

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, AT HYDERABAD**

CA. No. 88 of 2017
In
CA No. 46 of 2017
In

CP No.12/71/HDB/2016

U/S 420 of Companies Act, 2013

R/w Rules 11 & 32 & 34 of NCLT Rules 2016

In the matter of

MACK Soft Tech Private Limited,
Q City, 6th Floor, Block-A,
Sy.No.109, 110 & 111/2, Nanakramguda Village,
Serilingampally Mandal,
Hyderabad – 500 032.

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

...Applicant/Respondent

Versus

Quinn Finance
20, Church View, Cavan,
Co. Cavan, Ireland

... Respondent /Petitioner

Order delivered on: 21.08.2017



CORAM:

Hon'ble Shri. Rajeswara Rao Vittanala, Member (Judicial)

Hon'ble Shri. Ravikumar Duraisamy, Member (Technical)

Parties /Counsels present

Counsel for the Applicant/Respondent:

Mr.Dammalapati
Srinivas & Sidhartha
Luthra Sr. Advocates
with Ms.Ranjana Roy
Gawai, Shri Krishna
Keshav, Shri

Counsel for Respondent/Respondent

Pervinder, Shri Ali
Choudhary, Ms.
Smriti Sinha,
Advocates

Mr. Jayant Mehta with
Mr. Swapnil Gupta,
Ms. Shivambika Sinha,
Ms Sowmya Reddy,
Mr. Rusheek Reddy,
Advocates.

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The present Company Application bearing CA No. 88 of 2017 in C.A.No.46/2017 in CP No.12/71/HDB/2016 is filed by Mack Soft Tech Private Limited against Quinn Finance under Section 420 of Companies Act,2013 R/w Rues 11, 32 & 34 of the National Company Law Tribunal Rules, 2016 by inter-alia seeking a direction to consider the documents filed on 12.04.17 in IA Nos 531 & 532 of 2015 in O.S No. 21 on the file of Ist Addl. District Judge, RR District at LB Nagar, Hyderabad in adjudicating the CA No. 46 of 2017, and to rectify/modify the order dated 21.04.17 passed in CA No. 46 of 17 and consequently dismiss it etc.
2. The brief facts, as mentioned in the present Company application, which are relevant to present issue, are as follows:
 - 1) There is an error apparent on the face of record, in which the Tribunal failed to consider certain documents filed on 12.04.2017;
 - 2) There is a grave suppression of material facts, and the petition itself is 'forum shopping' in which the petitioner of



main CP has not disclosed the fact that similar relief as sought in IA No. 531, 532 of 15 in OS 21 of 12 was not pleaded/not brought to the notice in CA No. 46 of 17. Though the suit is filed by Quinn Logistics Sweden AB in Bankruptcy, the petitioner is one of associates/group companies of Quinn Logistics, and all those Companies are under control of receiver appointed at the behest of IBRC. It is also stated that Deponent of Quinn Logistics India Pvt. Ltd and deponent of the present Company petition is one and the same person.

- 3) The petitioner is a part of investment arm of Quinn Group of Companies, and it is fully owned subsidiary of Quinn Finance Holding Ltd (ROI), which holds and controls the petitioner through two companies namely Quinn Finance Holding(Jersey) Limited and Quinn Finance((Jersey) unlimited which hold 99.90% and .01% of the petitioner respectively.
- 4) IBRC acting through Mr. Leif Backlund, on behalf of the Quinn Logistics Sweden, has filed said IA No. 531 of 15 in OS No. 21 of 12 in the month of April, 2015 before filing the present company petition, and had specifically sought production of certain documents; under para 7(a) of application ie 'all documents lodged with the Reserve Bank of India (RBI) by Respondent/Defendant No. 1 herein 'the same is admittedly pending before the Civil Court. So the reliefs asked in the said Civil Suit and in CA No. 46 of 17 are similar/same.
- 5) It is contended that the applicant came to know about pending of several interlocutory applications in OS No. 21 of 12 and OS No. 1303 of 13 only on 12.04.17. So these things could not be brought to the notice of this Tribunal immediately. Though the copies of IA mentioned



supra were brought to the notice of this Tribunal and filed them on 21.04.2017, the same could not find consideration in the final order passed in CA No. 46 of 17. Therefore, the present application has been filed seeking the relief as mentioned above.

