

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No.50/2024

In the matter of:

- 1. SHRI SHAKTI BHUSHAN
S/O SHRI BHUSHAN KUMAR BAGGA**
- 2. SHRI BHUSHAN KUMAR BAGGA
S/O SHRI ASCHARAJ LAL BAGGA**
- 3. SMT. VENNA BHUSHAN
W/O SHRI BHUSHAN KUMAR BAGGA**

**ALL RESIDING AT.
WZ -1377, RANI BAGH, NEW DELHI-110034**

... APPELLANTS

V

- 1. M/S TITAN INDUSTRIES LTD.
REGD. OFF: 3, SIPCOT INDUSTRIES ESTATE,
HOSUR, TAMIL NADU-635126**
- 2. M/S TSR DARASHAW LTD.
PLOT NO NH-2,
C-1 BLOCK, LSC NEAR SAVITRI MARKET
JANAKPURI, NEW DELHI,
DELHI-110058**

...RESPONDENTS

Present :

For Appellants	: Mr. Shakti Bhushan (Party-in-person)
For Respondents	: Mr. PH Arvinth Pandian, Senior Advocate For Mr. Cyril Amarchand Mangaldas, Mr. Edward James, Ms. Vedantha Sai, Ms. Mansi Sethiya, Advocates for R1-R2

With

Company Appeal (AT) (CH) No.55/2024
(IA No.813/2024)

In the matter of:

**1. SHRI SHAKTI BHUSHAN
S/O SHRI BHUSHAN KUMAR BAGGA**

**2. SHRI BHUSHAN KUMAR BAGGA
S/O SHRI ASCHARAJ LAL BAGGA**

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...RESPONDENTS

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For Appellants : Mr. Shakti Bhushan (Party-in-person)
For Respondents : Mr. PH Arvindh Pandian, Senior Advocate
For Mr. Cyril Amarchand Mangaldas,
Mr. Edward James, Ms. Vedantha Sai,
Ms. Mansi Sethiya, Advocates for R1-R2

**JUDGMENT
(Hybrid Mode)**

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

The controversy, as it engages consideration in all these connected appeals, arise from a Common Order and engage consideration of a common

controversy. Hence for the purposes of brevity they are being taken up together. The precise facts are that, the appellants who are three in number had initiated a proceedings under Section 108 of the Companies Act of 1956 (hereinafter referred to as, “Act of 1956”) which was initially numbered as Suit No.365 of 2012 and upon its transfer, got renumbered as **T.P.No.301 of 2017 Shri Shakti Bhushan & others Vs. M/s. Titan Industries Ltd. & Another.**

In the aforesaid proceedings of Suit No.365 of 2012 as carried under the Companies Act of 1956, the Appellant had prayed for a grant of a decree of permanent injunction, in favour of the Plaintiff/Appellants, as against the Respondent/Defendant, thereby restraining them from transferring 400 shares bearing Registration Folio No.TW/P0026051 and New Certificate No.13430 Dist. No.30480961-30488960. Besides, the above, the Appellants also sought a Decree in the nature of Mandatory Injunction as against the Respondent, seeking a direction to register the name of the appellant/petitioner in the records of the Respondent No.1 Company as the owner of 400 shares, the particulars of which have been herein above. Another relief, which was sought for in the same petition, being Suit No.365 of 2012 by the Plaintiff / Appellant was that, the defendants / Respondents be directed to pay a sum of Rs.8,45,000/- along with the interest at the rate of 24% payable on it, to the appellants, in terms of the pleadings raised in para-16 of the plaint.

The aforesaid suit was contested on merits and the same was decided by order of 28.02.2019. Consequentially, by the said judgment the Learned Tribunal disposed of the Company Petition with the following directions:-

The relevant portion is extracted hereunder: -

“20) In the results, Suit.No.365 of 2012 (TP No. 301 of 2017) is disposed of with the following directions:

