

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

Company Appeal (AT) No. 139 of 2019

IN THE MATTER OF:

S.P. Contract Pvt. Ltd. & Ors.

...Appellants

Versus

Dinkar Dogra

...Respondent

Present:

For Appellant : Mr. Manjit Singh Ahluwalia, Advocate

For Respondents : Ms. Ananya Mishra, Advocate.

Mr. Krishna Kumar and Mr. Srujana Suman Mund, Advocates.

And

I.A. No. 1970 of 2019 in
Company Appeal (AT) No. 142 of 2019

IN THE MATTER OF:

Dinkar Dogra

...Appellant

Versus

S.P. Contract Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Ms. Ananya Mishra, Advocate for Appellant.

Mr. Krishna Kumar and Mr. Srujana Suman Mund, Advocates.

For Respondents : Mr. Manjit Singh Ahluwalia, Advocate for R-1.

**Ms. Saloni Purohit, Advocate for R-9, Dr. Bipin K. Dwivedi,
Advocate for R-11. Mr. Sarojanand Jha, Advocate for R-12.**

JUDGEMENT

(13.12.2019)

Dr. Ashok Kumar Mishra, Technical Member

1. The present set of 2 appeals has been preferred by the S.P. Contract Pvt. Ltd., Satish Gupta and Sandhya Gupta (hereinafter referred to as 'Appellants') and Dinkar Dogra (hereinafter referred to as 'Respondent') against each other. Appellants herein are partly challenging para 18 and 19 of the impugned judgment dated 12.4.2019 passed by NCLT, New Delhi Bench, in C.P. No. 29/ND/2016. Whereas the Respondent is challenging the above impugned judgment except to the extent of directions given in Para 18 and 19 of the impugned judgment alleging Oppression and Mismanagement against the Appellants.
2. The Adjudicating Authority in Para 17 of the impugned judgment has held there to be no case of Oppression and Mismanagement against the Appellants but in Para 18 and 19 of the impugned judgment has given directions to the Appellants to transfer the amount lying in the the SBI account to the HDFC bank account of the Appellant Company, and any further money which is received by R1 is also directed to be deposited in the bank account of R1.
3. The Appellants submits that the direction given by NCLT is erroneous as property of one of the directors is already a collateral security with HDFC bank, Gurgaon. The appellants further submits that they have sold their house on mortgage with the bank to pay of the debts of the company and the respondent has only filed a petition for mismanagement so that he may escape from liquidating his assets.
4. The respondent has alleged that the Appellants have siphoned off funds for their personal use resulting in the Respondents company inability to pay its debts to HDFC bank. The respondent further contends that the Appellants have intentionally not repaid the HDFC loan so as to force the Respondent to sell his

house attached as security for the loan amount granted to the respondent company. The respondent further submits that the Property(House of Appellants attached as security with HDFC bank) has been shown to be sold at lesser value to enable the Appellants to siphon off funds. The respondent has also submitted that the Appellants have been deliberately not recovering the money owed by third parties such as Era infra Engineering , Raheja Developers etc as they do not want the proceeds to be used to pay off the Debt owed to HDFC, thus forcing respondent to sell his own property.

5. The HDFC Bank has also raised SURFASI proceedings before NCLT after his SURFASI interim plea has already been dismissed by the DRT Chandigarh, DRAT –P&H high Court and further his writ was dismissed as withdrawn before the Hon'ble P&H High Court in single as well as division bench as well as before the Hon'ble Delhi High Court in Writ Petition no. 2603 of 2019.
6. The Appellants were directed by the Tribunal to deposit all receivables in their favor only in the HDFC Bank Account vide Order dated 01.03.2016. On their failure to deposit such amount in the HDFC Bank Account and instead depositing a cheque of Rs. 5 lacs in the SBI Account, an application for contempt under Section 425 of the Companies Act, 2013 was filed by the Respondent. The Ld. Tribunal while accepting that there was no case for mismanagement against the Appellants, held them to be in contempt of their Order dated 01.03.2016 and consequently directed the Appellants to transfer the money lying in the SBI Account with the State Bank of India, CGO Complex, Lodhi Road, New Delhi to the HDFC bank account of R1 and any other money received is also to be deposited in the HDFC account of the respondent company and further imposed a fine of Rs. 1,00,000/- on the Appellants.
7. We have heard the learned counsel for the parties and perused the records and therefore find no ground to interfere with the impugned order. The respondent has not been able to prove the case of Oppression and mismanagement against the Appellant. The Funds from the Appellants Company's bank account has not been siphoned off but is only used to pay the expenses of the respondent company or for making payments to the respective contractors and labor. The

amount transferred to the appellants personal account was repayment of the their spending on company's behalf.

8. The appeal stands disposed of with the following observations and directions:-

- a) There having been no case of mismanagement made out against the Appellant in the present case we concur with the view of the Ld. Tribunal
- b) The directions given by the Tribunal to transfer the money lying in the SBI Account with the State Bank of India , CGO Complex, Lodhi Road New Delhi and deposit further money collection receivables to the HDFC Bank Account of the Respondent Company is upheld as it is protection against siphoning off funds.
- c) The amount of fine imposed as per Tribunal's order is reduced to Rs. 10,000 considering the matter as stated Supra.

The present appeal is accordingly disposed off.

Justice Jarat Kumar Jain
Member (Judicial)

Mr. Balvinder Singh
Member(Technical)

Dr. Ashok Kumar Mishra
Member (Technical)

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New Delhi