

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

Company Appeal (AT) No. 160 of 2017

IN THE MATTER OF:

Thota Gurunath Reddy & Ors. Appellant

Vs.

**M/s. Continental Hospitals Pvt
Limited & Ors. ... Respondents**

Present:

For Appellant: - Mr. Amit Sibal, Senior Advocate, Mr Anirudh Wadhwa, Mr Hiresh Choudhary, Mr P Vikram, Mr Russell Allen Stamets and Mr Akash, Advocates.

For Respondent: Mr Arun Kathpalia, Sr. Advocate, Mr V.P. Singh, Mr Daksh Trivedi, Mr Aditya Jalan, Mr Priyank, Mr Abhijnan Jha and Mr Arjun Pant, Advocates.

ORDER

30.05.2017 — The question arises for consideration in this appeal is whether in the facts and circumstances, in a case where the Appellants allege 'oppression & mismanagement' by Respondents, against members and company and file a petition under Section 241 and 242 of the Companies Act, 2013, without specific finding that "there is no 'oppression & mismanagement' by Respondents against any member or Appellants or the company", the National Company Law Tribunal (hereinafter referred to as Tribunal) can refer the matter to Arbitral Tribunal under Section 45 of the Arbitration & Reconciliation Act, 1996 ?

The other question which arises for consideration is as to under which provision under the Companies Act, 2013 or National Company Law

Tribunal Rules, 2016 a Company Application can be filed before a Tribunal in a petition under Section 241 and 242 of the Companies Act, 2013 for amendment of petition or prayer.

The Respondents have also raised the question about maintainability of the appeal, the Tribunal having passed order under Section 45 of the Arbitration & Reconciliation Act, 1996.

However, before addressing issue of maintainability of appeal, Ld. Counsel for the Respondent will address as to which forum before which an order passed by NCLT under Section 45 of the Arbitration & Reconciliation Act, 1996 can be challenged.

Admit.

Parties have appeared. No further notice (s) be issued. Post the matter on 11th July 2017.

During the pendency of the appeal if the Arbitral Tribunal proceed with the matter or if the Respondents allot any shares or change the Board of Directors or take any action, such order of Arbitral Tribunal shall be subject to the decision of this Appeal.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

RC