

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

**Interlocutory Application No. 352 and 353 of 2017 in  
Company Appeal (AT) No. 213 of 2017**

**IN THE MATTER OF :**

**Archer Power Systems Private Limited .... Appellant**

**v.**

**Cascade Energy Pvt. Ltd & Ors. ... Respondent**

Present: **For Appellant:** Mr Satish Parasaran, Senior Advocate and Mr Goutham Shivshankar, Advocate.

**For Respondents:** Mr S.N. Mukherjee, Sr. Advocate, Ms Shalini Kaur, AoR, Mr Sanjay Kumar, Mr Bharat Chugh, Mr Gimni Sehgal, Mr Kushank Sindhu and Mr Gowtham Kumar and S. Nair, Advocates.

**O R D E R**

**14.7.2017** - This appeal has been preferred by the Appellant against order dated 14<sup>th</sup> June 2017 passed by National Company Law Tribunal, (hereinafter referred to as Tribunal) Chennai Bench in a petition under Section 241 and 242 of the Companies Act, 2013, wherein and where under the Tribunal considered the prayer of Respondent/petitioner for grant of interim relief and passed the following order:-

*"4. In view of the above, we proceed to consider the prayer of the petitioner for grant of interim relief contained under sub para (f) of Para II of the Petition. Counsels for the Respondents have*

*vehemently opposed the grant of interim relief. However, considering the facts and circumstances involved in the case, as detailed in the petition, we are inclined to grant interim relief as prayed and appoint Mr S. Santhanakrishnan as Chartered Accountant and Mr R Sridharan as Company Secretary, whose names have been recommended by the Petitioner and direct them to undertake forensic audit of the state of affairs of the company including accounts-cum-banking and statutory compliance including Sales Tax, Excise, Customs, FEMA, Companies Act, GATT and other laws applicable and statutory records of R1 company including the Income and Expenditure of Respondent No. 1. The audit report shall be submitted to this Bench within four weeks from the date, the copy of the order is received. The Chartered Accountant and the Company Secretary shall also report on the aspects of the corporate governance and compliance of effecting contractual commitments of R1 and its shareholders. The report shall be submitted in a sealed cover to this Branch. The petitioner and Respondents are directed to cooperate with the Chartered Accountant and Company Secretary by making available the accounts, books and other records as may be required by the Chartered Accountant and the Company Secretary. Regarding the payment of remuneration to the Chartered Accountant and the Company Secretary, both are at liberty to fix their remuneration s per the practice in vogue. The payment of remuneration to them shall be borne by the Petitioner and Respondents equally. Accordingly, the relief as prayed is granted to the petitioner.*

*5. It is also on record that an application has been filed by the Counsel for R2. The Petitioner is directed to file the counter within two weeks and thereafter within ten days the Counsel for the Respondent may file rejoinder, if any. Matter is posted for arguments on the application. Put up on 13.7.2017 at 10.30 a.m.”*

2. Heard Ld. Counsel for the Appellant and Mr Gowtham Kumar who appeared on behalf of Respondents No. 2 to 5 stated that he appears on behalf of other Respondents and will file Vakalatnama in course of day.

3. In the present case it is not necessary to go into the merit to decide the claim and counter claim of the parties as the matter is

pending before the Tribunal. The only question to be decided is as to whether the impugned interim order dated 14<sup>th</sup> June 2017 passed by the Tribunal is in consonance with sub-section (4) of Section 242 of the Companies Act, 2013, as quoted below:-

**“Powers of Tribunal - 242.** (1) If, on any application made under section 241, the Tribunal is of the opinion—  
(a) that the company’s affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and  
\*(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—  
(a) the regulation of conduct of affairs of the company in future;  
(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;  
\*(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;  
(d) restrictions on the transfer or allotment of the shares of the company;  
(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;  
(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;  
\*(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

*(h) removal of the managing director, manager or any of the directors of the company;*  
*(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;*

*(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);*

*(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;*

*(l) imposition of costs as may be deemed fit by the Tribunal;*  
*(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.*

*(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable."*

4. From a bare perusal of the impugned order, we find that no finding or reason has been given by Tribunal on the question whether it is just and equitable in the present case to pass an interim order for conduct of company's affairs. On the other hand, from the interim order, we find that the said order has nothing to do with the conduct and affairs of the company. For the reasons aforesaid the impugned order cannot be upheld.

5. It is informed by the parties that the Appellants have filed the original Company petition under Section 241 of the Companies Act, 2013 alleging 'oppression and mismanagement' by Respondents.

The Respondents have also filed a cross petition under Section 241 alleging 'oppression and mismanagement' on the part of the Appellants. Both the matters are pending and no affidavit or reply has been filed, as the Appellants have raised the question of maintainability of the petition filed by Respondents under Section 241 of the Companies Act, 2013. The original petitions were filed in April 2017 and though approximately three months have passed but the petitions have not been taken up for consideration on merit for one or other objections raised by the parties. The Petitions preferred by the parties are required to be disposed of by the Tribunal within three months as per sub-Section (1) of Section 422 of the Companies Act, 2013. But because of interim applications preferred by one or other parties, the Tribunal could not take up the main matter (s). We are of the view that the question of maintainability was not required to be decided as preliminary issue which can be decided along with main petition. It could have been taken up during the final hearing of the main Company Petition as the cases are required to be disposed of preferably within 90 days.

6. For the reasons aforesaid, we set aside the impugned order passed by Tribunal in Company Petition No. 19 of 2017 and direct the parties to file their respective reply affidavit in concerned petitions within one week, rejoinder, if any, be filed within a week

thereafter. In case one or other party fail to file reply affidavits in their respective petitions and or rejoinder, the Tribunal will proceed with the matter without granting further time to the parties while deciding the question of maintainability at the time of final hearing of the case. The parties should cooperate with the Tribunal and it is expected that the Tribunal will decide the case at an early date, preferably within 30 days.

7. The appeal stands disposed of with aforesaid observation and directions. No cost.

Sd/-  
(Justice S.J. Mukhopadhaya)  
Chairperson

Sd/-  
(Mr. Balvinder Singh)  
Member (Technical)

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