

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 276 of 2018

IN THE MATTER OF:

Alok Yoginder Punj & Ors.

...Appellants

Versus

Eurocoustic Products Ltd. & Ors.

...Respondents

Present:

For Appellants :

**Mr. Manish R. Bhatt, Senior Advocate assisted
by Mr. Munjaal Bhatt, Advocate**

ORDER

05.09.2018 The appellants (petitioners) filed an application under Section 241 and 242 of the Companies Act for alleged ‘oppression and mismanagement’ on the part of the contesting respondents. The National Company Law Tribunal, Ahmedabad Bench (hereinafter referred to as the ‘Tribunal’) passed an interim order dated 6th June, 2018 (Single Bench). 2nd Respondent thereafter filed I.A. No. 221/2018 for suitable modifications of the interim order, pursuant to which the impugned order dated 27th July, 2018 has been passed by the Tribunal (Division Bench) with clarifications and modifications, which is as follows:

“11. In a view to this, our order dated 06.06.2018 is clarified and modified to this extent that the respondent’s company shall deal with the issue of Right Share as per the relevant laws and rules for the purpose of allotment of right issue to the applicants including third party investor or to remit

back their application amount. Notwithstanding the right, the proportionate share of the petitioner in right issue and well as the present shareholding's patterns not to be disturbed and their proportionate right in existing shareholding pattern is protected; subject to outcome of the present company petition. The respondent's company can deal with rest of shares in accordance with law only pertaining to Right issue in respect of other applicants, shareholders and third parties.

12. *We also considered for permitting additional director to participate in the meeting of board of directors to achieve the aforesaid time bound task. Therefore, the additional director appointed through its meeting dated 07.06.2018 is permitted to participate in board's meeting only for this limited purpose and are expected not to take part in other affairs of management of the company. This order's direction that may be issued by this Court at appropriate stage in the present matter."*

Learned counsel appearing on behalf of the appellants submitted that the interim order amounts to an order which is final in nature which will affect the petition filed under Section 241 and 242 on merit. If issue is decided in favour

of the third party investor, in such case no relief can be granted after final hearing even if the application under Section 241 and 242 is allowed. It will also affect the shareholding pattern including the shareholding of the appellants which in turn may render the application under Section 241 and 242 infructuous.

We have perused the impugned order dated 27th July, 2018 and the records enclosed with the appeal.

We have noticed that the Tribunal has made it clear that notwithstanding the right the proportionate shares of the petitioners in right issue, the present shareholding pattern will not to be disturbed and proportionate right of the existing shareholding pattern is to be protected subject to the outcome of the company petition.

Though such specific observation has been made, we make it clear that if any third party right is created during the pendency of the company petition, then such right will be subject to the decision of the Tribunal. It is also within the jurisdiction of the Tribunal to annul such third party right if created during the pendency of the petition and the allegation of 'oppression and mismanagement' is proved.

We also make it clear that all the observations made by the Tribunal and by this Appellate Tribunal will not affect the rights and contentions of both the parties and the Tribunal will pass final order uninfluenced by the impugned order of 27th July, 2018.

As the matter is pending since more than three months and in the meantime rights in favour of their parties are created, the Tribunal is expected

to decide the main petition on merit after hearing the parties. Parties in their turn are directed to co-operate with the Tribunal and will not ask for unnecessary adjournments. The appeal stands disposed of with the aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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