

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.232-234 of 2019

IN THE MATTER OF:

Dinkar Dogra

...Appellant

Versus

S.P. Contracts Pvt. Ltd. & Ors.

...Respondents

**For Appellant: Shri Krishna Kumar and Ms. Srujana Suman Mund,
Advocates**

For Respondents: Shri M.S. Ahluwalia, Advocate (Respondent No.1)

O R D E R

23.08.2019 Heard learned Counsel for the Appellant and Advocate Shri M.S. Ahluwalia for Respondent No.1. The learned Counsel for the Appellant referred to the final Order which was passed in the Company Petition - C.P.No.29/ND/2016 on 12.04.2019 by the National Company Law Tribunal, New Delhi Bench (NCLT – in short) (Annexure A/10 Page – 139 at 161) in which after holding that Appellant/Petitioner has failed to make out a case of oppression and mismanagement, it was held in Paragraphs – 18 and 19 as follows:-

“18. The Petitioner had filed an application for contempt under Section 425 of the Companies Act, 2013 against R1, R2, R3 and R4 for disobeying order dated 01.03.2016 which mandated that all the receivables in favour of R1 will be deposited only in the HDFC Bank account. It is apparent from the records available that the Respondents had disobeyed that order dated 01.03.2016 by depositing a cheque of Rs.5 lacs in the SBI account instead of the HDFC account. Thus, there is no doubt that the Respondents

have committed a contempt of this Tribunal for which a fine is imposed on R1, R2 and R3 of Rs.1,00,000/- each to be paid into the PM Relief Fund within a period of one month from this order.

19. It is directed that the amount of money lying in the SBI account with state Bank of India, CGO Complex, Lodhi Road, New Delhi should be transferred to the HDFC bank account of R1 and any further money which is received by R1 is also directed to the HDFC bank account of R1, in confirmation with the sanction letter dated 31.05.2013. It is further directed that the freeze imposed on the accounts of R1 are hereby removed. The petition and all applications are hereby disposed of.”

2. The Company Petition of the Appellant has been disposed against which he has filed Company Appeal (AT) No.142 of 2019 which is pending in this Tribunal. The learned Counsel submits that his grievance in present Appeal, is in the context of the above two paragraphs as he had moved contempt against the Respondents. He states that in para – 19 of the Judgement in the main matter, there was direction that the amount should be kept in HDFC Bank in the Account of Respondent No.1 Company in confirmation with the sanction letter dated 31.05.2013. It is stated by the Counsel that the Impugned Orders which have now been passed after disposal of Company Petition, are not in conformity with this direction which was passed in the main Company Petition.

3. The learned NCLT passed Order dated 21.05.2019 in the presence of Counsel for both sides which reads as under:-

“ORDER

It is being submitted that fresh cheques have been

issued against the expired cheques. Let the same be converted to Fixed Deposit for a period of 1 year. Be listed before the Ld. Registrar on 27th May, 2019 for necessary compliance.”

Thereafter, yet another Order came to be passed on 10th June, 2019 in the presence of Counsel for both sides which reads as follows:-

“ORDER

This case has been listed before us by the Ld. Registrar for certain clarification. Vide our order dated 12.04.2019, the petition for operation and mismanagement was disposed off with direction that the cheques deposited with the Bench Officer be kept in a fixed deposit with HDFC Bank in terms of the initial order given by our predecessor Court. the erstwhile Bench Officer had failed to get the fixed deposit made of the proceeds under the Cheque.

Pursuant to the matter being listed before the Id. Registrar the cheques have been re-validated. The respondents pray that the FDR be made with the State Bank of India, CGO Complex in terms of our interim order, more so as an appeal against our direction is pending adjudication before the Hon’ble NCLAT. The petitioner on the other hand insists that the amount be deposited in the Company’s account maintained with HDFC, in order to reduce the existing liability of the company. This Bench is also informed that to make an FDR with the State Bank of India, an account has to be opened in the company’s name.

While the petitioner is keen that the proceeds be deposited in the account with HDFC so as to mitigate his personal liability, the respondent submits that the order for depositing this amount in HDFC Bank has been impugned before the Hon’ble NCLAT. The appeal is next listed for 5th July, 2019.

In view of the facts and circumstances, the cheques which expire on 31st July, 2019 are directed to be

deposited with HDFC Bank. The proceeds shall be kept in a fixed deposit. The said FDR which shall initially be for 45 days or its automatic renewal after expiry, shall not be encashed till disposal of the appeal pending before the Hon'ble NCLAT. The HDFC shall have no lien over these proceeds for appropriating it towards its dues till further direction, which shall be subject to the outcome of the appellate proceedings. Order be communicated to the concerned Bank. Copy of the order be given Dasti.

Necessary steps be taken before the Id. Registrar on 14th June, 2019.”

Thereafter, third Order which has been passed on 09.07.2019 is as under:-

“ORDER

Ld. Registrar has brought it to the notice of this Bench that in compliance of our directions, a Fixed Deposit has been made with the Respondent company's bankers, Viz. HDFC with instructions that proceeds thereunder will not be released without prior orders of this Bench. No further directions are called for.

Petition stands disposed off. File be consigned to the record room.”

4. The amount remains in HDFC as was the basic direction in the Order of Company Petition. The cheques have been revalidated and the amount has been put in Fixed Deposits. NCLT has taken care to ensure that initial Order given by predecessor Court is complied. Although we have asked the learned Counsel for the Appellant as to what grievance he has, the learned Counsel goes on referring to facts which are not matter for decision in the present Appeal. The grievance

that direction that HDFC will have no lien to appropriate the money towards its dues should not have been given, cannot be accepted when appeals are pending. We do not find that there is any substance in this Appeal to entertain the same.

The appeal is rejected at the stage of admission. No costs.

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

[Justice Bansi Lal Bhat]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

/rs/gc