

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV

CA-133(ND)/2022

And

Company Petition No. 53/45QA/ND/2022

(Under Rule 11 of NCLT Rules, 2016 read with proviso to Section 241 of the Companies Act, 2013 seeking waiver of condition to file the accompanying petition)

IN THE MATTER OF:-

Mr. Anirudh Kumar

... Applicants

VERSUS

M/s. Hydraulics and Pneumatics India LLP & ORS

...Respondent

CORAM:

SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 26.07.2024

Present:

For Applicant : Mr. Abhinav Bajaj, Mr. Saksham Jha, Ms. Geetanshi Chandna, Advs.
For Respondent : Mr. Krishnendu Datta, Senior Advocate
Mr. Kunal Vajani, Mr. Kunal Mimani,
Mr. Shubhang Tandon, Mr. Aman Barar,
Ms. Shraddha, Advs.

ORDER

PER: DR. SANJEEV RANJAN, MEMBER (T)

1. This is an application filed by Mr. Anirudh Kumar (“**Applicant**”) against M/s. Hydraulics and Pneumatics India LLP (“**Respondent**”/ “**Respondent LLP**”) under Rule 11 of NCLT Rules, 2011 read with proviso to Section 241 of the Companies Act, 2013. The relief sought is as extracted below:

“i) Waive the requirement of condition contained under section 43(3) of the Act stipulating minimum of 1/5th of total number partners filing the petition under section 43 of the LLP Act, 2008, in the interest of justice.

ii) Pass any other order/ relief as this Hon'ble Tribunal may deem fit in the facts of the present case, in favor of the applicant.”

2. Present application being CA No. 133 of 2022 [**Application**] is filed under Rule 11 of the National Company Law Tribunal Rules, 2016 [**NCLT Rules**] read with the proviso to Section 241 of the Companies Act, 2013 [**Companies Act**] seeking exemption from the condition contained in Section 43(3) of the LLP Act stipulating that a minimum of 1/5th of total number of members of a LLP can alone file a petition under Section 43(3) of the LLP Act.
3. The petitioner has preferred the accompanying petition CP. No. 53/45QA/ND/2022 (“**Petition**”) under section 43 of the LLP Act, 2008 wherein investigations into the affairs of the Respondent LLP are sought on various facts and ground. The allegations made in the accompanying petition discloses various acts of the alleged oppression and mismanagement committed by the designated partner.

4. The applicant is a minority shareholder/ partner in the Respondent LLP and hold about 11.33% shares/contribution in the Respondent LLP in terms of the LLP agreement. It is submitted that as per the condition contained in section 43 of the LLP Act, in order to invoke the jurisdiction of this Tribunal, 1/5th of total partners are required to make an application in this regard. However, the interest/contribution of the applicant falls short of 1/5th of the total partners and hence, the present application is being filed by the applicant.
5. It is averred by the applicant that the designated partners of the LLP have caused huge financial losses to the applicant as well as the Respondent LLP by making various financial irregularities in the affairs of the LLP. The conduct of the designated partners in managing the affairs is such which requires investigation under the orders of this Tribunal.
6. Ld. Counsel for the applicant submits that the applicant does not have any other effective or equitable remedy available to him and it is only after a thorough investigation, the fraud committed by the designated partners can be unearthed in the present case.
7. It is submitted that serious prejudice will be caused to the petitioner in the case the condition as mentioned above is not waived. It is well established position of law that the technicalities of statutes should not come in the way of advancement of substantial justice. It is further submitted that this Tribunal is vested with wide and ample inherent powers to pass any order/direction as may be necessary for meeting the ends of justice.

8. Ld. Counsel for the Applicant further submits that the present application and the accompanying petition has been made in a bonafide manner being a minority partner. Whereas all the majority partners have conspired together to cause financial losses and irregularities in the affairs of the Respondent LLP so as to cause substantial damage to the interest of the applicant as well as the Respondent LLP.

