

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

**Company Appeal (AT) No.149 of 2018**

[Arising out of orders dated 22.02.2018 passed by National Company Law Tribunal, Hyderabad Bench, Hyderabad in CP No.38/2006 (TP No.7/HDB/2016)]

**IN THE MATTER OF:**

1. M/s Krishna Metal Industries Private Limited  
13-06-824/1, Karwan Road,  
Hyderabad – 500 067  

...Appellant No.1  
(Original Respondent No.1)
2. Mr. Girish Gupta  
12-2-713, Nanal Nagar,  
Hyderabad – 500 028  

...Appellant No.2  
(Original Respondent No.4)
3. Mr. Mitesh Gupta  
12-2-713, Nanal Nagar,  
Hyderabad – 500 028  

...Appellant No.3  
(Original Respondent No.3)
4. Smt. Sheela Gupta  
12-2-173, Nanal Nagar,  
Hyderabad – 500 028  

...Appellant No.4  
(Original Respondent No.2)

**Versus**

1. Mr. Viajy Kumar Goyal,  
No.30, Rajasekharan Street,  
Mylapore, Chennai – 600 004  

...Respondent No.1  
(Original Petitioner No.1)

2. Mr. Bhushan Goyal,  
No.30, Rajasekharan Street,  
Mylapore, Chennai – 600 004

...Respondent No.2  
(Original Petitioner No.2)

3. Mr. Vishal Goyal  
No.30, Rajasekharan Street,  
Mylapore, Chennai – 600 004

...Respondent No.3  
(Original Petitioner No.3)

4. Smt. Sudha Goyal  
No.30, Rajasekharan Street,  
Mylapore, Chennai – 600 004

...Respondent No.4  
(Original Petitioner No.4)

5. Smt. Mukta Mangal,  
2/8, New Palasia,  
Indore – 452 001

...Respondent No.5  
(Original Respondent No.5)

**Present: Shri P. Nagesh and Shri Dhruv Gupta, Advocates for the Appellants**

**Shri Satish Parasaran, Senior Advocate with Shri Subhang Nair and Shri Ashwin Kumar D.S, Advocates for Respondent Nos.1 to 4**

**ORAL JUDGEMENT**

**06.08.2018**

**A.I.S. Cheema, J. :** This appeal has been filed by original Respondents 1 to 4. The Respondents 1 to 4 in this Appeal are the original Petitioners while the Respondent No.5 in Appeal is original Respondent No.5. The Company Petition pending before the National Company Law

Tribunal, Hyderabad Bench ('NCLT', in short) is CP 38/2006 (TP 7/HDB/2016).

2. The present Appeal arises out of Interim Order dated 22<sup>nd</sup> February, 2018. The present Appellants – Original Respondents 1 to 4 have filed this Appeal taking exception to the Impugned Order on the ground that the Interim Order without the Company Petition being tried and without the NCLT holding oppression and mismanagement, it has passed Order which is in the nature of final Order. It has been argued by the learned counsel for the Appellants that if the Order is perused, it shows as if before the NCLT, the only issue which was required to be decided was apportionment of the property. According to the learned counsel, such Order could not have been passed without first adjudicating the Company Petition. The learned counsel placed reliance on the case of “**Rachakonda Siva Kumar vs. Zetatek Engineering Systems Pvt. Ltd. & Ors.**” – Company Appeal (AT) 141/2017 which Judgement has been passed by the Bench of this National Company Law Appellate Tribunal on 19.05.2017, to argue that in that matter also when without going into the merits of case, Chairperson was appointed to hold meetings and Auditor was also appointed, the Order was set aside.

3. The learned counsel referred to the pleadings in the Company Petition and referring to the pleadings, the counsel submitted that there were various allegations made against the present Appellants – original Respondents making averments of oppression and mismanagement and

without settling the same, the Order which has been passed could not have been passed.

4. Thus, the learned counsel submitted that the present Interim Order cannot stand and deserves to be set aside.

5. Against this, the learned counsel for the Respondents 1 to 4 – original Petitioners submits that this matter really needs to be looked at from the aspect that the Company Petition basically is between two groups. Two brothers of the same family and their children are litigating the Company Petition. It is stated that in addition to the present Company Petition between the family, there are two other Company Petitions. One relates to Tirupati Roller Flour Mills Pvt. Ltd. having Company Petition No.60/2006 – TP 08/HDB/2016 and the third Company Petition relates to one Bhagyanagar Boards and Chemicals Pvt. Ltd. having Company Petition No.26/2005 - TP 06/HDB/2016. The counsel states that from these three Companies, only Tirupati Roller Flour Mills Pvt. Ltd. is functional Company and other two Companies which include the present Krishna Metals Industries Pvt. Ltd. are defunct Companies with only prime property as their asset. The counsel submitted that it being dispute between two branches of the same family, the present Respondents – original Petitioners had moved NCLT to find out early solutions as the Petitions were pending for long. The counsel stated that the present Impugned Order along with similar other Order on same date of 22<sup>nd</sup> February, 2018 was passed by the NCLT in the matter relating to Tirupati

Roller Flour Mills Pvt. Ltd. It is stated that this was done so as to balance equities between the two branches of the families and to do justice between them. The counsel states that in the other matter, the present Respondents – original Petitioners did not challenge the same in Appeal thinking that when the valuations will be got done in both the matters, things would settle down.

