

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 207 of 2017

IN THE MATTER OF:

Belfin Spa & Ors.

...Appellants

Vs

Cima Shyam Springs Pvt. Ltd. & Ors.

....Respondents

Present:

For Appellants: Ms. Armin Wandrewala, Mr. Akshay Vani, and Mr. Manan Jaiswal, Advocates.

For Respondents: Dr. U. K. Choudhary, Sr. Advocate with Ms. Avanti T. Chandele, Ms. Manisha Chaudhary, Mr. Karan Malhotra, Mr. Himanshu Vij and Ms. Anisha Mahajan, Advocates.

O R D E R

15.11.2017: Heard counsel for the appellants and the learned counsel for the respondents perused the order dated 11.10.2017. The counsel for appellants states that in compliance the notary who had certified below the appeal memo has filed affidavit. The learned counsel for the respondents submits that the directions on the last date were that the affidavit should be sworn before the Oath Commissioner or the Prothonotary of the Bombay High Court and thus this compliance is no compliance.

The learned counsel for the appellants states that the affidavit itself shows it bearing stamp of the Commissioner for oath of the Bombay High Court and the Associate of the High Court has signed the same, and stamped it.

We find that the affidavit filed is in compliance of the directions given earlier. Considering the contents of the affidavit we find that the topic regarding endorsement below the appeal memo by the notary does not require any further consideration by this Bench.

Next when the question of limitation is taken up, the learned counsel for the respondents points out that the appeal was tendered on 22nd June, 2017 showing that the power of attorney had signed the same on 20th June, 2017 with endorsement of notary dated 20th June, 2017. The counsel pointed out that the copies of three Power of Attorney which have been filed in the matter in volume III show the date of 28th June, 2017 with endorsement of the executors to the effect that *“In witness whereof I have executed this Power of Attorney on 28th June, 2017”*.

The learned counsel submits that the Power of Attorney is accompanied by certificate of authentication which claims that it was executed on 19th June, 2017. The counsel for the appellants tenders photocopies of translation of these authentication certificates which are taken on record.

Court Master to mark them “X”, “Y”, “Z” for identification and add where Power of Attorneys are filed. The authentication certificates claim that the executor has signed the Power of Attorney in his presence on 19th June, 2017.

The learned counsel for the respondents submits that as per Hague Convention the certificate of this nature requires Apostille and the Apostille which is behind the certificate filed in the record shows the date as 22nd June, 2017.

According to the learned counsel it shows that on 22nd June, 2017 when the appeal was filed with signatures dated 20th June, 2017, the power of attorney holder did not have the necessary powers to file the appeal.

Learned counsel for both sides to be heard on the aspect whether or not the person who filed the appeal had the necessary power on the date when the appeal was filed, and whether the act of Power of Attorney can be ratified subsequently by the Principal.

List on **22nd November, 2017.**

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

(Balvinder Singh)
Member (Technical)