

IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH

Company Petition No. 52/2016

(Under Section 433 & 434 of the Companies Act, 1956)

IN THE MATTER OF

M/S PATEL INTEGRATED LOGISTIC LTD.
Patel House, Plot No. 48, Near Suraj Building,
Gajdar Bandh, North Avenue Road, Santacruz
(West), Mumbai-400054, through its authorised
Representative

also at Regional Office, E-2 Caxton
House, 4th Floor, Rani Jhansi Road, Jhandewalan,
Delhi-110055.

.....Petitioner

Versus

M/s NEWGEN SPECIALLY PLASTICS LTD.
Through its Managing Director, E-24, Site-C,
Industrial Area, Greater Noida-201301
Through its Director

.....Respondent

JUDGMENT/ORDER DELIVERED ON 28.08.2017

Coram:

Hon'ble Shri H.P. Chaturvedi, Member (J)

For the petitioner : Shri Saurabh Yadav (Advocate).
For the Central Govt. : M.K Bagri, OL

As per**Shri H.P. Chaturvedi, Member (Judicial)**

Order/Judgement

1. The case is taken up today for pronouncement of order in the afternoon Session. The present petition is received as a transferred case from the Hon'ble Allahabad High Court under the provision of Section 434(1) (C) of the Companies Act, 2013.

2. In the present matter, argument of learned counsel for both the parties have earlier been heard.
3. The present petition was originally filed before the Hon'ble Allahabad High Court under Section 433 of the Companies Act, 1956 on such ground that the Hon'ble Allahabad High Court possess necessary jurisdiction, as the cause of action in the present matter arose in a Branch of the Respondent Company, which is situated at Greater Noida U.P., and falls within the territorial jurisdiction of the Allahabad High Court. The address of the Respondent Company is described as such;

The Specialty Plastics Ltd. through its Managing Director, E-24, Site-C, Industrial Area, Greater Noida, U.P., which comes also within the territorial jurisdiction of this Bench of the NCLT. Hence, as per the petitioner, the present winding up Company Petition was maintainable were before the Hon'ble Allahabad High Court and so is equally before this Bench.


4. In Contra to this, the learned OL representing the Central Govt. drew our attention on and contended such, since the Insolvency and Bankruptcy Code came into effect from December, 2016. The present winding up petition has now become infructuous.

In addition to the above, the present petition is not maintainable either before this Bench nor, it could be filed in the Transferor Court (eg. the Hon'ble High Court of Allahabad) because the registered office of the Respondent company situates at Regus Elegance, Level-2, Elegance Tower, Mathura Road, Jasola, District New Delhi, New Delhi DL 110025 IN. Therefore, the Regional jurisdiction for entertaining such winding up petition would lie only with the Court situated at New Delhi, that falls beyond the territorial / Regional

jurisdiction of this Bench of the NCLT as well as of the Hon'ble Allahabad High Court.

5. Further as per the provision of sections 2(29) read with section 272 of the Companies Act of 2013. (which now stands substituted with the I&B Code 2016) such winding up petition can be filed only before a court having territorial jurisdiction, over the place where the registered office of the Respondent company is situated.
6. That apart, the Respondent Company in its counter affidavit dated 26.07.2017 also raised such legal issues contending such "if the registered office of the Respondent Company is situated at Mumbai, then, keeping in view of the Section 10 of the Companies Act. The petitioner can agitate well their right before the Hon'ble Mumbai High Court and not before this Court (eg. Allahabad High Court)". Further the Respondent Company through its Authorised Signatory and Pairvikar Shri Shiv Kumar Singh filed a counter affidavit and drew our attention on the provision of the Companies Act under Section 273(2) of the Companies Act, 2013 (erstwhile Section 443(2) of the Companies Act, 1956). Wherein, the Tribunal has been empowered such to refuse winding up of a company, if, there is an alternative remedy available. The Respondent counsel referred to the present petition on the agreement entered between the parties which is annexed at Page 31 of the relevant clause 8 of the such agreement speaks as under;

"The jurisdiction for any matter arising out of the terms and conditions of this contract shall be at Mumbai and the courts alone shall jurisdiction to try and adjudicate such disputes(s) or difference(s).



Keeping in view of the above stated provision and contractual agreement entered between the parties. It is clear, that the jurisdiction to entertain such winding up petition may be either of Mumbai or the court where the registered office of the Company is situated.


7. We duly considered the above stated rival submission made by the both the parties. We feel since the registered office of the Companies is situated at New Delhi. Hence, the jurisdiction for filing such winding up petition would lie before the Hon'ble Delhi High Court or before an appropriate Bench of the NCLT, New Delhi, since it came into existence. Therefore, with due respect and in our humble opinion the present petition could not have been filed in or entertainable by the Hon'ble Allahabad High Court. In the light of its decision in the Company Petition No. 8-12 of 2004 and 19/2004 in the matter of Laxmi Sahgal & Ors. Vs. Suman Motels Ltd., wherein it pleased to observe and held as such;

“A preliminary objection has been raised by Sri Anupam Mehrotra, learned Counsel that since the registered office of M/s Suman Motels Limited is at Mumbai and as such, in view of Section 10 of the Companies Act, 1956, any dispute under the Companies Act can be agitated before the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate.

I have heard learned Counsel for the Company and perused the records.

Section 10 of the Companies Act, 1956 reads as under:

“10. Jurisdiction of Courts.



