

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**COMPANY APPEAL (AT) NO.23 OF 2018**

**IN THE MATTER OF:**

**Eastern Tea Estates Ltd. .. Appellant**  
**Vs**  
**Gaurangika Patel & Ors. .. Respondents**

**Present:**

**For Appellant:- Mr. Jayant Mehta, Mr. Anurag Kumar, Mr. Rakesh Sarkar and Mr. Rahul Kukhreja Advocates**

**For Respondent Nos. 1-5: Mr. Pankaj Bhatia, Mr. Ashish Choudhury, Mr. Dhrub Surana, Mr. Ravi Panwar and Mr. Nipun Goel, Advocates**

**For Respondent No. 6: Mr. Sakya Sen, Mr. Arik Banerjee, Mr. Rajib Mullick, Advocates**

**ORDER**

**19.01.2018** - Learned Counsel for the Appellant submits that there is delay of seven days in refiling of the appeal. Learned Counsels for the Respondents present do not object. The delay in refiling is condoned.

(2) Heard the learned Counsel for the Appellant and perused the impugned order. Learned Counsel for the Appellant submits that the Appellant is third party who has nothing to do with the dispute between the Directors and members of the Company.

(3) According to the learned Counsel for the Appellant, the Appellant is in possession of the property of the Company by way of registered Charge

and thus the Appellant is not necessary party before the NCLT. Learned Counsel further submits that the Appellant also had claimed that the matter was time barred as regards the Appellant. Learned Counsel for the Appellant referred to Sub Sections 242(2)(e) and 242(2)(f) which reads as under:

**“242. Powers of Tribunal**

.....

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for –

...

*(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;*

*(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):*

*Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned.”*

(4) Learned Counsel for the Appellant submits that looking into the above proviso, the Appellant although he is “party concerned” referred to in the proviso, he has not consented for modification etc. of the lease.

(5) Learned Counsel for the Appellant further submits that the Appellant had also disputed the locus of the Respondents to maintain the Company Petition.

(6) We have gone through the appeal and the records. Paragraph 18 & 19 of Impugned Order reads as under:

“....

18. *Rather such questions appear to be mixed questions of law and facts and, therefore, in terms of law, laid down in Order XIV Rule 2(2)(a) and (b) of the CPC, such questions cannot be taken as preliminary issues. Therefore, as held in the order dated 9<sup>th</sup> December, 2016 rendered in SLP No. 29566/2012 by Hon’ble Apex Court of the Country as well as by Hon’ble NCLT in Anup Kumar Agarwal & Anr. (supra), the controversies, projected through the company petition as well as all the demurer applications, being mixed question of law and facts, are required to be taken up for consideration simultaneously.*

19. *In such a scenario, I have no other option but to direct learned Advocates appearing for their respective parties to advance their arguments both on law points and on facts simultaneously.”*

(7) Looking to the submission being made and the impugned order which has been passed, (a part of which has been reproduced,) there is no reason why the Appellants should not advance argument on law and facts as called upon by NCLT. Admittedly the application raising objections by the Appellant has been filed. Apparently, if NCLT while deciding the matter finally if it upholds objections raised by the Appellant, it would give benefit accordingly and no

orders of ours are necessary. We do not find any reason to interfere with the impugned order.

- (8) There is no substance in the appeal. Appeal is dismissed.
- (9) The Company Petition be heard and decided expeditiously by NCLT.

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

[Justice Bansi Lal Bhat]  
Member (Judicial)

*Akc/Nn*