

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 210 of 2020

In the mater of:

**Alanda Media & Entertainments Pvt. Ltd.
#1-123, 8th Floor,
3rd Block, My Home Hub,
Hi-tech City, Madhapur,
Hyderabad – 500081.**

...Appellant.

Versus

**1. V. Ravi Prakash
S/o. V Prakash Rao
R/o Plot No. 23,
B.N. Reddy Colony,
Road No. 12, Banjara Hills,
Hyderabad**

...Respondent No. 1

**2. M.K.V.N. Murthy
R/o 6-3-596/4,
Sri Venkata Ramana Colony,
Khairatabad, Hyderabad-500004.**

...Respondent No. 2

**3. Clifford Pereira
R/o Plot No 97, Road No. 3,
Banjara Hills,
Hyderabad-500034.**

...Respondent No. 3

**4. Associated Broadcasting Company Pvt. Ltd.
Plot NO. 97, Road No. 3
Banjara Hills, Hyderabad,
Telangana- 500034**

...Respondent No. 4

**5. Chantalapati Holdings Pvt. Ltd.
Having its registered office at
Building 3, I Labs Center, Plot No. 18,
Software Units Layout, Madhapur, Hyderabad,
Telangana-500081**

... Respondent No. 5

**6. I Labs Venture Capital Fund
18, Inorbit Mall Road, Unit No. 3,
I Labs Hyderabad Technology Centre,
Software Unit Layout, Madhapur, Hyderabad,
Telangana-500081**

...Respondent No. 6

- 7. Jupally Jagapathi Rao**
R/o H. No. 1-66, Plot No. 45
Meenakshi Bamboos,
Serilingampally, Gachibowli,
Hyderabad, Telangana-500032 **...Respondent No. 7**
- 8. S. Sambasiva Rao**
R/o H. No. 174/A, MLA Coloy
Road No. 12, Banjara Hills,
Hyderabad, Telangana-500034 **...Respondent No. 8**
- 9. Srinivasa Rao Aravapalli**
R/o. Flat No. 911, Agate Block
My Home Jewel Apartments, Madeenaguda,
Hyderabad, Telangana- 500049 **...Respondent No. 9**
- 10. Pulluri Kaushik Rao**
R/o 3-6-547/1, 4th Floor, Himayathnagar,
Hyderabad, Telangana-500029 **...Respondent No. 10.**

Present:

For Appellant: Mr. Dhruva Mukherjee, Sr. Advocate with Mr. Kumar Anurag Singh, Anando Mukherjee and Zain A. Khan, Advocates.

For Respondent: Mr. Y. Suryanarayana (Caveator)

ORDER
(VIRTUAL MODE)

17.11.2020 Heard Learned Sr. Counsel for the Appellant. He submits that by the Impugned Order dated 30th January, 2020, Ld. National Company Law Tribunal, Hyderabad dismissed all the three Applications bearing Nos. 811 of 2019, 828 of 2019 and 929 of 2019 challenging the maintainability of the main Company Petition filed under Sections 241 & 242 of the Companies Act, 2013, (In brief the Act) as the Petition does not meet the threshold criteria under Section 244 of the Act. Learned Sr. Counsel submits that the Petition was filed on behalf of two Petitioners (Respondent No. 1 & 2 herein) However, the Petitioner No. 2 has not signed the Joint Petition and his written consent obtained under Section 244(2) of the Act is not annexed with the Petition as

required under Rule 81 of the National Company Law Tribunal Rules, 2016. This is a mandatory provision and non-compliance would *ipso facto* result in the dismissal of the Petition. Therefore, the Impugned Order is liable to be set aside.

2. We have gone through the record, Ld. Tribunal held that the Petitioner No 1 (Respondent No. 1 herein) holds 5,00,000 shares and Petitioner No. 2 (Respondent No. 2 herein) holds 1,40,000 shares in the Company and admittedly there are only six shareholders in the Company. Even if the Petitioner No. 2 has not signed the Petition, the Petitioner No. 1 alone can file the Petition as he is one of the shareholders out of six shareholders. It is well settled principle of law that the Petition is filed containing facts and law, the same cannot be dismissed at the threshold. It is also held that non-compliance with any procedural requirement relating to memorandum of the Appeal, pleading or Application should not lead to automatic dismissal or rejection.

3. We have recently dealt with the case in which the written consent obtained under Section 244(2) of the Act was not annexed with the Petition as per the Rule 81 of NCLT Rules 2016. We held that such non-compliance shall not invalidate the proceedings, we would like to reproduced the relevant paras of the Judgment in the case of Chalasani Venkateswara Rao & Ors. Vs. United Telecoms Ltd. & Ors. in Company Appeal (AT) No. 345 of 2019 which are as under:-

Whether written consent is required to be filed alongwith the Petition?

23. *Sub-section 2 of Section 244 of the Act only speaks of obtaining written consent. It does not speak of such*

consent to be annexed with the Petition. The Rule 81 of NCLT Rules, 2016 provides that the letter of consent signed by the members shall be annexed with the petition. Earlier, there was provision in Section 399 of the Companies act, 1956 and Regulation 18 of the Company Law Board Regulation, 1991. Sub-section 2 of Section 244 of the Act and Section 399 of the Companies Act, 1956 are parimateria and Rule 81 of NCLT Rules, 2016 and Regulation 18 of the Company Law Board Regulation, 1991 in sum and substance are the same.