9. We have heard the Ld. counsels of both parties and perused the documents on record. This application is reserved on the grounds of maintainability. Hence, we are not dealing with the merits of the Application / Petition. The question before us is as to whether this Tribunal can grant a waiver for the minimum stipulated threshold to file a Petition under section 43 of the LLP Act, 2008. Section 43 of the LLP Act, 2008 is extracted below for reference:

“43. Investigation of the affairs of limited liability partnership:

(1) The Central Government shall appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report thereon in such manner as it may direct if—

(a) the Tribunal, either suo motu, or on an application received from not less than one-fifth of the total number of partners of limited liability partnership, by order, declares that the affairs of the limited liability partnership ought to be investigated; or

(b) any Court, by order, declares that the affairs of a limited liability partnership ought to be investigated.

(2) The Central Government may appoint one or more competent persons as inspectors to investigate the affairs of a limited liability partnership and to report on them in such manner as it may direct.

(3) The appointment of inspectors pursuant to sub-section (2) may be made,—

(a) if not less than one-fifth of the total number of partners of the limited liability partnership make an application along with supporting evidence and security amount as may be prescribed; or (b) if the limited liability partnership makes an application that the affairs of the limited liability partnership ought to be investigated; or

(c) if, in the opinion of the Central Government, there are circumstances suggesting—

(i) that the business of the limited liability partnership is being or has been conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the limited liability partnership was formed for any fraudulent or unlawful purpose; or

(ii) that the affairs of the limited liability partnership are not being conducted in accordance with the provisions of this Act; or

(iii) that, on receipt of a report of the Registrar or any other investigating or regulatory agency, there are sufficient reasons that the affairs of the limited liability partnership ought to be investigated.”

10. On perusal of Section 43 of the LLP Act, it is evident that a petition thereunder can be filed only by not less than one fifth of the total number of partners of the LLP. At the outset, it is pertinent to note that, as per the Supplementary LLP Agreement dated 23.07.2015 annexed to the Petition [pg. 50 @ pg. 51], Respondent LLP has 7 [seven] partners / members. Respondent Nos. 2 to 7 are the other 6 [six] members of Respondent LLP. However, the Petition in question has been filed by only 1 [one] out of the 7 [seven] members of Respondent LLP.

11. The applicant has filed the application under Rule 11 of the NCLT Rules read with the proviso to Section 241 of the Companies Act,

2013 seeking waiver of the condition prescribed under Section 43 of the LLP Act as there is no specific provision for waiver in the LLP Act.

12. In the absence of any specific provision for waiver in the LLP Act, it is not permissible under law to rely upon Companies Act to seek waiver. We cannot import the provisions of another statute while dealing with a petition under the LLP Act. Any reliance on the provisions of the proviso to Section 241 of the Companies Act would amount to rewriting the statute.
13. Reliance is placed on the judgment of the Hon'ble Supreme Court of India in **Union of India & Anr. v. Deoki Nandan Aggarwal** [1992 Supp (1) SCC 323 @ para 14] wherein it has been held that
“it is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature, the Court could not go to its aid to correct or make up the deficiency.”
14. Further, it is settled law that a provision vesting “inherent powers” on a Court or Tribunal are to be used sparingly and should not be used to imply and read in substantive powers where the statute itself does not prescribe such powers.
15. Pertinently, whilst Section 67 of the LLP provides that the Central Government may by notification in the Official Gazette direct that

any provision of the Companies Act shall apply to a LLP, no notification has been issued extending the applicability of the proviso to Section 241 & 244 of the Companies Act to an LLP or proceedings filed under Section 43 of the LLP Act.

16. The absence of any specific provision empowering this Tribunal to relax / waive the eligibility requirements prescribed under Section 43 of the LLP Act shows the clear legislative intent to strictly construe and follow the provisions of Section 43 of the LLP Act. Hence, waiver cannot be granted by this Tribunal as prayed for by the applicant.
17. In view of the aforesaid discussion, **CA No. 133/ND/2022** in **CP. No. 53/45QA/ND/2022** stands **dismissed**.

In the light of orders passed in CA No. 133/ND/2022 above, CP No. 53/45QA/ND/2022 stands dismissed as non-maintainable.

No orders to cost.

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(DR.SANJEEV RANJAN)
MEMBER (T)

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(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)