

IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL

I.A. No. 2051 of 2018
IN
Company Appeal (AT) No. 412 of 2018

IN THE MATTER OF:

Oswal Agro Mills Limited **...Appellant**

Vs.

Mr. Pankaj Oswal & Ors. **...Respondents**

Present: For Appellant: - Mr. Abhijit Sinha, Mr. Manpreet Chadha and Mr. Soumabho Ghose, Advocates.

For Respondents: - Mr. Arun Kathpalia and Mr. Sanjeev Puri, Senior Advocates with Mr. Mayank Mishra and Mr. Raghav Sabharwal, Advocates for R-1.

Mr. Alok Dhir, Advocate for R-2.

Mr. Krishnendu Datta, Mr. Amish Tandon, Mr. Sameer Abhyankar and Mr. Ayush, Advocates for R-16.

WITH

Company Appeal (AT) No. 410 of 2018

IN THE MATTER OF:

Oswal Greentech Ltd. **...Appellant**

Vs.

Mr. Pankaj Oswal & Ors. **...Respondents**

Present: For Appellant: - Mr. Krishnendu Dutta, Mr. Amish Tandon, Mr. Sameer Abhyankar and Mr. Ayush Beotra, Advocates.

For 1st Respondent: - Mr. Arun Kathpalia, Senior Advocate with Mr. Mayank Mishra and Mr. Raghav Sabharwal, Advocates.

WITH

Company Appeal (AT) No. 411 of 2018

IN THE MATTER OF:

Mrs. Aruna Oswal

...Appellant

Vs.

Mr. Pankaj Oswal & Ors.

...Respondents

Present: For Appellant: - Mr. Gourab Banerjee, Senior Advocate with Ms. Manisha, Mr. Ashu Kansal, Mr. Milan Singh Negi, Mr. Abhijit Sinha and Mr. Sourabh Ghose, Advocates.

For 1st Respondent: - Mr. Arun Kathpalia, Senior Advocate with Mr. Mayank Mishra and Mr. Raghav Sabharwal, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The 1st Respondent- Mr. Pankaj Oswal (hereinafter referred to as the "Petitioner") filed a petition under Sections 241, 242 & 244 of the Companies Act, 2013 against the Appellant- 'Oswal Agro Mills Limited &

I.A. No. 2051 of 2018

IN

Company Appeal (AT) No. 412 of 2018

WITH

Company Appeal (AT) Nos. 410 & 411 of 2018

Ors.’- (hereinafter referred to as “the Company and Ors.”) alleging oppression and mismanagement.

2. The 1st, 2nd and 16th Respondents (“Appellants” herein) filed Application Nos. 142/2018; 145/2018 and 146/2018 challenging the maintainability of the Company Petition under Sections 241, 242 & 244 of the Companies Act, 2013 at the instance of the ‘Petitioner’- (“1st Respondent” herein).

3. On 21st May, 2018, the National Company Law Tribunal (hereinafter referred to as the “Tribunal”), Chandigarh Bench, Chandigarh, observed that the reply to the main Company Petition was not filed by the Respondents (“Appellants” herein) and there was difference and inconsistency between the copy of the Power of Attorney filed vide Diary No. 907 dated 16th March, 2018 and the one filed originally with the Company Petition. The Respondents (“Appellants” herein) were granted opportunity to file the reply to the main petition.

4. The aforesaid order dated 21st May, 2018 was challenged by the Respondents (“Appellants” herein) in Company Appeal (AT) No. 172 of 2018. This Appellate Tribunal by order dated 29th May, 2018 disposed of the appeal with an observation that the order dated 16th March, 2018 passed by the Tribunal while issuing notice of the petition was only *prima facie* view and not the determination of the question of maintainability

but directed the Tribunal to decide the question of maintainability allowing the Appellants (“Respondents” before the Tribunal) to file reply.

5. After such remand, the Tribunal by impugned order dated 13th November, 2018 held that the petition under Sections 241, 242 & 244 of the Companies Act, 2013 filed by the ‘Petitioner’- Mr. Pankaj Oswal (“1st Respondent” herein) is maintainable. The Appellant Company and Others, who are the Respondents to the Company Petition, have challenged the said order by filing the present appeals.

6. The present appeals came up for hearing on the question of admission on 12th December, 2018, when this Appellate Tribunal issued notice. The Appellant Company sought for stay of proceedings pending before the Tribunal as also for stay of passing any order by the Tribunal in the interim application (CA No. 525 of 2018) filed by the ‘Petitioner’ (1st Respondent) relating to proposed sale of ‘Chembur Land’ which was listed for hearing before the Tribunal on 18th December, 2018.