24. *Hon'ble Supreme Court in the case of J.P. Srivastava (Supra) while dealing with the case under Section 399 of the Companies Act, 1956 and Regulation 18 of the Company Law Board Regulation, 1991 held as under:-*

“38. The Courts below however refused to entertain the petition because the documents referred to earlier had not been filed along with the petition in accordance with their interpretation of S.399 and Reg. 18. Section 399 of the Act has replaced Section 153-C (3) of the Indian Companies Act, 1913 with some major differences. Section 153-C (3) of the 1913 Act itself provided that the consent of the shareholders supporting the petition should be obtained in writing . Sub Section (3) of Section 399 of the 1956 Act, however, contains no such requirement. It only speaks of "obtaining" of the consent. It does not speak of consent in writing nor does it require any such writing to be annexed with the petition. Many of the decisions cited by both the parties have turned on the wording of Section 153-C (3) of the 1913 Act such as Makhan Lal Jain vs. The AmritBanaspati Co. Ltd AIR 1953 Allahabad 326 when in the context of Sub section 3 of Section 153-C (a) it was held:

" the law requires that the consent should be in writing, i.e., in the form of a document. Therefore, the document itself should prove that the consent has been given. No evidence, either by way of affidavit or of oral sworn statement in Court, can be given to prove that such consent was given.”

39.The reasoning in this decision would no longer be apposite having regard to the change

in the language in Section 399(3) and the shifting of the requirement from the Act to Regulation 18 of the Company Law Board Regulations, 1991 (hereinafter referred to as “the Regulations”). Regulation 18 also does not itself contain the requirement for filing the consent letters. The Requirement has been prescribed in Annexure III, which is referred to in documents required to be annexed to Petitions relating to the exercise of Powers in connection with prevention of oppression or mismanagement under Sections 397, 398, 399(4), 400, 401, 402, 403, 404 and 405. The documents required to be annexed to such Petition include “where the Petition is presented on behalf of members, the letter of consent given by them”. Other documents required to be filed include “documentary and or other evidence in support of the statements made in the petition, as are reasonably open to the petitioner(s)”, as also “three spare copies of the petition’. These requirements can hardly be said to be mandatory in the sense that non-compliance with any of them would ipso facto result in the dismissal of the petition. Apart from this, Regulation 18 itself is subject to the powers of CLB under Regulations 44 and 48. These read as follows:

44. Saving of inherent power of the Bench: - Nothing in these rules shall be deemed to limit or otherwise affect the inherent power of the Bench to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Bench.

48. Power to dispense with the requirement of the regulations. - Every Bench shall have power for reasons to be recorded in writing, to dispense with the requirements of any of these regulations, subject to such terms and conditions as may be specified.

oral sworn statement in Court, can be given to prove that such consent was given.”

40. Given these powers in the CLB, we cannot hold that non-compliance with one of requirements in Srl. No.27 in App. III of Reg. 18 goes to the very root of the jurisdiction of the CLB

to entertain and dispose of a petition under Sections 397,398. All that regulation 18 requires by way of filing of documents, is proof that the consent of the supporting shareholders had in fact been obtained prior to the filing of the petition in terms of Section 399(3). It cannot be gainsaid that it is open to the persons opposing the application under Sections 397and 398 to question the correctness of an assertion as to consent made by the petitioner. It is equally open to the petitioner to provide evidence in support of the plea taken in the petition. If ofcourse the objection to the maintainability is taken by way of demurrer, the CLB can decide the issue on the basis of the averments contained in the petition alone, accepting the pleas therein as correct. But where the CLB takes into consideration facts outside the petition as it has done in this case, it cannot foreclose the petitioner from supporting its case in the petition on the basis of evidence not annexed thereto. Since the CLB calculated the total shareholding of the company including preference shares based on the allegations contained in the respondent No.8's application, it was for the CLB to determine the issue of actual prior consent on evidence. This view finds support from Reg. 24 which says:

24. Power of the Bench to call for further information/evidence: - The Bench may, before passing orders on the petition, require the parties or any one or more of them, to produce such further documentary or other evidence as the Bench may consider necessary. -

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders on the petition.”

25. *With the aforesaid proposition, it is clear that the requirements contained in Regulation 18 of Company Law Board Regulation, 1991 can hardly be said to be mandatory in the sense that non-compliance would ipso facto result in the dismissal of the petition. Thus, we can say that sub-section 2 of Section 244 of the Act only speaks of obtaining*

of written consent of members. Though Rule 81 of NCLT rules, 2016 provides that the letter of consent signed by the members shall be annexed to the petition, however, non-compliance would not ipso facto result in the dismissal of the petition. We can say that such defect can be cured subsequently by filing of the written consent of members.

26. It is not out of context to refer that Rule, 58 of the National Company Law Tribunal, Rules, 2016 provides that failure to comply with any requirements of these Rules shall not invalidate any proceedings, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice. Thus, the written consent obtained under Section 244(2) of the Act is not annexed with the Petition as per the Rule 81 of NCLT Rules, 2016. Such non-compliance of this rule shall not invalidate the proceedings.

5. With the aforesaid, we are of the considered view that there is no ground to interfere with the impugned order. Thus, the Appeal is dismissed in *limine*.

Registry is directed to send to copy of the order to the concern Tribunal for information.

[Justice Jarat Kumar Jain]
Member (Judicial)

[Balvinder Singh]
Member (Technical)

SC/Kam.