

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

**Company Appeal (AT) No.410 of 2017**

[Arising out of Order dated 23.10.2017 passed by National Company Law Tribunal, Division Bench, Chennai CA 1/2013 with IA-170/2017 in T.C.P. No.55 of 2016 (CP No.75 of 2010)]

**IN THE MATTER OF:**

Nair Service Society Karayogam, (NSS Karayogam)  
Kodal Nadakkave

...Appellant  
(Original Applicant)

**Versus**

1. V.C. Velayudhan Nair  
Churandath House  
Panthiranakavu Post  
Calicut – 673019

...Respondent No.1  
(Original Petitioner)

2. M/s. Mannam Centenary Textiles Limited  
OP 7/447, Olavanna,  
Panthiranakavu Post,  
Calicut – 673019

...Respondent No.2  
(Original Respondent No.1 - Company)

3. Prabhakaran Nair Cheruvanchery  
S/o Kuttykrishnan Nair Valaveetilchirundoth  
Kousthubham, Post – Pantheerankave,  
Kodalnadakave, Kozhikode – 673019

...Respondent No.3  
(Original Respondent No.2)

4. Gopinath Kannan Nair,  
S/o Kannan Nair,  
11/11, Aiswarya, Olavanna,  
Kozhikode – 673019

...Respondent No.4  
(Original Respondent No.3)

5. Swaminathan Nair Perooli,  
S/o Ravuni Nair,  
11/388, Veroli Abhilash,  
Olavanna, Kozhikode – 673019

...Respondent No.5  
(Original Respondent No.4)

6. Madhavan Kutty Nair Purangal,  
S/o Narayanan Nair Purangal,  
12/61, Edakkoth, Olavanna,  
Kozhikode – 673019

...Respondent No.6  
(Original Respondent No.5)

7. The Registrar of Companies – Kerala  
Having office at Thrikkara, Cochin

...Respondent No.7  
(Original Respondent No.6)

**Present: Shri Delep Goswami and Shri Anirrud Goswami, Advocates for the Appellant**

**Shri Ayush Choudhary, Advocate for Respondent Nos.1 and 2**

### **J U D G E M E N T**

**A.I.S. Cheema, J. :**

1. This Appeal arises out of the Impugned Order by which the National Company Law Tribunal, Division Bench, Chennai ('NCLT', in short) sat over the Order of this Appellate Tribunal which had set aside the earlier Order of the NCLT rejecting impleadment of the Appellant and had been directed to hear the parties on merits. By the Impugned Order, NCLT analysed and discarded the additional document which was pointed out to this Tribunal and was accepted in the earlier Appeal and again rejected the claim of the Appellant seeking right of hearing.

1.1 We have heard Counsel for both sides.

2. The Appellant - Nair Service Society Karayogam is a registered society under the Societies Registration Act, 1860. The Appellant filed CA 1/2013 (Diary No.6149 – Page – 4) for impleadment as necessary and proper party in the Company Petition 75/2010 (Diary No.6355) claiming to be the sponsor/promoter and majority shareholder of the original Respondent No.1 Company - M/s. Mannam Centenary Textiles Limited. The CP 75/2010 was filed by present Respondent No.1 - V.C. Velayudhan Nair (original Petitioner) (hereafter referred as 'Petitioner') against the original Respondent No.1 Company and the present Respondent No.3 - Prabhakaran Nair Cheruvanchery (hereafter referred as 'original Respondent No.2') and the other Respondents who have been arrayed in the Appeal as other Respondents 3 to 6. (Unless mentioned otherwise, we will refer to the parties as arrayed in CP)

3. The original Petitioner in the Company Petition claimed to be holding 14 shares and filed the Company Petition claiming oppression and mismanagement under Sections 397 and 398 read with Sections 402 and 403 of the Companies Act, 1956 ('old Act', in brief). He claimed to be holding 14 shares out of the authorized and paid up capital of Rs.1 Lakh divided unto 1,000 equity shares. He claimed that he had consent of 23 members of the Company who hold 61.60% of issued capital in order to show his eligibility to maintain the petition.