- 1) We hereby directed the Respondent/Defendant No.1 & 2 to register the names of the Petitioners/Plaintiffs in the Register of Names of the Respondent/Defendant No.1 as owners of 400 shares bearing earlier registered folio No. TW /P0026051 and share certificate Nos. 90048, 90049, 90050 and 90051 and new CERT No. 13430 DIST Nos. 30480961-30488960 and also handover bonus shares and dividend on the aforesaid shares to the Petitioner /Plaintiffs.*
- 2) We hereby further declared that the Petitioners/Plaintiffs are entitled for consequential benefits like dividend etc, on the aforesaid shares only with effect from year 2011.*
- 3) We hereby direct the Respondents/Defendant to comply with directions within a period of one month from the date of receipt of copy of this order, failing which outstanding amount carries interest at the rate of 18% per annum.*
- 4) We hereby rejected other claims of the Petitioners/Plaintiffs, and the parties are directed to bear their own costs.”*

But, Since the said order was not complied with within the specified time frame, the Appellant herein filed a Contempt Petition being Contempt Petition No.154/BB/2019, by invoking the provisions contained under Section 425 of the Companies Act of 2013 (to be read with the Provisions contained under

Section 10G of the Act of 1956). The said Contempt Petition was preferred by the Appellant by invoking the Provisions contained under Section 11 to be read with Section 12 of the Contempt of Courts Act of 1971.

Owing to the fact that the proceedings of the Contempt, under the Companies Act, are to be carried and governed in accordance with the provisions of the Contempt of Courts Act, the proceedings of the Contempt, as against the final judgment of 28.02.2019, rendered in Suit No.365 of 2012 was taken up before the Learned Adjudicating Authority and the Learned Adjudicating Authority by an order dated 30.08.2019, after observing that the contempt petition was filed on 09.05.2019 and that after its filing the Registry has pointed out certain defects and they were granted time to remove the defects, which was not complied with, got the Contempt Petition listed for hearing on 28.08.2019.

Consequently, citing non-compliance of the objections raised by the Registry of the NCLT on 10.06.2019, coupled with non-compliance of the email communication dated 14.06.2019, resulting into non-rectification of the defects as pointed out by the Registry, and citing non-appearance of the Applicant where the Contempt Petition was taken up on 30.08.2019, the NCLT dismissed the Contempt Petition, for want of prosecution. Seeking recall of this order dated 30.08.2019, the Appellant on 11.12.2020 filed an application for Restoration of Contempt Petition, praying thereby for recall of the order dated

30.08.2019 and to restore the Contempt Petition being Contempt Petition No.154/BB/2019, to its original number. The consequential relief, which was sought in the application for Restoration, was to the effect to restore the above Contempt Petition and to decide the same on merits. This Application which was preferred before the Registry of the Learned Tribunal was numbered as CA. No.16 of 2021.

The Contempt Petition was accompanied with a condone delay Application being CA No.16A of 2021 wherein the Appellant/Applicant had prayed for a condonation of 374 days of delay, which had chanced in preferring the Restoration Application. Both the Applications got dismissed by the order dated 28.05.2024. It is against the dismissal of the Delay Condonation Application being CA No. 16A of 2021, the **Company Appeal (AT) (CH) No.55 of 2024** has been preferred by the Appellant. Further Challenging the dismissal of the Restoration Application, CA No.16 of 2021 as preferred in Contempt Petition No.154/BB/2019, **Company Appeal (AT) (CH) No.50 of 2024**, has been preferred. The Appellant, in support of the Delay Condonation Application, being C.A No. 16A of 2021, where he has sought a condonation of 374 days of delay, chanced in preferring the Restoration Application, has pleaded that the Petitioner No.1(Appellant No.1 in the CA(AT) No. 50/2024) was having a serious health issues, ever since 2018 and the Petitioner No.2 (Appellant No.2 in the CA(AT) No. 50/2024) was having Acute Coronary

Syndrome, since January, 2019 and other related disease because of which, they were undergoing certain continuous follow up treatment due to which they could not pursue the Contempt Petition No. 154/BB/2019, diligently which was dismissed for want of prosecution by order dated 30.08.2019.

Apart from the ailment of the Petitioner Nos.1 & 2, they have also contended that the Petitioner No.2 since being an aged senior citizen of 75 years of age, was suffering from age related problem and at the relevant time he was bedridden and owing to the poor health conditions he was unable to put in his appearance when the Contempt Petition was called for hearing on 30.08.2019. He submits that, the reason which has been given in the Condone Delay Application is justified and therefore the Restoration Application seeking restoration of the Contempt Petition may be heard by Ld. NCLT on merits after condoning the 374 days of delay.

