

COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 341 of 2018

[Arising out of Order dated 27th July, 2018 passed by the National Company Law Tribunal, Division Bench, Chennai in C.P. 38(241/242)/2017]

IN THE MATTER OF:

1. Kozhikode Coconut Farmers Producer Company Ltd.,

Having its registered office at
C.P. 20/281, Samatha, P.O.,
Kannankara, Chelannur,
Kozhikode – 673616.

2. Soumeendran,

S/o Kelappan, 21, Thiyyakandi,
Nanmanda,
Kozhikode – 673582.

3. Padiharayil Pradeep Kumar,

S/o Kandan, Samatha,
Kannankara, Chelannur,
Kozhikode – 673613.

4. Chandran Theruvalath,

S/o Velayudhan,
537(3/389), Thiruvalath 5,
Kalarikkandi, Kunnamangalam Panchayath,
Kozhikode – 673571.

5. Krishnan Master

S/o Imbichi Nair,
10, Kalalayam,
9, Thalakkulathoor,
Kozhikode – 673317.

6. Parameswaran,

S/o Narayanan Nair,
473, Edavana 12, Olavanna,
Kozhikode – 673019.

7. Kunhimammed,

S/o Ammadkutty,
524, Chudalakkal, Chathamangalam,
Kozhikode – 673601.

...Appellants

Vs

1. Moolath Mannil Sreenivasan,

S/o. Raghavan Nair,
319, Kurumbechalil (H),
Kuruvattoor,
Kozhikode – 673 611.

2. Muhammed P,

S/o. Ussain Haji,
36, Pilathottathil (H),
Kozhikode – 673 585.

3. P. P. Purushothaman,

S/o. Kanara Kutty,
Pallavi (H) Cheekilde PO,
Kozhikode – 673 315.

....Respondents

Present:

For Appellants: Dr. K. S. Ravichandran, PCS.

For Respondents: Ms. Sreepriya Kalarikkal, PCS.

J U D G M E N T

BANSI LAL BHAT, J.

Appellants, who figure as Respondents in C.P. 38(241/242)/2017 pending consideration before the National Company Law Tribunal, Division Bench Chennai (hereinafter referred to as the 'Tribunal') filed I.A. 209/2018 raising objection to the maintainability of the Company Petition as a preliminary issue which came to be decided by the Tribunal in terms of

impugned order dated 27th July, 2018 by virtue whereof the Company Petition filed by the Respondents herein (Petitioners in the Company Petition) was held to be maintainable before the Tribunal. As a sequel to such finding I.A. 209/2018 filed by the Respondents therein came to be dismissed. Aggrieved thereof the Appellants have preferred the instant appeal primarily on the ground that the Appellant No. 1, being a Producer Company is governed by provisions of Part IX-A of the Companies Act, 1956 (hereinafter referred to as the 'Act') only and it being a Body Corporate registered under the Act and not a Company, provisions of Section 241 and 242 of Companies Act, 2013 relating to oppression and mismanagement do not apply to the Appellant Company.

2. The issue raised in this appeal is of vital importance as Part IX-A of the Act governing Producer Companies incorporated under the Act as Corporate Bodies has been saved from repeal by the provisions of Section 465 of Companies Act, 2013 by specifically providing that the Producer Companies shall continue to be governed by the provisions of Part IX-A of the Act as if such Act had not been repealed until a special act is enacted for Producer Companies. Before proceeding to deal with the issue it would be appropriate to refer to the factual matrix of the matter in dispute being subject matter of the Company Petition to appreciate whether such dispute is or is not a management dispute within the ambit of grievance redressal mechanism provided under Chapter IX-A of the Act.

3. The case setup by Respondents before the Tribunal for seeking an order for an investigation under Section 213 of the Companies Act, 2013 rests upon the allegations of fraud, misfeasance and misconduct against management towards the Company and its affairs with further directions to recover the misappropriated funds of the Company which comprised of the hard earned money of the innocent agriculturist members. From record of the Tribunal it emerges that the Appellant No.1 was registered as a Producer Company under Part IX-A of the Act. In the Company Petition allegations were made regarding misappropriation, oppression, mismanagement and fabrication of record. The Tribunal was of the view that the allegations constituted mixed questions of law and facts and therefore cannot be subject matter in a proceeding under the Arbitration and Conciliation Act, 1996. It was further of the view that the matter alleged in the Company Petition do not fall within the ambit of 'dispute' contemplated under Section 581-ZO of the Act. Holding that the Company Petition was maintainable before the Tribunal, I.A. 209/2018 was rejected in terms of the impugned order assailed in the instant appeal.

