

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No.30/2024

In the matter of:

A. Vijayan & Ors.

... Appellants

V

M/s. Silver Line Retreat Hotels

Private Limited & Ors Respondents

Present :

For Appellant : Mr. K. Gaurav Kumar, PCS

For Respondents : Mr. P.H. Arvinth Pandian, Senior Advocate

For Mr. Pawan Jhabakh, Mr. Jerin Asher Sojan &
Mr. Ujjwal Jain, Advocates, For R2-R3

ORDER
(Hybrid Mode)

19.06.2024:

It has become a quite common feature of the proceedings which are being instituted before the NCLAT, that voluminous records running in several volumes are being filed, including the citations of very little value addition while unnecessarily burdening the record section of the Tribunal, as well as, the coffers of the litigant. This basic professional in aptitude and intention of the litigant is deprecated.

To travel into the issue which is at hand in this Company Appeal, the Appellant puts the challenge to the Impugned Order dated 09.05.2024, as it has been passed by the learned National Company Law Tribunal, Divisional Bench, Chennai in CP/29/CHE/2024, Mr. A. Vijayan & Ors., Vs M/s. Silver Line Retreat

Hotels Private Limited & Ors. In this case, the Learned Tribunal, after it was brought to its knowledge, that there are other Company Petitions pending before it for consideration, involving consideration of an almost similar issue pertaining to the implications of sections 241 & 242 under the same facts (these being Company Petition Nos.3/2023 and 22/2023) has, by the Impugned Order dated 09.05.2024, only directed that all the Company Petitions, referred above are to be placed before the Hon'ble Chairperson for the nomination of an appropriate bench, so that all the lis may be decided together so as to avoid the possibility of passing of contradictory Judgments, if any.

Thus, it is quite clear that the Order which has been put to challenge is not an adjudication of any lis on merits, effecting any right of any of the parties to the proceedings. Hence, we are of the view that any order passed by the Learned Adjudicating Authority, which is not materially affecting or deciding any right of the party to the proceedings will not fall within the ambit of the Appellate Jurisdiction under section 421, to make it appealable. Because the term "Order" has been denoted under the provisions contained under section 421, it will always denote to be an order which affects or adjudicates any right of a party to a lis before the learned Adjudicating Authority. Accordingly, a procedural order passed during the intervening proceedings before NCLT not deciding a right, will not fall to be within the ambit of Appellate Jurisdiction under section 421, like the one at hand.

In the instant case, when the proceedings were taken up on 09.05.2024, the bench of the Learned Tribunal, realized the fact that there are other Company Petitions which were pending, and hence the Tribunal thought it appropriate to refer the matter to the Hon'ble Chairperson for nomination of the appropriate bench, so that all the matters which are similar in nature, are decided together. This order itself will not amount to be an adjudication of any of the rights to the party to the proceedings.

In order to cover the observation made by this Appellate Tribunal, the counsel for the Appellant, has read out an observation made in the Impugned Order, to the effect that “the Interim Relief prayed for by the Appellant before the Tribunal, has been declined to be granted” and therefore his rights are affected. But the interpretation given by the Learned Counsel for the Appellant, to the said observation so as to sustain his appeal, is not correct for the reason being that the Tribunal, having observed that were other Company Petitions pending consideration involving consideration of the same issue, had no option except to refer the matter to the Hon'ble Chairperson for the nomination of an appropriate bench to decide the matter in a congruent manner.

The observation thus made that the court is not inclined to grant any Interim Relief, “at this juncture”, has been misconstrued by the learned counsel for the Appellant, as if it amounts to denial of the Interim Order. That may not be the case and the correct interpretation of the order for the reason being that the court has expressed his inability to consider the Interim Relief Application at that stage

owing to the reasons already given in the preceding paragraph of the Impugned Order as well as this Judgment too. On this simple count and arguments itself, the Learned Counsel for the Appellant has burdened the litigant to this appeal with the preparation of 7 volumes of documents running to 1312 pages, for no good purpose or valid reason. It is against basic professional ethics. The conduct of the professionals herein is deprecated for the said mode of institution of the proceedings, particularly when the lis engages consideration of an Impugned Order of a nature which is not deciding or affecting any of the right of the Appellant.

This Company Appeal would stand dismissed and the dismissal of this Appeal may not be construed, as the dismissal of the pending Interim Order Application, which is to be adjudicated upon, on its own merits in accordance with law, and quite obviously only after the order of the consolidation of the Company Petitions to be passed by the Hon'ble Chairperson.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/TM