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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

IA 194 of 2017 in IA 20 of 2016 in
TP No. 122/397-398,58-59,235(2),237(b)/NCLT/AHM/2016 (New)
CP No. 27/397-398, 58-59,235(2),237(b)/CLB/MB/2016 (Old)

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.02.2018

Name of the Company: Alliance Industries Ltd.
V/s.
Peoples International and Services Pvt. Ltd.

Section of the Companies Act: Section 397-398, 58-59, 235(2), 237(b) of the Companies Act, 1956

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Kunal P Vaishnav	Advocate	Org. Petitioner	
2.	Hamesh C. Naidu	Advocate	Org. Petitioner	
3.	Vivek H. Shah	Advocate	Org Petitioner	

ORDER

Learned Advocate Mr. Kunal Vaishnav with Learned Advocate Mr. Hamesh Naidu with Learned Advocate Mr. Vivek Shah present for Original Petitioner. None present for Original Respondents.

Common order pronounced in open Court. Vide separate sheets.

MANORAMA KUMARI
MEMBER JUDICIAL

16.2.18
BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 16th day of February, 2018.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
AMEDABAD BENCH
AHMEDABAD

I.A. No. 260 of 2017
in
I.A. No. 19 of 2016
in
Company Petition No. T.P. 122 of 2016

Peoples International & Services Private Limited
through its Director, I.H. Siddiqui
People's Campus
Karnod – Bhanpur Bye Pass
Village Raslakhedi, Tahsil Huzur
Bhanpur, Bhopal 462 037 (M.P.)

Respondent No.1/ Applicant

M/s. Alliance Industries Limited.

Petitioners

Versus

Peoples International & Services Private Limited

Respondents

I.A. No. 194 of 2017
in
I.A. No. 20 of 2016
in
Company Petition No. T.P. 122 of 2016

Suresh Narayan Vijay
Bungalow No. 4, Vijaydwar
Near Peoples Campus
Bhanpur Byepass Road
BHOPAL 462 037 (M.P.)

Respondent No.2/ Applicant

M/s. Alliance Industries Ltd.

Petitioner

Peoples International & Services Private Limited & others

Respondents

Order delivered on 16th February, 2018

CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial
Hon'ble Ms. Manorama Kumari, Member Judicial

Appearance:

For the Applicant : Learned PCS Mr. S K Batra for Respondent/ Original Respondent no. 1.

Learned Advocate Mr. Amalpushp Shrotri Applicant/ Original Respondent no. 2.

For the respondent : Learned Advocate Mr. Kunal Vaishnav with learned Advocate Mr. Hamesh Naidu Respondent/ Original Petitioner.

Learned Advocate Mr. L J Golani present for Respondent/ Original Respondents no. 4, 5 and 8.

COMMON ORDER

(Per: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial)

01. Original respondents No. 1 and 2 in T.P. No. 122 of 2016 filed I.A. No. 19 of 2016 and I.A. No. 20 of 2016 respectively challenging maintainability of TP No. 122 of 2016 on the grounds of limitation, latches, no cause of auction, suppression of material facts, approaching the court with unclean hands, Ashok Kumar Khosla has no jurisdiction to file this petition and on the ground that original respondent No. 3 is no more.

02. Aforesaid applications, after hearing both the sides on merits were disposed of by this Tribunal as dismissed by a Common Order dated 29.05.2017.

03. In these petitions it is the grievance of the Applicants i.e. original respondents 1 and 2 that, this Tribunal, while passing the order dated 29.05.2017 has not taken into consideration

the oral arguments and contentions in written arguments on the aspect of Delay and Latches. It is also the case of the Applicantss/original respondents 1 and 2 is that this Tribunal has not taken into consideration the decisions of NCLT, Delhi Bench in case of *Praveen Shankaralayam vs. Elan Professional Appliances and others* reported in 2016 SCC Online NCLT 85 and the decision in case of *Esquire Electronics vs. Netherlands India Communications Enterprises Ltd. reported in 2016 SCC Online NCLT 71* and *Sanjay Agarwal and another vs. M/s. Meghalaya Finlease Pvt. Ltd. and Ors. reported in 2017 SCC Online NCLT 28.*

04. It is also pleaded that non-consideration of oral arguments on delay and latches as well as written submissions has resulted in grave miscarriage to Applicants.

05. These applications are filed under Section 420 (2) of the Companies Act read with Rule 11 of the National Company Law Tribunal Rules, 2016 seeking review of the order dated 29.05.2017 passed in IA No. 19 of 2016 and IA No. 20 of 2016. Section 420 of the Companies Act, 2013 reads as follows: -

> "420 (1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Tribunal may, at any time within two years from the date of the order with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties;

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.