3. The application is opposed by the Respondent/petitioner (Quinn Finance) by way of reply dated 8th May 2017 through its Director Mr. Robert Dix. The following are his main contentions :

- a) The present application is not maintainable, which is filed with a view to avoid the production of documents, and to delay adjudication of main proceedings;
- b) It is contended that section 420 of Companies Act, 2013 confer power on this Tribunal only with respect to rectify a mistake, and not to review of the order passed by it. Even otherwise, no ground is made out by the applicant for review of the order in question;
- c) They have contended that the documents in question are not relevant to the issue in question, and for the reasons best known to them, they have filed those documents belatedly, without any reasons, thought they are in possession of those documents well in advance;
- d) IA No. 531 of 15 in OS No. 21 of 12 has been moved by Quinn Logistics Sweden AB through its Bankruptcy Receiver (Mr. Leif Baecklund) appointed by the District Court of Stockholm by an order dated 6th July, 2011. Moreover, it does not relate to production of any documents for determining the terms of debentures, which is the issue in the Company petition herein. And it relates to value of shares of the Respondent. Any way Quinn Finance, the Respondent/petitioner herein, is



admittedly not one of respondents/defendants in the said suits.

- e) Mack Soft was held by Quinn Logistics India Private Limited, which in turn is held by Quinn Logistics Sweden AB, which has been placed in bankruptcy and controlled by said Mr. Leif Baecklund.
 - f) Therefore, they have prayed the Tribunal to dismiss the application.
4. A rejoinder dated 14th June, 2017, running into another 24 pages, has been filed to said reply by Mack Soft, through its learned counsel Ms. Ranjana Roy Gawai, again reiterating all the contentions already taken. It may not be necessary to refer all the contentions raised in this rejoinder, as those averments are hardly having relevance to the issue in question. However, few of those averments are mentioned below:
- I. It is again reiterated that the petitioner of CP has suppressed existence of IA No. 531 of 2015, and acting at the behest of IBRC, and it is gross abuse of process of law;
 - II. It is stated that Tribunal” **MUST EXERCISE ITS JURISDICTION** U/s 420 of Companies Act, 2013;
 - III. Similar relief as sought in CA No. 46 of 17 is already sought and pending before Civil Court as detailed supra.
5. We have heard Mr. Dammalapati Srinivas, the learned Advocate General and Senior Counsel for the State of Andhra Pradesh, Mr. Sidhartha Luthra Sr. Advocate with Ms. Ranjana Roy Gawai, Krishna Keshav for applicant/respondent, and Mr. Jayant Mehta with Swapnil Gupta, learned counsel for the Respondent/petitioner. We have also carefully perused all the pleadings along with extant provisions of Company Law.



6. The Learned counsels appearing for both the parties have reiterated their respective stands taken in their pleadings at the time of hearing of case as briefly stated supra.
7. Mr. Damalapati Srinivas, while reiterating all the averments made in their application, and rejoinder as stated supra, has strenuously pleaded and also relied upon the following decisions in support of his case:
 - a) Lachman Dass Bhatia Hingwala (P) Ltd vs. Assistant Commissioner of Income Tax(2011(121)DRJ 451(FB) of Delhi High Court
 - b) Honda Siel Power Products Ltd. vs Commissioner of Income Tax, Delhi (2007)12 Supreme Court Cases 596.
8. Mr. Jayant Mehta, the learned counsel for the respondent/ petitioner, after reading all relevant provisions of law, submit that the application itself is frivolous and mis-conceived, and under no stretch of imagination, the application is maintainable either on fact and law and the same is liable to be rejected out rightly.
9. In the normal circumstances, this type of application has to be decided in circulation since hardly any legal point involved in the case. And the direction of Tribunal in CA No. 46 of 2017 vide order dated 21.04.2017, is only direction to the respondent to produce and file an authenticated copy of compounding application filed with RBI in May, 2011 along with all its Annexures in order to adjudicate the issue involved in the main case. It is relevant to point out here that the said application was allowed only after duly affording reasonable opportunity to the parties. However, since the learned senior counsels for the applicant are interested to argue the case at length by raising so many un-tenable grounds; the Tribunal has no other alternative except to hear the case at length.



