

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 146 of 2019

[Arising out of Order dated 24th April 2019 passed by NCLT, Kolkata Bench in C.P. (CAA) No. 1099/KB/2018 under C.A. (CAA) No. 86/KB/2018]

IN THE MATTER OF:

Prithvi Tea Co. Pvt. Ltd. & Anr.

...Appellants

Versus

Regional Director, Eastern Region,

Registrar of Companies

...Respondent

Present:

For Appellant: Mr. Goutham Shivshankar, Ms. Nitu Poddar, Mr Bunny Sehgal, PCS and Mr. Shantanu Singh, Advocates.

For Respondent: Ms. Muktar Singh, Joint Director of RD (E/R) Kolkata.

J U D G M E N T

[Per; V. P. Singh, Member (T)]

This appeal has been preferred against the order 24th April 2019 passed by the National Company Law Tribunal, Kolkata Bench, in C.A. (CCA) No. 86/KB/2018 whereby the Tribunal 'National Company Law Tribunal', has rejected the request of the Appellant / Petitioner to approve the proposed scheme of demerger without compliance of the provisions of the Companies Act, 2013.

The counsel for the Appellants contends that National Company Law Tribunal, Kolkata Bench earlier passed an order in C.P. (CAA) No. 1099/KB/2018 on 24th January 2019 directing the Appellant / Petitioner to comply with the provisions of Section 131 read with Section 128(1) of the

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Companies Act, 2013 by order dated 24th January 2019. The Appellant / Petitioner, however, was directed to submit the revised financial statements on 18th March 2019. The Appellant / Petitioner instead of complying with the order(s) of the Tribunal, sought leave to file Supplementary Affidavit seeking to incorporate certain facts and documents, which according to the petitioner could not be produced at the time of hearing and therefore claimed that the Tribunal did not have the advantage of considering those facts and documents before passing of the order dated 24th January 2019. According to the Appellant / Petitioner those facts were "crucial and necessary" for the fair consideration of the petition, and in the absence of those facts the Tribunal was prevented from framing correct observations about the lost assets in issue.

The Tribunal held that the reconsideration of the earlier order dated 24th January 2019 would amount to review of the earlier order whereby direction was given to the Appellant / Petitioner to comply with the provisions of Section 131 read with Section 128(1) of the Companies Act, 2013. The Tribunal rejected the application on the premise that the Tribunal not being a Civil Court, has no power or authority to review its earlier order, even if the new facts pleaded in the Supplementary Affidavit was not brought to the notice of the Tribunal.

The relevant portion of the order dated 24th January 2019 is as under: -

4. *Upon hearing the arguments on both sides and reading the Memorandum of Understanding executed in between the*

Prithvi Tea Company Private Limited, Doloo Tea Company (India) Limited, Eastern Tea Estates Limited and Asharam Leasing and Finance Private Limited, it is understood that the Transferor Company, namely, Prithvi Tea Company Private Limited reserves its right to claim Rs. 7.58 Crores against Doloo Tea Company (India) Limited by stepping into the shoes of original lender Asharam Leasing and Finance Private Limited. It is good to read the clause, which reads as follows :-

"It is also agreed by and between the parties that Prithvi is only taking over the liability of Doloo towards Asharam for a sum of Rs. 1.14 Crore without prejudice to the fact that Prithvi after stepping into the shoes of Asharam will continue to have a claim of Rs. 7.58 Crore against Doloo in respect of the outstanding loan"

5. The above being the clause applicable to the applicant Company/Transferor Company the Balance Sheet of Transferor Company should have shown the realisable value of the assets. The realisable value to the loan being Rs. 7.58 Crores, it appears to me that same should be shown in the Balance Sheet of the Transferor Company, that has not been done. It is contrary to Section 128(1) of the Companies Act, 2013.

