

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH

NEW DELHI

COMPANY APPEAL (AT) NO.406 OF 2024

(Arising out of judgement and order dated 27.09.2024 passed by the National Company Law Tribunal, Ahmedabad, in CP 10/2023.)

In the matter of :

Jitesh Sanmukhlal Shah

Appellant

Vs

Corrtech International Ltd & Ors

Respondent

For Appellant: Mr Dhiren R Dave, Advocate.

For Respondent: Ms. Anushree Kapadia, Ms Shivangi Chawla, Ms Shrutika Garg, Advocates.

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This appeal is filed by the appellant against the impugned order dated 27.09.2024 passed by National Company Law Tribunal, Ahmedabad in the matter of CP No. 10/2023.

2. The brief facts *as alleged* by the appellant in his appeal are as follows:-

a) The Respondent No.1 Company was incorporated on 08.06.1982. During 2019-20 the Appellant became a creditor of Respondent No. 1 Company due to non-payment by Respondent No.1 of an outstanding amount of Rs 6,06,60,510/-. The Respondent engaged in unnecessary correspondence with the Appellant during 2020-21, thereby disputing the claim with a sole intention of obstructing the Appellant from filing a petition under the Insolvency and Bankruptcy Code (IBC);

b) in an attempt to hinder the Appellant, the Respondent not filed an arbitration petition in the year 2022, which is pending before the Ld. Arbitral Tribunal and despite multiple reminders the respondent did not file necessary documents in the matter;

c) on 31.01.2023 Appellant filed an investigation petition under Section 213(b) of the Companies Act, 2013, highlighting various illegalities committed by Respondent No. 1 Company, including:

i) Illegal allotments of convertible debentures at a discount in violation of Section 53 of Companies Act, 2013;

ii) illegal increase in authorized share capital of company in violation of section 14, 61 and 64 of the Companies Act, 2013. Illegal appointment / removal / resignation of statutory auditors of the company in violation of 95, 114 and 117 of Companies Act, 2013;

iii) conversion of Respondent No. 1 Company from a private to a public entity without adherence to legal procedures and in violation of 95, 114 and 117, of Companies Act, 2013;

iv) Illegal borrowing of funds based on fraudulent documentation, in violation of section 87, 185 and 186 of Companies Act, 2013.

3. It is argued the Ld. NCLT had erred in dismissing the CP 10 of 2023 *vide* order dated 27.09.2024 only on the grounds of maintainability, without issuing notice and rather held the petitioner is not eligible to file the petition.

4. Being aggrieved by impugned order dated 27.09.2024 of the Ld. NCLT the appellant had preferred this appeal.

5. In support of his argument the appellant has referred to M/s RS India Wind Energy P Ltd Vs PTC India Financial Services Ltd (2016 SCC OnLine NCLAT 10) which held :-

The present appeal arises out of the impugned order dated 22nd September 2016 passed by the National Company Law Tribunal, New Delhi, (hereinafter referred to as "Tribunal") in an application bearing C.A. No. 92/C-I/2016 filed by the 1st respondent - PTC India Financial Services Limited in C.P. No. 60(ND)/2015 under Section 213 of the Companies Act, 2013. In the impugned order, the Tribunal observed as follows:—

“The petitioner has brought out some apparent malpractices in the working of Respondent 1 Company to show that deeper probe is necessary. There has been complaint of mismanagement in the affairs of Respondent 1 Company. The applicant has also made out a good case by showing that there has been prima facie violations of the provisions of Companies Act in the maintenance of the minutes of various proceedings of the Respondent 1 company. Apparent misdeeds and dishonesty in the maintenance of minutes of the company in contravention of the provisions of the Act cannot be ruled out. Law makes the investigation comprehensive of all sorts of illegalities. Sub-clause 1 clause (b) of section 213 is wide enough to include contravention of any law. There has been prima facie existence of malpractices in tampering of records, which cannot be overlooked. In the facts, it appears that deeper probe in the affairs of Respondent No. 1 company is necessary”.

48. *The basic principle of justice delivery system involving offence resulting punishment is that if any allegation is made by any person before a court of law or Tribunal such person is required to support the allegation by bringing on record some evidence to suggest that a prima facie case is made out and there are good reasons for seeking an order. Therefore, the sentence **“supported by such evidence as may be necessary for the purpose of showing that applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company”**, as mentioned below clause (a) of Section 213 is applicable in all cases and the applicant(s), whoever prefers application under Section 213, whether they belong to category as mentioned in clause (a) or clause (b), such evidence is required to be relied upon not only to justify the allegations, but also to show that there is a good reason for seeking an order, to enable the Tribunal to form its opinion.*

6. It is the submission of the learned counsel for the appellant there are sufficient allegations made in the Company Petition so also in his appeal and under such circumstances the Learned NCLT ought to have directed investigation under Section 213(b) of the Companies Act, 2013.

7. We have heard the arguments advanced by the learned counsel for the appellant as also for the Respondent.

8. Section 213 of the Companies Act, 2013 is as under:-

213. Investigation into company's affairs in other cases.—*The Tribunal may,—*

(a) *on an application made by—*

(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) *on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—*

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct:

Provided that if after investigation it is proved that—

- (i) *the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or*
- (ii) *any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.*

9. The Learned NCLT has dwelled upon the allegation set out in the Company Petition and has held as under:-

13. Based on the submissions and documents, this Tribunal reserved the Order to decide on the limited aspect of eligibility of the applicant to file the present application under Section 213 of the Companies Act, 2013 and its maintainability. This was also original decision of this Tribunal when the matter was heard on 15.02.2023. Vide orders dated 27.06.2023, the applicant was directed to show how he is eligible to file the present application under Section 213 of the Companies Act, 2013 alongwith relevant judgements.