4. We have gone through the record and given a patient hearing to the Authorized Representatives of the parties, who, having regard for the piquant situation arising out of continued application of Part IX-A of the repealed Companies Act of 1956, were granted enough opportunity to make elaborate submissions. Before noticing their respective submissions, we would like to make a few observations about the concept of Producer

Companies as a distinct entity and the ambit and scope of Part IX-A of the Act dealing with the same.

5. A glance at the Act brings it to fore that under Section 2(10) of the Act “Company” means a company as defined in Section 3. “Company”, under Section 3 (i) means a company formed and registered under the Act or an existing company formed and registered under any of the previous company laws. Companies are further split into two species viz. ‘Private Company’ and ‘Public Company’. The Act, in its original form, did not provide for incorporation of a ‘Producer Company’ as a distinct specie. Part IX-A of the Act comprising of Sections 581A to 581ZT dealing with ‘Producer Companies’ as a distinct entity was introduced by Act I of 2003 w.e.f. 6th February, 2003. ‘Producer Company’ means a body corporate having objects or activities specified in Section 581B and registered as ‘Producer Company’ under the Act. A cursory look at the provisions embodied in Part IX- A of the Act reveals that Part IX-A was designed to exclusively deal with the ‘Producer Companies’ having its object as production, harvesting, procurement and all incidental activities including handling and selling of the primary produce of the members as also the import of goods and services for their benefit besides the objects specified in Section 581B. Section 581C deals with formation and registration of ‘Producer Company’. Provisions in this Chapter deal with the Memorandum of Producer Company, Articles of Association, enabling of Interstate Cooperative Societies to become Producer Companies, management of Producer

Companies, share capital, membership rights, finance, accounts, loans, investments, penalties, amalgamation, merger, division to form new Producer Companies as also resolution of disputes. Wading through these provisions renders it manifestly clear that Chapter IX-A is a complete code as regards 'Producer Companies' and lays down self-contained procedure to deal with all relevant aspects including resolution of disputes relating to the formation, management or business of a 'Producer Company' arising inter-se the members, former and existing, between a member and the Producer Company, Board of Directors, office bearers, etc. which were provided to be settled through conciliation or by arbitration under the 'Arbitration and Conciliation Act, 1996'. From the scheme of legislation, as laid bare by the provisions incorporated in Chapter IX-A of the Act, there is no room for doubt that 'Producer Companies' were treated as a class apart and provisions were made to cover every conceivable situation commencing from the formation of the 'Producer Company' till its dissolution. This conclusion emerging from a holistic view of the aforesaid provisions and in essence not refuted is further reinforced by the relevant portion of the provisions of Section 465 of the Companies Act, 2013 which provides as under:-

“465. Repeal of certain enactments and savings

(1) The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed:

Provided that the provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:”

This repealing provision provides in unambiguous terms that while the Act stands repealed, provisions of Part IX-A shall be applicable *mutatis mutandis* to a ‘Producer Company’ as if the Act had not been repealed. It also provides for the continued life of Part IX-A by specifically laying down that Part IX-A shall continue to govern ‘Producer Companies’ until a special Act is enacted for ‘Producer Companies’. Thus, it is indisputable that ‘Producer Companies’ having been treated as a class apart were not intended to be governed by the Companies Act, 2013 and provisions of Part IX-A of the Act survived despite repealing of the Act. Admittedly, Parliament has not enacted a special Act for ‘Producer Companies’ till date and the provisions of the Part IX-A of the Act continue to occupy the field qua ‘Producer Companies’. Contention of Respondents that the Appellant Company comes within the class of ‘Private Company’ and therefore should comply with the provisions of Companies Act, 2013 governing the ‘Private Companies’, apart from the provisions of Part IX-A of the Act, is fundamentally flawed and cannot be accepted. Same holds good as regards the contention put forth by Respondents in regard to formation and registration of a ‘Producer Company’, which is specifically dealt with under Part IX-A of the Act leaving

no scope for Companies Act, 2013 to regulate the affairs of 'Producer Companies' which have specifically been not included within the ambit of Companies Act, 2013.