In the Restoration Application thus preferred by the Appellant i.e. CA No. 16/2021 almost similar grounds as above have been pleaded to explain his inability to diligently pursue the Contempt Petition No. 154/BB/2019. In addition he had submitted that, it took him a long time to comply with the office objections and to collate the records, within the time and as such the inability to pursue the Contempt Petition diligently was on genuine reasons and therefore the Restoration Application, may be allowed.

The provisions of drawing of Contempt Proceedings under Companies Act, 1956 was contained under Section 10G and under the Companies Act of 2013, it is contained under Section 425. The Section 425 of the Companies Act, 2013 contemplates that the proceedings of the Contempt, could be drawn and carried in accordance with the provisions contained under the Contempt of Courts Act of 1971. Almost akin provisions were contemplated under the Companies Act of 1956, which too provided that the Contempt Proceedings will be carried on, by following the provisions of the Contempt of Courts Act, 1971. Be that as it may, under the normal parlance, when a person or a party to the proceedings alleges an act of Contempt and files a proceeding before the Tribunal or a Court alleging non-compliance of an order passed by the court or by the Tribunal, the Applicant simply acts in the status of being an informer to the Tribunal or the Court, about the act of violation or non-compliance of Order / Judgment rendered by the Tribunal or the Court. Since the status of the Applicant is that of the informer he may not have much material right, as such to have a say in the proceedings of the Contempt, which is to be carried in accordance with the provisions of the Contempt of Courts Act of 1971.

But in the instant proceedings, since being carried under the Special Statute of Companies Act, 1956 it may have a different complexion altogether when the proceedings relates to an enforcement of certain rights, which is claimed by the Appellant in the light of the provisions contained under Section

108 of the Companies Act of 1956. Section 108 of the Companies Act of 1956, deals with registration of the transfer of shares and stipulates that shares transferred are not to be registered except on the production of an instrument of transfer of the shares and as such, in those eventualities where the order which is alleged to have been not complied with, the applicant contends that, it may have a different complexion altogether in relation to the drawing of the Contempt proceedings under Section 10G of the Companies Act of 1956 or even under Section 425 of the Companies Act of 2013. But the fact remains that, if the Contempt Proceedings are taken up before the Tribunal since the issue of Contempt, contemplates of passing of an order of punishment, upon the Tribunal or the Court being satisfied of there being a case of deliberate and intentional non-compliance of order made out, the issue thereafter exclusively relates between the Tribunal or the Court and the alleged Contemnor. Hence, it had been a general widely accepted preposition that the proceedings of the Contempt, since not being a proceedings in relation to the enforcement of a personal right, but rather maintaining the prestige of the Court of Tribunal so as to ensure the compliance of its order, the Contempt Proceedings ought not to be dismissed for want of prosecution and the Tribunal or the Court should have decided the same on merits, even in the absence of the applicant, because it is an exclusive satisfaction, which is to be recorded by the Court or the Tribunal about the alleged non-compliance of an order passed by the Tribunal or the

Court. In that eventuality, the Contempt proceedings ought not to be dismissed for want of prosecution and it deserved to be decided on merits even in the absence of the applicant. The question which would engage consideration will be, as to even when there was a lack of diligence as observed in the order dismissing the application for want of prosecution, whether at all the same could be dismissed for want of prosecution as it has been made in the instant case by the order passed on 30.08.2019.

The observation made in para 2 of the order dismissing the Contempt Petition, for want of prosecution was on the ground that the email communication and objection raised on 14th June 2019 and 10th June 2019, had not been complied, with. Even in these eventualities, where the defect has not been complied if the defect is not so fatal, which may have any affect the merits of the proceedings of the Contempt, it could have been ignored in the vital interest of justice or an opportunity could further have been granted to rectify the defect rather than proceeding to dismiss the Contempt for want of prosecution and that too, when the Contempt related to the enforcement of the order of 28.02.2019 rendered in suit under Section 108 of the Companies Act and the intervening period from the date of the Judgment i.e 28.02.2019, till the grant of an opportunity to rectify the defects i.e. 14.06.2019 or when the matter was first listed on 28.06.2019 and its consequential dismissal for want of prosecution on 30.08.2019. It was not too long period where the Contempt

could have been dismissed on technicalities for non-rectification of defects as it would defeat the very purpose of the justice dispensation system.

