

HIGH COURT OF KARNATAKA**Bench: Chief Justice N. V. Anjaria and Justice K. V. Aravind****Date of Decision: July 5, 2024****Case No. :**

WRIT APPEAL NO. 969 OF 2024 (GM-RES)

WRIT APPEAL NO. 972 OF 2024 (GM-RES)

**APPELLANT(S): GENERAL ATLANTIC SINGAPORE TL PTE LTD.
.....Appellant****VERSUS****RESPONDENT(S): BYJU RAVEENDRAN & ORS.Respondents****Legislation:**

Sections 241, 242, 244 of the Companies Act, 2013

National Company Law Tribunal Rules, 2016 - Rules 11 and 32

Section 242(4) of the Companies Act, 2013

Section 4 of the Karnataka High Court Act

Subject: Appeals arising from an order of the National Company Law Tribunal (NCLT) regarding allegations of oppression and mismanagement by the management of Think and Learn Private Limited. The primary issue pertains to the issuance of rights offer letters and subsequent allotment of shares, alleged to be in violation of the NCLT's interim orders.

Headnotes:

Corporate Law – Rights Issue and Allotment of Shares – Petition filed by shareholders alleging oppressive acts and mismanagement by the company's management – NCLT's interim order dated 12.06.2024 restrained the company from proceeding with the rights issue and mandated maintaining the status quo of shareholding until the main petition is decided – Learned Single Judge set aside the NCLT's order and remanded the matter for a fresh decision with a reasoned and speaking order [Paras 2.3, 2.4, 3.4, 3.5].

Oppression and Mismanagement – Interim Orders – Court emphasized the necessity of a reasoned and speaking order by the NCLT when deciding interim applications under Sections 241 and 242 of the Companies Act –

Observations on the conduct of the company's affairs and compliance with interim orders [Paras 3.6, 6.1, 6.2].

Decision – Appeals Disposed of with Directions – NCLT directed to independently reconsider the case and decide on merits without being influenced by prior observations – Status quo regarding shareholding to be maintained until final decision – Allotments and transactions during the pendency to be subject to final order – NCLT to expedite the decision process [Para 6.4, 6.5, 7].

Referred Cases:

Not applicable.

Representing Advocates:

For appellant in W.A. No. 969 of 2024:

Sri. Udaya Holla, Senior Advocate

Sri. Shankh Sengupta, Advocate

Ms. Manasa Sundarraman, Advocate

Sri Mohammed Shameer, Advocate

For appellant in W.A. No. 972 of 2024:

Sri. Gaurav Chopra, Senior Advocate

Sri. Yogesh Singh, Advocate

Sri. Tine Abraham, Advocate

Ms. Prarthna Bathija, Advocate

For respondents in both appeals:

Sri. K.G. Raghavan, Senior Advocate

Sri. Rishab Gupta, Advocate

Sri. Manmeet Singh, Advocate

Sri. Vikram Unni Rajagopal, Advocate

Sri. Dhyan Chinnappa, Senior Advocate

Sri. Sairam Subramanian, Advocate

Ms. Saloni Shah, Advocate

Ms. Ashika Jain, Advocate

JUDGMENT

(PER : HON'BLE THE CHIEF JUSTICE MR. JUSTICE N.V. ANJARIA)

Both these appeals arise from the common judgment and order dated 02.07.2024 passed by learned Single Judge in Writ Petition No.15788 of 2024 and Writ Petition No.15801 of 2024. In both the writ petitions, what was challenged was the order dated 12.06.2024 passed by the National Company Law Tribunal, Bengaluru (NCLT) in Company Application No.71 of 2024 in Company Petition No.18/BB/2024 pending before the NCLT.

2. Company Application No.71 of 2024 was filed by the appellant-General Atlantic Singapore TL Pte. Ltd. and one Sofina S.A.-a company under Section 242(4) of the Companies Act, 2013 read with Rules 11 and 32 of the National Company Law Tribunal Rules, 2016. Sub-section (4) of Section 242 of the Companies Act provides that the Tribunal may, on the application of any party to the proceedings, make any interim order regulating the conduct of the company's affairs upon such terms and conditions which may be imposed as just and equitable.

2.1 The prayer was for injuncting the offer letters dated 11.05.2024 and 13.05.2024; any action pursuant to the offer letters dated 11.05.2024 and 13.05.2024, any further issuance of shares, *inter alia*, in furtherance of the impugned second rights offer letter dated 11.05.2024 and the revised offer letter dated 13.05.2024. It was further prayed to direct that any corporate actions taken on the basis of illegally (as alleged) revised shareholding pattern of respondent No.1-Company after the date of hearing on 27.02.2024 be kept in abeyance.

2.2 Company Application No.72 of 2024 was also filed to set aside the actions undertaken by the contesting respondents in violation of the order of the NCLT dated 27.02.2024 including allotment of Company's shares to certain shareholders including respondent No.3.

