

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No. 340 of 2017

IN THE MATTER OF :

N. Sankaranarayanan

... Appellant

Versus

**Aruna Theatres & Enterprises Pvt.
Ltd. & Ors.**

... Respondents

**Present: Shri Soamik Ghosal with Shri Gaurav Singh, Advocates
for the Appellant.**

**Shri S. Gowthaman and Ms. M. Venmani, Advocates for
Respondent No. 1.**

**Shri Ramakrishnan Viraraghavan, Senior Advocate with
Ms. Uttara Babbar, Advocate for Respondent No. 2.**

ORDER

23.01.2018 Counsel for the appellant seeks pass-over.

Later on

2. The appellant (Original Respondent No. 6) in TCA/11/2016 (Company Petition No.64 of 2006 in Company Law Board) has filed this appeal against order dated 20th July, 2017 passed by the National Company Law Tribunal, Division Bench, Chennai (hereinafter referred to as 'NCLT'), which order reads as under :

“Counsel for Applicant/R2 present. Counsel for R4, R8, R10 and R19 present. R11 and R18 reported expired. No representation on behalf of the other Respondents in the CA/115/2017. As directed by this Bench, Mr. R.

Aghoramurthy (Chartered Accountant), auditor concerned in this matter, appeared in person. He submitted that whatever report he has prepared is in line with the direction of the Hon'ble High Court of Madras. He stated that other than the interim report, he has no other report to submit, as there is no requirement to make additions and deletions in the same as no new material is found. To a query raised by this Bench as to what happened about the opportunity to be given to the parties, the Chartered Accountant answered that it is the Board of Directors who has to raise objections because they are legally bound to take care of the day to day affairs of the Management of the Company. Therefore, there is no requirement to give any Opportunity to the shareholders. From the submissions made by the Chartered Accountant, it is quite clear that he has completed his assignment of preparing a preliminary report as per the direction of the Hon'ble High Court. In fact, he has not followed the procedure that was devised by the CLB vide its order dated 25.02.2009. This has already been observed by this

Bench in a detailed order dated 20.01.2017. In the circumstances, Mr. R. Aghoramurthy, Chartered Accountant is relieved of his duties. The parties are directed to give names of three independent Chartered Accountants to this Bench for appointment of one among them in order to complete the assignment that was specified by the CLB vide its order dated 25.02.2009. The parties shall submit the names within one weeks. Matter is posted for further hearing. Put up on 11.08.2017 at 10.30 A.M.”

2. Learned counsel for the appellant and Respondents Nos. 1 and 2 have been heard. It is pointed out that the Company Law Board (CLB in brief) vide order dated 25th February, 2009 had initially directed investigative audit. The relevant important paragraph in that regard is 12(ii), which reads as under :-

“(ii) Shri R. Aghoramurthy, Chartered Accountant, Chennai (Mobile No. 9444322347) is authorized to carry out an investigative audit of the accounts of the Company for the period from 01.04.2000 to 31.03.2005 by scrutinizing the books of account, vouchers and other connected records of the Company and on hearing

submissions of all the connected parties. The Chartered Accountant will submit a report of the financial transactions of the Company for the relevant period, which shall include all the receipts, payments, expenses incurred on behalf of the Company together with the fund utilization thereof and irregularities, if any, and serve copies of the report on all the parties, who are bound by the report of the Chartered Accountant. The whole process shall be completed by 30.04.2009. The Company will bear the Chartered Accountant's remuneration and towards this end, an initial amount of Rs. 50,000/- may be paid by 31.03.2009. The matter will be heard on 15.05.2009 at 02:30 PM for issue of appropriate consequential directions, after hearing the parties concerned, to safeguard the interests of the Company and its members."

3. It appears that against this order, Respondent No. 2 in this appeal had filed an application to the High Court. The High Court passed certain orders on 21st April, 2009, relevant part of which reads as under :-

"3. Having regard to the rival contentions, this Court feels that an Interim measure it is suffice if the

appointed Chartered Accountant is directed to scrutinize the books of account and vouchers and other concerned records of the company and make an interim report on his findings about the various transactions and submit the interim report in a sealed cover to this Court on or before 11.6.2009. Such course of action will not cause any prejudice to the rights of the appellants herein pending consideration of the appeal before this Court.

4. It is hereby made clear that the Chartered Accountant shall not part with the interim report to the parties in the appeal. In view of the orders of this Court, there shall be an order of interim stay of the order dated 25.2.2009 passed by the Company Law Board till 22.6.2009. It is further made clear that while preparing the report, the Chartered Accountant shall not call for the views or response from any of the parties on this matter.”

4. Subsequently, it appears that Chartered Accountant submitted Interim Investigative Audit Report in a sealed cover to the High Court in the Company Appeal No. 6 of 2009. The High Court first analysed the appeal on its merits and then proceeded to open the report and made

certain observations in paragraph 120 of the judgement and proceeded to find that the Interim Investigative Audit Report also does not favour the Appellant (present Respondent No. 2) in many aspects.

5. Copy of the said Interim Investigative Audit Report has been filed in the present appeal and is available at Page 122 of the paper-book. It appears that the Auditor filed letter dated 16th March, 2017 in NCLT and after referring to certain facts mentioned in Paragraph 3 of that letter as under :-

“3. Thus, it would be noticed that no fresh or additional material has come in requiring reconsideration of any of my findings and conclusions in my Interim Report. I, therefore, reiterate my findings and conclusions recorded in my Interim Investigative Audit Report filed before this Hon’ble Tribunal on 21.12.2016 and pray that this Hon’ble Tribunal may be pleased to treat the same as my “Final Investigative Audit Report”.

The Auditor converted his own interim report into Final Investigative Audit Report.

6. The NCLT, however, was not satisfied and although it appears from the order of the CLB that it had not clarified anything as regards ‘Connected Parties’, the NCLT was of the view that the shareholders should have been heard. It passed certain orders on 20th January, 2017.

Learned counsel for Respondent No. 2 is pointing out that the application of the appellant for execution of the Investigative Audit Report was rejected by the NCLT by order dated 3rd July, 2017.

7. The NCLT has subsequently passed the present impugned order and the same has been challenged. We find that when the Auditor converted his Investigative Audit Report into the final report, without going into the merits of the report and without setting the same aside, the present impugned order calling for names of the new Chartered Accountants could not have been passed. We are told that subsequently new Chartered Accountant have even been appointed by order dated 23rd August, 2017.

8. In our view, it was necessary for NCLT to consider the report which was available and which was treated by the Auditor as its final report for whatever it was worth and record finding whether or not the said report could be maintained. Without rejecting the said report, giving directions for further Chartered Accountants to be suggested and appointment was not proper. When the present report has not been set aside, taking fresh report if the same happens to be in conflict would create confusions.

9. For the above reasons, the present appeal is allowed. The impugned order is quashed and set aside. Consequently, subsequent actions taken on the basis of Impugned Order would not survive. Matter is remitted back to NCLT. The NCLT is directed to consider the Investigative Audit

Report submitted by the Chartered Accountant read with letter dated 16th March, 2017 and giving opportunity to both sides either accept the Investigative Audit Report or may reject the same for reasons to be recorded.

With these directions, the present appeal stands disposed of. No order as to costs.

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

[Balvinder Singh]
Member (Technical)