10. There are two main issues to be considered in the present application;
- Whether the present application is maintainable ;
 - Whether any mistake occurred in the order in question so as to rectify/correct it ;
 - If so , what is relief entitled for
11. There is no dispute, that as per Section 420 of Companies Act, 2013, the Tribunal is supposed to pass an order as it thinks fit, after affording reasonable opportunity to concerned parties as arrayed in a case. The Tribunal is also empowered to rectify any mistake apparent on face of record, by way of amendment of order in question. Here, the question is whether any mistake at all, has occurred in the order. There is no dispute that the parties are given reasonable opportunity, before passing the impugned order. It is also not in dispute that Court/Tribunal are supposed to advert to material averments raised by the parties, and not necessary to advert all irrelevant issues/contentions raised by the parties. In the instant case, it is not the case of applicant herein that the pending of IA No. 531 of 2015 in question was not placed on record, and it is their contention rather allegation that Tribunal has not consideration about pending of IA /civil suit . Therefore, they have strongly urged that Tribunal 'MUST' accept its contention with regard to pendency of suit before a Civil Court with similar relief. And this contention, by no stretch of imagination, can be called a mistake so as to come under definition of Section 420 of the Act.
- 12 It is not in dispute that the Applicant/Respondent is not aware of OS No. 21/2012, and the IA No. 531/2015 thereon. I.A No. 531/2015 was filed on 22.04.2015, before the Civil Court. In fact, the OS No. 21/2012 and OS 1303/2013 were already stated in the Company Petition itself, and the same was



adverted to in the reply dated 26.12.2016 filed on behalf of Mack soft Tech Pvt. Ltd under paragraph 10.3. Few lines of paragraph 10.3 are extracted below.

"The content of para 10.3 are denied except to the extent of the fact that OS No.21 of 2012 and OS No. 1303 of 2013 are pending adjudication in the Civil Court at Hyderabad. It is denied that these litigations is the result of illegal issues and transfer of shares made at an under value of the said shares by the Respondent."

- 13 It is nobody's case that Tribunal does not have power to direct to produce any document in the process of adjudicating the issue in question. It is not in dispute that the Tribunal is having wide powers for rectification of its orders passed by it provided there is a mistake committed by it. As per Section 420 of the Companies Act, 2013, the Tribunal is having the power to rectify any mistake apparent on the face of record; such mistake is brought to its notice by the parties. Here, the question is whether any mistake occurred at all warranting to rectify it. As per the version of applicant, the fundamental mistake committed by the Tribunal is this Tribunal failed to advert to the pending of IA 531/532 of 2015 in OS No. 21/2012, in the impugned order passed in CA No. 46/2017.
- 14 Mr Dammalapati Srinivas, the Learned Senior Council has relied upon the two judgements as mentioned above. The first is case Lachman Dass Bhatia Hingwala (P) Ltd vs. Assistant Commissioner of Income Tax (2011 (121) DRJ 451 (FB)) In this case, the issue is whether the Appellate Tribunal is having power to rectify a mistake. The Hon'ble High Court, after consider the entire issue and law on it, has inter-alia held that the ITAT has power to recall an order, in exercise of power conferred to it under Section 254(2) of the Income Tax Act, 1961. Section 420 of the Companies Act, 2013, which is in



question in the present case, is also akin to the said section 254 (2) of Income Tax Act. As stated above, there is no dispute here that the Tribunal can rectify its mistake, error or omission. As stated supra, there is no error apparent on the face of record in the instant case which warrant to rectify it. The other case relied upon by the Learned Senior Counsel is Honda Siel Power Products Ltd. vs Commissioner of Income Tax, Delhi (2007)12 Supreme Court Cases 596. This case is already considered by the Hon'ble High court in the above.

