

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**IA No. 583 of 2018**

**In**

**Company Appeal (AT) No. 292 of 2017**

**IN THE MATTER OF:**

**Shri Shiv Raj Singh**

**.. Appellant**

**Versus**

**Kempton Konstruktion Pvt. Ltd. & Ors.**

**.. Respondents**

**Present:**

**For Appellant:**

**Mr. Rakesh Wadhwa, Mr. K. Dutta and Mr. Sidarth  
Sharma, Advocates**

**O R D E R**

**21.05.2018:** Interlocutory Application No. 583 of 2018 has been filed by the Appellant pursuant to the observations of the Hon'ble Supreme Court dated 16.03.2018 in Civil Appeal No, 2524 of 2018, as quoted below:

**"O R D E R**

*We have heard learned counsel for the parties and perused the record.*

*We do not find any ground to interfere with the impugned order except to observe that if the company is no longer in existence as stated on behalf of the appellant, it will be open to the appellant to move the National Company Law Appellate Tribunal (NCLAT) with this submission so that National Company Law Appellate Tribunal may pass appropriate orders in accordance with law.*

*The appeal is disposed of in above terms."*

2. The Appellant (Petitioner) filed an application under Sections 397 and 398 read with Sections 111, 402 and 403 of the Companies Act, 1956 (now Sections 241 & 242 of the Companies Act, 2013) before the National Company Law Tribunal (hereinafter referred to as 'Tribunal'). The application was rejected by Tribunal by an order dated 10<sup>th</sup> July, 2017. This Appellate Tribunal by a judgment dated 6<sup>th</sup> October, 2017 refused to interfere with the aforesaid order dated 10<sup>th</sup> July, 2017 passed by the Tribunal with the following observations:

.....

*“8. For the reasons aforesaid, while we are not inclined to interfere with the impugned order dated 10<sup>th</sup> July, 2017 passed by the Tribunal in Company Petition No. 104(ND)/2011, allow the appellant to file an application under section 59 of the Companies Act, 2013 before the company for deletion of the name of the persons whose names have been wrongly included the 3<sup>rd</sup> and 4<sup>th</sup> respondents. In such case, if the appellant prefers any application within three months before the company and the matter is not entertained or refused, it will be open to the appellant to move before the Tribunal against such order. On such petition, the Tribunal will consider the same on its merit after notice to the parties uninfluenced by the impugned order dated 10<sup>th</sup> July, 2017.”*

3. Against the said order, Appellant preferred an appeal before the Hon'ble Supreme Court wherein the order dated 16.03.2018, as referred to above, has been passed.

4. From the order of the Hon'ble Supreme Court we find that the Hon'ble Supreme Court has not interfered with the substantive part of the judgment dated 6<sup>th</sup> October, 2017. However, liberty has been given to the Appellant to move before this Appellate Tribunal if the Company no longer is in existence. In view of such observation of the Hon'ble Supreme Court, Interlocutory Application has been filed to bring to our notice that the Company is no more in existence.

5. Learned Counsel for the Appellant submits that appropriate order may be passed in view of the fact that the Company is no longer in existence, but that cannot be ground to recall or review the order dated 6<sup>th</sup> October, 2017 of this Appellate Tribunal which relates to alleged acts of 'oppression and mismanagement' and has been affirmed by the Hon'ble Supreme Court.

6. We have noticed the provision referred by the learned Counsel for the Appellant which includes powers of the Registrar of Company under Section 248 of the Companies Act, 2013, relevant portion of which reads as follows:

***"248. Power of Registrar to remove name of company from register of companies. -***

*(1) Where the Registrar has reasonable cause to believe that –*

*(a) a company has failed to commence its business within one year of its incorporation [or];*

*(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,*

*he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice. “*

*.....*

*“(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5) shall continue and may be enforced as if the company had not been dissolved. “*

7. Learned Counsel for the Appellant also placed reliance on Section 250 of the Companies Act, 2013 which relates to effect of company as dissolved as quoted below:

**”250. Effect of company notified as dissolved** - *Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realizing the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.”*

8. It is submitted that the obligation of the Company includes obligation relating to transfer of shares of the members as also illegal transfer of shares of the members which continues even after dissolution of the Company in terms of the provision, aforesaid:

**“252. Appeal to Tribunal.** – (1) Any person aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of three years from the date of the order of the Registrar and if the Tribunal is of the opinion that the removal of the name of the company from the register of companies is not justified in view of the absence of any of the grounds on which the order was passed by the registrar, it may order restoration of the name of the company in the register of companies:

*Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the registrar, the company and all the persons concerned:*

*Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.*

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within thirty days from the date of the order and on receipt of order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a fresh certificate of incorporation.

(3) If a company, or any member of creditor or workmen thereof feels aggrieved by the company having its

*name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise, it is just that the name of the company be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies.”*

9. Learned Counsel for the Appellant submits that the Appellant being aggrieved person is entitled to move an application under Section 252 of the Companies Act, 2013 and can highlight his right in terms of Section 252(1) of the Companies Act, 2013.

10. We have heard learned Counsel for the Petitioner but in view of the fact that we have refused to recall or review of order dated 6<sup>th</sup> October, 2017, we have not heard the Respondents.

11. If the appellant feels that he has remedy to avail some other relief relating to transfer of shares or illegal transfer of shares in spite of dissolution of the Company, the Appellant may choose its own course of action. In such case, the competent forum may decide the case uninfluenced by the order passed by this Appellate Tribunal.

12. I.A. No. 583 of 2018 stands disposed of with the aforesaid observations.

(Justice S. J. Mukhopadhaya)  
Chairperson

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

(Balvinder Singh)  
Member (Technical)

Akc/gc