NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
(IA No. 1262/2024)
Company Appeal (AT) (CH) No. 83/2024
(IA Nos. 1263 & 1264/2024)

In the matter of:

1. MR. VENKATA SHIVA PRASAD DEVULAPALLI
R/o Plot No. 897, Road No. 46,
Jubiliee Hills, Hyderabad – 500033

2. MR. M. SAI SUDHAKAR
S/o Late M. Appayya, H. No. 1-10-208,
Ashok Nagar, Hyderabad - 500020 **…APPELLANTS**

V

M. CHANDRA SEKHAR RAO
S/o. M. Poornachandra Rao
R/o 3rd Floor, 1-10-114, Subbamma Nilayam,
Ashok Nagar, Hyderabad – 500020 **.... RESPONDENT NO. 1**

M. V. RAMANA RAO
S/o M. Poornachandra Rao
R/o Flat No. 1405, Aagate block,
My Home Apartments, Madinaguda,
Hyderabad – 500049 **.... RESPONDENT NO. 2**

MR. ADITYA BHAVRAO AAGARE,
S/o Bhavrao Aagare,
R/o 702, Sudampuri, Nandanvan Road,
Nagpur, Maharashtra – 440009 **...RESPONDENT NO. 3**

MANTRAWADI NAGACHANDRIKA,
W/o Late Mantrawadi Nagaraj Rao,
R/o Flat No. 1405, Aagate block,
My Home Apartments, Madinaguda,
Hyderabad – 500049 **.... RESPONDENT NO. 4**

M. BHASKAR SHARMA
R/o 1-10-114/1, Subbamma Nilayam,
Ashok Nagar, Hyderabad – 500020 **....RESPONDENT NO. 5**

MRS. M. LALITA
W/o M. Chandra Sekhar Rao
R/o 3rd Floor, 1-10-114, Subbamma Nilayam,
Ashok Nagar, Hyderabad-500020 **.... RESPONDENT NO. 6**

MRS. M. MALLIKA
W/o Mr. M. Bhaskar Sharma
R/o 1-10-114/1, Subbamma Nilayam,
Ashok Nagar, Hyderabad – 500020 **.... RESPONDENT NO. 7**

MANTRAVADI SAI KRISHAN @ KITTU,
R/o Flat No. 1405, Aagate block,
My Home Apartments, Madinaguda,
Hyderabad – 500049 **.... RESPONDENT NO. 8**

MS. MANTRAVADI SHRUTHI
R/o Flat No. 1405, Aagate block,
My Home Apartments, Madinaguda,
Hyderabad – 500049 **.... RESPONDENT NO. 9**

MR. M. VENKATA CHAITANYA
R/o 3rd Floor, 1-10-114, Subbamma Nilayam,
Ashok Nagar, Hyderabad – 500020 **.... RESPONDENT NO. 10**

M/S POLYGON REGRACTORIES PRIVATE LIMITED
Registered office at Agate 1405
My Home Jewel Apartments,
Madinaguda, Hyderabad – 500049 **.... RESPONDENT NO. 11**

MR. N. NAVEEN KUMAR
(Partner of M/s Naveen & Associates)
Chartered Accountant,
H. No. 8-2-87/88 & 89, Flat No. 201,
Srinivas Plaza, Srinagar Colony,
Main Road, Punjagutta,

Hyderabad – 500082 **.... PROFORMA RESPONDENT NO. 12**

THE REGISTRAR OF COMPANIES
2nd Floor, Corporate Bhawan,
GST Post, Nagola, Bandlaguda,
Hyderabad – 500068 **.... PROFORMA RESPONDENT NO. 13**

MR. M. MRINALINI
W/o Late M. Appayya,
H. No. 1-10-208, Ashok Nagar,
Hyderabad-500020 **.... PROFORMA RESPONDENT NO. 14**

MRS. M. SRILATHA,
W/o Mr. M. Sai Sudhakar
H. No. 1-10-208, Ashok Nagar,
Hyderabad – 500020 **.... PROFORMA RESPONDENT NO. 15**

Present :

For Appellants : Mr. Anshuman Sharma, Advocate

For Respondents : Mr. Asad Hussain, Advocate for R1 to R11

JUDGMENT
(Hybrid Mode)

[Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial)]

The Appellant, by invoking the Appellate provision, as contained under Section 421 of the Companies Act, 2013, challenges the Impugned Order, dated 27.09.2024, as it has been rendered in CP No.47/241/HDB/2023. The order under challenge is interlocutory in nature, as by virtue of the Impugned order, the Ld. Tribunal has exercised its power to grant an interim protection to the opposite parties i.e., the Respondents herein, whereby directing the proceedings of the tentative Annual General Meeting (AGM), which was scheduled to be held as on 27.09.2024, has been directed to be kept on hold.

