

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) No.216 of 2019

(Arising out of three Orders dated 30th May, 2019 passed by the Hon'ble National Company Law Tribunal, New Delhi Bench, in Case No. 86/73(4)/ND/2019, 88/73(4)/ND/2019, 89/73(4)/ND/2019)

In the matter of:

Ateet Bansal

Appellant

Vs

Unitech Ltd

Respondent

Mr. Ateet Bansal, Appellant in person.

Ms Shrishti Juneja, Advocate for Respondent.

And

COMPANY APPEAL (AT) No.218 of 2019

In the matter of:

Sunita Bansal

Appellant

Vs

Unitech Ltd

Respondent

Mr. Ateet Bansal, Authorised representative of appellant.

Ms Shrishti Juneja, Advocate for Respondent.

And

COMPANY APPEAL (AT) No.219 of 2019

In the matter of:

Shweta Bansa

Appellant

Vs

Unitech Ltd

Respondent

Mr. Ateet Bansal, authorised representative of Appellant.

Ms Shrishti Juneja, Advocate for Respondent.

J U D G M E N T

(25th February, 2020)

Mr. Balvinder Singh, Member (Technical)

1. These three Appeals i.e. Company Appeal (AT) No. 216, 218 and 219 of 2019 have been preferred by the Appellants under Section 421 of the Companies Act, 2013 against three impugned orders dated 30th May, 2019 in Case No. 86/73(4)/ND/2019, 89/73(4)/ND/2019 and 88/73(4)/ND/2019 respectively passed by the National Company Law Tribunal, New Delhi Bench ('for short Bench').

2. The Appellants have filed the Appeal under Section 421 and prayed for quashing and set aside the impugned order dated 30.05.2019 passed by National Company Law Tribunal, New Delhi Bench in Case No. 86/73(4)/ND/2019, 89/73(4)/ND/2019 and 88/73(4)/ND/2019 and prayed that the Respondent may be directed to pay the maturity amount on fixed deposit with interest @12.5% p.a. from the date of maturity of the fixed deposit alongwith litigation cost.

COMPANY APPEAL (AT) No.216 of 2019

3. The brief facts of the case are that MR Ateet Bansal is a depositor who had bought a FDR from Respondent Company dated 01.06.2013 for Rs. 1,00,000/-

having FDR No. 1220500. FDR was made on 01.06.2013 for a period of three years and an amount of Rs. 1,45,217 was payable to the depositor upon maturity on 01.06.2016. The Respondent through an Application under Section 74(2) of the Companies Act, 2013 proposed to make payment to its depositors of matured amount with interest from the date of maturity till the date of payment through a rescheduled plan.

4. That the depositor had approached the Respondent several times since his Fixed Deposit got matured with them but on all such occasions the Respondent did not pay the maturity amount and also did not pay any attention to Appellant's demand and never replied regarding the outstanding payment. Appellant filed a Company Petition in March, 2019 in Hon'ble NCLT under Section 73(4) of Companies Act, 2013 read with Section 45Q of the Reserve Bank of India Act, 1934 for payment of maturity amount of the aforesaid deposit with 12.5% interest P.A. due thereon in accordance with the terms and conditions of the deposit. The said petition had been admitted by the Hon'ble NCLT, New Delhi Bench in March, 2019. Thereafter, no reply was filed by the Respondent and the impugned order dated 30.05.2019 was passed directing the Respondent to pay Rs. 1,45,217/- to the Appellant with pendent lite and future interest @ 10% from the date of filing till the receipt.

5. It is argued by the Appellant that National Company Law Tribunal, New Delhi Bench has erred in giving pendent lite and future interest @ 10% from the date

of filling till receipt thereof instead of 12.5% P.A. as per the terms and conditions of the deposit and has also failed to appreciate that the interest should have been awarded from the date of maturity.

6. Appellant further argued that National Company Law Tribunal, New Delhi Bench has failed to award the interest amounting to Rs. 60,507/- which is calculated at 12.5% P.A. from the date of maturity on the matured amount for the delayed period till September 2019.

7. It is stated by the Appellant that impugned order has failed to appreciate that Section 76A of the Companies Act, 2013 provides for punishment for contravention of Section 73 or section 76 which states that:

”76A. Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73,—

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than [one crore rupees or twice the amount of deposit accepted by the

company, whichever is lower] rupees but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to [seven years and with fine] which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees,

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.”

