IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.363 OF 2022

ALONG WITH

INTERIM APPLICATION NO.2531 OF 2022

Manish Kumar	]	…	Appellant
Vs.			
Topworth Urja & Metals Limited & Ors.	]]	…	Respondents

…

Mr. Karl Tamboly with Mr. Pranav Avhad, Ms. Darshna Naval for the appellant.

Mr. Sharan Jagtiani, senior counsel with Mr. Shekhar Jagtap, Mr. Mutahhar Khan, Mr. Mayur Shetty, Ms. Kavita Brid-Chavan i/b Rajani Associates for the respondents.

…

CORAM : SMT. BHARATI DANGRE, J.

DATED : 19TH APRIL, 2022.

ORAL JUDGMENT :-

1. The present appeal raises a challenge to the order passed by the Bombay City Civil Court, Greater Mumbai on 06/04/2022 on the draft notice of motion filed in a suit, seeking declaration that

the Resolutions passed at the purported Board Meetings of defendant No.1-Company to be illegal and *void ab-initio*. The said relief is coupled with a prayer for order/decree of permanent mandatory injunction against defendant Nos.2 to 6.

2. Suit (L) No.3917 of 2022 is filed by a director of defendant No.1, a public limited company, governed by the provisions of the Companies Act. The plaintiff alleges that contrary to the applicable laws and Article of Association of defendant No.1-Company and without the appellant's knowledge, defendant Nos.2 to 6 came to be illegally appointed as additional directors of the Company vide Resolution passed at the purported Board Meeting of the Directors and the said Resolution was subsequently ratified in the Annual General Meeting vide a special Resolution. It is alleged that defendant No.7 is holding the directorship of defendant No.1-Company and has purportedly signed the aforesaid Resolution in order to regularize the appointment of defendant Nos.2 to 6 under Sections 152 and 161 of the Companies Act. Aggrieved by the illegalities and irregularities committed by the Company, the plaintiff even registered a complaint with the Ministry of Corporate Affairs, but since no relief is passed on to him, he filed the suit alleging *ex-facie* arbitrary acts at the hands of the Company as well as the other directors i.e. defendant Nos.7 to 9 of inducting defendant Nos.2 to 6 as the directors, without noticing the plaintiff and other aggrieved directors about the purported Meeting of the Board of Directors convened on

24/11/2021. The plaintiff has pleaded various irregularities in appointing the additional directors and seeks a declaration that the said Resolutions passed at the purported Board Meeting of the Directors and it's ratification in the Annual General Meeting is illegal and *void ab-initio*.

3. In the said suit, he filed a notice of motion seeking an order / decree against defendant Nos.2 to 7 *qua* their directorships as on 23/11/2021 and a direction that defendant Nos.2 to 6 shall be restrained by a temporary injunction, from taking any decision in respect of appointment of directors or transacting any business with any third parties or changing the shareholding pattern of defendant No.1-Company.

4. The draft notice of motion was pressed into service and the learned Judge of the trial court has passed the following order:

> *"Heard both the side.*
>
> *The defendant are allowed to file their reply.*
>
> *Looking to the nature of relief of claimed and bar under section 430 of Companies Act and Judgment of Hon'ble Madras High Court reported in 2017 SCC online MAD 23049 in case Chiranjeevi Rathnam v/s. Ramesh, prima facie it appears to me that the plaintiff is having remedy to approach before NCLT. Hence, ad-interim relief is rejected.*
>
> *Put up for NM reply.*

Parties to act on authenticated copy.

Matter stands adjourned to 20.04.2022 for reply."

5. Heard Mr. Karl Tamboly, the learned counsel for the appellant and Mr. Sharan Jagtiani, the learned senior counsel appearing for the respondents.

6. The parties have advanced their submissions revolving around the relevant provisions of the Companies Act and the decision of the Madras High Court in the case of ***Chiranjeevi Rathnam v. Ramesh*** reported in ***2017 SCC Online Mad. 23049***, on which the learned trial court has placed reliance to record his *prima facie* view that the plaintiff has a remedy to approach before the National Company Law Tribunal and, therefore, does not deserve any ad-interim relief.

