

NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI

T.C.P No.114/(MAH)/2009  
CA No. 83/2016 & 324/2014

CORAM:

Present: SHRI M. K. SHRAWAT  
MEMBER (J)


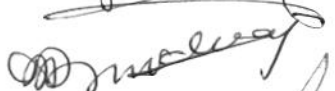
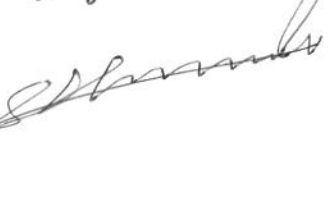
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 06.04.2017

NAME OF THE PARTIES: Mr. D. H. Narayansa  
V/s.

M/s. Aries Agro Vet Associates Pvt. Ltd. & Ors.

SECTION OF THE COMPANIES ACT: 397/398, 58-59 of the Companies Act  
1956 and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
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1.	S. P. DHONDALE	Adv. for Respondt. (A)	
2	M. S. BHARDWAJ	Adv. for R-1 & 3	
3)	S. L. holdhale	Adv. for Petitioner	

TCP 114/397-398/NCLT/MH 2009

Interim Order on Maintainability

Date of order: 14/06/2017

1) Petition bearing CP No.114/2009 was filed on 09.09.2009 before the then CLB, Mumbai, which was admitted in the year 2009. Thereafter court proceedings of various nature such as miscellaneous application, interim injunction, etc. were carried out. It is worth to note at this stage when we are going to begin the discussion that at one occasion an interim order of the CLB was also challenged before the Hon'ble High Court. When the NCLT came into operation the matter was transferred and the hearing commenced to decide the Petition finally. Accordingly, it was listed to be heard finally but at that point of time the 'Maintainability' of the petition was questioned.

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(Contd...2.)

1.1) From the side of the Respondent, Learned Counsel appeared and pleaded that the Petition is not maintainable before this forum but to be decided under the jurisdiction of a Trial court. Reason given is that few witnesses are required to be examined because the correctness of the signature is yet to be ascertained hence beyond the jurisdiction of the NCLT having only summary trial procedure. Such procedure of examination or cross examination of a witness is not available before this forum. Thus the same is required to be adjudicated upon by a Civil Court having authority to call for a witness. He has also pleaded that a fraud has been played which requires in-depth investigation therefore beyond the jurisdiction of summary trial of NCLT. In support of these arguments and certain allied arguments plethora of case laws are cited as listed below:-

"INDEX OF AUTHORITIES CITED BY RESPONDENT 2(a)

ON MAINTAINABILITY OF THE PETITION

Sl #	Authority	Marked as	Page #
1.	State of Rajasthan Vs. Rao Raja Kalyan <b>(1972)4 SCC 165 (Para 4 &amp; 6)</b> (Reg. maintainability as preliminary issue)	A	001-003
2.	T.L. Nagendra Babu Vs. Manohar Rao Pawar <b>I.L.R. 2005 KAR. 884 (Para 16)</b> (Reg. maintainability as preliminary issue)	B	004-024
3.	Mrs. Saroj Goenka Vs. Nariman Point Building <b>(1997) 90 Comp.Cases 205</b> (@page 213)	C	025-034
4.	T.L. Nagendra Babu Vs. Manohar Rao Pawar I.L.R. 2005 KAR 884 (Para 24 to 27) (Reg. sufficiency of cause of action)	B	004-024
5.	J.S. Yadav Vs. State of U.P. <b>(2011)6 SCC 570 (Para32)</b> (Court cannot pass order against person who is not a party to proceedings)	D	035-045
6.	In the Supreme Court of India dt:04-08-2014 Civil Appeal No.7174/2014 Babulal Vs Vijay Solvex Ltd.	E	046-050
7.	Bharat Amratlal Vs. Dosukhan Samadkhan <b>(2010 1 SCC 234</b> (Para 17, 18), Person against whom no accusation cannot be punished)	F	051-067
8.	<b>In the Supreme Court of India dt:21-04-2011</b> Civil Appeal No.6409/2002 (Para 18 to 21) Dr. Shehla Burney Vs Syed Ali Mossa (A relief not sought in plant cannot be Granted)	G	068-073
9.	Union of India Vs. E.I.D. Parry <b>A.I.R. 2000 S.C. 831</b> (Para 4)	H	074-076
10.	In the High Court of Gujarat Dt. 13-03-2012 Moti Ben vs. State of Gujarat LPA/10/2000 (Para 4, 5, 7 to 9) (Relief not claimed cannot be granted)	I	077-086
11.	Bishnudeo Narain Vs. Seogeni Roy <b>A.I.R. 1951 S.C. 280</b> (Para 25 to 27)	J	087-095
12.	V.S. Viswavidyalaya Vs. Rajkishore Tripathi <b>A.I.R. 1977 S.C. 615</b> (Para 8, 9) Details of fraud to be pleaded	K	096-102

