

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No. 298 of 2017

IN THE MATTER OF:

- 1) **Eyelid Infrastructure Private Limited** **...Appellants**
Having its registered office at
307, Raut Lane, Opp. Iskcon, Vile Parle(W),
Juhu, Mumbai-400049
- 2) **Shri. Prakash Baliram Bandarkar**
S/o Baliram Bandarkar
1, Rammanohar Gupta Building, Asalfa Village,
A.G. Link Road, Ghatkopar (West),
Mumbai -400084
- 3) **Shri. Pandoo Prabhakar Naig,**
S/o. Prabhakar Naig
Flat No. 62, Building SSS Nagar, Flank Road,
Mumbai-400037
- 4) **Smt. Shalini Shivcharan Patidar**
Flat No. 1601, 16th Floor, Mermit Tower,
N. M. Joshi Marg, Lower Parel (East),
Mumbai-400013
- 5) **M/s. Finacare Financial and**
Consultancy Services Private Limited
Through Shri. Daxesh Chandrakant Patel
S/o. Chandrakant Patel, Director
1, Rammanohar Gupta Building, Asalfa Village,
A.G. Link Road, Ghatkopar (West),
Mumbai -400084

Versus

- 1) **Mr. Birenbhai R. Panchal** **....Respondents**
S/o. Rameshkumar S. Panchal
2377, Parabdi Ni Pole, Near Halim Ni Khadki,
Shahpur, Ahmedabad- 380001
- 2) **Mr. Vasudev B. Patel**
S/o. B. Patel
At Saduthala, TA-Visnagar, Mehsana

**3) Shri. Mayank R. Bhatt
S/o. R. Bhatt
Patel Falia, Borsad, Dist. Anand**

**....Pro forma
Respondents**

Present:

For Appellant: Mr. Gaurav Goel, Advocate

For Respondent: Mr. P. Nagesh And Shri Abhishek Bansal, Advocates

ORDER

27.10.2017: Heard counsel on the point of delay in filing the appeal. For reasons stated, the delay is condoned. Now the Appeal is taken up for hearing with consent of both sides.

Heard learned counsel for the appellants and the respondents on the grounds raised in Appeal. In this matter in the Company Petition filed between the parties the appellants were respondents. In the Company Petition (No. 27/111/CLB/MB/MAH/2013) respondents filed Consent Terms which were dated on 18th October, 2013 (Annexure-4) before the Company Law Board on 22nd December, 2014. The order passed reads as under:

C. P. No. 27 of 2013

1. Case taken up today in presence of the Respondents Counsel named above. Nobody is present on behalf of the Petitioners.

2. The Ld. Counsel appearing for the Respondents submitted a copy of the Consent Terms. Let the same be taken on record. The Consent Terms reveals that the Petitioners have agreed therein to withdraw

their petition. The petition is, accordingly, dismissed as withdrawn.

The Consent Terms shall form part of this order.

3. No order as to costs.

4. Copy of the order be issued to the parties.

Dated this 22 December, 2014.

It is apparent that in the absence of the petitioners of the Company Petition the matter was taken up on Board and the copy of the Consent Terms was acted upon. The respondents filed an Application for withdrawal of this orders passed, for which application Dt. 27th January, 2015 was filed before Company Law Board for recalling of the order of Company Law Board which was passed on 22nd December, 2014.

The matter appears to have subsequently got transferred from Company Law Board to the learned National Company Law Tribunal Mumbai Bench, Mumbai. The National Company Law Tribunal has recalled that the order passed behind back of present respondents and recalled the Ex-parte order Dt. 22nd December, 2014 and directed listing of the Company Petition. This is impugned order passed in C.A. 30/2015 in C.P. No. 27/111/CLB/MB/MAH/2013 Dt. 02.05.2017.