Besides that when the defects are yet to be rectified, the presumption would be that as a matter of fact, there is no Contempt Petition which stands instituted either under Section 10G of the Companies Act of 1956 or under Section 425 of the Companies Act of 2013, which could be dismissed for want of prosecution, the reason being that dismissal for want of prosecution would be only in those cases where the proceedings have been legally instituted and it is pending consideration on merits before the Court or the Tribunal to be decided on merits. When the Contempt Petition and the proceedings thereof is still to take birth because of non-rectification of the defects, the same could not have been dismissed for want of prosecution by the Learned Tribunal on merits.

This would be one of the aspects that need to be taken into consideration, that the Contempt is an exclusive proceeding between the Tribunal and the Applicant and it cannot be dismissed for want of prosecution. Besides that, when the defects in the Contempt Petition are yet to be rectified, the Contempt has not legally matured to be considered on merits, and hence it couldn't have been dismissed for want of prosecution. This itself would render the order of 30.08.2019 dismissing the Contempt, i.e. the Contempt Petition No. 154/BB/2019 for default, to be an order bad in the eyes of law.

Be that as it may, the Appellant has filed a Restoration Application along with the Delay Condonation Application on 11.12.2020. Let us make it clear that, the provisions of Limitation Act has been made applicable in the proceedings under the Companies Act of 1956, by the virtue of provisions contained under Section 10 G and by virtue of Section 433 of the Companies Act, 2013, when the aspect of Limitation could have been taken into consideration, while deciding the Restoration Application preferred by the Appellant on 11.12.2020, for seeking recall of the order dated 30.08.2019 which was accompanied with a Condone Delay Application being CA.No.16A of 2021. If the reasons which has been assigned in those two Applications are taken into consideration, owing to the ailment of the Applicants, as it has been mentioned in the Application for Condonation of Delay, as well as in the Restoration Application, the factum of ailment since not been seriously disputed, the Condone Delay application seeking Condonation of 374 days of delay ought to have been condoned and the Restoration Application being CA.No.16/2021 ought to have been considered on its merits after restoring the Contempt Petition to its original number, to be decided on merits.

In objection to the Restoration Application as well as the Delay Condonation Application the case of the Respondent was that, in fact, nothing survives in the Contempt Petition to be decided on merits as the order rendered in Suit No. 365 of 2012 has already been complied with. Apart from that they

have contended that owing to the compliance already made the proceedings of the Contempt has been rendered infructuous. We feel it apt, to clarify at this juncture itself, that, compliance of an order itself will not amount to purging of Contempt, because various other aspects are required to be considered, such as whether the order was complied with in the stipulated time frame and who was supposed to comply the order. The averment of compliance, cannot be derived to be taken as to the basis for rejecting the Restoration Application along with Delay Condonation Application filed in the Contempt Petition, because the extent and nature of compliance would be an issue, which is required to be considered on merits when the Contempt Petition itself is considered after its Restoration and not before that.

The objection mounted by the Respondent that there had been an inordinate delay in serving the Contempt Petition, cannot be taken as an exclusive reason for the purposes to reject the Restoration Application, along with the Delay Condonation application, as no other proceedings could be derived and taken as to be the basis to reject the Restoration Application, along with the Condone Delay Application. Each Miscellaneous Application in any judicial proceedings have to be independently considered and decided on its merits, without being influenced by earlier applications or orders passed in the proceedings or by the conduct of the party to the proceedings. Thus, deriving its logic from previous observations which were made in the proceedings, that

itself cannot be a reason to reject the Restoration Application, along with the Condone Delay Application, where the delay of 374 days has been sought to be condoned on account of the ailment which the Appellant No. 1 and Appellant No. 2 have claimed to have suffered as detailed in para IV of the Application.

Owing to the fact, that the reasons, which has been given in the Condone Delay Application being CA.No. 16A/2021 appear reasonable in face of the documents which have been placed on record, the delay which has chanced in preferring the Restoration Application in the Contempt proceedings deserves condonation.

Accordingly, both the Appeals are allowed and the impugned orders dated 28.05.2024 as passed in C.A. No. 16A/2021, rejecting the Delay Condonation Application and consequentially in CA. No. 16 of 2021 too, rejecting the Restoration Application would hereby stand quashed. The order dated 30.08.2019, rejecting the Contempt Petition for default is recalled. The Contempt Petition No. 154/BB/2019 would stand restored to its Original Number, which is directed to be decided exclusively on its own merits.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

20/06/2025
PA/MS