

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No.351 of 2019

IN THE MATTER OF:

Esquire Electronics Inc & Anr.

.....Appellants

Vs.

**Netherlands India Communications
Enterprises Ltd. & Ors.**

.....Respondents

Present :

**For Appellant: Mr. Rajeev Ranjan, Senior Advocate, Mr. K.Datta,
 Mr. Manu Beri, Advocates**

**For Respondents: Dr. U.K. Chaudhary, Senior Advocate, Mr. Akshay
 Malik, Mr. Dhruv Gupta, Advocates**

O R D E R

04.12.2019 - The Appellant 'M/s Esquire Electronics Inc & Anr.' filed an application u/s 398 of the Companies Act, 1956 (now Section 241 and 242 of the Companies Act). In the said petition, 'National Company Law Tribunal', New Delhi, Special Bench by impugned order dated 29th November, 2019 issued notice and passed certain interim order which is as follows: -

“CA-2665(PB)/2019

*The applicants in the instant application
have filed the CP.No. 108(ND)/2016 under Section*

397-398 of the Companies Act, 1956. The applicants have filed the instant application mainly seeking a direction to the respondents to deposit the award amount of the Execution Petition being OMP (ENF) (COMM.) 25/2018 into this Tribunal and also a further direction to the respondents to restrain them from conducting/holding Annual General Meeting scheduled to be held on 30.11.2019.

Heard, Mr. Datta, Ld. Counsel for the applicant and Mr. Yogesh Jagia, Ld. Counsel for the respondent No. 1 to 3 and have perused the pleadings on record. Mr. Jagia, Ld. Counsel for the respondent No. 1 to 3 shall file their reply within ten days with a copy in advance to the counsel for the applicant.

Notice of the application to the remaining non applicant-respondents and affidavit of service shall be filed thereto.

In the circumstances and in view of the submissions made by Ld. Counsels, respondent No. 1 to 3 are directed to keep at least 15% of the amount of award to be received in Execution Petition OMP (ENF) (COMM.) 25/2018 intact until further orders. The

AGM scheduled to be held on 30.11.2019 may go on, however, respondent No. 1 to 3 are directed not to disturb the share distribution ratio of the applicants without leave of this Tribunal.

List for further consideration on 06.02.2020.”

Learned Counsel appearing on behalf of Appellant submitted that the appeal is being filed for modification of the direction to the Respondents to immediately deposit the full award amount with NCTL as and when the same are released to Respondent Company in execution petition from the Hon'ble High Court of Delhi pending investigation in FIR No. 0258/2018 filed on 13th August, 2018.

We have heard learned Counsel appearing on behalf of the Appellant Mr. Rajiv Ranjan, Sr. Advocate with Mr. Vishnu Sharma and Dr. U.K. Chaudhary, Learned Sr. Advocate with Mr. Akshay Malik, Learned Counsel for the contesting Respondents.

Taking into consideration the fact that the matter is still pending before the Tribunal to determine the question of operational mis-management as alleged and notice has been issued, we are not inclined to modify the interim order already passed.

The order passed by the Tribunal or this Appellate Tribunal will not come in any way of the Appellant for pursuing the matter of execution case, or the FIR

which has already been lodged and to request the Hon'ble High Court for its transfer to the 'National Company Law Tribunal' Delhi, in terms of Section 434 of the Companies Act, 2013. It is for the Hon'ble High Court of Delhi to decide the same in accordance with law.

It will also be open to the parties to pursue the FIR pending before the Forum.

The appeal stands disposed of with aforesaid observation.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

[Justice Venugopal M.]
Member (Judicial)

ss/sk