- 15 There is no dispute that the Tribunal is competent to adjudicate the issue raised in main CP No. 12/2016. When there is no dispute with regard to the competency of this Tribunal, the Tribunal is empowered to direct any party to the issue to direct to produce any document, which the Tribunal thought fit to adjudicate the issue in question. As stated supra, the impugned order passed in CA 46/2017 is not for adjudication of issue in itself, and it is only a direction, in the process of adjudication of the issue. Moreover, the Tribunal, after affording ample opportunities to the parties, has passed the impugned order. Whenever an issue of producing any document arise, relevant points for consideration for a Tribunal/court will be whether those documents are available in the possession of party or not ; and whether they are privileged documents as not disclose/produce. In the instant case, it is not the case of the Applicant/Petitioner, the documents directed to produce are not at all privileged documents ,and their only contention is similar relief was sought in the interlocutory applications, are filed and pending before a Civil Court. When the Tribunal is admittedly competent to adjudicate the issue, it is irrelevant whether the parties have approached some other civil court for any other relief. Moreover, every court will decide an issue basing on the documents available on record of a particular case. It is for the civil court to take a decision on the application pending therein and this Tribunal is not concerned with those proceedings. Even



documents as asked for in a Civil court is produced in the Civil court, this Tribunal would not have occasion to examine those documents.

16 The courts/Tribunal will have to consider all the pleadings of the parties and thereafter Court/tribunal will advert only relevant pleadings, while finalising the judgement. It is not necessary/mandatory to advert each and every averment, which are not relevant to the issue in question, in the final order. And it is settled position of law that even one pleading/material, which is placed on record is not specifically adverted in final order, it is deemed to have been considered and passed final order. As stated supra, while calling to produce any document(s), the relevant factors to be considered are whether those document(s) are available in the custody of the parties and whether they are privileged /confidential in nature as not to produce before the court of law. As stated supra, it is not the case of applicant / Respondent that the documents, which are directed to be produced as per the impugned order, are admittedly not confidential in nature and not available. We are also of the view that no prejudice would be caused to the applicant by direction of Tribunal as per the impugned order.

17 In the light of above facts and circumstances of the case, we are of the considered view that there is no mistake crept in the impugned order dated 21st April, 2017 passed in CA 46/2017, so as to warrant to rectify anything. However, we are in agreement with the Learned Senior Counsel for the Applicant/Respondent that this Tribunal is having power to rectify a mistake under section 420 of the Companies Act, 2013, which is analogous to Section 254(2) of the Income Tax 1961 as held by the Hon'ble Delhi High Court in the said Lachman Dass Bhatia Hingwala (P) Ltd case, as mentioned above. We hereby rejected all the contentions including pending of civil case on similar relief, and absolutely, there is no legal bar for the



Tribunal to call the documents in question as per the impugned order. The application is therefore, mis-conceived and it is liable to be rejected.

- 18 In the result, the Company Application bearing CA No.88/2017 in CA 46/2017 in CP No. 12/71/HDB/2016 is hereby dismissed. No order as to costs.

Sd/-
Ravikumar Duraisamy
Member (Technical)

Sd/-
Rajeswara Rao Vittanala
Member (Judicial)

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OF THE ORIGINAL

V. Annapoorna
V. ANNAPOORNA
Asst. DIRECTOR
NCLT, HYDERABAD.

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या C.A.NO88/2017 INCA NO46/21
CASE NUMBER C.P.NO.12/71/HDB/2016
निर्णय का तारीख
DATE OF JUDGEMENT 21.8.2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 24.8.2017