Aggrieved by this order, the present appellants have moved this appeal. It is submitted by the learned counsel for the appellants that the respondents in

the appeal have not disputed that they indeed joined the Consent Terms. The Consent Terms were substantially acted upon it is stated. He is referring to Annexure R-1 before the Company Law Board (Pg. 118 of PaperBook) to point out that they had objected in the Tribunal below & pointed out various actions taken under the compromise whereby the present Appellants have taken benefit of the Consent Terms. It is submitted by the learned counsel that the only thing remained to be done under the Consent Terms was that the present respondents were to return the original deeds and documents to the Appellants. As now the rates of property have increased the present respondents moved the 'Application for Restoration' of the Company Petition and withdrawal of the compromise terms which had been taken on record by the Company Law Board, it is stated.

Learned counsel for the Respondents is however opposing the application and submitting that the Consent Terms which were executed between the parties entered into troubled waters soon after they were executed and the terms were decided not to be acted upon. He says that there were various acts on the part of the present Appellants because of which it did not become possible for present respondents to continue with the Consent Terms which they had entered into. The Appellants had failed to fulfill their commitment. It is stated that after more than a year photocopy of the Consent Terms were filed before the Company Law Board and the Petition was got disposed behind the back of the respondents who were Petitioners in the Company Petition and such procedure is unknown to procedural Law.

We have gone through the matter. The learned NCLT observed in Para 6 as under:

Heard both the sides at some length in the light of the pleadings on record and the case law cited. Although an Order had been passed and the impugned petition was “dismissed as withdrawn” but the admitted factual position is that the said Judgment was passed in the absence of the Petitioner. Only the Learned Counsel of the Respondent was present who had placed a copy of the Consent Terms on Record. No one was present from the side of the Petitioner to affirm the authenticity of the Consent Terms. As a result the admitted factual position on the said date of hearing was that an Ex-parte Order was passed qua the Petitioner. Moreover, another admitted factual position had created a genuine doubt that why the impugned withdrawal petition was signed on a day earlier (i.e. 17.10.2013), than the date on which the Consent Terms was signed (i.e. 18.10.2013). The Petitioner is stating that taking the undue advantage of ex- party dismissal of the Petition, the Respondents are not fulfilling their part of commitment as agreed upon in the said Consent Term.

Then it was observed in Para 10 as follows:

I therefore conclude that no prejudice is going to be caused to the Respondent if the impugned Ex-parte Order dated

22.12.2014 is recalled and the C.P. be listed for hearing. This view is almost in line with an observation earlier made by that very Hon'ble Member on 30th of March 2015 (reproduced supra) granting hearing to the Petitioner. The Respondent shall, as well, get a fair chance either to demonstrate that the terms of the Consent have been implemented or to challenge the merits of the Petition. Nevertheless, in either case, the Respondent's legal rights are not going to be adversely effected if the matter is listed for hearing.

Looking to the reasonings recorded by the NCLT and the facts & law we find that principles of natural justice require that when the matter is to be disposed on the bases of Consent Terms which are stated to have been executed between the parties, it is duty of the authority to ensure that both the parties are before the authority and both the parties agree to the Consent Terms before same are acted upon. It is also necessary to see that the terms are lawful. Only after such exercise the concerned authority can act upon those consent Terms. In this matter the learned counsel for the respondent states that the original Consent Terms are with them and on the basis of photocopy the matter was got disposed off.

This point was raised even before the learned NCLT where it was pointed out that on the basis of Xerox copies produced the Company Law Board had disposed off the matter. The copy of the order which has been reproduced above also shows that the counsel for the respondents had submitted "a copy"

of the Consent Terms. In such circumstances, we are unable to persuade ourselves to find error with the impugned order where the learned Member (Judicial) has recalled Ex- parte dated 22nd December, 2014 and directed that the Company Petition should be listed for hearing.

We did not find any substance in this appeal the same is rejected. No order as to costs.

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

(Justice Bansi Lal Bhat)
(Member (Judicial))

(Balvinder Singh)
Member (Technical)

sh/nn