

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No.20/2025
(IA No.259/2025)

In the matter of:

**DR. M.A.M. RAMASWAMY CHETTIAR
OF CHETTINAD CHARITABLE TRUST,**

Chettinad House,
Raja Annamalaipuram,
Chennai-600 028

...APPELLANT

V

M/S. CHETTINAD COAL WASHERIES PVT. LTD.

5th Floor, Rani Seethai Hall Building,
603 Anna Salai,
Chennai – 600 006

...RESPONDENT NO.1

MR. M.A.M. R. MUTHIAH,

Resident of Chettinad House, Rajah Annalaipuram,
Chennai - 600028

...RESPONDENT NO.2

Present :

For Appellant : Mr. S. Ravi, Senior Advocate
For Ms. S. Indumathi Ravi, Advocate
For Respondent : No Appearance

JUDGMENT

(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

In the instant case, on 28.10.2014, the principal proceeding by way of CA No.1/2014, Late Dr. M. A. M. Ramaswamy Vs. M/s Chettinad Coal Washeries Private Limited stood instituted before the Company Law Board in which the then petitioner, Late Dr. M. A. M. Ramaswamy Chettiar, had moved an application under Section 74(1) to be read with Section 73(4) of

the Companies Act, 2013, praying for the repayment of the deposit, made by him in M/s Chettinad Coal Washeries Private Limited, Respondent-1 here in. The provisions contained under Section 73(4) of the Companies Act, 2013, prescribes for that, when the Company fails to repay the deposit or a part thereof or any interest thereon, as it falls due to be paid under Sub Section (3) of Section 73, it is left open for the depositor to apply to the Tribunal to get an order for the Company to pay the sum due or for any losses or damages incurred by the depositor as a result of non-payment for such dues. Further under Section 74 (1) of the Companies Act, 2013, it is incumbent on the Company to repay the deposits accepted by it prior to commencement of the Companies Act, 2013, within 3 years of commencement of the said Act or on the expiry of the deposit period whichever is earlier. The Petitioner had prayed before Ld. NCLT that the company as per the above provisions was to refund the deposit which it had not done and hence the same may be directed to be refunded.

2. The aforesaid Company Petition instituted by Dr. M.A.M. Ramaswamy Chettiar under Section 73(4), to be read with Section 74(1) of the Companies Act, 2013, as against M/s. Chettinad Coal Washeries Private Limited. Respondent No. 1 herein, remained pending before the Company Law Board till it was transferred to the Ld. NCLT, upon the promulgation of the Companies Act, 2013 and was numbered as TCP No. 1/2016.

3. During the pendency of the said company petition the Applicant Late Dr. M.A.M. Ramaswamy Chettiar met with a sad demise on 02.12.2015. Upon the demise of Dr. M.A.M. Ramaswamy Chettiar, one Mr. M.A.M.R. Muthiah, Respondent No. 2 herein filed a Substitution Application, i.e., CA No. 69/2016 on 29.02.2016 seeking himself to be substituted under Regulation 28, to be read with Regulation 44 of the Company Law Board (Regulation), 1991. The substitution as filed by the Applicant was on the ground that the Late Dr. M.A.M. Ramaswamy Chettiar, had adopted the Applicant/Respondent No.2 herein by virtue of a registered Adoption Deed dated 09.02.2006. Subsequently, another Substitution Application TCA No. 1/2016 was filed on 24.03.2016 by Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust (the Appellant herein), praying to substitute itself in place of Late Dr. M.A.M. Ramaswamy Chettiar (original Applicant) in the principal company proceedings being TCP No. 1/2016 on the plea that certain arrangements were made by the Late Dr. M.A.M. Ramaswamy Chettiar by way of will, to transfer all his movables including the deposit to the said Trust for management and therefore the said Trust ought to represent Original Petitioner as the legal heir to prosecute TCP No. 1/2016. The aforesaid applications as preferred, was considered by the Ld. NCLT, Chennai Bench and after hearing both sides, Ld. NCLT allowed TCA No. 1/2016 while rejecting CA No. 69/2016 by the order dated 26.05.2022.

