

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 165 of 2018

IN THE MATTER OF:

Andre De Menezes

...Appellant

Versus

Menezes Remedies Ltd. & Ors.

...Respondents

Present:

For Appellant :

**Mr. Yashraj Singh Deora and Ms. Sanjana Saddy,
Advocates**

For Respondents :

**Mr. Joseph Kodianthara, Senior Advocate assisted
by Mr.. M.P. Vinod and Mr. Atul Shankar Vinod,
Advocates**

O R D E R

23.05.2018

This appeal has been preferred by the appellant (petitioner before the Tribunal) against the order dated 1st February, 2018 passed by the National Company Law Tribunal, Mumbai Bench (hereinafter referred to as the 'Tribunal') in C.P. No.278/241-242/NCLT/MB/Mah/2017 & CP 372/14(1)/NCLT/MB/MAH/2017. By the impugned order, the Tribunal allowed the amendment as prayed for by the petitioner in the Miscellaneous Application in C.P. No. 278/241-242/NCLT/MB/Mah/2017 barring paragraph 15 of the Schedule 'A' wherein Clause (7A) related to declaration that the petitioner is entitled to act and appoint himself or his nominee to the extent of 25.25% of the strength of the Board of Directors of the 1st Respondent Company

at any point of time and to direct 1st to 6th Respondent to amend, alter the Articles of Association in order to effectuate the same and other prayer at Clause (7B) – wherein a prayer was made to pass order for re-instating the petitioner in the Board of Directors of the 1st Respondent.

2. The Company petition has been preferred by the petitioner under Sections 241 and 242 of the Companies Act wherein the prayer has been made to declare the Resolution passed in EOGM of 20th May, 2018 as illegal. The main petition is pending for consideration before the Tribunal and in the meantime, the amendment petition has been filed by the petitioner, part of which has been allowed as noticed and discussed above.

3. Learned counsel for appellant submitted that the Tribunal has failed to appreciate the grievance by disallowing part of the prayer for amendment. According to him, in regard to the relief sought for in the amendment petition with respect to Clause (7A) and (7B) the Tribunal has effectively denied the applicant to those reliefs. It is also alleged that the impugned order is a result of complete non-application of the mind by the Tribunal.

4. Learned counsel appearing on behalf of the 2nd Respondent opposed the prayer and submitted that the main petition is pending for consideration before the Tribunal and the allegation of oppression cannot be decided at this stage. Further, according to him, the main relief sought for by the appellant in the company petition is not covered by law.

5. Section 242 of the Companies Act, 2013 empowers the Tribunal to pass order on an application under Section 241. If the Tribunal is of the opinion that

the company affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company and winding up the company will unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be winding up, the Tribunal is empowered to “*make such order as it thinks fit*” to bring to an end the matters complained of. The Tribunal having empowered to pass ‘any order as it thinks fit’ the impugned order, in any manner, will not prejudice the parties.

6. For the reasons aforesaid, we are not inclined to interfere in the impugned order. The appeal is disposed of. No order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc