

**IN THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**NEW DELHI**

**Company Appeal (AT) No. 35 of 2016**

**Kerala Chamber of Commerce and Industry & Ors. .... Appellants**

**Vs.**

**Tap World & Anr. .... Respondents**

Present: For Appellants: - Mr. Anil D.Nair, Advocate for the Appellants

For Respondents: -Mr. Wills Mathews and Mr. D.K.Tiwari,  
Advocates

**ORDER**

**03.01.2017** - This appeal has been preferred by the Appellants Kerala Chamber of Commerce and Industry against the order dated 8<sup>th</sup> November 2016 passed by National Company Law Tribunal (hereinafter referred to as the "Tribunal"), Chennai Bench, Chennai which reads as follows: -

**"ORDER**

*Shri B.Dhanraj, counsel for petitioner present. Shri R.Venkatavaradan, counsel for R1 present. On the issue of the admission of the petition, the counsel for the petitioner has made his submissions in detail. The counsel for R1 has raised issues, first, with regard to locus standi of the petitioner because their membership has been suspended, and second, pertaining to granting of the permission by the Central Government under 399(4) of the Act, 1956. After hearing both the sides and looking to the permission granted by the Central Government to the petitioners for filing the petition and the prayer No. 14 made in C.P. which pertains to setting aside the*

*suspension relating to the membership of the petitioners from the first respondent company, we are satisfied that the petitioners have made prima facie case for admission of the petition, the petition is admitted for hearing. The Registry is directed to provide number to the petition and issue notice to all respondents except R1. The counsel for the petitioner has prayed or grant of interim relief pertaining to the passing of the accounts which is one of the items to be taken up in the ensuing AGM to be held and conducted on 12.11.2016, on the ground that the accounts are not representing a true and fair assessment. The issue in relation to the true and fair assessment of the accounts is a question that require a thorough enquiry that could be ordered by this bench, if required. Therefore, we decline to grant interim relief at this stage. Put up on **02.12.2016 at 10.30 A.M.**”*

2. We have heard learned counsel for the appellants and learned counsel appearing on behalf of the respondents. Taking into consideration the fact that the Court has expressed only prima facie opinion about maintainability of the Company Petition and having admitted the case for final hearing, we are not inclined to decide the issue ‘whether a Company Petition under Section 241 is maintainable at the instance of a suspended member of the company who alleges oppression and mismanagement due to suspension of membership’. The aforesaid question is required to be determined by the Tribunal during the final hearing after hearing the parties while determining the other question of oppression and mismanagement.

3. For the reasons aforesaid while we are not inclined to interfere with the impugned order dated 8<sup>th</sup> November 2016, direct the Tribunal to decide the

case both on merit and on the question of maintainability uninfluenced by the impugned order passed by the Tribunal.

4. The appeal stands disposed of with the aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)