(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned."

06. Rule 11 of the NCLT Rules reads as follows: -

"11. **Inherent Powers –** Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal".

07. In view of Section 420 (2) and Rule 14 of NCLT Rules it is clear that this Tribunal has got power to rectify the order if there is any mistake apparent from the record and if it is brought to the notice of this Tribunal within two years from the date of the order.

08. Here itself it is pertinent to refer to the judgement relied upon by the learned counsel appearing for the respondents 1 & 2 in *Assistant Commissioner, Income-Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Limited reported in (2008) 14 SCC 171.* In that decision Hon'ble Supreme Court of India while interpreting Section 254 (2) of the Income Tax Act has defined "mistake apparent from the record"

09. Learned counsel appearing for the Applicants contended that non-consideration of decision of jurisdictional court can be said to be a mistake apparent from the record, relying upon the aforesaid decision of Supreme Court.

10. It is contended by the learned counsel appearing for the Applicants that this Tribunal while passing order dated 29.05.2017 did not take into consideration the following decisions cited in IA No. 19 of 2016 and IA No. 20 of 2016: -

(1) *Praveen Shankaralayam vs. Elan Professional Appliances and others* reported in 2016 SCC Online NCLT 85

(2) *Esquire Electronics vs. Netherlands India Communications Enterprises Ltd. reported in 2016 SCC Online NCLT 71*

(3) *Sanjay Agarwal and another vs. M/s. Meghalaya Finlease Pvt. Ltd. and Ors reported in 2017 SCC Online NCLT 28.*

and it is a mistake apparent from the record and such mistakes can be corrected under Section 420 sub-section 2 of the Companies Act. In support of this contention, learned counsel for Applicants relied upon the decision of Hon'ble Supreme Court in Assistant Commissioner of Income-tax, Rajkot vs. Saurashtra Kutch Stock Exchange (2008) 14 SC cases 171.

11. On the other hand, learned counsel appearing for the original petitioner/respondent herein contended that the order dated 29.05.2017 is a reasoned order based upon facts of the case and appreciation of material on record and therefore recalling such order amounts to exercise of powers of review and this Tribunal has no power to review its own order. He also contended that the Applicants have got right of appeal against the order dated 29.05.2017 made in IA No. 19 of 2016 and IA No. 20 of 2016.

12. Prayer made in these applications is to recall the order dated 29.05.2017 passed in IA No. 19 of 2016 and IA No. 20 of 2016 and pass fresh orders considering the oral arguments on delay and latches and written arguments on the aspect of Delay and latches.

13. The following points emerge for determination in these petitions: -

(1) Whether this Tribunal has got any power to review its order?

14. A reading of section 420 (2) only show this Tribunal has got power to rectify its order if there is any mistake apparent from the record but it has no power of review of its own order. In fact, in the Judgement in *Assistant Commissioner, Income-Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Limited reported in (2008) 14 SCC 171* referred to SUPRA there is a reference to the decision in *Patel Narsi Thakershi v. Pradyumansinghji Arjunsinghji* reported in (1971) 3 SCC 844 which reads as under: -

"It is well settled that the power to review is not an inherent power. It must be conferred by law either

specifically or by necessary implication. No provision in the Act was brought to [our] notice from which it could be gathered that the Government had power to review its own order. If the government had no power to review its own order, it is obvious that its delegate could not have reviewed its order".

15. This judgement was passed with reference to provisions of Saurashtra Land Reforms Act, 1951 and referring to Order 47 Rule 1 of the Code of Civil Procedure, 1908.

16. Even in the Companies Act, 2013 or in the NCLT Rules there is no provision that confer power of review on this Tribunal either specifically or by necessary implication. It is settled law that power of review is not inherent power. Therefore, this Tribunal cannot exercise the power of review invoking Rule 11 of NCLT Rules. Therefore, the finding of this Tribunal is that, no power of review has been conferred on this Tribunal either expressively or impliedly in any of the provisions of the Companies Act, 2013 or in the NCLT Rules.

17. There is no dispute about the aspect that this Tribunal has got power to correct "mistake apparent from the record". Therefore, the crucial question is what is "mistake apparent from the record."

18. Main contention of the learned counsel appearing for the Applicants is that this Tribunal has not taken into consideration oral submission, written submissions and the decisions relied upon by the Applicants in IA No. 19 of 2016 and IA No. 20 of 2016 while passing order dated 29.05.2017. In this context it is necessary to refer to the judgement of Hon'ble Supreme Court relied upon by the learned counsel for the Applicants. Facts of the case in the judgement of Supreme Court in *Assistant Commissioner, Income-Tax, Rajkot vs. Saurashtra Kutch Stock Exchange Limited reported in (2008) 14 SCC 171* which reads as follows: -

19. The said judgement was rendered basing upon sub-section 2 of Section 254 of the Income-Tax Act. Sub-section 2 of Section 254 of the IT Act and Section 420 (2) of the Companies Act are in the same language.