6. The learned counsel for Appellants submitted that the claims regarding two family branches being in dispute were not raised before NCLT and according to him, even Krishna Metals Industries is a running Company.

7. The counsel for Respondents relied on the case of **“M.S.D.C. Radharamanan versus M.S.D. Chandrasekara Raja and Another”** reported in (2008) 6 SCC 750 to support his averments that when the dispute is between two shareholders/Directors and acrimony results in deadlock even if oppression and mismanagement is not proved, direction to buy out was upheld.

8. We have gone through the matter and heard counsel for both sides. It would be appropriate to reproduce the Impugned Order which is not a long one. The Impugned Order reads as under:-

“ORDER

1. The Company Petition bearing CP No.38/2006 is filed by Mr. Vijay Kumar Goyal and others under section 397, 398, 402, 403, 406 and Schedule XI of

the Companies Act, 1956 by inter-alia seeking to supersede the Board of Directors of Krishna Metal Industries Private Limited (hereinafter referred to as “the Company”) to appoint a committee to take charge of the affairs of the Company; and to direct the committee appointed to bring the landed/immovable properties belonging to the company to **save (read – sale)** by public auction at the best possible price and to distribute the proceeds among the shareholders pro rata **are preparing of (read – after paying off)** any statutory and unsecured liabilities **onto (read – and to)** appoint a chartered accountant or such other competent person to conduct investigative audit in the office of the company and **was (read – pass)** such orders as necessary.

2. The Company is not at all having any business activity except some landed property stand in the name of the company, which is bone of the contention among the shareholders and it has to be resolved in the present Company Petition. In order to settle the issue, the then Company Law Board by an order dated 18.02.2009 has appointed M/s Harinath & Associates, Hyderabad to take inventory of the plant and machinery, stores, spares, tools and under the removed items available in the office and factory premises of the company and submit its report by 15.03.2009. So much time has lapsed since filing of the case and thus it is necessary to find the properties of Company and its value so as to decide the issue.
3. As stated supra, the only issue remains to be decided is as to how the property of the Company to be apportioned between the contending parties. By reading the pleadings of both the parties, there is no dispute with regard to the substantive shareholding of both the parties. There are two groups in the company petition namely Mr. Vijaykumar Goyal which is referred to as VKG Group with 34.53% and 65.47% with Nirmal Kumar Gupta, which is referred to as NKG Group in the total paid up capital of the Company. As the above shareholding pattern of both parties is not in dispute and the apportionment of property is ultimately only question to be decided, we feel that

it would be just and proper to ascertain the actual value of the properties held by the Company by competent property valuers to be appointed by Tribunal.

4. Heard Mr. Arvind Pandian and Mr. Parasaran, the Learned Senior Counsels, Mr. S. Mukundan and Mr. Vihari, Counsel for the Petitioners and Mr. R. Raghunandan Rao, Learned Senior Counsel and Mr. S. Chidambaram, the Learned Practicing Company Secretary for the respondents. Mr. S. Chidambaram has opposed the appointment of Valuer by inter-alia contending that in view of status quo order passed by City Civil Court in OS No.328 of 2005, the property of Company cannot be sold, and thus no purpose would be served by appointing Valuer. The Learned Senior Counsels for the Petitioners submit that since there is a hardly any dispute for shareholding of both parties, it is only property and its value that has to be ascertained and to be apportioned ultimately between them. Therefore, they have urged the Tribunal to appoint competent Valuers for the same.
5. As per Companies Act, 2013, the present case, which has been initiated under the provisions of erstwhile Companies Act, 1956, and transferred to this Tribunal, has to be decided as if it is filed under analogous provisions of new Companies Act, 2013. As per section 430 of Companies Act, 2013, no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter, which the Tribunal or Appellate Tribunal is empowered to. Admittedly, the subject issue falls within jurisdiction of this Tribunal to adjudicate. Hence, the contention of respondent in this regard is not correct.
6. In view of the above facts and circumstances of the case and in order to decide the issue in question, we have decided to appoint an Auditor to arrive at fair value per share of the Company, so that the value of the properties of the Company can be suitably apportioned between the contending parties since the shareholding of both the parties are broadly not in dispute.

7. Therefore, we are passing the following order:-

- a) Hereby appointed Mr. Koganti Prashant, Chartered Accountant (Mobile No.90000 88122) of M/s. Koganti Associates, to arrive at fair value per share of M/s Krishna Metal Industries Private Limited.
- b) We hereby directed both the parties to extend full cooperation and assistance to the Auditor and provide required details to enable him to complete the assignment. The Auditor also can take such technical assistance as required.
- c) The remuneration of the Auditor is fixed at Rs.75,000/- (Rupees Seventy Five Thousand Only) plus applicable taxes, which is to be borne by both the parties equally.
- d) The Auditor is directed to submit his report within a period of 2 (two) months from the date of receipt of copy of this Order.
- e) Post the matter on 17.05.2018.”