7. In the propriety of things, it would be necessary to refer to certain relevant provisions of the Companies Act, 2013 and particularly, the provision operating as a bar from the civil court entertaining certain matters. The relevant section being Section 430, reads as under:

> ***"430. Civil court not to have jurisdiction.—*** *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or*

> *any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."*

8. Section 2(55) of the Companies Act defines '"member", in relation to a Company' as under:

> ***"2. Definitions.—*** *In this Act, unless the context otherwise requires,—*
>
> *(55) "member", in relation to a company, means—*
>
> *(i) the subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;*
>
> *(ii) every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;*
>
> *(iii) every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository;"*

9. Section 161 of the Act is a provision which provides for appointment of additional director, alternate director and nominee director. The procedure to be followed in effecting appointment in the Meeting of the Board is governed by Section 173 of the Companies Act followed by, the provision prescribing the manner

in which the Meeting has to be conducted contemplating the quorum for meetings of Board and passing of Resolution by circulation.

10. Section 241 included in Chapter XVI of the Companies Act, 2013 is a provision setting out the various contingencies in which any member of a Company is competent to apply to the Tribunal and the section adumbrates, that any member of the Company, who complains that the affairs of the Company have been or are conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interest of the company, he shall apply to the Tribunal for appropriate orders.

Section 241 of the Companies Act reads thus:

> *"**241. Application to Tribunal for relief in cases of oppression, etc.—** (1) Any member of a company who complains that—*
>
> *(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*
>
> *(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of*

> *Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.*
>
> *(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter."*

11. Section 244 of the Companies Act, again a part of the same chapter, qualify the right available to a member under Section 241, but as the proviso appended to it, stipulate that the Tribunal may on an application made to it, in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under Section 241. Section 244 reads thus:

> *"**244. Right to apply under section 241.—** (1) The following members of a company shall have the right to apply under section 241, namely:—*
>
> *(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls*

> *and other sums due on his or their shares;*
>
> *(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:*
>
> *Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.”*

12. In the wake of the aforesaid statutory scheme, the question that arises for consideration in the present appeal is, whether the bar under Section 430 of the Companies Act would operate in entertaining the application by a civil court, at the instance of the plaintiff, who is not a shareholder and the provision to seek relief in cases of oppression, etc. as contemplated under Section 241, is restricted to “a member of the Company”, since the plaintiff claims that he is not a ‘member’ within the meaning of Section 2(55) of the Companies Act and that, he is not entitled to invoke the provisions of Section 241 by approaching the Tribunal seeking the relief, aggrieved by the oppressive action of the respondents.

13. The aforesaid argument of Mr. Tamboly has to be tested not merely by reading of Section 241, but reading the said provision along with Section 430 of the Companies Act, which bars the jurisdiction of the civil court to entertain any suit or proceedings ‘in respect of any matter’, which the Tribunal or the Appellate

Tribunal is empowered to determine, by or under the Act. The word ‘matter’ used in Section 430 is of wide amplitude and it cannot be read in a constricted way to limit it to an individual, but it will have to be given the widest meaning to cover any matter which the Tribunal is empowered to determine under the Act and this would necessarily cover the dispute regarding the affairs of the Company alleged to be conducted prejudicial to the interest of the Company or even any allegation of oppression or mismanagement.

14. By reading the provisions referred to above, including the power of the Tribunal under Section 242, to make such order as it thinks fit, if on an application brought before it under Section 241, the Tribunal is of the opinion that the Company’s affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interest of the Company. In the context of the entire scheme contained in Chapter XVI of the Companies Act, 2013 and entwined with Sections 241, 242 and 244 read with Section 430, creating a bar in the civil court and in the wake of availability of remedy before the Tribunal or Appellate Tribunal, I do not feel that the argument of Mr. Tamboly is worth consideration.

