NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI

T.C.P No.114/(MAH)/2009
C.A. No. 83/2016

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

SHRI BHASKARA PANTULA MOHAN
MEMBER (J)

ATTENDENCE-CUM-ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.09.2017

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 of the Companies Act 1956 and 241/242 of the Companies Act, 2013.

S. No.	NAME	DESIGNATION	SIGNATURE
1.	S.P. Dhondale	Adv. for Respdt-2(a)	

ORDER
M.A. 297/2017 in T.C.P. 114/397-398/CLB/2009

1) Yet another Miscellaneous Application is filed on 2nd August 2017 by the Respondent (R-3). At the outset we are using the word "Yet another", because the records of this case are having sufficient number of Miscellaneous Applications filed one after another. May or may not be all by this Applicant. But this fact cannot be denied that the Main Petition was filed way back in the year 2009 but could not have reached to the final conclusion or final hearing owing to such type of protracted litigation caused by plethora of Interim Applications and consequent thereupon several Interim decisions. This case can be quoted as an example of long-drawn-out prolonged litigation resulting into huge pendency of undecided Petitions, earlier before erstwhile CLB and now transferred to newly created NCLT. In this context it is often quoted 'the

corridors of the courts are flooded with litigation', thus, in our humble opinion require a solemn contemplation.

2) Reason for filing of this Application is that an **'Interim Order on Maintainability'** was passed by this bench on 14/06/2017 wherein held that the Petition is **'Maintainable'**. The Applicant has moved this application for recalling of the said order on the ground of alleged apparent mistake. Nevertheless, after assigning several reason in the detailed order, the last paragraph of the order reads as under :-

> *"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 10th July 2017. Registry shall intimate the parties accordingly."*

3) In this application **it is stated that the question of Maintainability was very much raised at the beginning of the trial before the then CLB however remained undecided**. For ready reference only the relevant portions are reproduced below:-

> *"(d) The kind observations at para 3.1 (Page 5) of Annexure-5 are again based on false premise that maintainability of petition has sprung up for first time in March 2017 which again is contrary to the records. As rightly observed by this Hon'ble Tribunal, a duty is cast to do full justice to parties, howsoever burdensome it is, to review the Order as per Annexure-5 and dismiss the petition as not maintainable.*
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> *(e) The kind observations at para 3.2 (Page 5) that point of maintainability is to be considered at beginning of trial is partly correct in the sense that trial began only on 31-07-2013 when Petitioner completed his main argument and all stages before said date were preparatory to trial in nature and effect. Thus the Respondent No.2(a) has raised the issue of maintainability of petition on 26-08-2013 which was at the first available opportunity. It is a settled position in law that trial in a civil proceedings begins on framing of issues.*

Issues could not be said to have arisen before completion of pleadings in this case on 16-04-2013 and subsequent arguments of Petitioner."

4) Heard the arguments of both the sides at some length. We find no force in this Application. On facts as well as on law it sans merits. **First reason** is that in the impugned order the merits and law both were considered at considerable length. It was noted that the Petition bearing C.P. No. 114/2009 was filed way back on 09.09.2009. During the pendency of the main Petition certain Interim Orders were also passed to decide Interim/Miscellaneous Applications. On one occasion it had reached up to the Hon'ble High Court. Later on, due to transfer from CLB to NCLT again Application was moved and decided. After disposing of all those Misc. Applications the main Petition was listed for 'Final Hearing' as consented by both the sides. At that point of time when the Petition could have been finally decided, a preliminary question of Maintainability was raised. An observation was made that a lot of water had flowed under the bridge since 2009 since series of Interim and Ad-Interim orders were passed. In the said order, now seeking recall, number of instances have been recorded where Interim orders were passed { duly listed on Page 4 as (A) to (E) }. The **second reason** for dismissal of this Application is that it had already been held that the question of Maintainability in this case was nothing but a mixed question of fact and law therefore merged with the main petition to be decided accordingly by this forum and need not to be decided by any other Court of Law. In this regard Section 430 and Sec. 424 of Comp. Act have also been discussed. Therefore, it is not appropriate to allege that only on one point of belated raising of Maintainability issue the Petition was rejected. Rather several reasons made the basis for dismissal of that Petition.

5) The case Law cited of **Green View Tea & Industries vs. Collector, Golaghat, Assam (AIR 2004 SC 1738 / 4 SCC 122 (2004)** has deliberated upon the instances when it can be held an apparent mistake fit for rectification. By referring therein another case-law it was quoted that **'an error which is not self-evident and has to be detected by a process of reasoning, can hardly be an error apparent on the face of the record'.** A 'review Application' or 're-calling petition' must not be entertained so as to become **'an**

appeal in guise'. There are no two views that an act of a Court must not prejudice anyone, but to rectify, to revise or to re-call an order is possible only on mistaken assumption of a fact on which a decision was based upon. Undisputedly if an order is based upon a wrong appreciation of true gospel facts, having no possibility of any other view but one, then such a decision can be termed a mistake apparent on record which may be of serious consequence. A simple example often cited is that the gospel truth is that sun rises in the east, but if in a decision it is held that sun rises in the west then such a decision is naturally a blunder hence rectifiable U/s 420 (1) of the Act. But it is a trite and well established law that a well-reasoned order does not fall in the category of a 'mistake apparent on record' hence must not be rectified under Section 420 (1) of the Comp. Act. There may be a possibility of difference of opinion on certain facts but such difference of opinion by no stretch of argument can be considered as an apparent mistake to call for an amendment. Especially when a right of Appeal is provided in a Statute. If a litigant is not convinced by the reasoning given in an order or not satisfied, at that juncture has all the right to approach the next forum but not entitled to plea for review of it's own order passed by that very forum. This Application is nothing but in the nature of a 'review' of our own order which is beyond jurisdiction hence deserves to be rejected.

6) Before we part with it is worth drawing attention that it was emphatically conveyed in the said interim-order that frivolous applications, one after another, must be discouraged and a cost could be imposed. However, this Applicant was pardoned from the cost, refer last line of the order. Still this Application is moved knowing fully well that it may tantamount to Review and if rejected this time cost would be imposed. There is no fear of cost. At present the serious problem being faced by the Courts at all level is that there is no deterrence and discouragement of inflow of such unwanted litigation. It is unstopped. In our humble opinion a time has come to evoke the inner conscious of the litigants to realize that because of such delay tactics or prolonged litigation it snatches away the rights of genuine litigants falling in line of long Queue. Even imposition of cost has not resolved the delinquent behavior of such applicants. This menace

has jeopardized the legal system. We are again not imposing a cost with a hope of message of self realization on the part of such litigants.

7) The Application is dismissed. No order as to cost.

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)

Sd/-

M.K. SHRAWAT
Member (Judicial)

Date : 15.09.2017
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