

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

**Company Appeal (AT) No. 257 of 2017
AND
Company Appeal (AT) No. 258 of 2017**

IN THE MATTER OF:

S. Ahmed Meeran

...Appellant

Vs.

Ronny George & Ors.

...Respondents

Present: For Appellant: - Mr. Rana Mukherjee, Senior Advocate with Mr. Goutham Shivshankar and Ms. Sreoshi Chatterjee, Advocates.

**For Respondents:- Mr. Anirudh Wadhwa and Mr. Bhargava Thali, Advocates for Respondent no.1.
Mr. Prasanna.S, Advocate for Respondents 3 to 7.**

ORDER

05.10.2017- In both the appeals as common question of law is involved, they were heard together and disposed of by this common judgment.

2. In Company Appeal (AT) No. 257 of 2017, the appellant has challenged the order dated 14th July, 2017 passed by National Company Law Tribunal (hereinafter referred to as "Tribunal") Chennai Bench, Chennai in CA No. 122/2017 whereby and whereunder the Tribunal granted 'waiver' under proviso to sub-section (1) of Section 244 of the Companies Act, 2013 and passed the following order: -

Contd/-.....

*“Counsel for Petitioner present. Counsel for R2 present. Counsel for Applicant prayed for waiver of the requirements under section 244 of the Companies Act for the purpose of filing Petition under section 241(1). We have heard both the sides. The Petitioner made out the case for grant of waiver under section 244. We grant the waiver of the requirements under section 244(a) by allowing the Application. Keeping in view the facts and circumstances of the case and submissions made, we are inclined to grant relief as prayed under para 10(i) the 1st Respondent Company may proceed to have the EGM on 15th July 2017 and may pass the resolution on the agenda proposed. However, the 1st Respondent Company is restrained from giving effect to the resolution passed till further order. Counsel for Respondent is directed to file the interim counter within ten days to the application and the Company Petition. Put up on **27.07.2017 at 10:30 A.M.**”*

3. In Company Appeal (AT) No. 258 of 2017, similar order has been passed by the Tribunal waiving the requirements under sub-section (1) of Section 244 of the Companies Act, 2013. The order dated 14th July, 2017 passed in CA No. 121/2017 reads as follows: -

*“Counsel for Petitioner present. Counsel for R2 present. Counsel for Applicant prayed for waiver of the requirements under section 244 of the Companies Act for the purpose of filing Petition under section 241(1). We have heard both the sides. The Petitioner made out the case for grant of waiver under section 244. We grant the waiver of the requirements under section 244(a) by allowing the Application. Keeping in view the facts and circumstances of the case and submissions made, we are inclined to grant relief as prayed under para 10(i) the 1st Respondent Company may proceed to have the EGM on 15th July 2017 and may pass the resolution on the agenda proposed. However, the 1st Respondent Company is restrained from giving effect to the resolution passed till further order. Counsel for Respondent is directed to file the interim counter within ten days to the application and the Company Petition. Put up on **27.07.2017 at 10:30 A.M.**”*

4. We have heard learned counsel for the appellant and learned counsel for the respondents.

5. Apart from the fact that both the impugned orders have been passed in a mechanical manner by the Tribunal without considering any exceptional circumstances to allow the application for ‘waiver’ under

proviso to sub-section (1) of Section 244, the Tribunal has not applied its mind as to whether (proposed) application under section 241 merits consideration and whether it relates to 'oppression and mismanagement'.

6. The question of grant of 'waiver' under proviso to sub-section (1) of Section 244 fell for consideration before this Appellate Tribunal in "**Cyrus Investments Pvt. Ltd. & ANR. Vs. Tata Sons Ltd. & Ors. - 2017 SCC OnLine NCLAT 261**". In the said appeal, the Appellate Tribunal considering the provisions held as follows: -

"148. Now there is a clear departure from earlier provision i.e. sub-section (4) of Section 399 whereunder the Central Government was empowered to permit the ineligible member(s) to file an application for 'oppression and mismanagement' by its executive power. Under proviso to sub-section (1) of Section 244 now the Tribunal is required to decide the question whether application merits 'waiver' of all or any of the requirements as specified in clauses (a) and (b) of sub-section (1) of Section 244 to enable such member(s) to file application under Section 241. Such order of 'waiver' being judicial in nature, cannot be passed by Tribunal, in a capricious or arbitrary manner and can be passed only by a speaking and reasoned order after notice to the (proposed) respondent(s). The basic principle of justice delivery

system is that a court or a Tribunal while passing an order is not only required to give good reason based on record/evidence but also required to show that after being satisfied itself the Court/Tribunal has passed such order. To form an opinion as to whether the application merits waiver, the Tribunal is not only required to form its opinion objectively, but also required to satisfy itself on the basis of pleadings/evidence on record as to whether the proposed application under Section 241 merits consideration.

149. The Tribunal is required to take into consideration the relevant facts and evidence, as pleaded in the application for waiver and (proposed) application under Section 241 and required to record reasons reflecting its satisfaction.

150. The Tribunal is not required to decide merit of (proposed) application under Section 241, but required to record grounds to suggest that the applicants have made out some exceptional case for waiver of all or of any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244. Such opinion required to be formed on the basis of the (proposed) application under Section 241 and to form opinion whether allegation pertains to 'oppression and mismanagement' of the

company or its members. The merit cannot be decided till the Tribunal waives the requirement and enable the members to file application under Section 241.

151. Normally, the following factors are required to be noticed by the Tribunal before forming its opinion as to whether the application merits 'waiver' of all or one or other requirement as specified in clauses (a) and (b) of sub-section (1) Section 244:-

(i) Whether the applicants are member(s) of the company in question ? If the answer is in negative i.e. the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.

(ii) Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement' ? If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.

(iii) Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stand decided and concluded?

(iv) Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241 etc.?

152. The aforesaid factors are not exhaustive. There may be other factors unrelated to the merit of the case which can be taken into consideration by the Tribunal for forming opinion as to whether application merits 'waiver'."

7. For the reasons aforesaid and as the impugned order(s) are a non-speaking order, we have no option but to set aside the impugned orders both dated 14th July, 2017 passed in CA No. 121/2017 and CA No. 122/2017 and they are set aside. Both the cases are remitted to the Tribunal for its decision on the question whether the application for 'waiver' merits consideration after notice and hearing the parties.

8. Both the appeals are allowed with aforesaid observation. No costs.

9. In view of the fact that there is no 'waiver' in favour of the respondents, the question of granting any interim relief does not arise.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Balvinder Singh)
Member(Technical)