4. In such Petition, the Appellant filed CA 1/2013 claiming that the original Petitioner had filed the Company Petition with the alleged consent of 23 members. The Appellant – original Applicant seeking impleadment stated in CA 1/2013 that the claim of the original Petitioner was incorrect and false as the alleged members were not members of the Respondent Company. Counsel for Appellant has argued that Respondents 3 to 5 of this appeal are Directors of Respondent No.2 Company and also office bearers of Appellant but Appellant has independent entity and is promoter of the Company and majority shareholder holding 520 equity shares. The Appellant claimed in CA 1/2013 that the Company was incorporated in 1976 with the office bearers of the Appellant as the Board of Directors and the Appellant had assigned 2 acres of land to the Company for the business objectives and the Appellant (Applicant) had been allotted 520 equity shares of Rs.100/- each in the Company and since then it was holding the same. The Appellant claimed that it had not effected transfer of the shares to any person including the alleged transferees. The Appellant questioned the claim of original Petitioner that the shares had been transferred on 22.10.2008 pursuant to alleged Resolution of the Appellant dated 24.08.2008 and allege ratification in General Meeting dated 14.12.2008. The Appellant claimed that the original Petitioner had been removed from the office of Secretary of the Appellant and further claimed that the original Respondent No.2 - Prabhakaran Nair Cheruvanchery had been elected Secretary of the Appellant on 11.12.2005 and since then, the activities and affairs of the Appellant Society had been carried out by the other

Respondents mentioned in the Company Petition. Appellant claimed that since the shares of Applicant were claimed to have been transferred, it was necessary party. The Appellant claimed that it was still holding 520 equity shares which the supporters of the original Petitioner were claiming to have acquired.

5. The learned NCLT by an earlier Order dated 21<sup>st</sup> November, 2016 rejected the claim of the Appellant for impleadment. The matter was carried before this Tribunal and came up in Company Appeal (AT) No.2 of 2017 before the Bench presided over by the Hon'ble Chairperson and one of us (Mr. Balvinder Singh – Member [Technical]) on 14.02.2017. This Tribunal noticed the Order dated 21<sup>st</sup> November, 2016 which was impugned in that Appeal and considered the additional Affidavit which was filed in this Tribunal by the Appellant in which Form 20B had been filed by the Company giving details including shareholding during Financial Year ending 31<sup>st</sup> March, 2012. This Tribunal considered the list of equity shareholders which had been enclosed with the said Form 20-B which included 300 + 220 shares standing in the name of the Appellant. After thus referring to Annexure – E which had been filed, this Tribunal observed:-

“3. On notice Respondent No.1 and 2 have appeared but not denied the genuinity of Annexure – E. Ld. Counsel for the Respondents submits that the appellant otherwise had no case to contest the CP. It is also contended that the present signatory is not authorised to file petition on behalf of the appellant.

4. Having heard Ld. Counsel for the parties we are not inclined to accept the submission made on behalf of the Respondents as the Tribunal rejected the petition only on the ground that the appellant is not a shareholder but we find that the appellant, M/s. NSS Karayogam, Kodalnadakkave has been shown as the shareholder and holds 520 shares out of 1000 fully paid-up equity shares as on 31.3.2012. We find that the Tribunal erred in holding that the applicants are not the shareholders and rejected the Company Petition on wrong ground.

5. For the reasons aforesaid we set aside the impugned order dated 21<sup>st</sup> November, 2016 and remit the case to the Tribunal for hearing on merit after notice to the parties without granting unnecessary adjournments.”

5.1 After order as above was passed, the matter was remitted back to the learned NCLT so that the case could be heard on merits after Notice to the parties.

6. After going back, the Appellant appears to have filed IA 170/2017 (Diary No.6149 – Page - 11) claiming in the cause title and arraying itself - as “IMPLEADED AS CONTESTING PARTY RESPONDENT”. The application referred to the earlier developments and how this Tribunal had passed the earlier Judgement in CA 2/2017. The Appellant claimed before NCLT that this Tribunal had accepted the Appellant as a contesting party Respondent and thus, it was making submissions on merits of the pending Company Petition. The Appellant pointed out that its authorized representatives were already on record and claimed that the original Respondent No.2 - Prabhakaran Nair will be representing in dual capacity before the Tribunal. The Appellant thus referred to the case it was putting up and claimed that

its shares had never been sold and transferred or alienated in favour of anyone and that the contesting party Respondent had been and continues to be majority shareholder in the Respondent Company. The Appellant referred to Notice dated 28.11.2005 calling meeting of the Appellant to remove the original Petitioner and one Shri P. Venugopala Menon and that they were removed from their positions in the meeting held on 11.12.2005. Referring to these and other facts in details, the Appellant claimed that the original Petitioner was indulging in illegalities and non-compliance and fabrication of documents which was elaborated in the IA 170/2017 and claimed dismissal of the Company Petition.

