

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 180 of 2018

IN THE MATTER OF:

Nazura Ajaney

...Appellant

Vs

**Union of India,
Ministry of Corporate Affairs & Ors.**

....Respondent

With

Company Appeal (AT) No. 182 of 2018

IN THE MATTER OF:

Anil Haldipur

...Appellant

Vs

**Union of India,
Ministry of Corporate Affairs & Ors.**

....Respondent

Present:

For Appellant: Mr. Arpan Behl, Advocate.

For Respondent:

ORDER

13.07.2018: Both these appeals have been preferred against the judgment dated 2nd April, 2018 passed by the National Company Law Tribunal (hereinafter referred to as "Tribunal"), Mumbai Bench, Mumbai.

2. The aforesaid order was under challenge in the case of "Union of India, Ministry of Corporate Affairs Vs. Gitanjali Gems Ltd. & Ors. etc. (Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018)" wherein this Appellate Tribunal observed as follows:

“50. Therefore, on an application under sub-section (2) of Section 241, the Tribunal can pass not only any order under Chapter XVI and if it is read with Section 246, it will be evident that Sections 339, 340 and 341 being applicable mutatis mutandis, in relation to an application made to the Tribunal under Section 241, the Tribunal can pass order in terms of those extended provisions.

51. This apart under Section 420, the Tribunal is empowered to pass such orders as it thinks fit after giving the parties to any proceeding before it, a reasonable opportunity of being heard. The Tribunal has also inherent powers to make such orders as may be necessary for meeting the ends of justice or **to prevent abuse of the process of the Tribunal under Rule 11 of the NCLT Rules, 2016.**

52. Therefore, if sub-section (4) of Section 242 is read with Sections 339 & 340 and Section 221, it is clear that apart from **‘freezing of assets of company on inquiry and investigation’**, it is also open to the Tribunal to freeze the assets of any person, including other companies and individuals, even during inquiry and investigation of fraud under Section 212 of the Companies Act, 2013.

53. In so far as the order dated 2nd April, 2018 is concerned, we find that by the said order the Tribunal, while modified its earlier order dated 23rd February, 2018, practically exonerated Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent

No. 44); Mr. Suresh Senapathy (Respondent No. 51); Mr. Gautam Mukkavilli (Respondent No. 52) and Mr. Sanjay Rishi (Respondent No. 53) by holding that those Respondents had no complicity in the matter and they had no role to play in the financial fraud in question.

54. The Tribunal failed to appreciate that it was dealing with the question of vacating the interim order passed under sub-section (4) of Section 242 read with Sections 221, 241(2), 339 and 340 of the Companies Act, 2013. While considering the question of modification or vacating the interim order, it was not open to the Tribunal to pass an order which is final in nature, amounting to exonerating one or other Respondent particularly, when the allegation of fraud of this nature is pending investigation by the SFIO.

55. Though it was brought to the notice of the Tribunal that the Respondent Companies, individuals including existing and erstwhile Directors, partners, trustees, beneficiaries and their associates or subsidiaries and firms had exposure with the PNB and are prima facie found to be beneficiaries of the fraud, as noticed at paragraph no. 6 of this Judgment, without waiting for the report of the SFIO it was not open to the Tribunal to exonerate some of the Respondents from the charges.

56. For the reasons aforesaid, we set aside the impugned order dated 2nd April, 2018, so far as it relates to Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No. 44); Mr. Suresh Senapathy (Respondent No. 51); Mr. Gautam Mukkavilli (Respondent No. 52) and Mr. Sanjay Rishi (Respondent No. 53). In so far as Mr. Anil Umesh Haldipur (Respondent No. 35) and Mrs. Nazura Yash Ajaney (Respondent no. 38) are concerned, the Tribunal has already held that a prima facie case has been made out against them but while giving such finding, the Tribunal has modified the order dated 23rd February, 2018 permitting Mr. Anil Umesh Haldipur (Respondent No. 35) to withdraw Rs. 2,00,000/ (Rupees Two Lakhs only) per month and Mrs. Nazura Yash Ajaney (Respondent no. 38) to withdraw an amount to the extent of Rs. 1,00,000/- (Rupees One Lakh only) per month from their Bank accounts. Rest part of the order dated 23rd February, 2018 restraining them and others from removal, transfer or disposal of funds, assets and properties of the entities and individuals until further orders is continuing.

57. As aforesaid persons are entitled to withdraw certain amounts for their subsistence and of their families, we find no ground to interfere with the impugned order of modification dated 2nd April, 2018, so far it relates to Mr. Anil Umesh Haldipur (Respondent No. 35) and Mrs. Nazura Yash Ajaney (Respondent No. 38).

58. *In so far as Mr. Sujal Shah (Respondent No. 43); Mr. Gopal Krishnan Nair (Respondent No. 44); Mr. Suresh Senapathy (Respondent No. 51); Mr. Gautam Mukkavilli (Respondent No. 52); Mr. Sanjay Rishi (Respondent No. 53); Mr. Suresh Kumar Bhutani (Appellant in Company Appeal (AT) No. 124 of 2018), Mr. Paresh Pravinbhai Rathod (Appellant in Company Appeal (AT) No. 125 of 2018), Mr. Haresh V. Rajlal Shah (Appellant in Company Appeal (AT) No. 126 of 2018), Mr. Ketan Chandrakant Solanki (Appellant in Company Appeal (AT) No. 127 of 2018), Mr. Manish Lalit Dani (Appellant in Company Appeal (AT) No. 128 of 2018), Mr. Sanket Bipin Shah (Appellant in Company Appeal (AT) No. 129 of 2018), Mr. Himanshu Pravinchandra Trivedi (Appellant in Company Appeal (AT) No. 130 of 2018), Ms. Jyoti B Vora (Appellant in Company Appeal (AT) No. 131 of 2018), Mr. Sudhir Ambalal Mehta (Appellant in Company Appeal (AT) No. 132 of 2018) and Mr. Chandrakant Kanu Karkare (Appellant in Company Appeal (AT) No. 133 of 2018) are concerned, we are of the view that they are also entitled to withdraw certain amounts for their subsistence and of their families, therefore, we allow each of the aforesaid Respondents/Appellants to withdraw a sum of Rs. 1,00,000/- (Rupees One Lakh Only) per month from any of their accounts. Except to the extent above, the restraint order passed by the Tribunal in regard to removal, transfer or disposal of funds, assets, moveable and immovable properties of the entities and individuals as already ordered on 23rd February, 2018 shall continue until further orders.”*

3. The case of the Appellant being covered by the decision of this Appellate Tribunal dated 12th July, 2018 in “Union of India, Ministry of Corporate Affairs Vs. Gitanjali Gems Ltd. & Ors. etc. (Company Appeal (AT) Nos. 103, 119, 124 to 133 of 2018)”. These appeals are also disposed of in terms of the said order. However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

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