

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

**Company Appeal (AT) No. 386 of 2018**

[Arising out of order dated 18<sup>th</sup> September, 2018 passed by National Company Law Tribunal, Allahabad Bench in C.A. No. 203/2017 Company Petition no.14/ALD/2015]

**IN THE MATTER OF:**

**1. Nita Dube**

29 Newal Kishore Road  
Hazratganj, Lucknow  
Uttar Pradesh – 226001.

**2. Mr. Avnindra Dutt Dube**

115, Machharhatta  
Jaunpur.  
Uttar Pradesh – 222002.

**...Appellants**

**Vs**

**1. Tej Kumar Book Depot Pvt. Ltd.**

1, Triloki Nath Road,  
Lucknow  
Uttar Pradesh.

**2. Mrs. Smita Patwardhan**

Smit Pratik, CTS No. 1995,  
S. No. 103, Plot No. 129 E  
Nagpur Road, TCS Office Lane  
Opposite Konark Rivera Society  
Yerwada Pune  
Maharashtra – 411006.

**3. Mr. Pratik Parshuram Patwardhan**

Smit Pratik, CTS No. 1995,  
S. No. 103, Plot No. 129 E  
Nagpur Road, TCS Office Lane  
Opposite Konark Rivera Society  
Yerwada Pune  
Maharashtra – 411006.

**....Respondents**

**Present:**

**For Appellants:** Mr. Zeyaul Haque, Advocate.

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

### **BANSI LAL BHAT, J.**

Appellant's application filed under Section 424 of the Companies Act, 2013 for granting certain reliefs incorporated therein with the primary relief of impleading one 'Mr. Pranav Patwardhan', Director of Respondent No. 1 as party respondent in Company Petition no.14/ND/2015 came to be rejected by National Company Law Tribunal, Allahabad Bench in terms of impugned order dated 18<sup>th</sup> September, 2018. Aggrieved thereof the Appellants have filed the instant appeal assailing the impugned order on the grounds enumerated in the memo of appeal.

2. Heard learned counsel for the Appellants and perused the record on the file. It emerges from record that the Appellants had filed the Company Petition no.14(ND)2015 before the erstwhile Company Law Board, New Delhi Bench under Section 397 and 398 of the Companies Act, 1956 alleging oppression and mismanagement by the Respondent Directors and siphoning of huge funds by selling off fixed assets of the Company. Notices are said to have been issued in the Petition and status quo directed to be maintained in regard to shareholding. With the enactment of Companies Act, 2013, the matter landed in the National Company Law Tribunal, Allahabad Bench. The Appellants moved C.A. No. 203/2017 for impleadment of Mr. Pranav

Patwardhan as party respondent alleging that he had been illegally appointed as Director in the Respondent Company which came to be dismissed in terms of the impugned order. Learned counsel for the Appellants submits that Mr. Pranav Patwardhan had been illegally appointed as Director in the Respondent Company fraudulently by forging statutory documents in collusion with the Directors and the Auditor. It is contended that in terms of its resolution dated 15<sup>th</sup> March, 2016, the Board of Directors appointed Mr. Pranav Patwardhan initially as Additional Director and documents were forged for statutory filings. It is further contended that the resignation submitted by Mr. Pranav Patwardhan after filing of the application before the Tribunal and its hasty acceptance by the Board in terms of resolution dated 1<sup>st</sup> February, 2018 did not absolve him of his liabilities even after his resignation. It is contended that the whole episode was an instance of corporate fraud which should have been investigated by the Tribunal exercising inherent powers vested in it. The impugned order dismissing the Appellants application seeking impleadment of Mr. Pranav Patwardhan as party respondent on the ground of his resignation from the post of Additional Director on 16<sup>th</sup> January, 2018 coupled with the fact that no harm has been caused to the Appellants or the Company is assailed as being unsustainable and liable to be set aside.

3. After hearing learned counsel for the Appellants for a while and wading through the record on the file, I am not inclined to entertain this appeal which is lacking in merit. Though, learned counsel for Appellants

insisted that impleadment of Mr. Pranav Patwardhan as party respondent was not the only relief claimed in the application, he failed to demonstrate as to how the other reliefs flowing from and incidental to arraignment of Mr. Pranav Patwardhan as party respondent could be considered without impleading him as a party respondent. What comes to fore from record is that the Appellants primarily sought impleadment of Mr. Pranav Patwardhan as party respondent on the score that such appointment was illegal and documents were fabricated to file statutory compliances while other reliefs claimed were consequential. This factual position stares in the face of Appellants who cannot wriggle out of the same. Even the Memo of Appeal incorporates this factual position. The impleadment was sought on the ground that such appointment was violative of Section 161 of the Companies Act, 2013. The Tribunal took cognizance of the fact that Mr. Pranav Patwardhan had already resigned from the post of Additional Director on 16<sup>th</sup> January, 2018. The factum and validity of such resignation has not been questioned by the Appellants. The Tribunal's finding that in view of this development coupled with the fact that the Appellants had failed to demonstrate that any harm was caused to them or to the Company due to such appointment cannot be termed as erroneous muchless perverse. In absence of proof of any prejudice caused to the interests of the Appellants or the Company during the tenure of Mr. Pranav Patwardhan as Additional Director, such impleadment would not be warranted merely on the ground that the Respondents made such appointment in contravention of Articles of Association of the Company thereby infringing statutory provisions.

Infraction of the Articles of Association of the Company or provisions of Companies Act in this regard cannot be attributed to Mr. Pranav Patwardhan who is neither a necessary party nor a proper party for being impleaded as party respondent, moreso as he has admittedly tendered resignation on 16<sup>th</sup> January, 2018 and ceased to be a member of the Board of Directors.

4. There being no legal infirmity in the impugned order, the appeal merits dismissal. The appeal is accordingly dismissed. However, there shall be no order as to costs.

[Justice Bansi Lal Bhat]  
Member (Judicial)

**NEW DELHI**

**19<sup>th</sup> November, 2018**

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