20. In that case Income-tax Appellate Tribunal, Ahmedabad without taking into consideration the decision of Hon'ble High Court of Gujarat in *Hiralal Bhagwati v. CIR* reported in (2000) 246 ITR 188 wherein the Hon'ble High Court of Gujarat held that the 'trust' could claim such exemption, passed order since it was not brought to its notice when the order was passed. Subsequently when assessee came to know about the judgement of Hon'ble High Court of Gujarat wherein it is held that 'trust' is entitled for exemption, brought the same to the notice of the Tribunal by filing application under Section 254

(2) of the IT Act to correct the order stating that it is a mistake apparent from the record. Income-tax Appellate Tribunal corrected the mistake. Revenue Department carried the matter to Hon'ble High Court of Gujarat. Hon'ble High Court upheld the order of Income-tax Appellate Tribunal in recalling the order. Revenue Department carried the matter to Hon'ble Supreme Court. That is how the matter came up before Hon'ble Supreme Court. Hon'ble Supreme Court held that the decision of Hon'ble High Court of Gujarat on the aspect whether a 'trust' is entitled for certain exemption from income-tax or not is pending in Income Tax Appellate Tribunal and when such decision is not brought to the notice of the Tribunal when the order was passed but brought to the notice of the Tribunal thereafter, then the order passed is a 'mistake apparent from the record'. Hon'ble Supreme Court also upheld that the order of the Tribunal recalling the order. In the same judgement, Hon'ble Supreme Court referring to the decision in Syed Yakoob v. K.S. Radhakrishnan reported in AIR 1964 SC 477 wherein it is stated as under: -

"7... A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the court or tribunal acts illegally or improperly, as for instance,

it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the court exercising it is not entitled to act as an appellate court. This limitation necessarily means that findings of fact reached by the inferior court or tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced

before the tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in

holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the court may need an argument to discover the said error, but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior court or tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened".

21. Hon'ble Supreme Court after referring to the aforesaid judgement of the Constitution Bench of Supreme Court, held as follows: -

> "In our judgement, therefore, a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it, can be said to be an error apparent on the face of the record and can be corrected while exercising certiorari jurisdiction. An error cannot be said to be apparent on the face of the record if one has to travel beyond the record to see whether the judgement is correct or not. An error apparent on the face of the record means an error which strikes on mere looking and does not need long-drawn-out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. To put it differently, it should be so manifest and clear that no court would permit it to remain on record. If the view accepted by the court in the original judgement is one of the possible views, the case cannot be said to be covered by an error apparent on the face of the record.

22. In the case on hand decisions relied upon by the learned counsel for Applicants in IA No. 19 of 2016 and IA No. 20 of 2016 are *Praveen Shankaralayam vs. Elan Professional*

Appliances and others reported in 2016 SCC Online NCLT 85. It is contended that in that decision the Hon'ble NCLT, Delhi Bench held that the complaint regarding oppression and mismanagement has to be filed within reasonable time and such reasonable time for exercise of equitable jurisdiction under Section 397 and 398 of the Companies Act, 1956 was held to be three years and, thereafter, main petition TP No. 122 of 2016 filed in the year 2016 for the alleged acts of oppression and mismanagement committed in the year 2011 has to be dismissed on the ground of delay although Limitation Act is not applicable.

23. It is a fact, the above said decision has not been referred to in the order of this Tribunal dated 29.05.2017 made in IA No. 19 of 2016 and IA No. 20 of 2016.

24. A perusal of order dated 29.05.2017 on the aspect of delay and latches goes to show that it is observed that alleged acts complained is in the nature of continuous oppression and mismanagement. This Tribunal also further observed in the order dated 29.05.2017 that unless and until allegations made by the parties are closely scrutinised by making reference to the documents, conduct of the parties and consequences of the actions at the time of final hearing it is not possible to come to a conclusion whether there was delay or latches on the part of the original petitioner and whether it is a voluntary delay or delay in action on account of any other factor. It is settled law