The proviso clearly provides that the provisions of Part IX A of the Companies Act, 1956 shall be applicable *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies. Respondents made an unsuccessful attempt to persuade us to accept their plea that the general provisions of the Companies Act, 2013 would apply to the 'Producer Companies' as well. This plea ostensibly rests upon the expression '*mutatis mutandis*' used in Section 465 of the Companies Act, 2013. They relied upon the following observations of the Hon'ble Apex Court in '*Ashok Service Centre & Ors. Vs. State of Orissa*', reported in AIR 1983 SC 394 (para 17):-

"17. Extension of an earlier Act mutatis mutandis to a later Act brings in the idea of adaptation but so far only as it is necessary for the purpose, making a change without altering the essential nature of the thing changed, subject of course to express provisions made in the later Act."

The dictum of law propounded by the Hon'ble Apex Court is loud and clear. Adaptation is required where provisions of the earlier Act are extended to a later Act as the very extension of earlier Act *mutatis mutandis* to a later

Act would necessarily involve necessary changes in points of detail. However, this would not permit alteration of the essential nature of the changes effected and would be subject to express provisions of the later Act. In the instant case, Companies Act, 2013 (later Act), expressly provides for keeping intact provisions of Part IX-A of the Act (earlier Act) saving it from repeal and further providing for its retention on the Statute Book until a new legislation is enacted in regard to 'Producer Companies'. Admittedly, Companies Act, 2013 does not make provisions for formation of Producer Company, its registration, management, merger, amalgamation, etc. which continue to be governed by Part IX-A of the Act. Thus, the question of adaptation in the context of *mutatis mutandis* application of the provisions of the Act in the later Act does not at all arise. The judgment relied upon operates in a different sphere and does not get attracted in the facts and circumstances of the instant case. We find no difficulty in holding that Producer Companies continue to be governed in all respects by Part IX-A of the Act to the entire exclusion of Companies Act, 2013 and this arrangement is to continue until Parliament enacts law to consolidate, amend and modify law relating to Producer Companies.

6. Now coming to the nature of relief claimed in the context of allegations in the Company Petition be it seen that matters of oppression and mismanagement cannot be divorced from matters relating to management and affairs of the company. If an issue relating to mismanagement or running the business of the company prejudicial to the interests of Company

or its members or shareholders arises, same must necessarily fall across the ambit of a dispute contemplated in regard to management of the company. Some act of omission or commission attributable to the management which jeopardises the legitimate interests of the company or its members/ shareholders necessarily involves breach of statutory obligations or violation of Articles of Association which relate to the management, business or affairs of the company. Every act or omission entailing consequences of oppression or mismanagement is directly and proximately connected with the business and affairs of the company. In other words it can be safely stated that there cannot be a case of operation and mismanagement without being connected with the affairs of the Company. Everything done by or in the name of the Company, whether in adherence to or in breach of the statutory or contractual obligations would necessarily be connected with the management and business of the company. Viewed thus, allegations of oppression and mismanagement in the Company Petition seeking certain reliefs as noticed elsewhere fall within the ambit of a dispute relating to management or business of the company. Such dispute being a management dispute is squarely covered by the dispute contemplated under Section 581ZO of the Act, which reads as under:-

“581ZO. DISPUTES

(1) Where any dispute relating to the formation, management or business of a Producer Company arises –

- (a) *amongst Members, former Members or persons claiming to be Members or nominees of deceased Members ; or*
- (b) *between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member and the Producer Company, its Board of directors, office-bearers, or liquidator, past or present ; or*
- (c) *between the Producer Company or its Board, and any director, office bearer or any former director, or the nominee, heir or legal representative of any deceased director of the Producer Company, such dispute shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996 (26 of 1996) as if the parties to the dispute have consented in writing for determination of such disputes by conciliation or by arbitration and the provisions of the said Act shall apply accordingly.*

Explanation. - For the purposes of this section, a dispute shall include –

- (a) *a claim for any debt or other amount due ;*

(b) a claim by surety against the principal debtor, where the Producer Company has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not ;

(c) a claim by Producer Company against a Member for failure to supply produce as required of him ;

(d) a claim by a Member against the Producer Company for not taking goods supplied by him.

