

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) No.77 of 2017

IN THE MATTER OF:

K. Muthusamy

...Appellant

Vs

N. Sankaranarayanan & Ors

...Respondents

**Present: Mr. Ramakrishnan Viraraghavan, Sr. Advocate with Ms Uttara Babbar, Advocate for appellants.
Mr. Soumik Ghosal, Advocate for Respondent No.1.**

ORDER

23.03.2017- This appeal has been preferred by the appellant against the order dated 20.01.2017 passed by the National Company Law Tribunal Chennai in TCA No.11 of 2016 in C.P. No.64 of 2006 pursuant to an application for execution of the decree passed by Company Law Board. In the impugned order the Tribunal made observations and passed the following directions:

"In view of the above, though it is held that the Applicant/R6 is entitled to file the application under Section 634A of the Companies Act, 1956, yet this application is premature. Therefore, the TCA No.11 of 2016 is liable to be rejected. The same is dismissed, there is no order as to costs. However, the applicant/R6 is at liberty to file the Company Application at the time when the order of the CLB dated 25.2.2009 is all set for execution. Thus, the Chartered Accountant Shri R. Aghoramurthy is directed to submit his report before this Bench in the light of the directions given by the CLB in its order dated 25.02.2009, within two months from the date the copy of order is received. The Registry is directed to send a copy of this order by speed post along

with the order of the CLB dated 25.02.2009 to the Chartered Accountant Shri R. Aghoramurthy for compliance."

2. The brief facts of the case is that the Company Petition No.64 of 2006 under Sections 397, 398, 402 and 403 read with Section 235, 237 and Schedule XI of the Companies Act, 1956 was filed by one Shri S. Balasubramanian and four others. 1st Respondent, N. Sankaranarayanan was 6th Respondent in the

said Company Petition. The Company Law Board vide order dated 25.02.2009 passed a detailed order, the portion of which reads as follows:

"In view of my foregoing conclusions and in exercise of the powers vested in Sections 397 and 398 read with Section 402 of the Act, as envisaged in Harikumar Raja Vs Sovereign Dairy Industries Ltd & Others and with a view to bringing to an end the acts complained of by the aggrieved shareholders, thereby regulating the conduct of the Company's affairs, it is ordered as follows:

- i) *The present Board of Directors comprising of the petitioners will continue to carry on the management of affairs of the Company, in strict compliance with the articles of association, subject to the stipulations (i) to (iii) imposed in the order dated 09.08.2007 made in C.A. No.41 of 2007.*
- ii) *Shri R. Aghoramurthy, Chartered Accountant, Chennai (Mobile No.9444322347) is authorised to carry out an investigative audit of the accounts of the Company for the period from 01.04.2000 to 31.03.2005 by scrutinising 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 on 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 utilisation 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, on 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 P.M. for issue of appropriate consequential directions, after hearing the parties concerned, to safeguard the interests of the company and its members.

With the above directions, the Company Petition and all the connected applications stand disposed of, however, reserving the right to issue necessary directions, in terms of this order."

3. The aforesaid order was challenged before the Madras High Court in Company Appeal No.6 of 2009 which vide order dated 21.2.29011 confirmed the order passed by the Company Law Board, relevant of which reads as follows:

"A. Execute the order of the Hon'ble Madras High Court dated 21.02.2011 in Company Appeal No.6 of 2009 confirming the order of this Hon'ble Board dated 25.02.2009 in the above CP.

B. initiate surcharge proceedings against the Respondents 2 to 4 herein in accordance with Section 543-545 read with Schedule XI of the Companies Act and thus render justice.

C. direct the Respondents 2 to 4 to pay the 1st Respondent a sum of Rs.11,04,07,000/- (Eleven Crores four lakhs and seven thousand only) being the loss suffered by the 1st respondent, due to mismanagement of the same by the Respondents 2 to 4."

D. Such further or other orders that this Hon'ble Board may deem fit in the facts and circumstances of the case and thus render justice."

4. As the order passed by the Company Law Board on 25.02.2009 as was affirmed by the Madras High Court was not executed, 1st Respondent who was 6th Respondent before the Company Law Board preferred an application under Section 634A of the Companies Act, 1956 before the erstwhile Company

Law Board. The said petition under Section 634A remained pending and after constitution of the Tribunal, the petition was transferred and re-numbered as TCA No.11/2016 for execution of the decree. Therein, the Tribunal passed the impugned order as quoted above.

5. Learned Counsel appearing on behalf of the appellant submitted that the applicant, who was 6th Respondent before the Company Law Board and 1st Respondent herein is not the beneficiary of the judgement and decree passed by the Company Law Board on 25.2.2009. Therefore, he cannot file an application under Section 634A of the Companies Act, 1956 (now sub-section (3) of Section 424 of Companies Act, 2013). This was opposed by Learned Counsel for the 1st Respondent/applicant, who was 6th Respondent before the Company Law Board.

6. For determination of issue, it is desirable to notice the relevant provisions of the Section 634A of Companies Act, 1956 (now sub-section (3) of Companies Act, 424), which reads as follows:

“634A-Enforcement of order of Company Law Board

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Any order made by the Company Law Board may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction:-

- a) *In the case of an order against a company, the registered office of the company is situated; or*
- b) *In the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.*

7. Bare reading of Section 634A of Companies Act, 1956 it is clear that the power was vested with the Company Law Board (now National Company Law Tribunal) to enforce its order in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction. It is only in the case the Board is unable to execute its own order, the Company Law Board was liable to enforce the order through the Court where the registered office of the company is situated.

8. Now sub-section (3) of Section 424 of the Companies Act, 2013 empowers the Tribunal to get its order executed. The provision does not confine itself only to the beneficiary of the order. If any of the party to the Company Petition whether petitioner or the respondent brings it to the notice of the Company Law Board (now Tribunal) that the order passed by it has not been enforced, it is always open to the Company Law Board (now Tribunal) to get the same executed in the same manner as if it were a decree made by a court in a suit, and it is lawful for the Company Law Board or this Tribunal to send the order for execution to the competent court within the local limits of whose jurisdiction the registered office of the company is situated.

9. In view of the aforesaid provision of law, we hold that the Tribunal by the impugned order dated 20.1.2017 has rightly held that the application preferred by 1st Respondent/applicant (6th Respondent in Company Petition) is entitled to file the application under Section 634A of Companies Act yet the application is pre-mature. However, the applicant/Respondent No.6 has been

granted liberty to file the Company Application at the time when the order of Company Law

Board is all set for execution. The Tribunal has rightly directed the Chartered Accountant to submit its report, in the light of the directions given by the erstwhile Company Law Board.

10. Learned counsel appearing on behalf of the appellant next submitted that the Chartered Accountant is not proceeding in the manner in which it should proceed and has issued a notice to the appellant. If that be so the appellant should submit its reply and may point out the defect to the Chartered Accountant and thereafter, if necessary to the Tribunal. In this regard, we do not want to express any opinion regarding the functioning of the Chartered Accountant, who have been directed to submit his report in the light of the directions given by the Company Law Board.

11. We find no merit in this appeal. It is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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