

C.P NO. 68(MB)/2010
CA NO.

PRESENT: CHIEF JUSTICE M. M. KUMAR
Hon'ble President

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF PRINCIPAL BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 01.09.2016

SECTION OF THE COMPANIES ACT: 397/398

Order

P.T.O.

length and had reserved the orders on 18-05-2016. However, before the orders could be pronounced, the Company Law Board was dissolved vide notification dated 01-06-2016 issued by the Ministry of Corporate Affairs and National Company Law Tribunal (NCLT) was constituted by a separate notification. By another notification of the instant date, all matters, proceedings of cases pending before the erstwhile Company Law Board stood transferred to this Tribunal. The Principal Bench of the erstwhile Company Law Board had transferred and heard the matter on account of non-availability of Mumbai Bench of the Company Law Board and after detailed hearing, it had reserved the orders on 18.05.2016.

2. Reply has been filed in the form of affidavit of Respondent No. 4 on behalf of Respondent No. 1 company.
3. The application has been opposed on the ground that u/s 242(4) of the Act, NCLT has been given power to pass any interim order which it deems fit for regulating the affairs of the company upon such terms and conditions as it appears to be just and equitable and, therefore, the application invoking Sec. 242(2) would not cover the reliefs sought in the application filed by the petitioner.
4. It has also been submitted that NCLT cannot exercise its inherent powers to transfer the matter to Delhi Bench in the facts and circumstances of the present case because NCLT Bench at Mumbai is now functioning and the earlier impediment stands removed.
5. A reference has also been made to Rule 64 of the NCLT Rules. According to Rule 64, all cases pending with the Company Law Board are to be transferred to the respective Benches of the Tribunal exercising corresponding territorial jurisdiction as if the case had been originally filed in the Tribunal. The matter in any case has to be heard by the Mumbai Bench even if the exception carved out by the proviso is to be taken into account.
6. It has also been highlighted that the inherent powers under Rule 11 of NCLT Rules cannot be invoked by either the President or the Principal Bench to grant relief claimed in the present application.





7. Rejoinder to the application on behalf of the petitioner has also been filed and we have perused the same.

8. We have heard the Ld. Counsel for the parties at a considerable length and are of the view that the matter falls within the territorial jurisdiction of the Mumbai Bench of NCLT. The Company Petition 68/MB/2010 along with CA 47/2016 was transferred to Principal Bench New Delhi on account of non-availability of the Bench there and the same was heard at length by one of us. It is true that the arguments in the Company Petition along with CA 47/2016 were heard and the order was reserved. It is equally true that the files concerning the Company Petition 68/MB/2010 along with CA 47/2016 have already been sent to Mumbai Bench of the Tribunal. Therefore, it would be just and equitable to leave the matter within the territorial jurisdiction of Mumbai Bench as per the provisions of Rule 64 of NCLT Rules, 2016.

9. Even otherwise, we are of the view that it is not a complicated matter which may require exercise of extraordinary jurisdiction, particularly when the non-applicant has not consented for such a transfer. Their refusal to consent might have emanated from any other reason but the fact remains that they are inclined to argue before the NCLT Bench who have territorial jurisdiction at Mumbai. It may be the question of convenience of the parties as well.

10. For the reasons aforesaid, this application (CA67/PB/2016) fails and the same is dismissed.


(CHIEF JUSTICE M.M. KUMAR)
PRESIDENT


(S.K. MOHAPATRA)
MEMBER (T)