

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.339 of 2017

[Arising out of order dated 23.08.2017 passed by National Company Law Tribunal, Chennai in CA No.34 of 2016 [TCP/180/2016]]

IN THE MATTER OF:

Lalia Joseph
SFS Calton,
Kowdiar P.O.
Ambalamukku,
Trivandrum - 695003

... Appellant

- Versus -

- 1. A.K. Mansoor**
Chathuntakayil House,
Puthumanasseerry, Pavaratty,
P.O. Trichur – 680507
Kerala State

...Respondent No.1
(Original Petitioner)
- 2. M/s. Indo-Asian News Channel (P) Ltd.**
Having its registered office at
Reporter Studio Complex,
HMT Colony, Kalamassery,
Cochin – 683503
Kerala State

...Respondent No.2
(Original Respondent No.1)
- 3. M.V. Nikesh Kumar**
Meleth Veedu, Burnasseri Post,
Kannur – 670013
Kerala State

...Respondent No.3
(Original Respondent No.2)
- 4. Rani Verghese**
Meleth Veedu, Burnasseri Post,
Kannur – 670013
Kerala State

...Respondent No.4
(Original Respondent No.3)
- 5. The South Indian Bank Limited**
(Set ex-party on 09.02.2017)
Elias Chamber,
Banrjee Raod,
Ernakulum – 682018
Kerala State

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

6. **Leena Narayanan,**
(Set ex-party on 09.02.2017)
Ramamangalathu House,
Vizhikkithodu P.O.,
Kanjirapally (Via)
Kottayam – 686527
Kerala State **...Respondent No.6**
7. **Vijakumari**
(Set ex-party on 09.02.2017)
Flat No. 7B
Skyline Emeralds South Avenue
Panampilly Nagar
Ernakulum – 682036
Kerala State **...Respondent No.7**
8. **Asset Homes Private Limited**
(Set ex-party on 24.03.2017)
G-129, 2B/34A,
3rd Cross, Panampilly Nagar,
Cochin – 682036
Kerala State **... Respondent No.8**

Present: Shri Vikramjit Banerjee, Sr. Advocate with Shri M.S. Vishnu Sankar, Shri Ayush Anand, Shri Vatsalya Shrivastava and Shri E.M.S. Anam, Advocates for the Appellant

Shri K.S. Mahadevan, Advocate for Respondent No.1

Shri P.V. Dinesh and Shri Rajendra Beniwal, Advocate for Respondent Nos.2 and 4

J U D G E M E N T

A.I.S. Cheema, J. :

1. This appeal is filed by the appellant aggrieved by the impugned order dated 23.08.2017 passed by learned National Company Law Tribunal, Chennai Bench, Chennai (NCLT in short) in CA 34/2016 in TCP 180/2016 as she has been directed to be added as party respondent. Respondent No.1 - original petitioner has filed the company petition against present Respondent

Nos.2 to 5 alleging the acts of oppression and mismanagement. In the petition, he then filed CA 34/2016 seeking to implead the present appellant and present Respondent Nos.6 to 8. The learned NCLT after hearing the applicant has allowed the same adding Respondent Nos.5 to 8 as were sought by the present Respondent No.1. Accordingly, the present appeal has been filed by the appellant who was Respondent No.7 in the CA 34/2016.

2. We have heard learned counsel for the appellant. It is the submission that the appellant has been added on the basis of such application as CA 34/2016 which did not show any averments against the appellant. No relief has been sought against the appellant in the company petition. Only on the basis that if the oppression and mismanagement is proved, NCLAT may have to pass some orders regarding the disputes of issue of shares, the present appellant could not have been added as respondent. The learned counsel submitted that in the company petition itself in para – 19, the Respondent No.1 has filed the petition restricting the relief which he was seeking. Para - 19 reads as under:

“The petitioner submits that barring the initial allotment of shares at the time of incorporation, the shares subsequently subscribed and allotted are liable to set-aside, the same being in gross violation of the provisions of Article 5 of the AoA. However, the Petitioner is restricting his challenge to the impugned allotments made in favour of the Petitioner and the second and third Respondents, who are parties to the present proceedings. The

share allotments liable to be set-aside are given hereunder:

<i>S. No.</i>	<i>Name of Shareholders</i>	<i>Equity</i>	<i>%</i>
<i>1</i>	<i>A.K. Mansoor –P1</i>	<i>106387</i>	<i>25.51</i>
<i>2.</i>	<i>M.V. Nikesh Kumar –R2</i>	<i>233466</i>	<i>55.98</i>
<i>3.</i>	<i>Rani Varghese – R3</i>	<i>8333</i>	<i>2.00</i>

3. The counsel has then referred to CA 34/2016 where the Respondent No.1 without referring to his para – 19 reproduced in the application the reliefs 1 to 5 as were prayed in the company petition and then made the following averments:

“3. As can be seen from the reliefs claimed for in the petition, the rights of all the shareholders of the 1st respondent company would be directly affected. The issue giving rise to these rights cannot be adjudicated upon effectively and completely without the presence of these proposed parties. Since these persons continue to be the shareholders, their presence in the proceedings becomes necessary. These persons are proper and necessary parties for the adjudication of the issues in the above Company Petition.

