

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 134 of 2020

IN THE MATTER OF:

Macquarie SBI Infrastructure Investment Pte Ltd.

& Anr.

...Appellants.

Versus

Soham Renewable Energy India Pvt. Ltd.

& Ors.

...Respondents.

Present:

**For Appellant: Mr. Arun Kathpalia and Mr. Krishnendu Dutta, Sr.
Advocates with Ms. Saumay Kapoor, Mr. Manu Mishra
and Ms. Sonam Gupta, Advocates.**

**For Respondent: Mr. Aditya Chatterjee and Mr. NityaKalyani, Advocate
for R-1&8**

**Mr. Udaya Holla, Sr. Advocate with Ms. Neha Mathen,
Advocates for R- 2 to 6.**

Ms. Anuradha Agnihotri, Advocate

With

Company Appeal (AT) No. 135 of 2020

IN THE MATTER OF:

Macquarie SBI Infrastructure Investment Pte Ltd.

& Anr.

...Appellants.

Versus

K. Sadananda Shetty & Ors.

...Respondents.

Present:

**For Appellant: Mr. ArunKathpalia and Mr. Krishnendu Dutta, Sr.
Advocates with Ms. Saumay Kapoor, Mr. Manu Mishra
and Ms. Sonam Gupta, Advocates.**

**For Respondent: Mr. Udaya Holla, Sr. Advocate with Ms. Neha Mathen,
Advocates for R-1-5.**

**Mr. Aditya Chatterjee and Mr. NityaKalyani,
Advocates for R-6-12.**

Ms. Anuradha Agnihotri, Advocate for R-13.

ORDER
(12th February, 2021.)

Jarat Kumar Jain. J:

The Appellant Macquarie SBI Infrastructure Investment Pvt. Ltd. filed the Appeal CA(AT) No. 134 of 2020 against the order dated 16.06.2020 passed by National Company Law Tribunal, (In Brief Tribunal) Bangaluru Bench, Bangaluru. Whereby seven interim Applications Nos. 179, 180, 181, 182, 183, 184 and 189 of 2020 in CP No. 78/BB/2020 filed by the Appellants have been disposed of summarily. The Appellants have filed another Appeal CA (AT) 135 of 2020 against the order dated 16.06.2020 passed by the Tribunal in CP No. 77/BB/2020 whereby admitted the Petition of K Sadananda Shetty and three others for final hearing.

2. The Appellants filed Petition under Section 241 & 242 of the Companies Act, 2013 (in brief 'Act') bearing CP No. 78/BB/2020 inter alia seeking following reliefs:-

“(i) Challenging the illegal circular resolutions by which the employment agreement of Respondent Nos. 2 to 4 were extended in flagrant violation of affirmative voting rights of the Appellants:

(ii) Seeking directions to nullify any actions taken by Respondent Nos. 2 to 4 pursuant to these illegal appointment/extension of employment agreements:

(iii) Ancillary reliefs seeking appointment of professional management for Respondent No. 1: and

(iv) Interim and ad-interim reliefs.”

3. Alongwith the Petition the Appellants also filed the seven Interlocutory Applications seeking variety of interim reliefs against the Respondents. The Respondent No. 1 to 5 filed Company Petition No. 77/BB/2020 under Section 241 & 242 of the Act against the Appellants. Both the Petitions were taken up

for hearing together on 16.06.2020. Learned Tribunal vide impugned order dated 16.06.2020 disposed of the Appellant's Applications seeking interim reliefs in CP No. 78/BB/2020. Operating portion of the order is as under:-

“In the normal course, interim applications are maintainable only after question of admission of the main case is over. And separate interim application (s) can be filed later on, if any, new developments takes place in the case and there is any urgency in the matter. Since the case is coming for admission for the first time and the Respondents requested time for filing their Replies to main/interim reliefs sought for, separate applications are not maintainable. Moreover, the pleadings and prayers made in the above applications are more or less covered under the reliefs sought for in the main Company Petition, therefore, we are not inclined to entertain the above IAs separately and thus, to dispose of all the IAs by granting liberty to applicants to seek appropriate interim as asked for in the main petition, on the next date of hearing, after filing Replies by the Respondents”