4. The said order of 26.05.2022 was put to challenge before this Appellate Tribunal in **Company Appeal (AT) (CH) No. 43/2022** and in **Company Appeal (AT) (CH) No. 45/2022** by Respondent No.1 and Respondent No. 2 herein. The two company appeals were consolidated and were decided by this Appellate Tribunal vide its judgment dated 06.09.2022, setting aside the order of 26.05.2022 observing thereof that since there happens to be a dispute of succession between the parties which is pending consideration under Chapter II of the Indian Succession Act by initiation of the proceedings of Grant of probate or of Letter of Administration, the question of who will substitute the deceased Appellant in TCP No. 1/2016 can be answered only after the conclusion of the Testamentary Proceedings.

This Appellate Tribunal had observed as under: -

"114. As a logical corollary, the 'impugned order' dated 26.05.2022 in TCA/1/2016 in TCP/1/2016 and in CA/69/2016 in TCP/1/2016, on the file of the 'National Company Law Tribunal, Division Bench-I, Chennai, is set aside for the reasons ascribed by this 'Tribunal' in these two 'Appeals'. The matter is remitted back to the 'National Company Law Tribunal', Division Bench- 1, Chennai, for fresh consideration, and for passing a reasoned speaking order (ofcourse, un-influenced and un-trammelled with any of the observations made by this 'Tribunal' in these 'Appeals'), granting liberties to the respective 'Parties' to make a mention and to proceed further, in the subject matter in issue, soon after the adjudication of pending Testamentary Proceedings', between the 'Parties' before the Hon'ble High Court of Madras."

5. As a consequence of the aforesaid two appeals, the order of substitution dated 26.05.2022 was 'quashed' and a consequential direction was issued by virtue of Para 114 of the judgment which is extracted above and the matter was remanded back to the learned NCLT, Chennai Bench, for fresh consideration of both the Substitution Applications, which was supposed to be considered and decided on merits, only after the adjudication of the pending 'testamentary proceedings' between the 'parties' before the Hon'ble High Court of Judicature at Madras, which was pending consideration by way of **TOS No.27/2021**.

6. In the proceedings thus drawn before the Hon'ble High Court of Judicature at Madras by way of TOS No. 27/2021, the plaintiffs Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust therein have sought an issuance of the letter of administration on the basis of a will which was annexed thereto, contending thereof that the conferment of right of the assets flowing from Late Dr. M.A.M. Ramaswamy Chettiar and his Late wife Smt. Sigapi Achi, who was pre-deceased, having met with a sad demise on 24.03.2006, will have to be bestowed on it, on the ground that since there was a will executed on 18.02.2015 by Doc. 16/2015 the property would be governed by the terms of the said will and the probate is required to be granted by issuance of a letter of administration to the plaintiff to the

proceedings (Appellant herein) under the provisions of the Indian Succession Act. The said proceedings is still pending consideration.

7. The consequential effect of this Appellate Tribunal's judgment dated 06.09.2022 of setting aside the order of substitution dated 26.05.2022 of Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust, coupled with the fact that TOS No. 27/2021 instituted before Hon'ble High Court of Madras is still pending is that, till date there is no legally identified heir of the Applicant to prosecute the proceedings of TCP No. 1/2016 pending before Ld. NCLT and that Ld. NCLT has adjourned TCP No. 1/2016 sine die vide order dated 19.12.2022. Subsequently on 09.01.2023, the Appellant Trust sought to amend the list of assets in the petition for grant of probate of the will dated 18.02.2015 executed by Late Dr. MAM Ramaswamy and filed Applications 1534 and 1536 of 2023 in T.O.S. No. 27 of 2021 to amend the affidavit of Assets to the Petition for grant of Probate to include the deposit given to Respondent-1 company herein. Further, as the deposit became ripe for repayment in March, 2023 after expiry of 10-year period, the Appellant herein filed an application being IA (CA) No. 93(CHE)/2024 before Ld. NCLT praying for a Direction to the Respondent No.1 Company M/s. Chettinad Coal Washeries Pvt. Ltd. to deposit a sum of Rs. 66.32 crores along with interest of 18 % from the date of filing of TCP/1/2016 until the date of repayment to the credit of probate proceedings pending on the file of