4. I state that this application is limited to the extent of impleading these proposed parties as party respondents to the above petition. The presence of these respondents would in no way prejudice the

interest or rights of the other respondents. On the other hand the presence of these persons is paramount for complete adjudication of all the issues in the petition.

5. *The Petitioner submits that the presence of these proposed parties would also ensure that all the parties, who would be affected if an Order is passed in the above petition, are before this Tribunal. This would not only put an end to all the issues in the petition but would also ensure that there are no further litigations in respect of the issues here.*

In the light of all the above submissions it is prayed that

- (a) The respondents 5 – 8 in the above application be impleaded as party respondents to the above petition;*
- (b) Consequently permit the applicant to amend the cause-title of the above petition to include the respondents 5-8 as respondents in the memo of parties.*
- (c) Pass such further or other orders as this Hon'ble Tribunal may deem fit in the facts and circumstances of the case.”*

4. Learned counsel submitted that while making the application for impleadment, although the Respondent No.1 referred to the reliefs sought in the company petition, no reference was made to the challenge restricted as was mentioned in para – 19 of the company petition. In the application for impleadment, no case has been made out as to why the present appellant was a necessary party. It has been argued that when no relief has been sought against the present appellant, she could not have been impleaded as a respondent.

5. It has been argued by the learned counsel for the appellant that the appellant has already filed criminal complaint against the Respondents 3 and 4 relating to cheating which has been investigated. The appellant had invested Rs.1.5 crores for equity shares in the respondent company and again Rs.9.5 crores to set up the company and had even mortgaged her property. The amount was given to the respondents 2 and 3. It is stated that some shares were issued but later on it was learnt that preference shares had been issued without voting rights because of which the appellant found that she had been cheated and it was further found that transfer forms had been forged. It is stated that original respondents 2 and 3 moved Kerala High Court for quashing of the criminal case which has not succeeded. It is submitted by the learned counsel that before the Kerala High Court that original Respondents 2 and 3 tried to show that it is basically civil dispute between the parties. This was not accepted. The counsel submitted that the original respondents 2 and 3 have then filed SLP before the Hon'ble Supreme Court on 06.04.2017 and just before that, on 01.04.2017, CA 34/2016 was filed before the NCLT. It is

argued that ground was being made out by present respondents in collusion that there is a civil dispute pending. According to the counsel, the facts are obvious and the application for impleadment should have been rejected. The counsel submitted that the impugned order deserves to be set aside.

6. Learned counsel for Respondent No.1 – original petitioner has submitted that the CA 34/2016 will have to be read with the company petition. According to him, even if in the CA, Respondent No.1 did not mention that the appellant is a shareholder, the appellant herself in her reply before NCLT accepted that she is a shareholder. Learned counsel referred to copy annexed with reply filed by Respondent No.1 in this appeal. The appellant mentioned in para – 6 as under:

“It is submitted that the 7th Respondent cannot be made as a party in the present petition just because she is a shareholder of the Company specifically when there are no allegations and no specific prayer made against her. The present application is only to annoy the 7th Respondent by impleading here in a longstanding litigation between the Applicant and the contenting Respondents.”

7. According to the learned counsel, it is in the interest of the appellant herself that she should be party in the company petition. He says that Respondent No.1 does not know the details of the shareholders of the company. At the time of arguments, the learned counsel for Respondent No.1, however, agreed that if records of the Registrar of Companies are seen, particulars of the shareholders can be ascertained.

8. Counsel for present Respondents 2 to 4 submitted that if the copy of the preliminary enquiry report filed by the appellant is seen, it can be appreciated that these respondents are facing criminal case on the facts which according to the learned counsel will also have to be considered in the company petition. The learned counsel thus submitted that the appeal should be rejected.

9. We have perused the prayers made in the company petition as well as para – 19 of the company petition whereby Respondent No.1 – original petitioner himself has restricted his challenge to the impugned allotments made in favour of the petitioner and original second and third respondents in the company petition. When this is so, the learned counsel for the appellant is rightly submitting that without amending the company petition and without giving particulars in their application for impleadment as to how and why the appellant is a necessary party, the impleadment could not have been allowed just for the asking. From the paragraphs reproduced from CA 34/2016, it is apparent that it was quite a vague application. There appears substance in the submissions made by the learned counsel for the appellant that when there was no amendment sought in the company petition so as to make out a case against appellant and there were no sufficient pleadings in the application for impleadment, the impugned order as has been passed is not maintainable, at least against the present appellant. The others who have been added and have not come forward to challenge the

impugned order we will not interfere as regards those other respondents who have been added. We pass the following order.

10. The appeal is allowed, the impugned order is quashed and set aside as far as the impugned order is impleading the present appellant as respondent in the company petition. No order as to costs.

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

[Balvinder Singh]
Member (Technical)

New Delhi

18th December, 2017

/rs/nn