

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 271 of 2017

And

Company Appeal (AT) No. 385 of 2017

IN THE MATTER OF:

Pankaj Khandelia & Anr.

.. Appellants

Versus

Khandelia Oil and General Mills Pvt. Ltd. & Ors.

.. Respondents

Present:

For Appellants: Shri Shariq J. Reyaz Advocate.

**For Respondents: Shri Rohit Sharma and Shri Anshul Chowdhary
Advocates**

O R D E R

20.11.2017 The Appellants (hereinafter referred to as '**Petitioners**') preferred a petition under Sections 111, 397, 398, 402, 403 & 406 of the Companies Act, 1956 r/w Section 59 of the Companies Act, 2013 alleging wrongful transfer of Petitioners' shares in favour of the Respondents. The case was originally filed and registered by the erstwhile Company Law Board ('**CLB**' in Short) which was subsequently transferred to National Company Law Tribunal (herein referred to as '**Tribunal**') Chandigarh Bench, Chandigarh.

2. The case was heard by Division Bench consisting of Hon'ble Member(Judicial) and Hon'ble Member (Technical) and on hearing, the Judgment was reserved.

3. On 30th September, 2016, two Hon'ble Members passed separate orders, disagreeing with each other. Hon'ble Member (Technical) held that the transfer of shares executed beyond the period prescribed for two months are not valid and declared transfer in favour of the Respondents are in violation of Section 8 of the Companies Act, 1956. The Hon'ble Member(Judicial) recorded his dissent and held that there is no merit in the petitions and thereby disposed the petition with liberty to the Petitioners to avail alternative remedy of suit.

4. Both the orders passed on 30th September, 2016 were not delivered in the open Court and were recorded in the administrative side and on the same date i.e., 30th September, 2016, the points of difference were recorded as follows:

“(i) Whether the time provided in Section 108(1-A) of the Companies Act, 1956 is mandatory or directory and what is the effect of delivery of the instrument of transfer to the company beyond the period of two months as prescribed thereunder:

(ii) Whether the transfer of the shares of HUF in CP No. 164 of 2013/RT No. 47 of 2016 is illegal and invalid;

(iii) Whether the delay in filing the petition would not disentitle the petition from the relief under Section 397, 398, 402, 403, 406, 111 of

*the Companies Act 1956 and Section 59 of the Companies Act, 2013;
and*

(iv) Whether the petition is liable to be partly allowed or dismissed in toto except liberty to petitioners in CP No. 164 of 2013/RT No. 47 of 2016 to avail of the remedy, if so advised, by filing a civil suit to claim right in shares of HUF. “

5. The points on difference of opinion for consideration by a third Member was also not delivered in the open Court. In the administrative side, both the Hon'ble Members recording their dissent and referring to the points of difference, forwarded the matter in the administrative side to the Hon'ble President of the National Company Law Tribunal, Principal Bench. The Hon'ble President also did not list the matter nor pronounce any order(s) and from its administrative side ordered to place the matter before a Third Hon'ble Member(Judicial).

6. The Third Hon'ble Member(Judicial) heard the parties and passed a detailed order on 2nd June, 2017 but curiously, the said order was also not pronounced in the open Court, nor a copy of the same were made available to the parties. In the Administrative side, Third Hon'ble Member (Judicial) forwarded the file to the Tribunal, Chandigarh Bench, Chandigarh wherein another Hon'ble Member(Judicial) of Tribunal, who earlier heard the matter, passed the impugned order on 27th June, 2017 and referring the majority decision, dismissed the Company Petition but allowing the Petitioners to seek recourse of alternative remedy. The order dated 27th June, 2017 was, for the first time, delivered in the open Court by Hon'ble Member(Judicial). The

Hon'ble Member(Technical) who earlier dissented was not present in the Court.

7. The aforesaid facts as noticed above, has not been disputed by learned Counsels appearing on behalf of the parties.

8. Learned Counsel appearing on behalf of the Petitioners submitted that the impugned majority decision stands vitiated in view of the fact that the difference of opinion expressed by two Hon'ble Members were not delivered in the open Court, nor the copies of the same were supplied to the parties. It is further submitted that the points of difference, which were framed and referred to the Hon'ble President for placing the matter before the Third Hon'ble Member, was also not supplied to the parties. It is also alleged that the order passed by Third Hon'ble Member (Judicial) was also not passed in the open Court, nor copy of the said order was supplied to the parties.

9. Learned Counsel appearing on behalf of the Respondents accepted that the difference of opinion recorded by both the Hon'ble Members on 30th September, 2016 were not pronounced in the open Court. It also accepted that on 30th September, 2016, the case was not listed for pronouncement of the Judgment/order. The parties could come to know from office that there is difference of opinion. Learned Counsel for the Respondents has also admitted that the order passed by the Third Hon'ble Member(Judicial) on 2nd June, 2017 was also not pronounced in the open Court. It was neither listed on the said date, nor copies were supplied.

