

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 88 of 2018

IN THE MATTER OF:

Buhari Abdul Kader Khalid

...Appellant

Vs

Electromechanical Technical Associates Ltd. & Ors.

....Respondents

Present:

**For Appellant: Dr. U. K. Choudhary, Senior Advocate with
Ms. Shalini Kaul and Mr. Himanshu Vij,
Advocates.**

For Respondents: Mr. Kannan P. T., Advocate for R-1.

O R D E R

28.05.2018: The Appellant (Respondent before NCLT) has preferred this appeal against order dated 7th February, 2018 passed by National Company Law Tribunal, Single Bench Chennai in CA/123/2017 filed in TCP/191/2016, whereby and whereunder the application for impleadment preferred by 1st Respondent (Petitioner) has been allowed. The impugned order reads as follows:

“ORDER

*Counsel in CA/123/2017 filed in TCP/191/16 present.
Counsel for R1, R5 and R6 present. Counsel for the Applicant has
filed an Application for arraying M/s Electromechanical Technical
Associates Ltd. as petitioner in the main Company Petition. The
Applicant has stated therein that no fresh cause of action is to be
stated and there will not be any change in the reliefs prayed.
Counsel for the Respondent has filed the objections stating therein
that the Application filed for impleadment is not maintainable and
liable to be dismissed. But, no detailed reason has been cited in*

the order to show as to how the prayer of the Petitioner is going to prejudice the Respondents.

*In the circumstances, the CA/123/2017 is allowed. The Petitioner is directed to change the cause title of the Petition. Put up for hearing on **09.03.2018 at 10.30 AM.**”*

2. Learned senior counsel appearing on behalf of the Appellant submitted that the impugned order is a non-speaking order and plea regarding the objections raised by the Appellant (Respondent before NCLT) has not been discussed nor determined by the Tribunal.

3. Learned counsel for the 1st Respondent (Petitioner) submitted that mere impleadment is not going to change the nature of the petition nor the relief as sought for.

4. However, it has not been made clear as to why there is a necessity to implead other persons as co-petitioner, particularly in a petition under Section 241 and 242 which is maintainable only at instance of person eligible in terms of Section 244 of the Companies Act, 2013. If the petition is otherwise not maintainable under Section 241, by impleadment of other person, such petition cannot be made maintainable. However, we find that the Tribunal has not discussed the objections raised by the Appellant (Respondent) nor given any reason for allowing certain persons to be impleaded as co-petitioner(s) in a petition filed under Section 241 and 242. It is also not clear whether they are eligible or not and their impleadment will change the nature of the petition.

5. For the reasons aforesaid, we set aside the impugned order dated 7th February, 2018 and remit back the case to the Tribunal to decide CA/123/2017, after hearing the parties, by speaking and reasoned order. The appeal is allowed with aforesaid observations.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc