

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

IA No.1931, 1932 and 1933 of 2019
in
Company Appeal (AT) No.255 of 2018

[Arising out of Order dated 5th December, 2018 passed by National Company Law Appellate Tribunal in Company Appeal (AT) No.255 of 2018]

IN THE MATTER OF:

1. Shri Sushil Kumar
R/o W-42, Sector -11
Noida, Dist. Gautam
Budh Nagar,
UP – 201301

...Appellant/Applicant No.1

2. Mr. Gaurav Aggarwal
R/o W-42, Sector -11
Noida, Dist. Gautam
Budh Nagar,
UP – 201301

...Appellant/Applicant No.2

Versus

1. M/s. Shilpa Garments
Pvt. Ltd.
4251, Jai Mata Market,
Tri Nagar, New Delhi – 110035

...Respondent No.1

2. Mr. Hari Ram,
R/o 12-A, Sundar Nagar,
Outside Zira Gate,
Ferozpur,
City Punjab – 152002

...Respondent No.2

3. Mrs. Dinesh Kumari
R/o 12-A, Sundar Nagar,
Outside Zira Gate,
Ferozepur,
City Punjab – 152002

...Respondent No.3

**For Appellants: Mr. Kumar Ankur and Mr. Bipul Kedia,
Advocates.**

**For Respondents: Mr Iswar Mohapatra and Mr. Aaryan Sharma,
Advocates.**

J U D G E M E N T

(6th September, 2019)

A.I.S. Cheema, J. :

1. the Applicants are riding series of defaults in the participation of their litigation. The Applicants who are comfortably holding on to control of the original Respondent Company - M/s. Shilpa Garments Pvt. Ltd. are seeking recall Orders of this Tribunal dismissing their Appeal in default on 5th December, 2018. Record shows that Respondents 2 and 3 - original Petitioners filed the Company Petition – CP 286/ND/2017 before National Company Law Tribunal, New Delhi (NCLT – in short) and NCLT noted that the Respondents, although they were duly served, failed to put in any appearance to contest the allegations made against them and were accordingly ex-parte. Consequently, NCLT examined the matter and passed the Orders which were impugned in the Appeal.

2. In the Appeal on 29.11.2018, the counsel for Respondent was present and we passed the following Order:-

“O R D E R

29.11.2018 - None present for appellant. List the matter for hearing on 5th December, 2018. If on that date also none appears for the appellant, suitable orders will be passed.”

On 5th December, 2018, following Order came to be passed:-

“O R D E R

05.12.2018 - This matter was kept back earlier as none was present for the appellants. Even in the second round nobody is present. Seen the orders of this Tribunal dated 29.11.2018. Even on that date nobody was present for the appellants and we had adjourned the matter to 5th December, 2018 i.e. today. We had directed that if on the adjourned date also none appears for the appellants, suitable orders will be passed. Seen record. Counsel for Respondents present. As nobody is appearing for the appellants and the appellants are also not present, when the matter has come up for hearing the appeal is not prosecuted. As such the appeal is dismissed in default of the appellants. No order as to costs.

3. Thereafter, as per record of this Tribunal, free Copy of the Order dated 5th December, 2018 was sent by the Registry vide letter dated 6th December, 2018 which was issued on 7th December, 2018, inter alia to the Applicants.

4. IA 1932/2019 and 1933/2019 came to be filed only on 28th March, 2019. The IA seeks setting aside of the Order dated 5th December, 2018. The delay condonation Application – IA 1933 of 2019 sought condonation of 78 days of delay in filing the Application for recall of the Order dated 05.12.2018. The conduct of the Applicants is further apparent from IA 1931 of 2019 which shows that even for refiling, the Applicants who are from Delhi were required to seek condonation of delay of 65 days. So much so for diligence.

5. In the Application for condonation of delay of 78 days, the Applicants conveniently put the blame on earlier Counsel and also come up with excuses like being busy in marriage of younger daughter on 7th March, 2019. They claim to have sent the complaint against the earlier Counsel on 27th March, 2019 to the Bar Council. In the complaint to the Bar Council, the Applicants claimed that they came to know about dismissal of the Appeal on 22nd February, 2019 when they were served with copy of execution in the matter.

6. When the matter came up before us, looking to the record of Registry of this Tribunal, we asked the Applicants to file Affidavit as to the date when free copy of the Order dated 5th December, 2018 was received by

them and the Applicant - Gaurav Aggarwal has filed Affidavit – Diary No.12985 on 09.07.2019 accepting that copy of the Order dated 5th December, 2018 was received in the 3rd week of December, 2018. This is against what was put in Complaint to Bar Council which shows their knowledge on 22.02.2019. It is apparent that the Applicants are resorting to falsehood and they have not been diligent in responding to the litigation and are not coming with clean hands while seeking relief. No specific provision for recall of the Order is indicated. However, even if we rely on Rule 11 of the NCLAT Rules, 2016 to invoke inherent powers to meet the ends of justice, as we find that the Applicants are not with clean hands, we do not think that this is an appropriate case for which the inherent powers should be invoked. The Applicants cannot be allowed to go on creating complications at each level of the litigation which has an effect of protracting the litigation after they are comfortably in command of the concerned Company. Equity does not tilt in favour of such litigants.

7. We do not find any substance in these Applications. The same are rejected.

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

[Balvinder Singh]
Member (Technical)

/rs/nn