14. The observations for a decision is based on the arguments put forth, the documents enclosed by the applicant who at later stage furnished documents as rejoinder that he qualifies to be a creditor stated to have agreed to resolve the dispute, if any, before an Arbitration as ordered by the Hon'ble High Court. Even though a copy of the ledger wherein certain exposure is shown of the Respondent No.1, the nature of dealing, its invoices or other documents were not furnished as proof that there is a nature of debt and amount due, in which case it becomes a case of filing an application under Sec 9 of IBC, 2016. Further, during the oral arguments it was argued by the respondent that the application was filed to thwart a proposed IPO issue which has not been filed, thereby this raises an apprehension if similar to an interim moratorium on the proposed action of an IPO, this application was filed. A proposed IPO issue cannot be a matter to be decided through this application and this Tribunal is not

the authority, which has to be filed before the appropriate regulator, the SEBI. SEBI even though need not have been made a party, whatsoever, appeared and filed a reply that the application is not sustainable and SEBI to be made as a party as there are no 'pending approvals or irregularities as the Respondent No.1 is not a listed company which does not cover under its regulation. Similarly issue of debentures for an unlisted company is by the board of directors and from all the documents submitted there apparently does not seem to be any irregularity as Respondent No.1's Board of Directors approved the proposals on the various dates of issue with the consent of the shareholders. Prima facie, there appears to be no irregularity, or, if any, has not been explained and mere facts that certain meetings were included or not included in the Forms uploaded do not give any grounds for consideration of this application for whatever reason as the circumstances does not explain in any way the Tribunal to examine if it is to be satisfied on Sec **213 [b]**. The absolute authority to issue debentures vests with the Board of Directors who have taken the necessary approval of the shareholders. The applicant has not brought in any valid proof including any grievance of any of the affected shareholders or creditors on account of the issue of such debentures on a discounted basis nor has he proved whether he is a creditor and in any way affected by such issue or proposed IPO which are apparently needed for restructuring or financial strength of the company for which we see that due procedure has been followed. The MIS mismatch is for the appropriate regulatory RCS to have taken appropriate note of on the submission of regulatory compliances, authenticity and timeliness of submission and the applicant has made sweeping statements of such forms submitted during various years way back to 2015 which apparently is nothing but filing this application to do a fishing expedition on a company, its affairs, which is unwarranted, fraud and malfeasance not proved and not inconsistent statements which are not maintainable. Hence, this petition filed is deemed to have been filed for reasons beyond the scope of needing any investigation under Sec 213. We also see that Respondent No.1 has a sufficiently competent Board and its strength with both working and independent directors and on a perusal of the minutes of the meeting, its approvals for increase of capital (approval for issue of capital through debentures) have been passed as per procedure complying with the relevant provisions of Companies Act particularly Sec 71 and do not warrant any action or investigation on the basis of this application. The applicant has not clearly

brought in whether there was any violation under Sec 71 of the Act.

15. The Tribunal has carefully gone through the documents and submissions and conclude thereby that the applicant does not qualify for filing this application under Section 213(a) (i) and (ii) of the Companies Act, 2013 and the Tribunal is not satisfied to take cognizance of this Company Petition.

10. We have gone through the impugned order and find no infirmity in the same. One of the arguments raised by the learned counsel for the appellant is *per para 15* of the impugned order, the Ld. NCLT had disposed of the Company Petition only on the grounds of Section 213(a) of the Companies Act, 2013 but whereas the allegations were made purely under sub-section (b) of Section 213 of Companies Act, 2013.

11. We have gone through the circumstances necessary for exercise of powers under sub-section (b) of Section 213 of the Companies Act, 2013. It is not the case of the appellant the business of Respondent No.1 company is being conducted for a fraudulent or unlawful purpose; or any person managing affairs of the company is guilty of fraud. *Admittedly* the appellant is not a member of the Respondent No.1 company, hence cannot allege the business of Respondent No.1 company is being conducted in a manner oppressive to its members; or the company is guilty of fraud, misfeasance or other misconduct towards its members; or members of the company have not been given due information etc. The only argument of appellant is the business of the respondent company is being conducted with an intent to defraud its creditors, though the appellant was unable to substantiate his allegations the creditors of the company are being defrauded. *Admittedly* the appellant and the Respondent are in money dispute and arbitration

proceedings are pending between two. It appears to circumvent such proceedings and to create pressure upon Respondent company, the appellant had filed the present Company Petition seeking investigation into its affairs. Further on perusal of the impugned order we find that though in para 15 of its impugned order, the Ld. NCLT has held the petition is not maintainable under sub-section (a) of Section 213 of Companies Act, 2013 *yet* if one examines the impugned order in its entirety, more specifically its para (Supra) one would find the Ld. NCLT had also dealt with *circumstances* enumerated in sub-section (b) of Section 213 of Companies Act, 2013. Thus we find no merit in the appeal and hence it is dismissed.

12. Pending applications, if any, are also disposed of.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated: 22.04.2025
Bm/md