8. It is further stated by the Appellant that despite the acceptance of notice on 25.04.2019 by Mr. Vivek Mishra the Ld. Counsel for the Respondent, no reply was sought to be filed which clearly shows that they were in default and no objection was raised by them and due to the default in repayment of matured amount by the Respondent, Appellant had to bear the court fees at NCLT, and now in appeal to the Appellate Tribunal with litigation cost.

COMPANY APPEAL (AT) No.218 of 2019

The brief facts of the case are that Sunita Bansal is a depositor who had bought two FDR from Unitech Limited (Respondent Company) dated 29.05.2013 & 28.11.2013 for Rs. 3,00,000/- and Rs. 50,000/- having FDR No. 1220015 &

1246693 respectively. FDR's were fixed on 29.05.2013 & 28.11.2013 for a period of three years and an amount of Rs. 4,35,652 & Rs. 72,609/- was payable to the depositor upon maturity on 29.05.2016 & 28.11.2016.

The Hon'ble National Company Law Tribunal, New Delhi Bench passed the Order on 30.05.2019 in Case No. 89/73(4)/ND/2019 directing the Respondent to pay Rs. 3,50,000/- to the Appellant with pendent lite and future interest @ 10% from the date of filing till the receipt.

All the submission on behalf of the Appellant is similar as in the above case.

COMPANY APPEAL (AT) No.219 of 2019

The brief facts of the case are that Shweta Bansal is a depositor who had bought a FDR from Unitech Limited (Respondent Company) dated 20.06.2013 for Rs. 50,000/- having FDR No. 1222585 respectively. FDR was fixed on 20.06.2013 for a period of three years and an amount of Rs. 72,609/- was payable to the depositor upon maturity on 20.06.2016.

The Hon'ble National Company Law Tribunal, New Delhi Bench passed the Order on 30.05.2019 in Case No. 88/73(4)/ND/2019 directing the Respondent to pay Rs. 50,000/- to the Appellant with pendent lite and future interest @ 10% from the date of filing till the receipt.

All the submission on behalf of the Appellant is similar as in the above two cases.

9. Respondents filed their reply and rebutted in brief as under: -

- a) It is submitted that the impugned orders have been passed by the National Company Law Tribunal in a mechanical and non-reasoned manner and suffers from non-application of mind, material irregularity, error apparent on the facts of the record and is therefore liable to be set aside.
- b) It is further submitted that the impugned order has been taken by the Hon'ble NCLT in complete violation of the orders of the Hon'ble Supreme Court of India whereby the Hon'ble Supreme Court is unequivocally seized of the matters against the Respondent and has directed that no coercive steps shall be taken against the company or its director.
- c) It is stated on behalf of the Respondent that due to certain ongoing disputes, certain purported complaints were filed by various persons whereby aggrieved by order dated 11th August 2017 passed by this Hon'ble Court, the Managing Directors of the Respondent Company filed Special Leave Petitions under Article 136 of Constitution of India bearing S.L.P.(Crl) No. 5978-79 of 2017. During the course of the proceedings, vide order dated 8th September 2017, the Hon'ble Supreme Court appointed Mr. Pawan Shree Agarwal as Amicus Curiae, who directed to file a chart containing details of various projects of the Company and the name of consumers and amount deposited with the Respondent.
- d) It is further stated that pursuant thereto, Order dated 30th October 2017, the Hon'ble Supreme Court directed the Directors of the Respondent to deposit

a total amount of Rs. 750 Crores before the Registry of the Hon'ble Supreme Court as a pre-condition to the grant of bail. The Apex Court further directed that no coercive steps shall be taken against the company and passed direction for the Amicus Curie to create a portal where the persons who have invested with the Company by way of fixed deposits shall give the requisite information.

