

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**Company Appeal (AT) No. 249-250 OF 2019**

**IN THE MATTER OF:**

**Mrs.Asha Kiran.**

W/o Sh. Ramesh C Bawa  
R/o W-78, Greater Kailash – I  
New Delhi - 110046

**...Appellant**

**Vs.**

**Union of India**

**Ministry of Corporate Affairs,**  
Through Regional Director  
(Western Region),  
Everest 5<sup>th</sup> Floor,  
100, Marine Drive,  
Mumbai – 400 002

**... Respondent**

AND

**Company Appeal (AT) No. 251-252 of 2019**

**IN THE MATTER OF:**

**Ms.Aakanksha Bawa.**

D/o Sh. Ramesh C Bawa  
R/o W-78, Greater Kailash – I  
New Delhi - 110046

**...Appellant**

**Vs.**

**Union of India**

**Ministry of Corporate Affairs,**  
Through Regional Director  
(Western Region),

Everest 5<sup>th</sup> Floor,  
100, Marine Drive,  
Mumbai – 400 002

... Respondent

**Present:**

**For the Petitioner:** Mr. Rajiv Bansal, Sr. Advocate along with  
Mr. Sachin.M and Mr. Anant Nigam, Advocates.

**For the Respondent:** Mr. Sanjay Shorey, Director, MCA  
and Mr. C.Balooni, Assistant Director.

**J U D G M E N T**

( 29<sup>TH</sup> MAY, 2020)

**DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER**

1. The Appellants Mrs. Asha Kiran wife of Shri Ramesh.C.Bawa and Mrs. Aakanksha Bawa daughter of Shri Ramesh C.Bawa have filed separate Company Appeal (AT) No. 249-250/2019 and 251-252/2019 respectively against the impugned order dated 26.04.2019 and 04.09.2019 passed by NCLT, Mumbai Bench in M.A No.1576/2019, M.A No. 2007/2019 & M.A No.1577/2019 and M.A No.2006/2019 in C.P No.3638/2018 respectively. Since impugned orders are common, hence the order is passed as a common order.
2. The Appellants have sought relief for passing an order setting aside the impugned order dated 26.04.2019 & 04.09.2019 passed by NCLT, Mumbai

Bench as also to give direction to the Banks to de-seal the accounts of the Appellants etc.

3. As far as Company Appeal (AT) No.249-250 of 2019 is concerned, it has been submitted that the Appellant - Mrs. Asha Kiran has accessed the joint lockers in Axis Bank and Standard Chartered Bank on 27.03.2018, 03.12.2018, 04.12.2018, 10.12.2018, after passing of the order of wilful disobedience of the order dated 03.12.2018 by the NCLT Mumbai by Mr. Ramesh C.Bawa (Respondent No.315 in CP No.3638/2018) and his family members.
4. The Appellant has submitted that the same were operated without the knowledge of the order dated 03.12.2018 passed by NCLT Mumbai on account of need, as the lockers had her personal belonging like jewellery etc., which were her “stree dhan” articles. They have also submitted that if they have alienated anything from the locker then there was no need to operate the locker multiple times. The jewellery kept in the lockers were duly disclosed to the income tax authorities and the entire jewellery articles are either in her possession or in the locker. She has never been the shareholder, Director or employees of the ILFS. It was also submitted by the Appellant that when the application was filed in NCLT Mumbai by the Appellant, the Union of India further produced a letter dated 08.07.2019

from the SFIO which stated that the Appellant had received huge amount from Mr. Ramesh.C.Bawa from 2008 onwards and the same were used to purchase properties for other companies in which the Appellant was a Director. It was also submitted by the Appellant that SFIO has completed its investigation on 29.05.2019 and has filed a complaint in the court of competent jurisdiction at Mumbai but no charge sheet has been issued to the Appellant. The Appellant has submitted that the person liable under Section 339 of the Companies Act, 2013 are the following persons :

- a. Director of the company
  - b. Manager of the Company
  - c. Officer of the Company
  - d. Any other person who knowingly becomes a party to carrying of the business in the manner aforesaid- in a manner prejudicial to public interest- for any fraudulent purpose
5. The Appellant is a 3<sup>rd</sup> party to the proceedings and cannot be subjected to an order under Section 241-242, 337 and 339 of the Companies Act, 2013.
6. While in the Company Appeal (AT) No.251-252 /2019 Miss. Aakanksha Bawa D/o of Ramesh.C.Bawa has been impleaded because he has transferred Rs.4.84 Crore to her account into separate transactions and thereby they have done wilful disobedience of the order dated 03.12.2018.

