

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

I.A. No. 157 of 2018

In

Company Appeal (AT) No. 159 of 2017

IN THE MATTER OF:

M/s Therm Flow Engineers Pvt. Ltd. & Ors.

.. Appellants

Versus

Mr. Bhavesh Narumalani

.. Respondent

And

Company Appeal (AT) No. 198 of 2017

IN THE MATTER OF:

Mr. Bhavesh Narumalani

.. Appellant

Versus

M/s Therm Flow Engineers Pvt. Ltd. & Ors.

.. Respondents

Present:

For Appellants in: Mr. Purti Marwaha Gupta, Advocate
CA(AT) No. 159/2017
& Respondents in
CA(AT) No. 198/2017

For Respondent in: Ms. Prachi Johri, Advocate
CA(AT) No. 159/2017
& Appellant in
CA(AT) No. 198/2017

O R D E R

16.02.2018: Learned Counsel for the Respondent(s) submits that the impugned order dated 15.03.2017 passed by the National Company Law

Tribunal, Ahmedabad Bench ("Tribunal" in short) was subsequently modified by correcting the typographical error. The modified and corrected order was not enclosed by Appellant- M/s Therm Flow Engineers Pvt. Ltd. though it was enclosed in connected Appeal prepared by Mr. Bhavesh Narumalani. This resulted in quoting uncorrected paragraph 153 of the order passed by the Tribunal, while order dated 22.02.2017 was passed by this Appellate Tribunal.

2. Having heard learned Counsel for the parties, we direct to quote the following paragraph in paragraph-2 of the order dated 22.12.2017 in place of earlier one:

"153. The aforesaid case of the respondents 2 and 3 in the management and affairs of the first respondent company are harsh, burdensome and detrimental to the interest of the petitioner. Therefore, finding of this Tribunal is that, respondents 2 and 3 committed act of oppression, mis-management in the conduct of the affairs and business of the first respondent company. The acts cases of oppression and mismanagement warrant passing winding up order but such order prove to be detrimental not only to the interest of the petitioner but to the first respondent company. Therefore, this Tribunal is passing the following order:

(1) Increase in the share capital from Rs. 1.00 lac to Rs. 2.00 lacs of the first respondent company

that took place on 21/12/2009 and from Rs. 2.00 lacs to Rs. 3.00 lacs on 28/9/2010 is declared as illegal and set aside.

(2) Allotment of 2500 shares to Respondent No.4 on 29/01/2010, allotment of 2500 shares each to Respondent No.5 to Respondent No.10 on 18/1/2011 and allotment of 2500 shares to Respondent No.11 on 4/7/2013 is declared as illegal and set aside.

(3) Transfer of shares of Respondent no.1 to Respondent no. 2 is set aside.

(4) Shares of respondent No. 12 shall be re-allotted to the shareholders by duly following the procedures laid down under the Companies Act and Articles of Association.

(5) This Tribunal is not inclined to grant other reliefs prayed in the petition.

The petition is disposed of accordingly. There is no order as to costs. The pending application TP 106-A/2016 (CA 35/2016) stands closed.”

3. It is further submitted that the Tribunal made typographical error with regard to place of the Registrar of Companies, which was subsequently

corrected as “Registrar of Companies, Ahmedabad” in place of “Registrar of Companies, Mumbai”. That being so, it is ordered to read “Registrar of Companies, Ahmedabad” in place of “Registrar of Companies, Mumbai” in the last line of paragraph-5.3. of order dated 22.12.2017.

3.1. It is also informed that due to typographical error in the last two lines of paragraph 5.5. of the judgment dated 22.12.2017 certain sentences have been included.

3.2 Having heard the learned counsel for the parties, we order to delete the sentence “and the Annual Returns for the respective years were not filed before the Registrar of Companies on time”.

3.3 It is pointed out that in the second line of paragraph -7 in place of “5th and 10th Respondents should be “5th to 10th Respondents”. It is accordingly ordered to read “5th to 10th Respondents” in place of “5th and 10th Respondents. Similarly, in the third line of paragraph-7 also date “19th February, 2011” has been wrongly typed in place of “18th January, 2011” and therefore it is ordered to be read “18th January, 2011” in place of “19th February, 2011”.

3.4 Learned Counsel also pointed out that typographical error in paragraph 28 due to the uncorrected impugned order passed by the Tribunal which was later on rectified by the Tribunal. In view of such rectification passed by the Tribunal, we order that in 5th line of paragraph 28 the date “21st September, 2010” should be read as “29th January, 2010” and in the 7th line, in place of “4th July, 2003” it should be read as “4th July, 2013”. In 9th line of paragraph 28 the word “and 3rd Respondent” is to be deleted.

4. Judgment dated 22nd December, 2017 passed by this Appellate Tribunal should be corrected accordingly and corrected certified copy should be handed over to the learned Counsels free of cost.

5. I.A. No. 157 of 2018 is disposed of.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

/akc/uk/