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13.	Ranganayakamma Vs. K.S. PRAKASH <b>A.I.R. 2005 KAR. 426</b> (Para 43 to 53) (This judgment is confirmed in (2008) 15 SCC 673) Details of particulars of fraud to be pleaded	L	103-128
14.	Dr. Francis Cleetus Vs. Rashtra Deepika <b>(2013) 178 Comp Cases 206</b> (Para 24, Page 47)	M	129-177
15	Delhi High Court Dt: 04-07-2005 A.P.Jain Vs. Faridabad Metal Udyog Ltd (Para 14) (Absence of satisfactory explanation for delay fatal to petition and relief to be refused)	N	178-185

Mumbai

Date:

Advocate for Respondent-2(a)

(Shrinivas P.Dhondate)"

2. From the other side Learned counsel has vehemently opposed the manner in which the question of maintainability is raised at this stage when the pleadings already got completed and voluminous discussion had been made in the past number of years. . He has argued that the impugned petition was filed way back in the year 2009 but it was never raised in the past. The respected Company Law Board and the High Court has examined several issues but the respondent had never questioned the validity of the Petition. Even at the time when the petition was admitted by the CLB no such question was raised. According to the Learned Advocate, in fact that was the appropriate time i.e. preliminary stage of admission, to object the admission of the petition on the ground of Maintainability however not questioned. Learned Advocate has also drawn attention on the provisions of **Section 424(2) of the Act** in support of the argument that the Tribunal has same powers as are vested in CPC, hence the complicated cases where a presence of a witness is required can also be taken up under the jurisdiction of NCLT. He has further pleaded that the Petitioner should not be thrown out of the litigation at the very threshold. Arguments were concluded with a request that the Petition deserves to be decided on merits.

### 3. Findings :-

Heard both the sides at some length. The Respondent is raising a preliminary issue of Maintainability of the Petitions in question. Legal points as raised by the respective Learned Advocates/ Representatives are to be dealt with accordingly.

1) The first question which is seriously contested from the side of the Petitioner is that whether the Respondent be permitted to raise this preliminary objection at this juncture when all the proceedings of the case are already over after the completion of the pleadings as also completion of the hearing. According to the arguments a final order is pending for the limited purpose to consider the **Writing Experts reports**. Otherwise, in the opinion of the Petitioner's Counsel, the matter had been finally argued hence stood completed.