2. However, there would be a legal question, which would be requiring consideration by us as to "*whether at all, the appeal would lie under Section 421 of the Companies Act, 2013, as against an interim arrangement made by the Ld. Tribunal in the exercise of powers vested with it under the Companies Act, 2013*". The provisions contained under Section 421 of the Companies Act, 2013, reads as "**any order would be appealable under Section 421**". One of the major questions, which would require consideration by us is, as to what type of orders could be subjected to appeal, under Section 421 of the Companies Act, 2013, more particularly, when the term "**order**" had not been defined under the Companies Act, 2013. But if the word "**order**" is to be read in conjunction to, the appellate provision continued under Section 421 of the Companies Act, 2013, and when it is made subject to appeal, it will always be an order, which has been rendered in a manner which substantively and permanently affects a right of a party in a proceeding before the Tribunal. It may not include within its ambit an order which is passed by the Tribunal in the exercise of its discretionary power, by way of interlocutory order, which simply and only intends to protect the status of a subject in a company petition, during the pendency of the company petition itself till its final disposal. The nature of the orders, passed by the Ld. Tribunals, which take the shape of an interim order are such that will have be treated as to be an arrangement

made during the pendency of the proceedings, and such type of an order will not have any bearing on the adjudication of the petition, on merits and will have no effect on the final adjudication, and final determination of rights, which are before the Tribunal, to be decided.

3. Hence, the question, which emanates for consideration is, whether an order which does not have a long-drawn bearing on the rights of either side of the parties or which does not have any bearing on the principal adjudication of the petition and which is an interlocutory arrangement made by the Ld. Tribunal or the courts while exercising their inherent powers, could, at all be treated as to be an order, which could be made appealable to the appellate jurisdiction?

4. In our opinion, an order which is passed while exercising inherent powers by the Ld. Tribunal, which is exclusively interim in nature and does not affect or determine the rights of the parties, though it could be got recalled or vacated, it could not be made appealable, when it is not having any element of deciding a substantive right of a party in a proceeding, where object of the order is exclusively to protect the subject or issue in controversy pending adjudication.

5. In the instant case, the Ld. Adjudicating Authority at the stage, when it was considering the two pending interlocutory applications being IA. No. 282/2024 & IA. No. 283/2024, as it had been preferred in CP No.47/241/HDB/2023, has proceeded to pass an order on IA. No. 283/2024, in the nature of suspending the

proceedings of the proposed conduct of Annual General Meeting (AGM), which was scheduled to be held on 27.09.2024. And the reasons for the aforesaid suspension of the Annual General Meeting (AGM), have been detailed by the Ld. Tribunal in para 11 and 12 of the impugned order which is under challenge in this instant company appeal. Hence, it cannot be said that, the order passed of restraining the holding of the Annual General Meeting (AGM) on 27.09.2024, was at all affecting a material right, or it was passed by the Tribunal by not assigning any reasons to it, which is the basic element required to be satisfied when the Ld. Tribunal / or, for that purpose, any court, passes an interim order so as to, attach an application of mind while passing an order, which is of interim nature.

6. It will be worthwhile to note the conclusion of the Ld. Adjudicating Authority which has been drawn in the impugned order therein, particularly that as contained in para 15, 17 and 18 of the said impugned order, which is extracted hereunder: -

> *"15. In the light of our observations as above, we hold that there is no need for holding AGM on 27.09.2024.*
>
> *17. We direct both the parties to get ready for expeditious hearing in CP No. 47/2023, by next hearing date.*
>
> *18. List the main CP along with IA 282/2024 on 17.10.2024."*

7. The Ld. Tribunal has passed an order in IA. No. 283/2024, thereby restraining the Appellants/Respondents, from holding the Annual General Meeting

(AGM) as it was scheduled for 27.09.2024. Simultaneously, it has also directed that, the proceedings of the company petition would be expedited. Furthermore, in the concluding para 18 of the impugned order, it has ordered that IA. No. 282/2024 would be decided along with the main company petition. The basic bone of contention of the Ld. Counsel for the Appellants while challenging the impugned order is that:

(i) When there were two interlocutory applications which were pending before the Ld. Adjudicating Authority being IA. No. 282/2024 and IA. No. 283/2024, the Ld. Adjudicating Authority cannot be selective in deciding the application IA. No. 283/2024 earlier without there being a prior adjudication made on IA. No. 282/2024. In fact, there is no legal bar as such, which is mandatorily imposed upon the Ld. Tribunals requiring them to render orders on all the pending interlocutory applications chronologically or simultaneously, as contended by the Applicant to the interlocutory applications. It always depends upon the facts and circumstances of each case, and on the wisdom of the Ld. Tribunal to pass an order on the pending interlocutory applications, which has been done in the instant case, where while passing an order in IA. No. 283/2024, IA. No. 282/2024 has been kept pending to be decided at a later stage. Frequent interference with the functioning of the Tribunal at an interlocutory stage is not to be done unless there is some flagrant error of law on the face of the order.

