

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No 212 of 2018

IN THE MATTER OF:

Shri Fidaali Moiz Mithiborwala & Anr.

...Appellants

Vs

Aceros Fortune Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellants: Mr. Vikas Agarwal, Mr. Sujit Gupta and Mr. R.K. Singh, Advocates.

For Respondents: Mr. Saurabh Kalia and Mr. Harshit Agarwal, Advocates for R-1.

ORDER

26.07.2018: The Appellants (Petitioners) preferred application under Section 59 read with Section 397 & 398 of the Companies Act, 1956 before erstwhile Company Law Board in the year 2015. The case was subsequently transferred to National Company Law Tribunal, Mumbai (Special) Bench. On 2nd May, 2017, the counsel failed to appear before the Tribunal due to which the petition was dismissed for default on the said date.

2. Thereafter, the Applicants filed Miscellaneous Applications on 8th May, 2017 in each of the company petitions for recalling and modification of the order(s) all dated 2nd May, 2017. The Adjudicating Authority by impugned order dated 26th April, 2018 taking into consideration the provisions of the NCLT Rules and other facts refused to restore the petitions.

3. To show the gravity of inaction on part of the Applicants (Petitioners), the Tribunal referred to order dated 2nd May, 2018 which reads as under:

“COMMON ORDER

TCP 64/58, 397-398/NCLT/MB/MAH/2015
TCP 65/58, 397-398/NCLT/MB/MAH/2015
TCP 66/58, 397-398/NCLT/MB/MAH/2015
TCP 67/58, 397-398/NCLT/MB/MAH/2015
TCP 68/58, 397-398/NCLT/MB/MAH/2015

The Petitioner Counsel is absent. Some Counsel was present on the last date of hearing seeking time on the ground appeal on the Order dated 06.04.2017 passed by the Hon’ble National Company Law Appellate Tribunal has been appealed to Honorable Supreme Court, on that request, this Bench as there is a direction from Honorable Appellate Tribunal to this Bench to dispose of this Company Petition by 31st May, 2017, directed the petitioner side either to file stay order or to argue the case without fail on the next date of hearing i.e. on 03.5.2017 whereas that Counsel has not appeared today to argue this matter.

Today, a Junior appeared on behalf of the Petitioners repeating that since an appeal has already been filed before the Hon’ble Supreme Court, he has again sought time for making their submissions in this Company Petition.

Though the Junior has stated that an appeal has been filed, but he has not stated that any stay has been granted by Hon’ble Supreme Court, whereby this Bench, following the directions given by the Hon’ble NCLAT, passed over the matter insisting upon that Junior to argue the case after sometime, but by the time the matter is reached the Junior was

not present, henceforth this Bench could not get any occasion for hearing the matter from the Petitioner side, since nobody is present from the Petitioner side to argue the matter, recoding the absence from the petitioner side, the Company Petitions are dismissed for default.

Since the order has been passed by the Hon'ble NCLAT to dispose of this Application within one month hereof i.e. by the end of this month, for there being vacation from 4.5.2017 to 4.6.2017, it has to make clear from our side that this Bench will remain closed for vacation from 4.5.2017 to 4.6.2017."

4. The Tribunal also noticed that earlier on 6th February, 2017, amendment applications were moved by the Appellants (Petitioners) which were also dismissed. All the time the Appellant unsuccessfully challenged the orders before the Appellate Tribunal or the Hon'ble Supreme Court and delayed the proceeding. As the Appellants (Petitioners) themselves were delaying the case in spite of direction of this Appellate Tribunal and were not cooperating with the Tribunal, the Tribunal rejected the prayer of the Appellants (Petitioners) to recall order dated 2nd May, 2017.

5. The impugned order dated 26th April, 2018 is a common order passed in MA Nos. 168, 169, 170, 171, 173 of 2017 in respective Company Petition nos. 64, 65, 66, 67 & 68 of 2015 as a common order in respect of five separate applications. The appellants as per NCLAT Rules was required to deposit five sets of fee, but only deposited one set. The learned counsel for the Appellant submits that 4 sets of court fee will be deposited by tomorrow i.e. 27th July, 2018. Office is directed to provide different numbers to the five sets of appeals.

6. Mr. Saurabh Kalia, learned counsel appearing on behalf of the Respondent also highlighted the aforesaid fact as noticed and recorded above. Learned counsel for the Respondent brought to our notice Para 8 of Company Petitions filed by the Appellants, and submitted that applicants used to file one after another application. Appellants also made allegations against Hon'ble Member of the Tribunal due to which the earlier Hon'ble Member recused himself from the case. It is only thereafter the case was transferred before the Special Bench of the Tribunal.

7. From the aforesaid fact as we find that the Petitioners are delaying the matter and in spite of our earlier direction are not cooperating with the Tribunal, we are of the view that these are not cases where any liberal attitude can be taken to restore the petitions. For the reasons aforesaid we dismiss the appeals. No cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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