It was submitted that these amounts are from liquidating mutual fund investment of Mr. Ramesh.C.Bawaa and he has asked Axis bank and ICICI Bank on 26.11.2018 prior to the passing of order dated 03.12.2018 by NCLT Mumbai. The money was received in his account on 30.11.2018 and was transferred to his daughter's account on 03.12.2018 as a provisions of her marriage expenses. The daughter, appellant has nothing to do ILFS and she has never been any Shareholder, Director or employee of the said Company. It was also submitted that the SFIO has completed its investigation on 29.05.2019 and has filed a complaint in the court of competent jurisdiction at Mumbai and no charge sheet has been filed against the Appellant i.e of his daughter Ms. Aakanksha Bawa. She is not attracted by the provisions of Section 339 of the Companies Act, 2013 and she is a 3<sup>rd</sup> party of the proceedings and cannot be subjected to an order under Section 241-242, 337 and 339 of the Companies Act, 2013.

7. The Director represented Union of India, has submitted in Company Appeal(AT) No. 249-250/2019 & 251-252/2019 that around September, 2018 Series of default were made by entities in the IL&FS Group during June to September 2018 due to mismanagement and mis-governance by the then existing Board of Director of IL&FS and Group Companies. It has also been submitted that the exposure in the IL&FS group is very large

both to the public and private sector banks and financial institutions and this will have a catastrophic impact on the economy of the country. It was also stated that based on the report of the Registrar of Companies, Union of India has filed a Petition under Section 241-242 of the Companies Act, 2013 before NCLT Mumbai Bench bearing Company Petition No. 3638 of 2018; the charges are on Mr. Ramesh .C.Bawa that he has drawn hefty salaries and siphoned funds.

8. It was also submitted by Director that on the basis of SFIO Report and requisite application vide order dated 03.12.2018, the NCLT restrained the erstwhile Directors inter alia including Mr. Ramesh.C.Bawa from creating a charge or lien or creating a 3<sup>rd</sup> party interest or in any way alienating the movable or immovable properties owned by them including jointly held property. The Director has submitted that in December, 2018 it was brought to a notice by Indian Bank Association that Mr. Ramesh.C.Bawa has operated its bank account and has transferred a large sum of money Rs.1.14 Crore plus on December 3, 2018 to his daughter account on the same day the NCLT has restrained the order and his wife has also operated the locker. They have observed that accordingly that Appellants in both the cases are a proper and necessary parties as in their absence no effective decree can be made. It has also been stated that CP No.3638 has been filed

inter alia in the backdrop that the affairs of IL&FS group were mismanaged by the Erstwhile Directors etc.

9. Furthermore, the Director has pointed out that Mr. Ramesh. C. Bawa has transferred large sum of money to the company where the Appellant is a Director and these monies are the proceeds of mismanagement/fraud on the part of Mr. Ramesh C.Bawa.
10. We have gone into a detail and observed that as far as operation of locker is concerned if the Appellant have ulterior motive then they should have done on the very first day and would not have waited for the subsequent times. We have gone through the Hon'ble Supreme Court judgment delivered on 12<sup>th</sup> February 2020 Usha Ananthasubramanian. Vs. Union of India in Civil Appeal No. 7604 of 2019. The fact of the two cases are different Ms.Usha Ananthasubramanian was the former MD and CEO of Punjab National Bank for a limited period 2015 to 2017 whereas she was not related party to Directors of M/s.Gitanjali Geems ltd., and the charges on her was "omitted to take precaution or preventive steps to prevent the fraud perpetrated by Mr. Neerav Modi"; whereas in the present case either the money has been transferred by Mr. Ramesh.C.Bawa, or non-compliance of NCLT order has happened. Impleading a party does not mean that charges are proved on them but their presence would enable the

court to effectively and adequately adjudicate the matter involved in the case. Hence both appeals are dismissed. No order as to costs.

(Justice Jarat Kumar Jain)  
Member (Judicial)

(Mr. Balvinder Singh)  
Member (Technical)

(Dr. Ashok Kumar Mishra)  
Member(Technical)

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New Delhi