

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

**Company Appeal (AT) No. 158 of 2018**

**IN THE MATTER OF:**

**T.O. Abraham**

**...Appellant**

**Versus**

**St. Mary's Pvt. Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellant :**                   **Mr. Bhuvan Mishra, Mr. Jogy Scaria and Mr. Leegan S. Ban, Advocates**

**ORDER**

**15.05.2018**            Respondents filed an application under Sections 59, 241 and 242 of the Companies Act, 2013 registered as CP/9/2016 and pending before the National Company Law Tribunal, Chennai (hereinafter referred to as the 'Tribunal'). In the said petition an application being CA/57/2017 was filed under Section 130 of the Companies Act, 2013 for convening the AGM. It was alleged that the earlier accounts have not been prepared properly nor audited physically and there are instances of mis-management during the relevant period which causing doubt on the reliability of the financial statements till 2008.

2.     Learned Tribunal keeping into consideration of Section 130 of the Companies Act, 2013 and the statements made by the parties observed that there is nothing on record to suggest that the accounts of the company were prepared, audited physically and adopted. In that view of the matter, the

impugned order dated 6<sup>th</sup> March, 2018 was passed with the following observations :

- “9. *In totality of the circumstances, as have been brought to the notice of this Tribunal, there requires an Order for re-opening of the books of accounts for the purpose of re-casting the financial statements through validly appointed Auditors in respect of the 1<sup>st</sup> Applicant Company. However, before passing any Order, it is incumbent upon this Tribunal to issue notice to the RD, RoC, Income-Tax authority and to other regulators. Therefore, the Registry is directed to issue notice to the RD, RoC, Income-Tax Authority including the concerned “Assessing Officer”, and other regulators to whom the notice is required to be issued, with a direction to the Authorities concerned to make representation, if any, within 30 days from the date of receipt of this Order, failing which, it shall be presumed that they have no objection for re-opening of the accounts of the 1<sup>st</sup> Applicant Company for the period as mentioned above.*
10. *The Applicants/Respondents are also directed to issue private notice to the said Authorities*

*concerned along with the copies of CA/57/2017 and Memo date 14.09.2017 filed in CP/9/2016, and file the proof of service of notice along with an Affidavit in the Registry before the next date of hearing.”*

3. Learned counsel appearing on behalf of the appellant submitted that the observations made by the Tribunal casting doubt on the reliability of the financial statements of the appellant who was the Director and in-charge of the company. According to him, it is for the AGM which may decide the question of the reliability of the financial statements and the Tribunal ought not have given any finding on mere presumption.

4. Having heard the learned counsel for the appellant and on perusal of the record, we find that the main petition relates to allegation of ‘oppression and mismanagement’ and is pending consideration before the Tribunal, which had fixed 20<sup>th</sup> April, 2018 as the next date of hearing. It is not known and as to what order was passed on 20<sup>th</sup> April, 2018 and whether in the meantime the AGM has taken place or not. However, on perusal of impugned order, it is clear that the Tribunal for coming to the conclusion whether a direction should be issued under Section 130 of the Companies Act, 2013 or not noticed the submission made by the parties and may passing observations, which cannot be treated to be a finding of the Tribunal. For the said reason, we are not inclined to interfere with the impugned order as the AGM is required to decide the matter

uninfluenced by the impugned order dated 6<sup>th</sup> March, 2018 passed by the Tribunal.

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

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/gc