1.1) To evaluate this point it is deemed expedient to go through the past proceedings as available in the proceedings folder. Petition No. CP 114/397-398/ MB/ 2009 is a very old Petition filed in the year 2009. At the outset it is worth to make an observation that **a lot of water had flowed under**



**the bridge since 2009.** Series of Interim, Ad—Interim orders have been passed in the past. Number of grievances of the Respondent, during the pendency of the impugned Petition, have duly been addressed. It is to be examined whether in the past at any stage the Respondent had ever raised this issue of 'Maintainability'?. **Abysmally, the answer is in negative.** Although the vehement contention of Ld. Counsel of the Respondent is that this is a preliminary issue to be decided first, i.e. now in the year 2017. The moot question is that had it been a preliminary issue than why it had not been raised at the preliminary stage ?. Nevertheless, I consider it beneficial to examine whether any light had been thrown on this controversy in the past, hence cursory look is as under: -

A) An order (interim) was passed on 16/5/2011 wherein the directions were issued in respect of lease rent received from one M/s Gokul Das Image Pvt. Ltd. That suggestion of the Respondent about the Rent was accepted.

B) An order ( interim ) was passed dated 31/07/2013 clearly demonstrating that the Respondent had duly completed the pleadings on his part and the then CLB had directed to utilize the Bank deposit in a particular manner.

C) Proceeding sheets / folder (daily Roznamacha) is full of evidence that the Respondents have fully participated in the court proceedings since inception of filing of the Petition by filing several pleadings viz. Reply, Sur-Rejoinder, affidavit, additional affidavit. To keep brevity in mind, need not to mention all of them. However, point to be noted is that in any of them there was not a whisper of questioning the Maintainability. Like on 29/10/2013 an order(interim) was passed wherein on an information received from the Respondent it was directed to make deposit of FDR of Rs. 21 lakhs in a Bank.

D) An order (interim) was passed on 06/02/2014 to call for a report of a hand-writing expert. **That order was challenged in the High Court.** Side by side the Respondent has also moved an Application seeking stay on operation of the said order, however not granted. Hon'ble High Court vide order dated 27/02/2015 & 10/03/2015 had directed to re-hear the question of appointment of a Handwriting expert.

E) Consequent upon the directions of the Hon'ble High Court a detailed order was passed by the respected **CLB Mumbai on 01/04/2015** upholding the earlier view affirming the appointment of the expert and importantly it was recorded that the expert had opined that the signatures were forged on certain documents. But it was deemed appropriate by the CLB to give a chance to the Respondents to file an Expert report -in-rebuttal. Worthwhile to indicate at this juncture that the Responds have availed that opportunity and the report-in-rebuttal is also now placed on record.

One more important point has been noted by me in the said order that a legal objection on discretion of the CLB had also been answered in the said order , for ready reference reproduced below :-

*"22. I have given my serious thoughts to this question raised by the Respondents. The decision rendered in the case of **Ammonia Supplies (Supra)** clearly stipulates that in the case for rectification of Register of Members, this is for the CLB to decide as to whether disputes involve such complicated question of facts which should be decided by the civil court. In other words, the entire discretion has been left to the CLB either to relegate the parties to the civil*

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court, if it finds that the facts are so complicated that requires oral evidence by way of cross examination, and therefore, the parties must be relegated to the civil court, or the CLB itself is competent to decide such question. **In my view, having regard to the facts of the present case, no complicated question of facts are involved and the parties are not required to be relegated to a civil court. Having examined the facts and the material available on record, I am satisfied that the CLB in the exercising its jurisdiction is competent to decide all the question in this case.** The relevant part of the said decision is extracted below: -

*"....So we conclude the principle of law as decided by the high court that jurisdiction of court under Section 155 is summary in nature cannot be faulted. Reverting to the second limb of submission by learned counsel for the appellant that court should not have directed for seeking permission to file suit only because a party for dispute sake states that the dispute raised is complicated question of facts including fraud to be adjudicated. The Court should have examined itself to see whether even prima facie what is said is complicated question or not. Even dispute of fraud, if by bare perusal of the documents or what is apparent on the face of it pm comparison of any disputed signature with that of the admitted signature the court is able to conclude no fraud, then it should proceed to decide the matter and not reject it only because fraud is stated. Further on the other hand, learned counsel for the respondent totally denies any share having been purchased by the appellant company or any amount paid to it. No transfer of any such share was ever approved by the board of directors. It is urged the money even if advanced to Sri. V.K. Bhargava by the appellant company, if at all was a private transaction between the two to which respondent-company has no concern. So we find there is total denial by the respondent".*" ( a portion is high lighted to give emphasis )

