

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 159 of 2018

IN THE MATTER OF:

Subba Rao Pavuluri

Plot No. 1355C, Road No.45,
Jubilee hills, Hyderabad-500033,
Telangana, India

...Appellant

Vs

1. Gagan Aerospace Ltd.

Plot no. 39, Hi-Tech City, Phase-II
Madhapur, Hyderabad
Telangana-500081
Purportedly shifted to Plot No. 31, Part-B,
3rd Floor, TIE, Balanagar, Hyderabad-500037

....Respondents

2.Rachakonda Siva Kumar

H.No.8-2-334/1/A,205,
Aditya Garden 1 A, Road No. 7, Banjara Hills,
Hyderabad-500034, Telangana, India.
Also at H.no.8-2-293/1/G/A 202, Aditya Elegance,
Road No. 34, Jubilee Hills, Hyderabad-500033

3. Rachakonda Ramadevi

H.No.8-2-334/1/A,205,
Aditya Garden 1 A, Road No. 7, Banjara Hills,
Hyderabad-500034, Telangana, India.
Also at H.no.8-2-293/1/G/A 202, Aditya Elegance,
Road No. 34, Jubilee Hills, Hyderabad-500033

4. Koteswar Rao, Partner

238/A, Road No.12, MLA Colony,
Banjara Hills, Hyderabad
Telangana 500034

Present:

For Appellants: Mr. Y. Suryanarayana, Advocate

**For Respondents: Mr. Abinav Rao, Advocate.
Mr. S. Chidambaram, PCS**

Oral Judgement

A.I.S. CHEEMA, J. :

01.08.2018: This appeal has been filed by Original Petitioner who filed Company Application under Section of 97 of The Companies Act, 2013 (Act-in-short) C.A. No. 73/97/HDB/2016 which is pending before the NCLT, Hyderabad Bench. The CA interalia sought directions to auditor-Respondent No. 4 to furnish Auditor's Report and that Respondent Nos. 2 and 3 should cooperate in holding of A.G.M, etc. The Appeal arises out of the order passed in C. A. No. 51, 52 and 53 of 2018 which were filed by the Respondents. This Appeal is taking exception to the Impugned Order mainly on the count that the Respondents, even if they are entitled to inspection of the statements of accounts, they are not entitled to taking Tally Back Up as has been directed by NCLT.

2. The impugned order reads as under:-

"Order

1. Heard Mr. S. Chidambaram, Learned PCS, representing Applicants CA/51, 52 & 53. Ms. C. Shilpa, representing Mr. Y. Suryanarayana, Learned Counsel for the Petitioner/Respondent.

2. Mr. Chidambaram, Learned PCS submit that he filed 3 CA's long time back and there is an urgency in their cases to pass appropriate orders. He sought an Interim Direction by directing Respondent/Petitioner to furnish all statements for three financial years i.e. 2013-14, 2014-15, 2015-16 and the Tally Back up Electronic record.

3. Ms. C. Shilpa, Learned Counsel for the Petitioner requested time to file reply in all 3 CA's.

4. After Considering all the pleadings of both the parties the Respondent/ Petitioner directed to furnish all statements for three financial years i.e. 2013-14, 2014-15, 2015-16 and also provide Tally Back Up to the Applicants within 3 days from the date of

receipt of copy of this order. The Respondent permitted to file reply in all the 3 CA's well before the next date of hearing.

5. *Post the case on 23.03.2018. ”*

The learned counsel for the Appellant has argued that under Section 128 of the Companies Act, 2013 books of accounts are to be kept in the registered office of the company or at such other place as the Board may decide and there is only a right of inspection to the Directors but there is no right to take copies on pen drive. According to the counsel, the Companies Act in various other provisions (which the learned counsel is referring) provides wherever copies are to be given by specifically making provisions. Thus, the submission is that right to take Tally Back Up by the Respondents is not there. It has also been argued that if the prayer in CA 52/2018 is seen, it did not specifically ask for inspection of accounts for the financial years 2013-14 to 2015-16. Thus according to him the application did not have any specific prayer but however the NCLT in the Impugned Order (as recorded above) directed furnishing of statements for the concerned financial years. The Counsel further submitted that while passing the impugned order the Appellant was not given opportunity and even before the reply was filed the Impugned Order was passed.

