

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 380 & 381 of 2017

[arising out of Orders dated 14.06.2017 & 15.09.2017 by NCLT, Mumbai Bench, Mumbai in Case Nos. TCP No. 114/(MAH)/2009 –C.A. No. 83/2016 & 324/2014 & M.A. No. 297/2017 in TCP 114/397-398/CLB/2009]

IN THE MATTER OF:

1. **M/s. Aries Agro-Vet Associates Pvt. Ltd.**
Flat No. 18, 1st Floor,
Building 'A', Plot No. 51,
Kailashnagar,
Housing Co-operative Society,
Shankar Galli,
Kandiveli (West),
Mumbai – 400 067

2. **Mr. D. H. Navnathsa,**
S/o late D.H. Hanumanthsa,
No. 55/1, N.M. G. Plaza,
1st Main Road,
Chamrajpet,
Bengaluru – 560 018.

...Appellants

Versus

1. **Mr. D.H. Narayanasa,**
S/o late D.H. Hanumanthsa,
Nos. 14/1, 14/2 & 14/3, Sheshadri Road,
Bengaluru – 560 009.

2. **Mr. D N. Govind,**
S/o late D.H. Hanumanthsa,
No. 55/1, 1st Floor, N.M. G. Plaza,
1st Main Road,
Chamarajpet,
Bengaluru – 560 018

.... Respondents

For Appellants : **Mr. Balaji Srinivasan and Ms. Pratiksha Mishra,**
Advocates

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Respondent – Mr. D.H. Narayanas preferred a petition under Sections 397, 398, 402 and 403 read with Section 58-59 of the Companies Act, 1956 (for short, ‘Act, 1956’) before the erstwhile Company Law Board, Mumbai alleging ‘oppression and mismanagement’ in regard to M/s. Aries Agro Vet Associates Pvt. Ltd. (Company – appellant herein). The petition was filed in the year 2009 but remained pending and on transfer was taken up by National Company Law Tribunal, Mumbai Bench (hereinafter referred to as the ‘Tribunal’).

2. The appellant/respondent in the said petition filed Interlocutory Application raising maintainability of the petition under Sections 397, 398, 402 and 403 of the Companies Act, 1956 (now Sections 241 and 242 of the Companies Act, 2013). The Tribunal by impugned order dated 14th June, 2017 rejected the preliminary objection and observed that the petition will be decided on merit.

3. On the ground that the Tribunal has not considered all the aspect while passed the impugned order on 14th June, 2017, the appellants/respondents filed ‘miscellaneous application’ for review of the earlier order, which has been rejected by the other impugned order dated 15th September, 2017.

4. Learned counsel appearing on behalf of the appellants submitted that the application under Sections 397 and 398 read with Sections 402 and 403 of the Act, 1956 (now Sections 241 and 242 of the Companies Act, 2013) is not maintainable as it is barred by limitation. Respondents/petitioners have not disclosed the cause of action and the petition is bereft of material particulars. It was submitted that the Tribunal has not dealt with the validity of the notice nor considered the submission that due to non-joinder of necessary parties, the petition is fit to be dismissed. It is stated that the persons against whose shares relief have been claimed have not been arrayed as respondents in the petition. Two fatal defects of the said petition.

5. We have heard the learned counsel for the appellant and the counsel appearing on behalf of the respondent and perused the record. It is not the case of the appellant that the petition is not maintainable at the instance of the 1st respondent/petitioner on the ground that he is ineligible in terms of Section 244 of the Companies Act, 2013.

6. The question of limitation is a mixed question of fact and law which cannot be decided in the threshold and can be decided only at the time of final hearing taking into consideration the relevant facts and evidence. Therefore, the Tribunal rightly rejected the application. Insofar as the impleadment of necessary parties is concerned, from bare perusal of Section 241 read with Section 242 of the Companies Act, 2013, it is clear that the Tribunal is empowered to pass any order in accordance with law, including power vested under Section 242(2). If the Tribunal holds that there is an oppression by

any member against one or other member or group of members and it is not desirable to order winding up, if the Tribunal has not entertained the objection relating to maintainability at the threshold of the appeal, after about 8 years of the filing of the appeal and decided to proceed with the main petition, no interference is called for.

7. For the reasons aforesaid, we are not inclined to interfere with both the impugned orders. In absence of any merit both the appeals are dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

New Delhi

26th April, 2018

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