

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

**COMPANY APPEAL(AT) NO.260 OF 2019**

(ARISING OUT OF IMPUGNED ORDER DATED 09.07.2019 PASSED BY  
NATIONAL COMPANY LAW TRIBUNAL, MUMBAI IN I.A. NO.216/2019)

**IN THE MATTER OF:**

1. VRG Healthcare Pvt Ltd  
Plot No.278, Central Bazar Road,  
Ramdaspeth,  
Nagpur 440011
  
2. Dr.Sameer Narayan Paltewar,  
502, Le Prestige  
Besides Bisne Hospital,  
Ramdaspeth,  
Nagpur 440011
  
3. Sonali Paltewar,  
502, Le Prestige,  
Besides Bisne Hospital,  
Ramdaspeth,  
Nagpur 440011

Appellantss

Vs

Ganesh Ramchandra Chakkarwar,  
Chakkarwar Court,  
Sitabuldi,Soni Lane  
Nagpur 440012

Respondent

**For Appellant:-** Mr J.K.Gilda, Mr. Rishabh Sancheti, Ms Padma Priya and Mr. Anchit Bhandari, Advocates.

**For Respondents:** - Mr. P.K. Mittal, Mr. Gagan Sanghi, Ms Tanya Goel, Advocates.

**JUDGEMENT**  
**(11<sup>th</sup> December, 2019)**

**JUSTICE JARAT KUMAR JAIN, MEMBER (JUDICIAL)**

The appellants have preferred this appeal against the interim order dated 09.07.2019 passed by National Company Law Tribunal, Mumbai in the petition under Section 241 and 242 of the Companies Act, 2013. The

Respondent, (petitioner before NCLT), filed Company Petition before NCLT, Mumbai on 19.09.2018 making grievance of oppression and mismanagement against the appellants (Respondent before NCLT). During pendency of this petition NCLT on 26.9.2018 at 4.30 PM passed the Ad-Interim Order. The operative portion is as under:-

*“We have considered the contentions, statements made by the petitioner and we are convinced that there is a prima facie case in favour of the petitioner and balance of convenience is also in favour of the petitioner and if interim orders are not passed, the petitioner will suffer irreparable loss which cannot be compensated in terms of money for the reason that in the event the company which runs the hospital suffers bad name, being the director and substantial shareholder of the company, the petitioner has to bear the negative image apart from losing valuable investments made in to the company. Therefore, in ‘A’ this background of the matter, we hereby direct the respondent not to alter the shareholding pattern of the company and also not to give effect to resolution, if any, removing the petitioner as director of the company until further orders. In the event, the respondent had uploaded the resolution removing the petitioner as a director of the company, respondents are directed to immediately remove/ delete the said resolution from the MCA ‘B’ portal, the DIR-12 must be cancelled and take appropriate steps to restore the name of the petitioner as a director of the company. The respondents are directed to file their counter within four weeks by duly serving the copies to the petitioner and get ready to argue the matter on 15<sup>th</sup> November, 2018 Hence this order”*

2. Aggrieved by the above order the appellants have filed appeal Company Appeal (AT) No.385/2018 before this Appellate Tribunal. This Tribunal vide order dated 14.02.2019 modified the order. Operative portion is as under:-

*“12. We are not setting aside the Impugned Order as a whole as, going through the rival cases, it appears to us that both sides would require explaining to be done as interest of Company as a whole is to be protected. We pass the following Orders:-*

**ORDER**

*A) For the above reasons, we set aside the portions of Impugned Order (highlighted and marked 'B' in para 5 – supra) where it is directed that if the (original) Respondents have uploaded the Resolution, they should remove/delete the same from MCA portal and that DIR 12 must be cancelled.*

*B) As regards the other directions (highlighted and marked 'A' in para 5 – supra) where NCLT has directed the (original) Respondents not to alter the shareholding pattern of the Company and also not to give effect to the Resolution, if any, removing the original Petitioner as Director of the Company, we set aside the words suffixed "until further orders". We direct that rest of this direction of NCLT (highlighted and marked 'A' in para 5 – supra) shall be treated as Ad-Interim Orders which shall remain in force till Appellants – original Respondents are heard giving opportunity as to why the Ad-Interim Order should not be confirmed pending decision of the Company Petition.*

*14. The Impugned Order is modified accordingly and the Order passed by NCLT shall be treated as Ad-Interim Order. The parties before us are directed to appear before NCLT on 05.03.2019. The Appellants shall file Reply to the Company Petition and Reply to the Ad-Interim Relief claimed by the Respondent – Petitioner to be filed within time NCLT may specify. NCLT is directed to hear both the parties and decide regarding the Interim Relief expeditiously. If any party protracts, NCLT may take any further suitable decisions and pass appropriate orders."*