(2) If any question arises whether the dispute relates to formation, management or business of the Producer Company, the question shall be referred to the arbitrator, whose decision thereon shall be final.”

A bare perusal of the aforesaid provision would make it clear that the definition of dispute contemplated under this Section is inclusive in nature and does not exclude disputes not specifically enumerated in the explanation. The types of disputes specified in various clauses of the definition undoubtedly fall within the purview of dispute contemplated under the Section but such disputes are not the only disputes dealt with under the aforesaid provisions. Clauses in the explanation extend the scope of dispute and not restrict it. Creative interpretation has to be adopted to

render the provision serve the purpose for which it was enacted. It is not disputed that a 'Producer Company' being treated as a class apart for the benefit of producer community, special mechanism for redressal of grievances and resolution of disputes has been devised. Once it is held that mismanagement of the Company bears direct and proximate nexus with management of the Company and an activity involving mismanagement may be prejudicial to the interests of the Company or a member thereof, it would be absurd to hold that dispute contemplated under the aforesaid provision would exclude disputes regarding and relating to management out of the scope and ambit of a 'Dispute' under this section notwithstanding the fact that such dispute does not fall within the 'inclusive' provision embodied in the Explanation. Holding to the contrary would be doing violence to the statute and the object of legislation.

There is yet another aspect which cannot be overlooked. Sub-section 2 specifically provides that if any question arises whether the dispute relates to formation, management or business of the Producer Company, the question shall be referred to the Arbitrator, whose decision thereon shall be final. If an issue is raised as regards the nature of dispute and a decision thereon is essential to determine whether such dispute inter-alia relates to 'management', reference is to be made to the Arbitrator and the decision taken by Arbitrator thereon is final. It is manifest that question relating to the dispute being a management dispute is necessarily referable to the Arbitrator, whose decision is regarded as final. This clearly ousts the

jurisdiction of other authorities, be it the Tribunal or a Civil Court, to decide whether the dispute raised is in regard to management of the company. Therefore, we are of the considered opinion that apart from the acts resulting in mismanagement and oppression being essentially integral and proximate to management, jurisdiction to decide the question relating to the dispute being with regard to management falls within the domain of Arbitrator with finality being attached to his decision.

Viewed in the aforesaid background, we are of the firm view that provisions of Sections 241-242 of the Companies Act, 2013 cannot be invoked for settlement of disputes regarding oppression and mismanagement of a 'Producer Company'. Such disputes would continue to be resolved through conciliation or arbitration. The Tribunal appears to have narrowed down the definition of 'dispute' for purpose of Section 581ZO by misinterpreting the explanation which only seeks to include certain types of disputes within the ambit of 'dispute' as defined in the aforesaid provision. The explanation cannot be read in a manner so as to restrict the meaning of 'dispute' as contemplated under the Section in the context of objects of the Producer Company and its being treated as a class apart. Viewed in this context and also taking notice of the fact that the Tribunal has proceeded to return a finding that the dispute alleged in the Company Petition does not fall under the explanation of 'dispute' thereby usurping the jurisdiction vested in the 'Arbitrator' under Section 581ZO (2) of the Act, the impugned order cannot be sustained and is liable to be set aside.

7. For the foregoing reasons, we find it difficult to support the impugned order which apart from being erroneous suffers from the vice of usurping jurisdiction vested in Arbitrator, whose decision in regard to the question whether the dispute relates to formation, management or business of the Producer Company is final. The impugned order suffers from legal infirmity and is unsustainable. We accordingly, allow the appeal and set aside the impugned order, in consequence whereof the Company Petition No. 38/2017 is held to be not maintainable and on that count shall stand dismissed. In the circumstances of the case there shall be no order as to costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

NEW DELHI

1st August, 2019

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