- e) It is also submitted that Hon'ble Supreme Court having taken strict cognizance of the payments and disbursements by the Respondent Company, time to time issued various directions to the Amicus Curie and further constituted Justice Dhingra Committee vide order dated 14th May 2018 to supervise the working of payments and disbursal of the money deposited by the company and the Directors before the Registry of the Hon'ble Supreme Court. Upon agitation by the fixed deposit holders, vide Order dated 7th December 2018 the Hon'ble Supreme Court directed the Dhingra Committee to retain 10% of Rs. 174 Crore deposited by the Company with the Registry of the Hon'ble Supreme Court of India, towards fixed deposit holders.
- f) It is further submitted that directions were passed for the amicus curiae to obtain and furnish status of fixed deposit holders vide order dated 7th March 2019. That despite being aware of the facts that the Hon'ble Supreme

Court was duly monitoring the payments by the company Appellant herein preferred the present appeal.

g) It is also submitted that the Appellant herein has concealed with impunity that the Appellant herein has concealed with impunity that the Appellant herein has been aware of the proceedings pending against the Respondent Company has even filed its claim before the Amicus Curie vide Amicus ID bearing No. 617 whereby the Amicus Curie shall disburse the refund in due time and in accordance with the directions of the Hon'ble Supreme Court of India and therefore the present Appeal deserved to be dismissed in limine.

10. Appellants argued that the NCLT have erred in law in deciding the matter by reducing the contracted rate of interest and also have awarded the interest from the date of filing the petition before the NCLT till realisation thereof. Appellants also argued that they have also spent the litigation cost at NCLT and have also deposited the court fees in the Registry of NCLAT for filing the appeal. Appellants have also argued that the reliefs sought by them may be awarded and heavy cost may also be imposed upon the Respondent. Appellants also argued that despite taking notice at NCLT, Respondent have not appeared nor filed any reply and indirectly they have admitted their liability.

11. On the other hand learned counsel for the Respondent argued that the main promoters are behind bar and the financial condition of the Respondent company

is not good and the Hon'ble Supreme Court has directed that no coercive steps should be taken against the company or its directors. Respondent has placed certain orders of the Hon'ble Supreme Court in this regard. Respondent argued that the appellants are also very well aware of the proceedings against the company before the Hon'ble Supreme Court.

12. We have heard the parties at length and perused the record. First of all we want to mention that the order was reserved on 13.1.2020 and thereafter on 20.1.2020 the Hon'ble Supreme Court of India in the case of Bhupinder Singh Vs Unitech Ltd Civil Appeal(s) No.10856 of 2016 have reconstituted the Board of Unitech Ltd and there is no director on the Board of erstwhile Management. It is not in dispute that the Respondent accepted deposit in the shape of FDR on 1.6.2013, 20.06.2013, 28.11.2013 and their maturity date was in 2016. It is also not in dispute that the Respondent company has not paid the maturity amount to the appellants on their due date inspite of various requests made by the appellants. It is also not in dispute that the Respondent did not appear before NCLT despite accepting notice, no reply was filed. The arguments of the Respondent that the Hon'ble Supreme Court has directed that no coercive steps should be taken against the company or directors is concerned, no coercive steps have been taken by the appellants against the respondent company and its directors. On the other hand the Respondent taking the shelter of Supreme Court order is creating hurdle in the process of law such as accepting notice and then not appearing. We have

also gone through the impugned order and find that rate of interest has been reduce and for the period between maturity date and date of filing the petition has not been awarded. Rules have been made to protect the interest of deposit holders and for the benefit of the economy of the country. Rules have not been to reward the defaulting company by reducing the rate of interest and not paying the interest from maturity date to filing of petition. We note that the appellants are not even paid any amount who has given as deposit his hard money so that the company may flourish and the economy of the country to grow. But the company and its directors have siphoned off the money of the investors/home buyers as observed by Hon'ble Supreme Court and that is why the directors of the respondent are behind bar. We should have no sympathy with the defaulting company and its directors. NCLT has reduced the rate of interest for which no justification has been given and also for not awarding interest from the maturity date to filing of the petition. We note that this is a reward to the defaulting company and punishment to honest depositor who is running from pillar to post to get his amount back with interest. We also observe that if the respondent makes an attempt to get fresh deposits from the public then the company will not get at cheaper rate but at a higher rate because the depositor will only give deposit seeing the risk factor of his deposit.

13. In view of the above discussions and observations the impugned orders are set aside. The appeals are allowed and the following order is passed:

- i) Appellants are entitled to a decree under their respective matured FDR. The amount is decreed in favour of the respective appellant together with pendent lite and future interest @ 12.5% p.a. from the date of maturity of the respective FDR till receipt thereof.
- ii) Respondent will pay Rs.50000/- each to the above three appellants towards cost of litigation, costs etc.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Dr. Ashok Kumar Mishra)
Member (Technical)

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