10. Section 419 of the Companies Act, 2013 deals with the 'Benches of the Tribunal'. Sub-Section (5) therein stipulates the manner in which the case is to be decided in case of difference of opinion on any point or points, as quoted below:

“419. Benches of Tribunal -

(1)

(5) If the Members of a Bench differ in opinion on any point or points, it shall be decided according to the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.”

Though provision has been made to refer the matter to the Hon'ble President and to send the matter to the Third Hon'ble Member, Section 419 is silent on the question as to whether the decision on difference of opinion is to be pronounced in the open Court or not and whether the copy of the same is to be forwarded to the parties. From a plain reading of sub Section (5) of Section 419, however, makes it clear that in case of difference of opinion where the matter to be referred to the Hon'ble President for hearing on the point or points of one or more of the Hon'ble Members of the Tribunal, such point or points required to be decided according to the opinion of the majority of the Members, who have heard the case, including those who first heard the matter.

11. The Tribunal is required to pass order after giving parties in a proceeding before it, a reasonable opportunity being heard, in terms of Section 420 of the Companies Act, 2013. As per sub-Section (3) of Section 420, the Tribunal is required to forward the copy of every order passed under Section 420 to the parties concerned as apparent from said provision and quoted below:

“420. Orders of Tribunal. –

(1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(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 the 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.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

12. Section 424 relates to procedure to be followed by the Tribunal and the Appellate Tribunal which reads as follows:

424. Procedure before Tribunal and Appellate Tribunal:

“(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of

Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act [or of the Insolvency and Bankruptcy Code, 2016] and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.”

13. The basic principle of Justice Delivery System is that a Court or a Tribunal, while passing an order is not only required to give reasonable opportunity of being heard to the parties but is also required to give good reasons based on record/evidence. It is also required to show that the order is passed after being satisfied itself on issues raised by the parties.

14. In Indian Judiciary, Justice Delivery System including provisions of Companies Act, 2013, the Tribunal is required to give hearing in an open Court. Once such hearing is given in the open Court, the Court or the Tribunal, while passing an order is also required to pronounce order in the open Court.

15. Under sub-Section (3) of Section 421, the Tribunal is required to send the copy of every order passed under Section 420, which is also required to be followed in a petition filed under Section 241 of the Companies Act, 2013 and other petitions. The Principle of Natural Justice is also require that the parties should be informed of the order pronounced by the Court/Tribunal. Such information can be given either by following prescribed procedure or by informing the parties that the matter will be listed for judgment in the open Court on a particular date. It is only after such pronouncement, the Hon'ble Member(s) are supposed to frame the terms of difference of opinion which is

also required to be informed to the parties not only for the purpose of getting good assistance, but also in terms of sub Section (3) of Section 420 of the Companies Act, 2013, and in accordance with the Rules of Natural Justice.

16. For the reasons aforesaid, we hold as follows:

- i) The Tribunal is required to pronounce its order or deliver its judgment on hearing the parties in the open Court;
- ii) If a judgment is reserved, Tribunal is required to pronounce it in the open Court. If two or more Hon'ble Members have heard the case, normally they should join together while delivering a judgment in the open Court. In appropriate case, for the reasons to be recorded in writing and with the permission of the Hon'ble President of Tribunal, after obtaining signature of one or other absenting Hon'ble Member, the other Hon'ble Member who has also heard the case, may pronounce the judgement but it should be in the open Court;
- iii) In case any terms of difference of opinion is recorded, either it is to be recorded in the open Court and if the order is reserved, then it is to be pronounced in the open Court and
- iv) As per sub-section (3) of Section 420 copies of all such order(s) are to be forwarded to the parties, to enable the aggrieved person, if so required to move an appeal before the Appellate Tribunal under Section 421 of the Companies Act, 2013.

17. Aforesaid provisions having not followed in the present case, we set aside the impugned order dated 27th June, 2017 passed by National Company Law Tribunal, Chandigarh Bench, Chandigarh in CP No. 163(ND)/2013, RT

No. 46/2016 and declare the decision(s) rendered by the Hon'ble Third Member(Judicial) on 2nd June, 2017 illegal and void and set aside the said order.

18. The case is remitted to the Hon'ble President, National Company Law Tribunal, Principal Bench, New Delhi, who in his turn will direct the Registry to provide free certified copies of the difference of opinion/order passed by two Hon'ble Members comprising Hon'ble Member (Judicial) and Hon'ble Member(Technical), both dated 30th September 2016, and the terms of reference framed by one of the Hon'ble Member dated 30th September, 2016. The Hon'ble President thereafter will refer the matter to a Third Hon'ble Member, other than the Third Hon'ble Member(Judicial), to whom it was earlier referred, who after notice to the parties will fix a date of hearing and on hearing the parties, will pass appropriate order in accordance with law.

19. Both the appeals are allowed with aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order to cost.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Balvinder Singh]
Member (Technical)

akc/