

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

Company Appeal (AT) No.183 of 2017

IN THE MATTER OF:

**Dr.M.A.M. Ramaswamy Chettiar of Chettinad Charitable
Trust**

Appellant

Vs

M/s Chettinad Cement Corporation Ltd ...Respondent

And

Company Appeal (AT) No.184 of 2017

IN THE MATTER OF:

Adaipakkappan (A) Sithiral Ananandan

Appellant

Vs

M/s Chettinad Cement Corporation Ltd ...Respondent

**Present: Mr. S. Ravi, Advocate for the appellant.
Mr. R.K. Khanna, PCS for the appellant.
Mr. S.N. Jha, Sr. Advocate with Mr. R.
Jawahar Lal, Mr. Shyamal Anand and Ms
Maina Duggal, Advocates for the Respondent
(Appeal No.183/2017).
Mr. R. Jawahar Lal, Mr. Shyamal Anand and
Ms Maina Duggal, Advocates for the
Respondent (Appeal No.184/2017).**

ORDER

27.07.2017- This appeal has been preferred by the appellant,
Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable
Trust against the order dated 31st March, 2017 passed by the
National Company Law Tribunal (hereinafter referred to as

the Tribunal), Chennai Bench, Chennai. In an application filed under Second Proviso to Section 14(1)(b) of the Companies Act, 2013, the Tribunal accepted the prayer of the 1st Respondent Company to change its status from public to private company.

2. Learned Counsel appearing on behalf of the appellant (3rd objector) submitted that while passing the impugned order the Tribunal has not satisfied itself having regard to all the circumstances of the case and failed to notice that the conversion was not in the interest of the company and should not have been made which will contravene or to avoid complying with the provisions of the Companies Act. Reliance was placed on Rule 68 of NCLT Rules, 2016 which relate to second provision to sub-section (1) of Section 14 of the Companies Act, 2013 as per which an objector whose interest is likely to be affected has been allowed to be heard and under Sub-Rule (7) the Tribunal to satisfy itself with regard to the circumstances of the case. In this regard it is desirable to notice sub-rule (6) and (7) of Rule 68 which are as follows:

“68. Petition under Section 14-

*(1) A petition under the second provision to sub-section (1) of section 14 of the Act for the conversion of a public company into a private company, shall, not less than three months from the date of passing of special resolution, be filed to the Tribunal in **Form No.NCLT.1***

and shall be accompanied by such documents as are mentioned in Annexure B.

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“(6) Where any objection of any person whose interest is like to be affected by the proposed petition has been received by the petitioner, it shall serve a copy thereof to the Registrar on or before the date of hearing.

(7) While passing an order, the Tribunal may, if it is satisfied, having regard to all the circumstances of the case, that the conversion would not be in the interest of the company or is being made with a view to contravene or to avoid comply with the provisions of the Act, disallow the conversion with reasons to be recorded in writing.”

3. Respondents have raised main objection with regard to the locus standi of the appellant on the ground that the appellant is a trust and is not the shareholder of the 1st respondent company.

4. Learned Counsel for the appellant in reply submitted that the shares which belongs to one Dr. M.A.M.Ramaswamy (deceased); he executed his last Will in favour of the appellant trust. Learned counsel for the appellant further stated that appellant trust has filed an application for grant of probate of the Will before the Hon'ble High Court of Madras which is pending. However, till date the issue of Probate of Will has not been decided by the Hon'ble High Court of Court to find out whether, the appellant can claim its right over the shares of Dr. M.A.M. Ramaswamy.

5. Even if it is accepted that the appellant has right to raise objection we find that all such objections, raised by the objectors including the appellant-3rd objector, have been noticed by the Tribunal. The objections has been rejected with following observations:

“At this juncture, there are three objectors. First Objector Mr. N. Sivaprasad has filed his objections stating that the ‘consolidation of shares’ which has happened during February, 2016 is not in accordance with the law and the shareholders who are having less stakes have been paid and thrown out of the company and if the application of the company for conversion is allowed that would violate the rights of the Objector who has already been paid by the company as per the scheme of consolidation of shares and presently he is not a shareholder. He further submitted that when the status of the company is changed, then the applicable provisions of the Companies Act, 2013 would be different and the company would enjoy some privileges and exemptions. This in turn will result in creating hardship to the small investors who have already been paid by the applicant company. Second Objector Mr. Sithiraianandam vehemently opposed the proposed conversion of the applicant company from public to private, stating that the company under the guise of scheme of consolidation of shares is getting the conversion of the company from public to private and ultimately that would violate the rights of the shareholders, but he could not explain as to how the rights of the shareholders would get violated. The Objector has already been paid by the company under the scheme of consolidation of shares and presently he is not a shareholder. Third Objector is a Trust called ‘Dr. MAM Ramaswamy Chettiar of Chettinad Charitable Trust’ who has raised a different issue that on 2nd May 2016, the Applicant company has issued ‘rights issue’ wherein there was no participation by the Trust, because it has not been given any opportunity for the same. However, during the previous hearing, the Applicant company has been asked to make an arrangement for the Trust so that the Trust could be in a position to get

its due proportionate share in the 'rights issue'. The company has come with an arrangement by filing an affidavit stating that it is open to provide protection to the Trust in relation to the 'rights issue' provided the Trust is willing to deposit the money equivalent to the proportion of its shares to get the 'rights issue' to the tune of Rs.102.24 crores provided the probate of Will is granted by Hon'ble High Court of Madras in relation to the estate of Dr. MAM Ramaswamy (deceased). The Probate of Will would make the Trust entitled to get its name entered in the Register of the Members of company to the extent of 71 equity shares with all consequential benefits. Therefore, the Trust is at liberty to decide the course of action as proposed by the Applicant Company."

6. Apart from the fact that the Tribunal has noticed that the objectors are not in a position explain as to how the interest of the company would be prejudiced if the application of the company is allowed conversion from public company to private company. We find that the learned Counsel for the appellant has also failed to satisfy as to how the appellant/objectors' interest or the company's interest will suffer, if company is allowed for conversion of its status to private limited company. There is nothing on record to suggest that conversion would not be in the interest of company and it is in contravention any of the provisions of law or that the said application has been filed in violation of any provisions of the Companies Act, 2013. In absence of any deficiencies, the Tribunal being satisfied having regard to the facts and circumstances of the case allowed the application.

7. The connected Company Appeal (AT) No.184 of 2017 has been preferred by Mr. S. Adaikkappan (A) Sithirai

Anandam (2nd Objector) against the same impugned order. In so far as 2nd Objector/appellant is concerned, he is the shareholder of the 1st Respondent Company. His grievance is that the 1st respondent company took steps to oust the minority shareholders by directing paying the share value in their bank accounts. From the arguments advanced on behalf of the 2nd objector/appellant, we find that the 2nd objector/appellant intends to make out a case of 'oppression and mismanagement' by the Directors and 1st Respondent company, which cannot be noticed in a petition under Section 14(1)(b) of the Companies Act, 2013, though it is open to the shareholder(s) to move an appropriate application under Sections 241 and 242 of the Companies Act, 2013, if they qualify under Section 244 of Companies Act, 2013 and if there is an act of 'oppression and mismanagement' on the part of any of the Director(s) or 1st Respondent Company.

6. We find no merits in these appeals. The appeals are, therefore, dismissed. However, in the facts and circumstances of the case, there shall be no order to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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