

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW
DELHI**

Company Appeal (AT) No. 141 of 2017

IN THE MATTER OF:

Rachakonda Siva Kumar

...Appellant

Vs.

Zetatek Engineering Systems Pvt. Ltd. & Ors.

...Respondents

Present: For Appellant:- Mr. D. Abhinav Rao, Advocate

For Respondents:- Mr. Y. Suryanarayana, Advocate

ORDER

19.05.2017- This Appeal has been preferred by the Appellant against the order dated 1st March, 2017 passed by National Company Law Tribunal, Hyderabad Bench at Hyderabad (hereinafter referred to as the "Tribunal") in Company Petition No. 58 of 2015 (TP No. 80/HDB/2016), whereby Ld. Tribunal has passed the following orders:

"13. We have considered all the contentions raised by all the parties, and we are of the considered view that the present petition is disposed of without going into the merits of the case. Hence, we disposed of CP No. 58 of 2015 with the following directions:

- i) *We hereby appoint Shri T. Hanumantha Reddy, Advocate & Senior Panel Counsel for Central Govt. & Railway Panel Advocate in CAT/HYD, H.No. 6-1-72, Sri Maha Laxmi Meadows, A-1501, Lakdikapool, Hyderabad-4, as Chairperson to conduct Board Meetings and Annual General Meetings for the year 2013-14, 2014-15 and 2015-16 of Zetatek Engineering Systems Private Limited.*
- ii) *We hereby appoint Seshachalan & Co., Chartered Accountants, "Wall Street Plaza", 1-11-256, ICICI Building, St. No.1, Begumpet, Hyderabad-16, (Contact Person: Partner Mr. K. Goutham, Mobile No.9885773752) as Auditor in the present case and his fee will be decided in consultation with the Chairperson.*
- iii) *The Learned Chairperson is directed to fix dates and venues suitable, after discussing the issue with the petitioner and the Respondent No.2 & 3 and give advance notices to all the concerned parties;*
- iv) *The petitioner as well as the Respondent No. 2 and 3 are directed to extend full co-operation to the Learned Chairperson and Auditor to discharge their duties;*
- v) *The learned Chairperson is also directed to take all relevant records and make available those records to the Respondent No.2 & 3;*

- vi) *The Learned Chairperson's fee is fixed at for Rs.25,000/- for Board Meetings and Rs.50,000/- to Annual/Extra Ordinary General Meetings which is to be borne by Respondent No. 1 Company apart from other expenses;*
- vii) *We direct the Auditor to take up auditing of all the relevant records.*
- viii) *We direct the Petitioner and the Respondents to make available all the records as required by the said Auditor as and when called for.*
- ix) *The Petitioner as well Respondents are entitled to have an access to records obtained by the auditor is directed to furnish the copies as requested by the parties if the copies are few in pages. If they are in voluminous the parties are entitled to inspect those documents.*
- x) *The Learned Chairperson and Auditor are directed to complete the above exercise within a maximum period of three months from the date of receipt copy of this order;*
- xi) *Both the Chairperson and Auditor are entitled to take any professional service/assistance required by them depending on the nature of their assignment; and they have to minute/record all the proceedings and furnish copies to both the parties;*

- xii) *Both the Learned Chairperson and Auditor should make all efforts to settle the issue amicably;*
- xiii) *The respondents are also directed to co-operate with the newly appointed Auditor, if any services are required by the C.A.*
- xiv) *The Registry of NCLT is directed to forward a copy of this Order to the Learned Chairperson and Auditor.”*

2. The brief facts of the case is that the Appellant preferred an application under section 59 of the Companies Act, 2013 and Sections 81, 111, 397, 398, 399, 402, 403 read with Schedule XI of the Companies Act, 1956, to declare ‘the fake Board Resolutions uploaded with the Form No.MGT-14 transferring 500 shares by the 2nd Respondent to 3rd Respondent’ as void and illegal and to declare the allotment of 90,000 shares solely to the 2nd Respondent at the purported Board meeting dated 3rd September, 2014 as void and illegal. Prayer was also made to convene and conduct the AGM for the year ending 31.03.2014 immediately for approval of the annual accounts at the Board Meeting held on 03.09.2014.

3. The grievance of the Appellant is that the Ld. Tribunal without deciding the case on merit passed the impugned order with certain

directions. The arguments were advanced by the Ld. Counsel for the Appellant was neither noticed nor adjudicated by the Ld. Tribunal.

4. Ld. Counsel appearing on behalf of contesting respondents submits that the impugned order was passed with the consent of the parties. However, from bare reading of the impugned order it is clear that the said order has not been passed on the consent of the parties.

5. From reading of the impugned order dated 1st March, 2017, particularly Paragraph no.13 as quoted above, we find that submissions made by all the parties was not discussed. Ld. Tribunal without going into the merits of the case passed certain orders and directions.

6. It is a settled that when a Court of law or a Tribunal do not decide a case on merit has no jurisdiction to pass any specific order and directions including interim order, though it is always open to the Court/Tribunal to ask the parties to move before an appropriate forum. As we have held that the Tribunal had no jurisdiction to pass any specific order where it has not decided case on merit, we have no other option but to set aside impugned order dated 01.03.2017 passed by NCLT. The said order is set aside, accordingly. The case stands remitted to the Tribunal.

7. Taking into consideration the fact that the case is pending before Tribunal since long, we direct the parties to cooperate with the Tribunal for early disposal of the Company Petition. The Tribunal in its turn will decide the case expeditiously, without granting unnecessary adjournment, preferably within two months.

8. The appeal is allowed with aforesaid observations and directions.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member(Technical)

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