4. Learned Tribunal vide order dated 16.06.2020 admitted the Respondent's Petition CP No 77/BB/2020 for final hearing.

5. Being aggrieved with these interim orders, the Appellants have filed these Appeals.

6. Ld. Senior Counsel for the Appellant submitted that the tribunal has applied different yardstick while adjudicating the Petitions filed by the parties. Both the Petitions were listed and taken up together, however, the Respondent's Petition was admitted for final hearing but the Appellant's Petition order of admission was deferred when admittedly no plea as to maintainability was raised by the contesting Respondents. Thus, there is a discriminatory treatment given to the Appellants. It is also submitted that there is no provision in the Act, or in the NCLT Rules that interim applications

are maintainable only after admission of the Petition. It is very strange to hold that interim applications can be filed only after admission of the Petition. It is also submitted that the impugned order is self-contradictory and inconsistent as on one hand the tribunal has disposed of the interlocutory applications on the ground that separate interim applications can be filed after question admission of the Petition. At the same time without admitting the Petition for final hearing, the Tribunal has proceeded to list the matter for consideration of interim reliefs. The Tribunal has passed the impugned order without affording the Appellants a reasonable opportunity of being heard and not appreciating the extraordinary circumstances and urgency for consideration of the Interlocutory Applications. Thus, the impugned order passed in CP No. 78/BB/2020 is erroneous and liable to be dismissed and direction be issued to the Tribunal for considering the applications and to pass the order on merit.

7. Learned Counsel for the Respondent Nos. 2 to 6 submitted that the Appellants have failed to make out any prejudice caused to them due to the impugned order. The prayers set out in the interlocutory applications are entirely covered by the reliefs sought by the Appellants under the para 44 of the main petition. The tribunal has listed the matter for consideration of interim reliefs on 10.07.2020 instead of pursuing their interim prayers before the Tribunal, the Appellants chose to challenge the impugned order. The Appellant cannot be permitted to rely on a stray sentence in the impugned order as a ground for setting aside the impugned order. Thus, the Appeals are liable to be dismissed.

8. After hearing Learned Counsel for the parties, we have gone through the record.

9. There is no procedure prescribed in the Act and Rules that separate interim applications can be filed only after the question of admission of main case is over. Ld. Counsel for the Respondents frankly admitted that there is no provision in the Act or Rules that for interim reliefs separate applications are not maintainable or such applications can be filed only after admission of the main Petition. Section 242 (4) of the Act provides that:

“The Tribunal may on the application of any party to the proceedings make any interim order which it thinks fit for regulating the conduct of the company’s affairs upon such terms and conditions as appear to it to be just and equitable”

10. In the light of this provision it cannot be said that application for interim reliefs are not maintainable or such applications can be filed only after admission of the main Petition or if the interim reliefs claimed in the interlocutory applications are entirely covered by the reliefs sought in the main Petition then the applications are not maintainable.

11. It is also an interesting fact that the Respondents have not taken any objection about the maintainability of the interlocutory applications whereas they requested time for filing their replies to the main/interim reliefs sought for.

12. The Tribunal has adopted an unusual procedure and disposed of interim applications without any legal foundation. It is very strange that on one hand the Tribunal has disposed of interlocutory applications as not maintainable before admission of the Petition and on the other hand, without

admitting the Petition the matter was posted for consideration of interim reliefs.

13. With the aforesaid, we are of the view that the impugned order is not inconsonance with the provisions of Act and Rules. Thus, the impugned order passed in CP No. 78/BB/2020 is set aside and aforesaid IA's are restored to their original position. The Tribunal is directed to decide the applications after giving reasonable opportunity to the parties.

14. So far as the impugned order passed by the Tribunal in CP No. 77/BB/2020, we find no flaw in this order. Therefore, no interference is called for in this order. Thus, the Company Appeal (AT) No. 134 of 2020 is allowed as aforesaid, whereas, Company Appeal (AT) No. 135 of 2020 is disposed of.

15. We request the Tribunal to make all endeavour to decide these applications as early as possible. The Registry is directed to send the copy of this order forthwith to the concerned Tribunal.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

New Delhi
SC