3. Against this, the learned counsel for the Respondents has pointed out that earlier the Learned NCLT in CA. 73/97/HDB/2016 passed orders dated 27.02.2017 which was an application filed by the Appellant himself and in that application, after hearing the parties the following orders were passed by NCLT:-

“6. We have considered all the contentions raised by all the parties, and we are of the considered view that the present

application can be disposed of without going into the merits of the case. Hence, we dispose of CA No. 73/97/HDB/2016 with the following directions::

- i. We hereby appoint Sri 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 Chair Person to conduct Board Meetings and Annual General Meetings for the year 2014-15 and 2015-16 of Gagan Aerospace Limited;*
- ii. We hereby appoint Seshachalam & Co., Chartered Accountants, "Wall Street Plaza", 1-11-256, ICICI Building, St. No.1, Begumpet, Hyderabad-16, (Contact Person: Mr. K. Goutham) as Auditor in the present case and his fee will be decided in consultation with the Chairperson.*
- iii. The learned Chair Person is directed to fix dates and venues suitably, 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, 3 & 4 are directed to extend full co-operation to the Learned Chairperson and Auditor to discharge their duties;*
- v. The learned Chair person 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. 50000/- to Annual 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 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 on records obtained by the auditor and also 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 Chairman 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 Chair person and Auditor should make all efforts to settle the issue amicably;*

xiii. The Respondent No.4 is 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.

7. With the above directions, CA No. 73/97/HDB/2016 is disposed of by granting liberty to file fresh application.

It is submitted by the learned counsel for Respondents that in view of this order, Chairman has been appointed but Auditor who was also appointed resigned a few months back and both the parties have applied for appointment of another Auditor. The counsel for Respondents States that as per this order it is the Chairman appointed by the NCLT who is in charge of the books of accounts as per direction “v” and was directed to make the same available to these Respondents and thus the Appellant who is holding the accounts on behalf of the Chairman has no right to resist.

4. It is argued that prayers of C.A. 52/18 read as under:-

“1. To publish Dr. Subba Rao (Respondent No.2 herein) for willful contempt (obstruction of justice) of order dated 27.02.2017.

2. To direct Dr. Subba Rao (Respondent No. 2 herein) to handover all the records of the company under the possession and control of Dr. Subba Rao(Respondent No. 2 herein) to the chairman/auditor appointed by this Hon’ble Tribunal.

3. Direct the respondent No.1 company to permit the applicant to inspect the records and to obtain copies wherever required both physically and electronically.

4. Any other order as the Tribunal may deem fit and proper under the circumstances of the case and in the interest of justice.”

The learned counsel submits that in the background of above order of 27.02.2017, the CA 52/18 with such prayers was filed and present impugned order came to be passed when in spite of the pendency of CA. 51, 52 and 53 the Appellant had not filed reply and was protracting.

5. On the last date of 04.07.2018 we had called upon the parties to address this Tribunal on limited question of custody, inspection and manner in which inspection under law can be given and the right of directors to access such documents, in hard copy and digital format.

6. While hearing the parties, we have come across facts noted as above. There is this order dated 27.02.2017, which counsel for both sides accept has not been challenged in Appeal by any party. Counsel for both sides accept that the Appellant must be said to be holding the books of accounts on behalf of the Chairman. Looking to the facts of this matter, and reading the order dated 27.02.2017 with CA 52/18 which was filed and its prayers with the present impugned order, the present impugned order must be said to be in continuation of the earlier order dated 27.02.2017. When the earlier order has not been challenged, we do not find it appropriate to enter into the question which was raised in this appeal on the last date. The impugned order, in any case is an interim direction and CA 51, 52 and 53 of 2018 are yet to be finally decided by learned NCLT.

7. For reasons discussed above, we do not find any reason to interfere with the Impugned order. The appeal is disposed of accordingly with no orders as to costs.

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

(Balvinder Singh)
Member (Technical)

Sh/nn