7. Learned Senior Counsel for the ‘Petitioner’ (“1st Respondent” herein) opposed the interim prayer and alleged that the Appellant Company intends to sell the ‘Chembur Land’ and referred to notice dated 23rd October, 2018. This Appellate Tribunal on 12th December, 2018 by common order while issued notice, passed the following interim order:

“12.12.2018 Let notice be issued on the respondents.

Mr. Mayank Mishra, Advocate accepts notice on behalf of 1st Respondent- Mr. Pankaj Oswal. No further notice need be issued on him. He may file reply-affidavit within 15 days and rejoinder, if any, may be filed by the appellant(s) within a week thereof.

Let notice be issued on rest of the respondents of all the appeals. Requisites along with process fee, if not filed, be filed by 14.12.2018. if the appellant provides the e-mail address of respondents, let notice be also issued through e-mail.

Post the case ‘for admission (After Notice)’ on 15th January, 2019 at 12.00 Noon.

Until further orders, the appellant(s) and respondents will not take steps to sell moveable or immovable property of the company without prior intimation to each other and prior approval of this Appellate Tribunal.

In view of the aforesaid interim order, Tribunal is prohibited for passing any interim order.

I.A. Nos. 2024 of 2018; 2026 of 2018 and 2031 of 2018 (for stay in respective appeals) stand disposed of.”

8. The Appellant Company filed Interlocutory Application No. 2051 of 2018 for variations of the interim order dated 12th December, 2018 on the ground that the Appellant has not prayed for any stay on sale of all the assets of the Company and had given an undertaking that they will not sell the ‘Chembur Land’.

9. When the Interlocutory Application for modification of earlier interim order was taken up, learned Senior Counsel appearing for the ‘Petitioner’ (“1st Respondent” herein) opposed the prayer and submitted that this Appellate Tribunal has rightly passed the interim order on 12th December, 2018 with regard to all the lands and assets of the Company in view of the interim application filed by the ‘Petitioner’ (“1st Respondent” herein) before the Tribunal.

10. We have heard learned counsel for the parties and perused the record.

11. For the present, we are not deciding the question of maintainability of the Company Petition, which is to be determined in the main appeals after hearing the parties. We have noticed that an order of *status quo* was passed by the Hon'ble High Court of Delhi on 8th February, 2017 at the behest of 'Petitioner' ("1st Respondent" herein) *inter alia*, directing the Defendants to maintain *status quo* in respect of Residential Property at 3, Tilak Marg, New Delhi- 110025 and also the shares held by Late Mr. Abhey Kumar Oswal and the bank accounts in his personal name. What is the effect of the interim order passed by the Hon'ble High Court of Delhi having not argued, we are not going to decide the same at this stage.

12. The only question arises for consideration for the present is whether this Appellate Tribunal should modify or make variations of the interim order passed on 12th December, 2018?

13. From the record, we find that the Appellant has not prayed for any interim relief in appeal. The order dated 12th December, 2018 was passed by this Appellate Tribunal as it was alleged by the learned Senior Counsel for the 'Petitioner' ("1st Respondent" herein) that they have issued notice on 24th October, 2018 with regard to sale of 'Chembur Land', which Appellant Company intend to sell.

14. From the record, we also find that the Company is a Real Estate business of construction to the allottees. If the interim order dated 12th December, 2018 is allowed to continue, it would result in stopping the

entire business and operations of the Appellant Company as not only immovable assets, even the movable assets of the Appellant Company cannot be dealt with in normal course of its business.

15. In a petition under Sections 241 & 242 of the Companies Act, 2013, the Tribunal has jurisdiction to pass interim order in terms of Section 242 (4), which reads as follows:

“242. Power of Tribunal. – (4) *The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company’s affairs upon such terms and conditions as appear to it to be just and equitable.*”

16. Such power having vested with the Tribunal, this Appellate Tribunal can also pass interim order in the interest of the Company. Taking into consideration the fact that the interim order dated 12th December, 2018 if allowed to continue, it will result in stopping the entire operations and business of the Appellant Company, as Company in normal course cannot sell or allot properties to the allottees, which will affect the business of the Company, we modify the interim order dated

12th December, 2018 and direct the parties not to sell the 'Chembur Land' of the Company without prior permission of this Appellate Tribunal or till the final decision of these appeals whichever is earlier. The order dated 12th December, 2018 is recalled and stands modified to the extent above.

I.A No. 2051 of 2018 stands disposed of.

Post these appeals 'for admission (after notice)' before the 1st Bench on 15th January, 2019 within two cases.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

NEW DELHI

7th January, 2019

AR