

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEALNO.9388 OF 2017

CASCADE ENERGY PTE. LTD

Appellant(s)

VERSUS

M/S ARCHER POWER SYSTEMS PVT LTD & ORS.

Respondent(s)

O R D E R

Admit.

Heard Dr. A.K. Singhvi and Mr. Mukul Rohatgi, learned senior counsel along with Ms. Shalini Kaul, learned counsel appearing for the appellant and Mr. C.S. Vaidyanathan, learned senior counsel along with Mr. Divyesh Pratap Singh, learned counsel appearing for the Respondent No.1 and Mr. Mohan Parasaran, learned senior counsel along with Mr. Abhimanue Shrestha, learned counsel appearing for Respondent nos.3 to 5.

It is submitted by Dr. Singhvi, learned senior counsel that the National Company Law Appellate Tribunal (for brevity, 'the NCLAT') has failed to appreciate the reasons ascribed by the National Company Law Tribunal (for short, 'the NCLT') it has erred in holding that the NCLT has not ascribed reasons whether it is just and equitable in the controversy involved to pass an interim order for conduct of company affairs. On a perusal of the order

passed by the NCLT, we find certain reasons have been given. In such a case, we are of the considered opinion that the NCLAT should not have cryptically set aside the order and remanded the matter with a direction that the main petition shall be decided along with the prayer for interim relief. Whether circumstances exist to arrive at a reasonable conclusion for regulating the conduct of the company affairs to pass an interim order on such terms and conditions as appeared to be just and equitable are to be appositely appreciated. Needless to say the words 'just and equitable' are associated with the terms and conditions but not with the reasons for passing an interim order. A case has to be made out by the applicant for getting an interim order. Whether the reasons ascribed by the NCLT are erroneous or not is required to be adjudicated by the NCLAT. The NCLAT is also required to consider from the materials brought on record whether the interim order for regulating the conduct of the company affairs is warranted.

As the said aspect has not been addressed by the NCLAT, we are compelled to allow the appeal and set aside the order passed by the NCLAT and direct the NCLAT to decide the appeal within four weeks from today. The parties are at liberty to raise their respective contentions on the basis of the materials produced before the NCLT.

When we are remanding the matter to the NCLAT, the main proceeding before the NCLT shall remain stayed till the NCLAT decides with regard to the justifiability of the interim order. The NCLAT may be well advised to deal with the issue of

maintainability of the original proceedings or that comes within the sweep of *prima facie* case for entertaining the prayer for interim relief.

The appeal is allowed to the extent indicated above. There shall be no order as to costs.

.....,J.
(Dipak Misra)

.....,J.
(Amitava Roy)

.....,J.
(A.M. Khanwilkar)

New Delhi;
August 10, 2017.

ITEM NO.3

COURT NO.2

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 9388/2017

CASCADE ENERGY PTE. LTD

Appellant(s)

VERSUS

M/S ARCHER POWER SYSTEMS PVT LTD & ORS.

Respondent(s)

(FOR EX-PARTE STAY and FOR ADMISSION and EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.71116/2017-PERMISSION TO FILE ADDITIONAL DOCUMENTS[TO BE TAKEN UP AT 3.00 P.M. FOR FINAL DISPOSAL])

Date : 10-08-2017 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY
HON'BLE MR. JUSTICE A.M. KHANWILKAR

For Appellant(s) Dr. A.M. Singhvi, Sr. Adv.
Mr. Mukul Rohatgi, Sr. Adv.
Ms. Shalini Kaul, AOR
Mr. Sanjay Kumar, Adv.
Mr. Soham Kumar, Adv.
Ms. Ginni Sehgal, Adv.
Mr. Kushank Sindhu, Adv.
Mr. Bharat Chugh, Adv.

For Respondent(s) Mr. Divyesh Pratap Singh, AOR
Mr. Abhimanue Shrestha, AOR

UPON hearing the counsel the Court made the following
O R D E R

Admit.

The appeal is allowed to the extent indicated in the signed order. There shall be no order as to costs.

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Assistant Registrar

(Signed order is placed on the file)