

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

**Company Appeal (AT) No. 377 of 2018**

**IN THE MATTER OF:**

**Jubey M. Devasia & Anr.**

**...Appellants**

**Vs.**

**Kims Bellerose Institute of Medical  
Sciences Pvt. Ltd. & Ors.**

**...Respondents**

**Present: For Appellant: - Mr. Piyush Singh, Advocate.**

**ORDER**

**10.12.2018**— This appeal has been preferred by the Appellant against the order dated 5<sup>th</sup> September, 2018 passed by the National Company Law Tribunal ('Tribunal' for short), Division Bench, Chennai.

2. By the impugned order, the Interlocutory Application preferred by the Respondent under Section 8 of the 'Arbitration and Conciliation Act, 1996' has been allowed and the Company Petition filed under Sections 241 & 242 of the Companies Act, 2013 has been dismissed.

3. In "***Thota Gurunath Reddy & Ors. Vs. Continental Hospitals Pvt. Ltd. & Ors.— Company Appeal (AT) No. 160 of 2017***", this Appellate Tribunal while dealing with the application filed under Section 45 of the Arbitration and Conciliation Act, 1996, held that the appeal under Section 421 of the Companies Act, 2013 is not maintainable

Contd/-.....

against an order of reference to Arbitral Tribunal as the National Company Law Tribunal do not pass the order in the capacity of a Tribunal but in the capacity of the 'judicial authority'.

4. Learned counsel appearing on behalf of the Appellant tried to distinguish the decision in **“Thota Gurunath Reddy & Ors.”** (Supra) on the ground that the application under Sections 241 & 242 was required to be determined on merit. He further submits that the Tribunal has inherent power under Rule 11 of the National Company Law Tribunal Rules, 2016.

5. However, such submission cannot be accepted as the Tribunal has no inherent power under its Rules to pass any order. The case of the Appellant being covered by the decision in **“Thota Gurunath Reddy & Ors.”** (Supra) as the appeal under Section 421 of the Companies Act, 2013 is not maintainable, we are not inclined to interfere with the impugned order dated 5<sup>th</sup> September, 2018. It is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

Ar/uk