

DICTUM

“Summary of Judicial Pronouncements”

Director’s Functions under domain of Management: *Not a subject matter of Mismanagement and Oppression*

– Mr. Giju Mathai vs Rojer Mathew P

[National Company Law Appellate Tribunal, New Delhi, Company Appeal No. 276/2017]

[February 13, 2018]

BACKGROUND

Section 241 of the Companies Act, 2013 (‘the Act’) grants right to any member who has right to apply under Section 244 of the Act, to file application to the Tribunal in cases of Oppression and Mismanagement, where the members consider that the Company’s affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or public interest. Further where any person is aggrieved by the order of Tribunal, he may prefer an appeal to Appellate Tribunal as per Section 421 of the Act.

However, a recent judgement by the National Company Law Appellate Tribunal (NCLAT) brings forward that the Tribunal shall not interfere in the matters which are under purview of the domain of the management.

In the case of *Mr. Giju Mathai vs Rojer Mathew P*, NCLAT quashed and set aside the order of National Company Law Tribunal (NCLT), and ruled that the Director’s functions in an organization cannot be considered as an individual cost and profit centre. Such matters are within the domain of Company and not normally considered to be subject matter of the oppression and mismanagement by the Tribunal. The interference in the matter on such matters by the Tribunal shall be considered as unwarranted.

Issues of the Case

1. What is the subject matter of Oppression and Mismanagement?
2. What is the scope of Tribunal in dealing with matters of Oppression and Mismanagement?

Tribunal’s Ruling

NCLT in *Mr. Giju Mathai vs Rojer Mathew P* (‘Case’) held that:

1. the failure of Director of Company to complete the allotted projects within stipulated timeline and failure of Company to investigate on such matters shall be considered as *acts of omission by Director and commission by Company*.
2. the Director’s functions are an individual cost and profit centre. Director shall be personally liable for loss incurred by Company on account of mismanagement of projects undertaken by him and he shall indemnify the Company against any default in payment of monies for such projects.

Appellate Tribunal’s Ruling

1. Any delegation of work which is managed by Director’s separately is only purpose of execution of work. The total profit/loss is the total profit/loss of the Company. The Company shall be liable for losses incurred by it on account of failure of performance of duties by Director.
2. Where the Master Account of Company is maintained with Bank and funds are transferred into sub-accounts of Directors for execution of individually assigned work, in case the amount is overdrawn from such account by Director; the Company and not Director shall be liable to pay the amount to Bank.

3. The Tribunal has wrongly come to a conclusion that each Director functions as an individual cost and profit centre. *As these matters are within the domain of the Management of the company and not normally considered to be subject matter of oppression and mismanagement by the Tribunal. Therefore, the interference in the matter on this issue by the Tribunal is unwarranted.*

4. The Appellate Tribunal emphasized on “ Doctrine of Unclean Hands”. Where other Directors of Company being aware of facts, sign the Financials of Company, they cannot later complaint about mismanagement of Company as *‘he who seeks remedy must come with clean hands’*.

Our Views

1. Where the matters are under the purview of Board of Directors of the Company and it can investigate and have settled the matter internally, such matters are outside the scope of Tribunal.
2. This judgement will be a good benchmark for the India Inc. to be aware of the subject matter of Oppression and Mismanagement and Tribunal’s scope on same.

Let’s Talk

For a deeper discussion on how this issue might affect your business, please contact:

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