15. If any person, who is interested in the affairs of the Company and who alleges mismanagement or oppression, he shall

not be restrained from knocking the doors of the Tribunal merely because the words employed in Section 241; as ‘any member’ and under Section 242, the Tribunal is expected to exercise it’s power upon an application preferred under Section 241 i.e. by any member of the Company. If the intention of the legislature was to create a special Fora, in the form of a quasi judicial authority incorporated for dealing with the corporate disputes that are of civil nature arising under the Companies Act, particularly, the complaints in relation to the affairs of the Company, alleging that they are conducted in a manner prejudicial to the public interest or prejudicial or oppressive to the complainant or any other member or members or prejudicial to the interest of the Company itself, there is no reason why the plaintiff, who alleges mismanagement and oppression, cannot approach the Tribunal. The words ‘any member’ if read constrictively and confining it only to member as defined, would result in defeating the intention of law makers, who created the special Tribunal with exclusive jurisdiction only for corporate and reduce the multiplicity of litigation before different forums, including civil courts and to provide justice at close range. On it’s creation, the jurisdiction of civil court is ousted, to consider any suit or proceeding with reference to any matter, which the Tribunal or Appellate Tribunal is empowered to decide.

16. This is exactly, how the learned Single Judge of the Madras High Court in his judgment articulated his opinion, in the case of

<u>Chiranjeevi Rathnam (supra)</u>. Paragraph Nos.25 and 26 of the said judgment are relevant, which read as under:

> *"24. The right to approach tribunal is given to the members, because none-else can have any cause of action or complaint against the indoor-management of the company. Whether the Company calls for Extraordinary General Body Meeting(EGM) is legal (or) whether or not its Directors are elected following the mandate of the procedure contemplated in the statue or the bye laws of the respective company are all matters of concern only to members of the Company and not for outsiders/non-members.*
>
> *25. In the light of the facts and circumstances of this case, this Court is of the opinion that the word* ***"member"*** *employed in Section 241 of the Act cannot be given a restricted meaning. If restricted meaning is given, it may lead to abuse of the process law, as it is found in this case. Hence, it is essential to apply the doctrine of reading down to make the provisions under Chapter XVI of the Act purposeful. The golden Rule of statutory construction is that the words and phrases or sentences should be interpreted according to the intent of the legistature that passed the Act. Section 241 and 242 should be read together. If the words of the statutes raises doubt, it is inevitable to call in aid the ground and cause of making the statute and the mischiefs, which the Act intends to redress. Under the new Companies Act, 2013, the intention of the legistature is to vest the power of adjudication the matters referred in Section 242 to the Tribunal."*

17. I concur with the above view and is of the firm opinion that

the word ‘member’ employed in Section 241 cannot be assigned a confined and narrow meaning as it may lead to abuse of process of law, particularly, by keeping in mind the intention of the legislature, when it created a special Tribunal and conferred powers on it to pass appropriate orders for preventing the oppression and mismanagement in a company.

18. Another reason, which justifies the wider interpretation of the word ‘member’ is, indicated in proviso appended to Section 244, where the Tribunal may waive all or any of the requirements specified in clause (a) or clause (b) of Section 241, so as to enable the members to apply to it under Section 241 claiming relief in case of oppression, etc. The legislature, therefore, intended that every matter revolving around the affairs of the Company, by whosoever it is sought to be brought forth before the Tribunal, shall be entertained by it and the jurisdiction of the civil court shall be ousted. In the wake of the above, I do not find any legal infirmity in the impugned order refusing ad-interim relief to the plaintiff.

19. The respective counsel have expressed their consensus on proceeding with the notice of motion pending before the learned Judge in an expeditious manner. Mr. Jagtiani, the learned senior counsel appearing for the respondents undertakes that the reply to the notice of motion shall be filed within a period of four weeks from today. Upon such reply being filed, the learned Judge is

requested to conclude the proceedings in the notice of motion on or before 30/07/2022.

Since I have declined to interfere with the impugned order, the appeal is dismissed.

20. It needs to be clarified that I have not dealt with the merits of the matter, particularly in the context in which the parties are contesting their rival claims and it is left open to the learned Judge to decide the merits of the matter, while adjudicating the notice of motion. It is also made clear that the issue of maintainability of the suit of the plaintiff in the form of jurisdiction is kept open.

21. In view of the dismissal of the appeal, the interim application does not survive and is disposed of as such.

[SMT. BHARATI DANGRE, J.]