent and Learned Advocate Mr. Sujal Shah present for Respondent no. 3 to 7 in IA 316/2017.

Heard arguments of Learned Counsel for Respondent. Order reserved in IA 316/2017.”

6. Thus the orders are reserved. The learned counsel for the appellant is insisting that the present appeal may be kept pending although affidavit in reply has been filed and although I.A. No. 316/2017 has already been heard and reserved for orders. He submits that the appellant is apprehensive, in case I.A. is not decided first and the Company Petition gets disposed of. We do not find any basis for the apprehension of the appellant. In the face of the above developments and orders, the present appeal becomes infructuous as nothing survives in it for decision.

7. The appeal is dismissed as infructuous. No orders as to costs.

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

[Balvinder Singh]
Member (Technical)

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