1. The Court having jurisdiction under this Act shall be-
(a) The High Court having jurisdiction in relation to the place
at which the registered office of the company concerned is
situate”


(3) For the purposes of jurisdiction to wind up companies, the
expression “registered office” means the place which has
longest been the registered office of the company during
the six months immediately preceding the presentation of
the petition for winding up.

From the records, it appears that the registered office of
the respondent- company is situated at Mumbai and as
such, in view of aforesaid Section 10 of the Companies
Act, the petitioners can agitate their right before the High
court at Mumbai and not before this Court.

Accordingly, all the petitions are dismissed for want of
jurisdiction.”

In addition to the above, the Hon’ble Supreme Court in its decision in the matter of **STRIDEWELL LEATHERS (P) LTD. AND OTHERS Vs BHANKERPUR SIMBHAOLI BEVERAGES (P) LTD.** also came to examine the legal/ statutory provisions of Section 10 of the Companies Act, 1956 and pleased to observe and ruled as such;


“For the aforesaid reasons, we are of the opinion that
the expression “the High Court” in Section 10-F of the
Companies Act means the High Court having
jurisdiction in relation to the place at which the
registered office of the company concerned is situate as



indicated by Section 2(11) read with Section 10 (1) (a) of the Act. Accordingly, in the present case, the appeal against the order of the Company Law Board would lie in the Madras High Court which has jurisdiction in relation to the place at which the registered office of the company concerned is situate and not the Delhi High Court merely because the order was made by the Company Law Board at Delhi. This appeal is allowed and the impugned order made by the Delhi High Court is set aside resulting in acceptance to the preliminary objection raised by the appellants in the Delhi High Court. The Delhi High Court will now make the consequential order. No costs."

In the light of the above referred decisions and by considering the facts of the present case as the registered office of the Company situates at New Delhi, we are of the view, that the jurisdiction of a Court would lie at New Delhi. Further, in our humble view, the Hon'ble Allahabad High Court has not decided on its jurisdiction, and on the maintainability of the present petition filed before it, when it made over the case (under Section 434(1) (C) of the Companies Act, 2013) to this Bench. Therefore, we are equally expected to determine the Regional jurisdiction of this Bench of NCLT, for the purpose of hearing and disposal.

By placing reliance on the above stated judicial precedents of the Hon'ble Supreme Court and Allahabad High Court and having considered the issues involved in the present matter, we find that the present petition is misconceived on the question of Regional jurisdiction of the Hon'ble Allahabad High Court and of this Bench of the NCLT.



A reading of the relevant statutory provision Under Section 2(29) of the Companies Act, 2013 read with corresponding provision of Section 10 of the Companies Act, 1956 gives such impression that the jurisdiction would lie only with such court, in which jurisdiction of the registered office of the Company situates. Undisputedly, in the present matter, the registered office of the Company situates at Mathura Road, Jasola, District – New Delhi. Hence, the present petition is not found maintainable before the Hon'ble Allahabad High Court, in the light of its decision in Company Petitions No. 8 to 12 of 2004 and 19/2004 in the matter of **Laxmi Sahgal & Ors. Vs. Suman Motels Ltd.** (decided on 19.08.2013). Whereby, such petitions came to be dismissed by the High Court for want of its territorial jurisdiction. The above decision of Hon'ble Allahabad High Court vindicates our view and squarely applicable to the present case that the present petition neither could be presented before the Hon'ble High of Allahabad and nor further is maintainable before this Bench of NCLT.

Notwithstanding the above, such being legal & factual position of the matter, as rightly pointed out by the learned Official Liquidator representing the Central Government, that due to some statutory changes took place in the Companies Act, 2013 by replacing the winding up provisions of a company with the substituted provision of the Insolvency and Bankruptcy Code, 2016 (since it has come into force). The present petition has now become infructuous. Thus, it is not maintainable.

8. By giving due regard to the changed statutory provisions. The present petition before this Tribunal has now become infructuous because the provisions of Section 433 and 434 of the Companies Act, 1956 read with corresponding sections 272 & 273 of the Companies Act, 2013, now stands substituted with

the provisions of the Insolvency and Bankruptcy Code, 2016 w.e.f. 1st December, 2016. Therefore, even assuming so, that the present petition was properly filed before the Hon'ble High Court of Allahabad having proper jurisdiction. The, the present petition must fail on such reason and is liable to be dismissed accordingly. Hence, the same is dismissed.

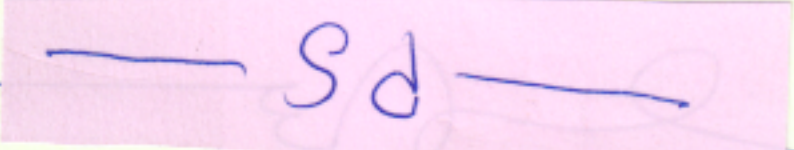
The petitioner however is at liberty to move a proper application under the provision of I & B Code before an appropriate Bench of the NCLT.

It is further made clear that observation of this Bench made, in the present order will not operate as res-judicata, as we have not dealt with nor decided the issue on the merits of the present case. Parties concern are at liberty to agitate the same in accordance with law before an appropriate Forum.

9. With the above stated observation, the present petition C.P No. 52/2016 stands finally disposed of.

No order as to costs.

Dated 28.08.2017


Hon'ble Shri H.P. Chaturvedi, Member (J)

28/8/2017

Typed by
Jyoti