

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 154 of 2018

IN THE MATTER OF:

Inder Chand Pincha

...Appellant

Vs.

Borgang Tea Co. (P) Ltd. & Ors.

...Respondents

Company Appeal (AT) No. 155 of 2018

IN THE MATTER OF:

Inder Chand Pincha

...Appellant

Vs.

Kettela Tea Co. (P) Ltd. & Ors.

...Respondents

**Present: For Appellant: - Mr. Akhilesh Kr. Shrivastava, Advocate
and Ms. Suhita Mukhopadhyay, PCS.**

O R D E R

11.05.2018- This appeal has been preferred by the Appellant against order dated 6th March, 2018, whereby and whereunder the National Company Law Tribunal (hereinafter referred to as "Tribunal"), Guwahati Bench, Guwahati, while making necessary rectification of some of the typographical and clerical errors refused to amend or review the order dated 31st May, 2017.

2. The Appellant preferred the Company Petition No. 160/2013 before the erstwhile Company Law Board, which on constitution of the Tribunal, transferred to the Tribunal and registered as TP No.

11/397/398/GB/2016. The grievance related to 'oppression and mismanagement' so the petition was filed under Sections 397/398 of the Companies Act, 1956.

3. The Appellant who was the Petitioner before the Tribunal, being not happy with the decision of the Tribunal, after a long delay filed a miscellaneous application under Section 420(2) of the Companies Act, 2013 for rectification of errors apparent on the face of the record. The 'typographical errors' and 'clerical errors' were corrected by the Tribunal, but prayer for amendment of the judgment and thereby review of the judgment was rejected.

4. Learned counsel appearing on behalf of the Appellant submits that the factual errors have not been taken into consideration and nor considered. The judgment of this Appellate Tribunal were also not taken into consideration.

5. According to counsel for the Appellant, the observations made in paragraphs 65-71 of the judgment dated 31st May, 2017 led to the decision which was recorded in paragraph 72 of the judgment. Such decision in paragraph 72 and observation in paragraphs 65-71 were not founded on the basis of averments made in paragraphs 49-55 of the petition. Similar plea of error was taken by the Appellant which were not accepted by the Tribunal.

6. Similar argument has been made by the learned counsel for the Appellant. Though the Appellant has challenged the order dated 31st May, 2017 apart from another order, proper court fee has not been filed, nor an application for condonation of delay has been filed. The appeal against the order dated 31st May, 2017 has been filed after 11 months. Under sub-section (2) of Section 421, this Appellate Tribunal has jurisdiction to condone the delay but not beyond a period of forty-five days. In view of the aforesaid provision, the prayer as made against the original order dated 31st May, 2017 cannot be granted, being barred by limitation. Such prayer is rejected.

7. Section 420 of the Companies Act, 2013 deals with 'order of the Tribunal'. As per Section 420(2) of the Companies Act, 2013, the Tribunal may, at any time within two years from the date of the order, with a view to rectify any mistake apparent from the record, amend any order passed by it, which reads as follows:

“420(2). The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.”

8. From the aforesaid provision, we find that on the basis of mistake apparent on the face of the record is always open to the Tribunal to amend the original order passed by it, which will not amount to review of the order and the mistake should be such apparent on the face of the record. The opinion formed and observations made by the Tribunal cannot be treated as an error apparent on the face of record. Such observations having made by the Tribunal on appreciation of evidence and after hearing the parties, being not an error on the face of record, the question of rectification of observation does not arise.

9. We find no merit in these appeals. They are accordingly dismissed.

No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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