

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

**Company Appeals (AT) No.57 of 2017**

**IN THE MATTER OF:**

**Brahmani Infratech Pvt Ltd & Ors**

**...Appellant**

**Vs**

**Malaxmi Infra Ventures (India) Ltd**

**...Respondent**

**Present: Mr. Y. Surya Narayana, Advocate for the Appellants.  
Mr. Yogesh Raavi, with Mr. Alok Dhir, Ms Versha Banerjee and  
Mr Milan Singh Negi, Advocates for the Respondent.  
Mr. Kunal Godwani, Advocate for Respondent No.3, 4, 5 and 6.**

**ORDER**

17.04.2017- This appeal has been preferred by appellant, Brahmani Infratech Pvt Ltd & Ors, against the order dated 31.1.2017 passed by the National Company Law Tribunal, Hyderabad Bench (hereinafter referred to as the 'Tribunal' for short) in Company Petition No.42/2011. By the impugned judgement, while the Tribunal answered the oppression and mismanagement in favour of appellant and held that the company petition was maintainable only with respect to the 1<sup>st</sup> respondent and 2<sup>nd</sup> respondent has no locus standi to join in his individual capacity to file the company petition but directed the appellant company to appoint the same very 2<sup>nd</sup> respondent as Director of the appellant company.

On 10<sup>th</sup> February, 2017 when the matter was taken up the Appellate Court passed the following order:-

*"The appellant has challenged the order dated 31<sup>st</sup> of January 2017 passed by National Company Law Tribunal, Hyderabad*

*Bench whereby the Tribunal observed that Company Petition is maintainable only with respect to 1<sup>st</sup> Petitioner. The Tribunal while held that the Company Petition is not maintainable by the 2<sup>nd</sup> Petitioner, Mr. Y. Harish Chandra Prasad but curiously restored 2<sup>nd</sup> Petitioner Mr. Y. Harish Chandra Prasad as Director of the Company, which appears to be without any reason. In spite of notice respondents have not appeared. By way of last chance, we give them opportunity to appear. Otherwise the appeal will be decided ex parte.”*

On notice when the Respondents have appeared. Learned Counsel for the Respondent submits that the very same impugned judgement was challenged by the Respondent before this Appellate Tribunal in Company appeal (AT) No.78 of 2017. The Appellate Tribunal by order dated 23<sup>rd</sup> March, 2017 refused to interfere with the impugned judgement granted liberty to the 1<sup>st</sup> Respondent to file fresh company petition under Section 241 and 242 of the Companies Act, 2013, if there is fresh cause of action i.e. ‘oppression and mismanagement’, taken place after the 1<sup>st</sup> respondent become the shareholder of the company.

The order dated 23.03.2017 passed in Company Appeal (AT) No.78/2017 reads as follows:

*“In this appeal, by impugned order dated 31<sup>st</sup> January 2017 in C.P.No. 42 of 2017, the National Company Law Tribunal, Hyderabad Bench (hereinafter referred to as the ‘Tribunal’) held that the C.P. No. 42 of 2017 is maintainable only with respect to 1<sup>st</sup> petitioner – Mahalaxmi Infra Ventures (India) Pvt. Ltd. w.e.f. 21<sup>st</sup> March 2011 and in regard to the 2<sup>nd</sup> petitioner (2<sup>nd</sup> appellant herein) the said Company Petition is not maintainable.*

*After some arguments, learned counsel for the appellants sought permission to withdraw the appeal to enable the appellants to file a fresh Company Petition under section 241 and 242 of the Companies Act 2013 with regard to ‘Oppression and*

*Mismanagement if committed after the appellants become the shareholders of the company.*

*Learned counsel for the appellants further submitted that in the meantime, as ordered by the Tribunal in the impugned order dated 31<sup>st</sup> January 2017, 2<sup>nd</sup> appellant be allowed to continue as director.*

*Learned counsel appearing on behalf of 1<sup>st</sup> to 6<sup>th</sup> respondents raised objection with regard to prayer made for continuance of 2<sup>nd</sup> appellant as director of the company and informed that they have filed a separate Company Appeal(AT) No. 57 of 2017 before this Appellate Tribunal challenging such part of the impugned judgement.*

*Having heard learned counsel for the parties while we allow the appellants to withdraw the appeal with liberty to file a fresh petition under section 241 and 242 of the Companies Act 2013, if there is any 'Oppression and Mismanagement' taken place after they become the shareholders of the company, we do not express any opinion with regard to the impugned order dated 31<sup>st</sup> January 2017 whereby the 2<sup>nd</sup> appellant has been directed to continue as the director, which may be looked into in Company Appeal (AT) No. 57 of 2017.*

*We make it clear that we have not expressed any opinion in regard to the petition as may be preferred by the appellants in future and if such petition is filed, the Tribunal will decide the same on its own merit uninfluenced by the impugned order and the order of the Appellate tribunal.*

*The appeal stands disposed of as withdrawn and with the aforesaid observations."*

In view of the fact that the Tribunal has held that the company petition in regard to 2<sup>nd</sup> respondent was not maintainable as affirmed by this Appellate Tribunal in Company Appeal (AT) No.78/2017, we hold that the Tribunal was not justified in directing the appellant company to reinstate the 2<sup>nd</sup> respondent as Director of the company. For the reasons aforesaid the

impugned judgment in so far the direction contained in Clause 4(iv), which reads as follows, is set aside:-

*“iv) The Respondent No.1 Company is directed to appoint the second petitioner as Director of Respondent No.1 company in accordance with its Articles of Association within a reasonable time.*

*v) Interim orders dated 10.6.2011 stands vacated and CA Nos 140 and 141 of 12 also stands dismissed with no order as to costs.”*

However, we make it clear that the impugned judgement dated 31.1.2017 passed in CP No.42/2017 or the order passed by the Appellate Tribunal in Company Appeal (AT) No.78/2017 or the judgement passed by the Appellate Tribunal today in this Company Appeal (AT) No.57 of 2017 will not come in the way of the aggrieved person to file fresh petition, if preferred, for any subsequent cause of action and if maintainable, as observed by the Tribunal and in Appellate Tribunal's order dated 23.3.2017. In such case the Tribunal will decide the case uninfluenced by earlier order passed by it on 31.1.2017 in CP No.42/2011 or the order passed by the Appellate Tribunal.

The appeal is allowed with aforesaid observations. However, in the facts and circumstances there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Mr. Balvinder Singh)  
Member (Technical)

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