that delay and latches are not fatal to the cases unless the delay resulted in grave prejudice to the rights of the parties that were asked to face litigation. It is also settled law that unless the delay amounts to waiver it is not fatal to the case of the petitioner. In that view of the matter this Tribunal needs a detailed examination of the material on record to give a final finding whether there is delay and latches on the part of the petitioner. In fact, in the order dated 29.05.2017, there is no finding that there is no delay and no latches on the part of the petitioner. The finding on such aspect is reserved for final hearing. In that view of the matter, the decision of NCLT, New Delhi in *Praveen Shankaralayam vs. Elan Professional Appliances and others* has not been referred to in the order. The decision of NCLT in *Praveen Shankaralayam vs. Elan Professional Appliances and others* holding that reasonable time for complaining about the case of oppression is three years applies only in cases where acts are not continuous acts of oppression and mismanagement in respect of the cases filed before coming into force of Companies Act, 2013. In case the decision in *Praveen Shankaralayam vs. Elan Professional Appliances and others* is applied to all cases filed before coming into force of Section 433 of the Companies Act, 2013 they have to be dismissed on the ground of delay and latches if they are filed beyond three years irrespective of fact situation. Therefore, the decision of NCLT, Delhi Bench in the case of *Praveen Shankaralayam vs. Elan Professional Appliances and others* does not laid down any proposition of law which applies to all cases irrespective of fact situation unlike the decision of

Hon'ble High Court of Gujarat wherein a 'trust' was exempted from payment of income-tax in a case which is pending with Income Tax Tribunal. In fact, Hon'ble Supreme Court in the decision in Assistant Commissioner of IT, Rajkot as stated in para 21 of this order clearly held that mistake apparent from the record must be a patent, manifest and self-evident error which does not require elaborate discussion of evidence or argument to establish it. In the case on hand learned counsel appearing for the Applicants took lot of pain to establish that non-consideration of judgements by this Tribunal is a mistake apparent from the record. It is held by Hon'ble Supreme Court when two views are possible from the material on record, the view taken by the Tribunal though it is not correct or not, it cannot be said to be an apparent mistake on the face of the record.

25. The decision in *Esquire Electronics vs. Netherlands India Communications Enterprises Ltd. reported in 2016 SCC Online NCLT 71* deals with the petition in respect of which Section 433 of the Companies Act, 2013 applies. Findings in the aforesaid decision on the aspect of delay is not a proposition of law that applies to all fact situations.

26. The decision in *Sanjay Agarwal and another vs. M/s. Meghalaya Finlease Pvt. Ltd. and Ors. reported in 2017 SCC Online NCLT 28* also refers to the applicability of Section 433 of the Companies Act, 2013 which came into force with effect from

01.06.2016. In that decision it is held that if the delay is more than the period prescribed by the Limitation Act, then it would be appropriate for the court to hold that it is unreasonable. That is not the proposition that applies to all fact situation. Therefore, this Tribunal due to inadvertence did not refer to the aforesaid three decisions in its order dated 29.05.2017 and record reasons. The decision of the Gujarat High Court in *Hiralal Bhagwati v. CIR* reported in (2000) 246 ITR 188 lays down a proposition of law viz. that the 'Trust' is exempted from payment of income-tax. That proposition of law is certainly binding on the Income-tax Tribunal. When such proposition of law has not been taken care of by Income-tax Tribunal, it is held by Hon'ble Supreme Court that it is a mistake apparent from the record and the Income-tax Tribunal is right in correcting its order after the judgement of Hon'ble High Court of Gujarat is brought to the notice of Tribunal.

27. But in the case on hand the decisions relied upon by the learned counsel appearing for the applicant for the purpose of order dated 29.05.2017 passed by this Tribunal does not lay down any proposition of law which applies to all fact situations. The issues involved on the maintainability of the company petitions depend upon the facts of the case. Therefore, the non-referring of the judgements relied upon by the learned counsel for the applicant in the order dated 29.05.2017 is not a mistake apparent from the record.

28. In fact, this Tribunal in the order dated 29.05.2017 held that the question of limitation in this case is mixed question of fact and law. Delay aspect has to be considered at the final hearing, the authority of Ashok Kumar Khosla to file this petition is upheld subject to the challenge pending in other courts. This Tribunal also held that the controversy regarding convening of EOGM has to be decided only at the time of final hearing. A reading of the entire order of this Tribunal dated 29.05.2017 only indicate that this Tribunal was not inclined to dismiss the petition without there being a final hearing considering the facts and circumstances of the case. It is pertinent to mention here that original petition was filed before the Company Law Board in the year 2016. After the constitution of this Tribunal Applications challenging maintainability were filed by more than one respondent with a prayer to dismiss the main petition on the ground of limitation, alleging delay/latches, no cause of action etc.

29. In view of the aforesaid discussion, these applications filed by original respondents 1 and 2 cannot be considered under Section 420 (2) of the Companies Act, 2013 or under Rule 11 of NCLT Rules since there is no mistake apparent from the record in the order dated 29.05.2017.

30. IAs 260/17 and IA 194/17 are dismissed.

Ms. Manorama Kumari,
Member Judicial

Bikki Raveendra Babu
Member Judicial