3.1 Thereafter the NCLT came in to existence and the case records were transferred from CLB. The proceedings again started accordingly and duly attended by both the sides as per the occasion. Noting on several order -sheets since November 2016 have clear indication that apart from 'preliminary objection of maintainability' every other aspect was touched/ raised by the Respondents. Two other application (CA 83/16 & 324/2014) were also fixed for hearing during last few months but no such application was ever moved challenging the 'Maintainability' of the Petition under consideration. Since the pleadings were long back completed and the case was ripe for final hearing , but to utter astonishment on the last occasion (March 2017) one of the Respondent sprang up challenging the validity of the Petition. **A duty is casted on a Judge to give full justice to all the litigants, hence this legal question, although raised at the fag end, is as well heard at length. Howsoever burdensome it is, but this is the commitment of the judiciary.**

3.2 ) The legal points are conveyed only through oral arguments and in support few case laws are relied upon ( as listed supra ), required to be dealt with but briefly as below:-

i) Few decisions are on the subject that the question of 'Maintainability' is a preliminary issue essentially to be ascertained ex-facie before the trial begins. Precedents cited are (A), (B), (C). It is somewhat strange that on one hand it is being argued that this is an issue to be decided first, but on the other hand failed to give any explanation that why at all it was not raised at the preliminary stage? Why the validity of the Petition was not prima-facie challenged ? All these decisions have casted a duty on the litigant to raise this question at that stage when the trial is about to start so that the lengthy procedure of filing of pleadings could be avoid . Further, It has also been held that the question of

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validity has to be raised at the every threshold . All these case laws thus go against the Respondent because it was he who had not raised this issue earlier.

I(a) An alternate plea was that a legal question can be raised at any time during the trial or pendency of a suit. But the distinction is very basic and absolutely clear that this is not with in the domain of ' any legal question' but with in the province of ' preliminary legal issue '. Rather, this is what argued by the Ld. Advocate of the Respondent himself. **He cannot blow hot and cold in one breath.** It is his argument that the question of ' maintainability ' is a preliminary issue than a question can be asked to him that why it was not raised at the preliminary stage ?. From the admitted facts it is manifest that the matter had gone up to Hon'ble High Court but the Respondent had never and ever questioned the validity of the Petition. Inter alia, this plea being full of inconsistency has no force in the eyes of law. Rejected.

ii) Decision of CLB , New Delhi dated 21.01.2015 in the case of (1) M/s Ganesham Buildwell Pvt Ltd. , CP No.46(ND)/2013; (2) dated 10-02-2015 in the case of M/s. Surya Prakash Goyal, Petitioner, Versus M/s. Rajender Plywood Ind. Pvt. Ltd., & Ors, Respondents, and (3) dated 03-12-2015 in the matter of Shri Teofilo D'souza, Petitioner Versus M/s. Atlas Fisheries Private Limited & Ors. Respondents, are referred for the legal question that complicated matters are beyond the domain of the summary jurisdiction of the CLB and to be adjudicated by the Civil Court. It has also been pleaded that the allegation of forgery cannot be decided in summary proceedings without full trail hence the Tribunals have discretion to relegate the case to Civil Court . In my humble opinion all the cited decisions are misplaced considering the facts and circumstances of this case . I have two reasons to discard this argument of the Ld. Counsel. **First** , vide an order dated 1/4/2015( relevant paragraph (22) reproduced above ) the respected CLB had already taken a decision that CLB itself is competent to decide the alleged complicated factual aspect and unambiguously held that there was no necessity to relegate the matter to a Civil Court. I have been informed that the said verdict was not challenged before the High Court. Meaning thereby, the Respondents have duly accepted the said view. Now at this stage it is unfair on the part of the Respondent's Advocate to rake-up an issue which otherwise stood settled in this very case. An Advocate is an officer of the court hence fully aware that the corridors of the courts are flooded with the litigation, an observation of an Hon'ble Courts. Instead of finalizing the CP, raking up issues again and again which have already reached to the finality in this case. A time has come for an holistic retrospection. Suggestion rejected.