2.3 The order which was passed by the NCLT on the said civil applications in its relevant part reads as under,

“16. Therefore, in the present facts and circumstances of the matter, this Tribunal hereby restrains the Respondents from going ahead with the present rights issue which is in progress till the disposal of the main CP No.18/BB/2024. The Respondents are further directed to keep the amounts collected so far since opening of the second rights issue in relation to this offer in a separate account which should not be utilised till the disposal of the main petition in CP No.18/BB/2024. Further, **status quo** with regard to existing shareholders and their shareholding shall be maintained till the disposal of the main petition C.P.No.18/BB/2024.

17. The Respondents are directed to comply with the directions given in Para-10 and 11 above, regarding the details of allotment of shares on 02.03.2024 and the details of the Escrow banks accounts by filing a compliance affidavit with a memo within a period of 10 days; duly serving the copy on the otherside.

18. List this matter before regular bench on 04.07.2024 along with main petition i.e. CP No.18/BB/2024 for further consideration.

C.A.No.76/2024

1. Heard the Ld. Senior Counsels and Ld. Counsels appearing for the parties.
2. The Ld. Counsels for the Respondents accepted notice and requested time to file their reply. They are permitted to file the same, within a period of ten days from today, after duly serving the copy on the other side. The Applicants shall file rejoinder, if any, within a period of one week thereafter, after duly serving the copy on the other side.
3. List the matter on 04.07.2024.”
- 2.4 When the aforesaid order of the NCLT dated 12.06.2024 was challenged before learned Single Judge by the respondents hereinpetitioners, learned Single Judge passed the following order, while allowing the two writ petitions,

“(i) Both W.P.No.15788/2024 and W.P.No.15801/2024 are hereby allowed.

(ii) The impugned order dated 12.06.2024 passed on C.A.No.71/2024 in C.P.No.18/BB/2024 by the NCLT, Bengaluru, is hereby set aside.

(iii) The matter is remitted back to the NCLT for reconsideration of C.A.No.71/2024 afresh and to pass a reasoned and speaking order in accordance with law bearing in mind the observations made in this order within a period of two weeks from 04.07.2024.

(iv) All rival contentions on all aspects of the matter are kept open and no opinion is expressed on the same.”

2.5 Heard learned Senior Advocate Mr.Udaya Holla assisted by learned advocates Mr.Shankh Sengupta, Ms.Manasa Sudarraman and Mr.Mohammed Shameer for the appellant in Writ Appeal No.969 of 2024, learned Senior Advocate Mr.Gaurav Chopra assisted by learned advocate Mr.Yogesh Singh, Mr.Tine Abraham and Ms.Prarthna Bathija for the appellant in Writ Appeal No.972 of 2024 and learned Senior Advocate Mr.K.G.Raghavan assisted by learned advocates Mr.Rishab Gupta, Mr.Manmeet Singh, Mr.Vikram Unni Rajagopal who appeared on caveat for respondent Nos.1 to 3 in Writ Appeal No.969 of 2024 and learned Senior Advocate Dhyan Chinnappa assisted by learned advocates Mr.Sairam Subramanian, Ms.Saloni Shah, Ms.Ashika Jain and Sri Vikram Unni Rajagopal who appeared on caveat for respondent Nos.1 and 13 to 15.

3. In order to comprehend the controversy arising from the impugned order, it is necessary to notice the basic facts in the background. The main proceedings before the NCLT, which are pending, have been filed under Sections 241 and 242 of the Companies Act, 2013 in which it is alleged that the respondents have committed various acts of oppression and mismanagement. Under Section 241 of the Companies Act, application lies to the Tribunal for relief in cases of oppression and relation to the grievance

that the affairs of the company have been conducted in a manner prejudicial or oppressive to public interest or any other member of the company etc.

3.1 The appellant is one of the shareholders of Think and Learn Private Limited (hereinafter referred to as 'the Company'). A petition under Sections 241, 242 and 244 of the Companies Act came to be filed by the appellant before the NCLT seeking orders in respect of regulating the affairs of the company alleging oppressive acts and mismanagement by the present management of the Company-the respondents herein. One of the reason for filing the company petition and to allege the oppressive acts was the issuance of the letter of offer offering 40,488,546 equity shares by the Company to all existing shareholders on 27.01.2024. The appellant described it as the First Illegal Rights Issue.