(ii) It is always that the wisdom of the Tribunal will prevail if an application, is decided contrary to the expectation of the Applicant and that in itself will not attach any malice or judicial impropriety in passing the order, which is impugned in question on IA. No. 283/2024, because it is always the nature of relief prayed in the application, which has to be considered based upon its exigency when taking up an application for consideration.

8. There is another limb of argument of the Ld. Counsel for the Appellants that in IA. No. 282/2024, as it was preferred by the Applicants/Petitioners before the Ld. Adjudicating Authority, the nature of relief which was modulated by the Applicants/Petitioners was in the following manner, is extracted hereunder: -

> ***"VI. <u>Prayer</u>:***
>
> ***In view of the above it is humbly prayed that:***
>
> *a) The Hon'ble Tribunal may be pleased to appoint Independent Chairman/Advocate Commissioner to conduct Annual General Meeting for Petitioner No.1 Company for the Financial Year 2023-24, additionally allowing the presence of One Professional (either Practicing Company Secretary or Advocate) from each side i.e., one each during the conduction of the said Annual General Meeting."*

9. What the Applicants to the Interlocutory Application, expected from the orders to be passed on IA. No. 282/2024, was to the effect of seeking a direction for the appointment of an independent Person or an Advocate Commissioner, for the purposes of holding the Annual General Meeting (AGM). The foundation of the relief, which was prayed for, in the said application was based upon, the earlier order which has been earlier passed by the Tribunal on 14.09.2023, which has been taken as to be a precedent for pressing upon the interim relief claimed in the application owing to the orders passed on 14.09.2023, whereby an advocate commissioner was appointed to conduct the Annual General Meeting (AGM) as per the Article of Association and the report was called upon to be submitted.

10. We feel that, passing of an interim order on 14.09.2023, is not a judicial adjudication of a right on merits, which can be taken as to be a precedent and a guiding factor for the purposes of deciding IA. No. 282/2024, which, according to the Appellant, ought to have been considered, prior to the passing of an order in IA. No. 283/2024 on 27.09.2024, which is impugned in the instant appeal. Besides this, the argument of the Ld. Counsel for the Appellant the decision in IA. No. 282/2024 should have been made prior to the decision in IA No. 283/2024, is preposterous to be accepted because according to the impugned order itself, though the Annual General Meeting (AGM) has been directed to be suspended by way of an interim arrangement, but still the scope of considering the IA No. 282/2024 has been left open to be considered by the Ld. Tribunal on its own merits.

11. Even otherwise also, we are of the view that when the Tribunal is exercising its exclusive jurisdiction of exercising its inherent powers, the earlier interim order cannot be taken as to be an-exampleror precedent to be laid as a foundation and application for the grant of a similar relief for conducting an Annual General Meeting (AGM) by appointing an Advocate Commissioner, was mandatorily required to be considered on the said basis.

12. The Ld. Counsel for the Appellant had relied upon the judgment, rendered in the matters of ***Dwarikesh Sugar Industry Limited versus Prem Heavy Engineering Works Limited as reported in 1997 Volume 6 SCC Page 450***. First of all, there will be a marginal difference because the said order has been passed in a civil appeal, as per the proceedings which are exclusively contemplated and governed under the procedure prescribed under Civil Procedure Code, 1908.

13. Apart from it, the reference made by the Ld. Counsel for the Appellant with regards to the extent of the exercise of the Appellate power for deciding the applications in the manner in which the ratio has been laid down in the matter of Dwarikesh Sugar Industry Limited (Supra). Yet again, it cannot be a yardstick to be commonly applied where the proceedings are being governed by the provisions contained under Order XLI of the Civil Procedure Code, 1908, more particularly when the governing circumstances of Dwarikesh Sugar Industry Limited (Supra) are absolutely distinct, to the appeal at hand.

14. Yet another judgment on which reliance has been placed by the Ld. Counsel for the Appellants is that reported in ***2021 Volume 6 SCC Page 707, Opto Circuit India Limited versus Axis Bank***, and particularly, the reference has been made by the Ld. Counsel for the Appellant to the contents of para 14 and 15 of the said judgment which is extracted hereunder: -

> *"14. This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad [Chandra Kishore Jha v. Mahavir Prasad, (1999) 8 SCC 266] and in the course of consideration observed as hereunder : (SCC p. 273, para 17)*
>
> > *"17. … It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."*
> >
> > *Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorised officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other*

aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party.