3. Against this order the appellants have filed Civil Appeal No.2366/2019 before the Hon'ble Supreme Court. The appeal was disposed off on 03.05.2019 as under:-

*"Heard the learned Senior counsel appearing for the appellants and the learned Senior counsel appearing for the respondent.*

*It is brought to the notice of this court by both the learned senior counsel appearing for the parties that the matter is listed before National Company Law Tribunal on Monday, the 6<sup>th</sup> May, 2019 and in view of that, we are not inclined to pass any order except requesting the said Tribunal to pass appropriate order on the Company Petition in accordance with law, without being influenced by any observation made by the National Company Law Tribunal and National Company Law Appellate Tribunal.*

*The Appeal is disposed of in the afore-stated terms."*

Thereafter NCLT passed the impugned order.

4. Learned counsel for the appellants submitted that NCLT on 26.9.2018 without first appreciating the issue of maintainability of the petition passed an ad interim order restraining the appellant company from giving effect to the Resolution dated 21.9.2018 for removal of Respondent from the directorship of the appellant company. Learned counsel for the appellant further submits that NCLT erred in declining the prayer of vacation of ad interim order and allowed the application of respondent and directed for Forensic Audit report. It is further submitted that the impugned order is in clear violation of the Supreme Court's order dated 03.05.2019.

5. Learned counsel for the Respondents submits that so far as the forensic audit report by independent CA is concerned this decision was taken in a Board Meeting dated 21.6.2018 in which the appellants were present. In this regard the Respondent has filed the application IA No.216/2019 and the appellants in their reply to the application have not disputed this prayer. Hence the NCLT by the impugned order has directed for forensic audit report. Thus this is a consent order and as per Section 421(2) of the Companies Act, 2013 against the consent order no appeal lie to the Appellate Tribunal. Hence, the appeal is not maintainable. It is further submitted that the impugned order is a well reasoned order. Forensic audit report would help to take appropriate decision whether the allegations of oppression and mismanagement are correct or not. If interim order is vacated then the respondent will be removed from the director of the company. Therefore, the appeal is liable to be dismissed.

6. Having heard learned counsel for the parties we have considered the submissions.

7. The bone of contention of the appellants counsel is that Hon'ble Supreme Court has not interfered in the interim order passed in favour of respondent because the company petition was listed before NCLT for final hearing and now NCLT instead of deciding company petition on merit passed the impugned order which is against the spirit of Hon'ble Supreme Court's order. Specially when ad interim order is in favour of Respondent.

8. In this light we have examined the impugned order.

9. Undisputedly the Respondent has moved the application (IA No.216/2019) after the passing of the ad interim order dated 26.09.2018. In reply of the application appellants have not opposed the forensic audit report by independent CA. NCLT in the impugned order held that *"At this point of time it would be appropriate for this Bench to finally adjudicate the matter once for all, after obtaining the forensic audit report by an independent Chartered Accountant. Only an independent Chartered Accountant not connected with the affairs of the company, after going through the books of accounts can submit an impartial report as regards the financial irregularities, if any, on the part of the directors of the company whether it is the Petitioners or the Respondents"*. It is not argued before us by the Learned counsel for the appellants that forensic audit report will not be helpful to adjudicate the allegations of oppression and mismanagement.

10. Whether the NCLT has violated the order of Hon'ble Supreme Court.

Hon'ble Supreme Court in order dated 03.05.2019 directed the NCLT  
*“to pass appropriate order on the Company Petition in accordance with law,  
without being influenced by any observation made by the National Company  
Law Tribunal and National Company Law Appellate Tribunal.”*

11. With the above it is apparent that the impugned order is not in violation  
of Hon'ble Supreme Court order.

12. Whether NCLT is unnecessary prolonging the matter.

NCLT in the impugned order observed that *“we are also conscious that  
the matter be heard at the earliest point of time and final orders are required to  
be passed on priority basis”*

13. We, with the above discussion, find no ground to interfere in the  
impugned order. Hence the appeal is dismissed. No order as to costs.

**(Justice Jarat Kumar Jain)**  
**Member (Judicial)**

**(Mr. Balvinder Singh)**  
**Member (Technical)**

**(Dr. Ashok Kumar Mishra)**  
**Member (Technical)**

**New Delhi**

**Bm**