3.3 It appears that on 27.02.2024, the NCLT passed the following order,

“Considering all the submissions made by the Learned Senior Counsels for both the sides and perusing the materials on record, we hereby direct the following;

(i.) Since the Ld. Senior Counsel for the Respondent has already given undertaking that **there will be no allotment of shares without increasing the Authorised Share Capital of the Respondent No.1 company** as per the provisions of law and **the funds/money received from the rights offer will be kept in a separate account and will not be used for any purposes, the funds received by the Respondent Company in respect to the rights issue should be kept in a separate Escrow account and it should not be withdrawn till the disposal of this matter.**”

3.4 It is the case of the appellant that on 02.03.2024, without increasing the authorised Share Capital of the Company and seeking any clarification of the aforesaid order dated 27.02.2024, the Company proceeded to allot 18,14,887 shares which, submitted by the appellants, was again an illegal

allotment. On 29.03.2024, which was after the aforesaid allotment, the Company held its Extraordinary General Meeting for increasing the authorised Share Capital. It is the case of the appellant that the factum of the said second allotment came to light when one MIH Edtech Investments B.V allowed viewing the Register of Members of the Company.

3.5 It was stated that on 04.04.2024, the appellant made submissions before the NCLT stating that illegal allotment had taken place. The respondent-Company and the Founders sought time. The order dated 04.04.2024 came to be passed by the NCLT, in which it was again directed that the Company and the Founders would scrupulously follow the order dated 27.02.2024.

3.6 It further appears that the proceedings before the NCLT on one hand and as per the case of the appellant on the other hand, the respondents continued to commit defiance of the order dated 27.02.2024 to perpetuate illegality and yet another Rights Issue dated 11.05.2024 was made. The Company described the said Rights Issue as an extension of the First Illegal Rights Issue. The case of the appellant was that both the Rights Issues were not lawful and violated the orders of the NCLT.

3.7 The aforesaid developments led the appellants to move Company Application No.71 of 2024 seeking the relief of injunction and other reliefs as mentioned above. In the order dated 12.06.2024 passed upon Company Application Nos.71, 72 and 76 of 2024 which were impugned before learned Single Judge and the operative portion is reproduced hereinabove certain directions were issued. As contained in paragraphs 10 and 11 of the order, the proceedings were kept on 04.07.2024. Learned Single Judge, as could

be seen from the impugned order, remanded the case requiring the NCLT to pass reasoned order.

4. This Court heard learned Senior Counsels for the respective parties in extenso.

5. Two main aspects strike for not interjecting with the impugned order. Firstly, that the order is interim order. The proceedings before the NCLT are pending. Secondly, learned Single Judge has remitted back the case to the NCLT to be decided within two weeks.

6. Learned advocate for the appellant submitted that despite the order dated 27.02.2024 and the subsequent order dated 04.04.2024, the respondents have been brazenly committing breach and have been issuing the shares, which conduct is unlawful. It was submitted that oral undertaking was given which was recorded by the NCLT in its orders, but the same was not abided by. On the other hand, learned Senior Counsels for the respondents strongly refuted the contentions of the appellants.

6.1 However, the submission of learned Senior Counsels for the appellant could be countenanced, when it was submitted that if on one hand, proceedings were decided by the NCLT as remanded and on the other, if the respondents are permitted to continue to commit the acts of illegalities and to issue shares and other transactions, it will generate for them certain rights and create equities, even as the principal proceedings are pending and that the case is remanded. It was submitted that shares are already allotted from the date of passing of the order of learned Single Judge which is the Second Rights Issue, though it was prohibited.

- 6.2 It was submitted that during the remand and pending decision on remand, further actions by the respondents should not be permitted. It would not only precipitate the controversy, but will create new rights and fresh equities for the respondents.
- 6.3 The Court is not inclined to go into the merits of either side including whether the order of the NCLT impugned before learned Single Judge was reasoned order or not for the above two main reasons.
- 6.4 Considering the totality of the facts and circumstances and having regard to the above aspects, the following directions are issued,
- (i) During the proceedings of remand and till the decision which may be taken by the NCLT, the parties shall maintain *status quo* with regard to the subject matter dispute as obtained on today.
 - (ii) The respondents shall not make allotment of shares in the interregnum, to be subject to the final order which may be passed by the NCLT.
 - (iii) The transactions which may have taken place of allotment of shares and other connected transactions between the period from the date of the order of learned Single Judge that is from 02.07.2024 till the date, shall remain subject to final order which may be passed by the NCLT and the rights in that regard shall be governed accordingly.
 - (iv) The NCLT shall consider the case on remand independently and on its own merits and without influenced by any of the observations in its earlier order, without influenced by the observations in the order of learned Single Judge and any other order which may have been passed previously to decide the issues involved, strictly on merits and in accordance with law.

(v) The exercise of deciding as per the remand order by learned Single Judge shall be completed expeditiously and before 31.07.2024.

6.5 It is clarified that this Court has not gone into the merits of the case of the appellant and has not expressed any opinion on merits. Any observations in this order shall not be construed as an expression on merits.

7. Both the writ appeals are disposed of in terms of and in accordance with the aforesaid directions.

In view of disposal of the appeals, the interlocutory applications would not survive and they stand accordingly disposed of.

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