[Emphasis supplied]

9. The counter Affidavit of Respondents in para – 12 (Diary No.5657) has listed to the acts of oppression and mismanagement. The learned counsel for the Respondents stated that the acts enlisted at ‘b’ to ‘i’ in para – 12 are those acts of oppression and mismanagement which have been raised to in the original Company Petition. The said acts as stated by the



original Petitioners are as under:-

- “b. The Appellants have illegally sought to induct themselves as directors of the Company, and have initiated *mala fide* litigation against other group companies such as Tirupati Roller Flour Mills Pvt. Ltd.
- c. Preventing scrutiny of statutory records by Respondent No.1.
- d. Siphoning of funds of the company
- e. Surreptitious sale of machinery of the company
- f. Blatant removal of more machinery from the company during the pendency of the Petition.
- g. Denying the loans given by the Respondent group to the company.
- h. Misusing the powers of the board and filing several court cases against the Respondent group and companies controlled by Respondent group.
- i. Misguiding revenue authorities and showing incorrect title in the revenue records as if Nirmal Kumar Gupta is the owner of the land.
- j. Misguiding revenue authorities and not showing full extent of the land which belongs to the company in the revenue records.
- k. Taking loans from their associates at high rates of interest and depositing the same in Fixed Deposits in the bank at lower rate of interest and causing deliberate loss to the company.
- l. Misrepresenting the company before other judicial forums.”

10. The Final Relief prayed of the Respondents – original Petitioners

in the Company Petition which are as under:-

**“VII. FINAL RELIEF:**

- a) Supersede the Board of Directors of the Company and to appoint a Committee to take charge of the affairs of the Company
- b) Direct the Committee appointed to bring the landed/immovable properties belonging to the Company to sale by public auction at the best possible price and to distribute the proceeds among the shareholders pro rata after paying off any statutory and unsecured liabilities.
- c) To appoint a Chartered Accountant or such other competent person to conduct an investigative audit into the affairs of the Company and to pass Orders under Schedule XI of the Companies Act, 1956 surcharging such of those persons, officers who have caused loss to the Company.
- d) In the alternative provide for an exit mechanism for one Group to exit the Company.”

11. The learned counsel for the Appellants has rightly submitted that it would be necessary for NCLT to first adjudicate and decide prayer ‘a’ to consider other prayers. It is argued that without considering and deciding alleged acts of oppression and mismanagement if the same are proved or without holding that there is such a deadlock that in the interest of the Company, NCLT needs to give certain directions, Order like impugned Order could not have been passed. If we see the Impugned Order, it is apparent that the NCLT without considering the alleged acts of oppression and mismanagement and without giving findings on them, has gone ahead to declare that only issue remaining to be decided was the apportionment

of property. Proceeding from such stand, the NCLT went on to direct appointment of Auditor to arrive at fair value per share of the Company so that value of properties of the Company can be apportioned. There are no discussions and no foundation has been laid for giving such directions to appoint Auditor to value shares and also no cut-off date is stated or valuation should be as on which date has been fixed. We find that without deciding the Company Petition on its merits, simply by declaring that only issue is of apportionment of property (as if it was some partition suit), NCLT could not have passed the Impugned Order as it did, looking to the facts and pleadings.

12. The Impugned Order is apparently appearing to be mistake from the record. It could not have been passed without adjudicating the disputes between the parties and thus, we need to set aside the Impugned Order.

13. Looking to the submissions which have been made before us and as Counsel for both sides agree, the three matters between the parties need to be referred for mediation.

14. It would be in the interest of the parties and the Companies that they give a chance to themselves by taking up their matters before the Mediator. It would be appropriate if the NCLT refers the parties for mediation in the three Petitions which are stated to be pending before NCLT, Hyderabad.

15. We proceed to pass the following order:-

- A) The Appeal is allowed. The Impugned Order is quashed and set aside.
- B) The matter is sent back to NCLT, Hyderabad. We request the parties to cooperate with NCLT for early adjudication of the Company Petition on merits keeping in view Section 422 of the Companies Act.
- C) However, before that, we request the learned NCLT, Hyderabad to first refer the matters between the parties in the present CP 38/2006 (TP 7/HDB/2016) along with Company Petition 60/2006 – TP 08/HDB/2016 relating to Tirupati Roller Flour Mills Pvt. Ltd. and Company Petition 26/2005 (TP 06/HDB/2016) relating to Bhagyanagar Boards and Chemicals Pvt. Ltd. to mediation under Section 442 of the Companies Act, 2013 to Mediator or Mediation and Conciliation Panel, if available in terms of the Companies (Mediation and Conciliation) Rules, 2016. In case such Mediator or Panel is not available, the learned NCLT may refer the above disputes to Mediation Centre at the Hon'ble High Court of Judicature at

Hyderabad for the States of Telangana and Andhra Pradesh.

- D) In case the mediation fails, the learned NCLT should proceed to expeditiously dispose the above Company Petition on merits.
- E) No orders as to costs.

[Justice A.I.S. Cheema]  
Member (Judicial)

[Balvinder Singh]  
Member (Technical)

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