'Prithvi Tea Company Pvt. Ltd. (hereinafter referred to as Transferor Company) and 'Cachar Tea and Industries Private Limited' (Transferee

Company) filed a Scheme of Arrangement before the National Company Law Tribunal, Kolkata Bench for demerger of Investment undertaking of the Transferor Company under Section 230(1) read with Section 232 of the Companies Act, 2013 and Rule 15 and other applicable rules of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016. The application for the first motion, bearing C.A. (CAA) NO. 86/KB/2018, praying for dispensation of convening meeting of the members and creditors of the Transferor Company and the Reporting Company was disposed off by order of the National Company Law Tribunal, Kolkata Bench vide its order dated 10th May 2018. The Resulting Company did not have any creditors as on the date of filing of the petition. After that the second motion petition bearing C.P. (CAA) No. 1099/KB/2018 has been filed for sanction of the said Scheme. During the pendency of this Company Petition, objection was raised by the Central Government that Transferor Company (Prithvi Tea Company Private Limited) has not shown its balance sheet as to the realisable value of the loan, which comes to Rs. 7.58 Crores, and not to Rs. 1.14 Crores, as shown in the balance sheet, and therefore, Appellant was directed to submit revised balance sheet in compliance of the Companies Act, 2013. It is further observed by the Kolkata Bench that in its order dated 24th January 2019 that the Transferor Company should have shown the realisable value of the assets. But the balance sheet of the Transferor Company is contrary to provisions of Section 128(1) of the Companies Act 2013. The financial statement of the Transferor Company as given is not true and fare view state of the affairs of the Company.

In the circumstances, the Tribunal by the order dated 24th January 2019 directed the Appellant to comply with the provisions of Section 131 read with Section 128(1) of the Companies Act, 2013 and asked for submission of revised financial statements.

It is pertinent to mention that order dated 24th January, 2019 is not under-challenge in this appeal. The Appellant has filed this Appeal only against the order dated 24th April 2019, whereby the National Company Law Tribunal, Kolkata Bench refuses to review the detailed order passed on 24th January, 2019 based on Supplementary Affidavit filed on 25th March, 2019. The Tribunal rejected the review application on the ground that the Tribunal has power and authority to review its order or to amend the order, if any, mistake is brought to the notice by the parties. But by the impugned order the Appellant wants to review the detailed order dated 24th January, 2019 which is not permissible under the law; hence Tribunal rejected the application filed by the Appellant.

It is important to point out that Section 420(2) provides that *“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**”*.

Admittedly, no apparent error or mistake has been pointed out in the order dated 24th January, 2019.

Apart from above it is also clear that Section 128(1) of the Companies Act, 2013 was rightly referred which for ready reference is given below: -

“Every company shall prepare and keep at its registered office books of account and other relevant books and papers and financial statement for every financial year which give a true and fair view of the state of the affairs of the company, including that of its branch office or offices, if any, and explain the transaction effected both at the registered office and its branches and such books shall be kept on accrual basis and according to the double-entry system of accounting:

Provided that all or any of the books of account aforesaid and other relevant papers may be kept at such other place in India as the Board of Directors may decide and where such a decision is taken, the company shall, within seven days thereof, file with the registrar a notice in writing giving the full address of that other place:

Provided further that the company may keep such books of account or other relevant papers in electronic mode in such manner as may be prescribed.”

Every Company must keep relevant Books or Papers and Financial Statements for every Financial year **which give a true and fair value of the state of the affairs of the Company.**

The National Company Law Tribunal found discrepancies, in the statements of balance sheet of the Transferor Company, wherein realisable value to the loan is shown as 1.14 Crores instead of 7.58 Crores, which was to be received from 'Doloo Tea Company (India) Limited.

However, the order of the Tribunal dated 24th January 2019 was appealable order, but no appeal is preferred against that order. But the Appellant intends to challenge the order dated 24th January 2019 by filing the review application under the guise of Section 420(2) of the Companies Act, 2013, which is not permissible under Law.

In the circumstances, we are of the view that there is no error in the impugned Order passed by the National Company Law Tribunal, Kolkata Bench. Accordingly, Appeal is dismissed. No costs.

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

[Kanthi Narahari]
Member (Technical)

[V. P. Singh]
Member (Technical)

NEW DELHI

5th December, 2019

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