7. The learned NCLT has then passed Impugned Order dated 23<sup>rd</sup> October, 2017 purporting to pass Orders in CA 1/2013 with IA 170/2017. Although this Tribunal had accepted Annexure – E, when additional Affidavit which was Form 20-B filed by the Company, genuineness of which in this Tribunal was not questioned by the Respondents which included the original Petitioner, the NCLT, on the basis of what the original Petitioner had stated in his rejoinder, treating the same as evidence, went on to conclude at interim stage itself that it was fully established that the shares pertaining to the Appellant stood transferred on 22.10.2008 and that such transfer had never been challenged before any of the Judicial Forum and so the Appellant had no locus standi to become a party in the Petition. the NCLT observed in para – 4 of the Impugned Order as under:-

“Now question arises as to which was the document that has been produced before the Appellate Tribunal for getting the Order dated 21.11.2016 to be set aside. After perusal of Company Petition, Reply, Rejoinder, CA-1/2013 and IA - 170/2017, we have come to the conclusion that the Applicant viz., C. Prabhakaran Nair, who is Respondent No.2 in TCP 55/2016 (CP 75/2010) along with others, ousted the 1<sup>st</sup> Respondent/Petitioner and other Directors of the 1<sup>st</sup> Respondent Company at the EoGM held on 06.02.2010, and become the Director of the 1<sup>st</sup> Respondent Company and filed Form No.20B relating to AGM dated 20.09.2012 for the financial year ending 31.03.2012 with the Registrar of Companies, with which he has enclosed the lists of the equity shareholders as per the allotment dated 28.05.1984. Thus, bringing on record an earlier document in order to show that M/s. NSS Karayogam still holds 520 shares in the 1<sup>st</sup> Respondent Company, which is contrary to the record as has been referred in the preceding paragraphs. The copy of the list showing allotment of shares made on 28.05.1984 had been produced before Hon’ble NCLAT to show that M/s. NSS Karayogam is still a shareholder of the 1<sup>st</sup> Respondent Company, whereas, the same is contrary to what has been stated in the preceding paragraphs.”

8. We have heard the counsel for both sides who go on asserting rival claims but we find the approach of NCLT quite surprising in making the above observations after what had been observed by this Tribunal in para – 3 of its earlier Judgement in CA 2/2017, which we have reproduced above. Such approach of the NCLT, we find not to be in accordance with judicial discipline expected. The earlier order in CA 1/2013 was at interim stage seeking impleadment which prayer of Appellant was rejected and against such order at interim stage when this Tribunal in Appeal had ruled in favour of the Appellant, the matter should have proceeded further from the stage of impleadment. The NCLT could not have again sat over the



matter to see whether the Appellant had made out a case or not of being shareholder. The original Petitioner has proposed to maintain the petition on the basis of support of 23 members. The Appellant was pointing out that the claim on the basis of which 23 members claimed rights, is a disputed question and the Respondents from whom those persons claimed to have got rights was the disputed question. In such situation in the first place itself, CA 1/2013 should have been allowed. When the rejecting of the CA 1/2013 had been set aside, it was not proper for NCLT not to treat the Appellant as the impleaded Respondent. At such preliminary stage, it was not necessary for the NCLT to go into what has been observed in OS 590 of 2009 relating to disputes between the parties, especially when it is stated before us (and not denied by the counsel for Respondents) that Appeal against the Impugned Order in OS 590 of 2009 is still pending. At interim stage of the matter, if this Tribunal had observed that there was document to show that the Appellant was shareholder and holding 520 shares out of 1,000 fully paid up shares, it was inappropriate for the NCLT to sit over the Judgement of this Tribunal to conclude that the shares of the Appellant – Applicant had been transferred on 22.10.2008 and thus, the Appellant has no locus standi to file the application for impleadment. In fact, the impleadment application already stood disposed vide this Tribunal's earlier Judgement as mentioned above and the NCLT had no other option but to proceed with the matter treating the Appellant as party Respondent.

9. We reject the arguments raised by the counsel for Respondent No.1 – original Petitioner trying to justify and support the Impugned Order. The averments made in the rejoinder by the original Petitioner in NCLT are yet to be finally decided and they cannot form basis for the learned NCLT to reject claim of Appellant of impleadment, for which prima facie case has been made out, looking to the observations already made by this Tribunal in CA 2/2017.

10(A). We thus set aside the Impugned Order. We direct that the CA 1/2013 filed by the Appellant shall be treated as having been allowed and the Appellant shall be treated as party Respondent. The Appellant shall be arrayed in the Company Petition as party Respondent, and heard.

(B). The Company Petition be now disposed on merits at the earliest.

(C). The Appeal is allowed as above. No Orders as to costs.

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

[Balvinder Singh]  
Member (Technical)

New Delhi

19<sup>th</sup> September, 2018

/rs/nn