ii(a) Secondly and most importantly, a clear mandate is legislated in **Section 430 of the Companies Act 2013** that :-

***"Section 430. Civil Court not to have jurisdiction [Effective from 1<sup>st</sup> June 2016]***

*No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal. "*

*ms*

iii) In addition to the existence of the specific Section in the Companies Act as reproduced above, it is equally important to refer one more section i.e. **Section 424 of Companies Act 2013**, titled as '**Procedure before Tribunal**' wherein as per sub-section(2) the Tribunal shall have same powers as are vested in a Civil Court under CPC while trying a suit. The NCLT therefore can summon and enforce the attendance of any person. The NCLT can examine any person on oath. The NCLT is empowered to receive evidence on affidavit and also can direct to produce document. The NCLT can issue commission for the examination of the witness or document. As a consequence it is incorrect to argue that the NCLT has no jurisdiction to decide a case having complex matrix of facts. On due consideration of the above discussed legal position this argument of the Ld. Advocate is bad in law hence rejected.

iv) The next reason for seeking dismissal of the Petition in-limine is due to non-joinder of a party. In support case laws referred are:

a) J.S. Yadav Vs. State of U.P. (2011)6 SCC 570 (Para 32) (Court cannot pass order against person who is not a party to proceedings)

b) In the Supreme Court of India dated 04-08-2014 Civil Appeal No.7174/2014 (Para 6 &9) Babulal Vs. Vijay Solvex Ltd.

c) Bharat Amratlal Vs. Dosukhan Samadkhan (2010)1 SCC 234 (Para 17, 18) 31, 32 (Person against whom no accusation cannot be punished)

iv.b) Is it appropriate for the Respondent to demand at the fag end to implead a party, otherwise not hitherto found proper and necessary party? Rather no convincing reason at all is canvassed and the plea remained unsupported by any cogent evidence. Per contra, this bench is satisfied that in the absence of any corroborative evidence, whatsoever, no more party is presently needed to be impleaded in this case. The provisions of C.P.C have prescribed a time bound procedure for furnishing of the pleadings which is not infinite. Litigants are always urged to follow them, hence applies on this Respondent as well. Such unsubstantiated argument is thus rejected.

v) Rest of the case laws, as per the list printed above, are not relevant under the present set of facts and circumstances. They revolve around the issues like the incidence of fraud requires to be pleaded etc. There is apparent inconsistency in the arguments of the Ld. Counsel because on one hand he pleaded for dismissal at the threshold, but on the other hand case laws cited ruled that issue of fraud to be pleaded in a case proceedings. Already this aspect had been due cognizance in the past hence Expert reports were called for and now the hearing shall take place in due course. But the difficulty is that miscellaneous applications one after another are stalling the finalization of the Petition. This approach and attitude needs to be forbidden.

4) In the light of the above discussion the impugned preliminary objection is hereby rejected. The Petition in question had already been admitted way back in the year 2009. Thereafter the pleadings have also been completed. Hearings also took place to finalize the case. There is no reason to hold the Petition as non-maintainable. This type of frivolous objection after objection must be discouraged hence as a deterrence there is a provision of imposition of cost, however at present



pardoned. Petition shall be decided on merits hence directed to list for **hearing on 10<sup>th</sup> July 2017**.  
Registry shall intimate the parties accordingly.

**Date : 14-06-2017**

Sd/-  
**M.K. SHRAWAT**  
**Member (Judicial)**