15. Apart from the above consideration, what has also engaged the attention of this Court is with regard to the plea put forth on behalf of the appellant regarding the need to defreeze the account to enable the appellant to pay the statutory dues. The appellant in that regard has relied on the certificate issued by the Chartered Accountant (Annexure P-38 at p. 231) which indicates the amount payable towards ITDS, PF, ESI, professional tax, gratuity and LIC employees' deductions, in all amounting to Rs 79,93,124. Since we have indicated that the freezing has been done without due compliance with law, it is necessary to direct Respondents 1 to 3 to defreeze the respective accounts and clear the cheques issued by the appellant, drawn in favour of the competent authority towards ITDS, PF, ESI, professional tax, gratuity and LIC employees' deductions, subject to availability of the funds in the account concerned. Needless to mention that if any further amount is available in the account after payment of the statutory dues and with regard to the same any action is to be taken by Respondent 4 within a reasonable time, it would open to them to do so subject to compliance with the required procedure afresh, as contemplated in law."

15. The said proceedings, which were subject matter of consideration in the matters of Opto Circuit India Limited (Supra), were the proceedings, which were held, on initiation of an investigation by the Central Bureau of Investigation (CBI), which was factually based on different reasoning altogether. Even if we accept the reference to para 14 and 15, which has been relied upon by the Ld. Counsel for the Appellants, as extracted above, as laying down a guiding principle that, if the

"***statute provides a thing to be done in a particular manner, it has to be ensured to be done in that manner, or it has not to be done in any other manner, which is unknown to law***". In this regard, we will have to answer the question as to, whether the procedural implications as it has been pedestaled in Para 14 and 15 of the judgment of Opto Circuit India Limited (Supra), would at all be made applicable in the instant case, so as to treat the order of 14.09.2023, as to be the basis to judicially decide, that appointment of an Advocate Commissioner by the earlier order will form to be, a part and parcel of the procedure provided under law, which is required to be adhered to while passing of the order on IA. No. 283/2024. In fact, the ratio of Para 14 and 15 laying down for a strict adherence to the procedural law, was in a case where the matter was being finally adjudicated and, where there could not have been any deviation to any other process, unknown to the process of law. But the same principle cannot be adopted when a Court or a Tribunal is exercising its discretionary powers which has some element of human prudence too, which is variable from man to man, for considering the interlocutory applications and hence the procedure cannot be derived from the earlier interim orders, which as already observed is not a precedence for deciding the matter. Apart from it, non-decision on IA. No. 282/2024 cannot be derived as to be taken as a reason to put a challenge to the impugned order dated 27.09.2024 as passed in IA. No. 283/2024 for the reason being that, in accordance with the observation made in para 18 of the impugned judgment, the decision on IA. No. 282/2024 is still been left open to be decided. Hence, it is a premonition, which the Appellant is having otherwise, without any basis, to press upon this instant company, appeal, against the impugned order passed in IA. No. 283/2024. However, since the order being exclusively of an interlocutory in nature, having no bearing on deciding the rights of the parties in petition on merits, rather it intends to maintain the *status quo* during the pendency of the proceedings of the company petition, it will not be an appealable order under Section 421 of the Companies Act, 2013, more particularly, in the light of the fact that, the Ld. Tribunal has reserved the rights of the Appellant for a decision to be taken on IA. No. 282/2024.

16. Hence, while declining to interfere in the company appeal, as against the impugned interlocutory order passed by the Ld. Tribunal while exercising its discretionary powers, we feel it apt to direct the Tribunal that, if the Appellant prefers the stay vacation application against the impugned order dated 27.09.2024, the same would be considered in accordance with the law without being influenced by any observations made by us in the order. And simultaneously, the Ld. Tribunal is requested also make an earnest effort to decide the IA. No. 282/2024, which the Appellant expects to be decided based on the procedures of the order 14.09.2023, which is yet again directed to be considered by the Ld. Tribunal, under the given facts and circumstances of the case, if at all made applicable, as per the provisions of law.

17. Hence, subject to the aforesaid exception carved out by us, the appeal would stand dismissed qua the order dated 27.09.2024, leaving it open for the Ld. Tribunal to consider and pass an appropriate order on the stay vacation application, if any, preferred by the Appellant as directed above, and while deciding the stay vacation application, the Ld. Tribunal is requested to consider passing an order on IA. No. 282/2024, in accordance with the law. Subject to the aforesaid, the 'appeal' would stand 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

07/04/2025
SN/MS