Hon'ble Madras High Court in T.O.S No. 27/2021. The said relief was sought for on the grounds that though Hon'ble NCLAT has directed Ld. NCLT to decide on the Substitution Application after final adjudication in the probate proceedings T.O.S. No. 27 / 2021 before Hon'ble High Court of Madras, it has not given its seal of approval to the Respondent No. 1 Company to override the provisions of Section 73 & 74 of the Companies Act, 2016, and the provisions of Companies (Acceptance of deposits) Rules, 2014, by continuing to retain the said deposit received before the commencement of Act, 2013 and that too even after its maturity. He also expressed his apprehension that since 99% of the shares of the Respondent No. 1 Company are being held by Respondent No. 2 along with his wife, there is a possibility of the said deposit being frittered away and therefore, to safeguard the said asset, the entire sum may be ordered to be deposited by the Respondent-1 company to the credit of the probate proceedings, irrespective of whosoever is successful in said probate proceedings.

8. Ld. NCLT hearing both sides passed the impugned order dated 27.11.2024, directing the Appellant herein to approach Hon'ble NCLAT for directions after observing that since there is an order of Hon'ble NCLAT dated 06.09.2022 and on that basis the petition was adjourned sine die vide order dated 19.12.2022, it would be appropriate if the Applicant/Appellant may approach the Hon'ble NCLAT for directions, if any.

9. Subsequent to this, the Appellant Late Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust has filed the instant appeal, being CA (AT) (CH) No. 20 / 2025, challenging the impugned order as noted above. In the said appeal, he has reiterated the points he had contended before Ld. NCLT and has also submitted that neither of the respondents have contested the fact of deposit made by Late Dr. M.A.M. Ramaswamy with the Company, that the balance sheet of the Respondent No. 1 for the year ending 31.03.2013 clearly refers to the amounts advanced by him as short term borrowings under 'current liabilities' which is repayable within 12 months, and that the said deposit was unilaterally converted into a long term deposit with a tenure of 10 years repayable in March 2023 without the consent of Late Dr. M.A.M. Ramaswamy.

10. He has further contended that even if it is assumed that it was a 10-year deposit, such deposit has matured in March 2023, apart from the fact that the retention of the said deposit is contrary to the provisions of Section 74 of Companies Act, 2016 and also the provisions of Companies (Acceptance of Deposit) Rules, 2014. He has further stated that he had filed Application 1534 & 1536 of 2023 in T.O.S No. 27 / 2021 for including the said deposit in the Affidavit of Assets in the petition for grant of probate of the registered will which was allowed by Hon'ble single Judge vide order 12.06.2023 and was confirmed by the Division Bench of Hon'ble Madras

High Court in OSA No. 152 & 154 of 2023 wherein the said court clarified that the question of as to who will be the legatee qua the deposit will be a question to be decided by the Probate Court.

11. He has also raised the apprehension that the Respondent No. 1 Company continues to retain the deposit even after its maturity which will not be in the interest of the estate of Late Dr. M.A.M. Ramaswamy and the said asset may be frittered away by the Company and therefore it is just and proper that the said deposit is refunded back to the estate of Late Dr. M.A.M. Ramaswamy along with accrued interest irrespective of who is declared as his successor as per the probate proceedings.

12. After having gone through the pleadings of the Appellant and the elaborate arguments put forth by the Ld. Senior Counsel for the Appellant, we are of the view that the judgment of this Appellate Tribunal dated 06.09.2022 was only limited to adjudicating on the issue of as to who will replace or who will be substituted for late Dr. M.A.M. Ramaswamy Chettiar in the T.C.P. No.1 of 2016. Rightfully, the said question can be decided only after conclusion of the probate proceedings which is pending before the Hon'ble High Court of Madras. However, in the application IA No.93/2024 it has been prayed that the Respondent No.1 company to be directed to refund the deposit made by late Dr. M.A.M. Ramaswamy Chettiar with interest as stated therein to the credit of the probate proceedings in the file of Hon'ble

High Court of Madras in view of the fact that the said deposit is being held by Respondent No.1 company in contravention of Section 73(4) and Section 74(1) of the Companies Act, 2013 and in the interest of safeguarding the estate of Late. Dr. M.A.M. Ramaswamy.

13. This Appellate Tribunal in its judgment dated 06.09.2022 has not stopped any proceedings on this aspect. In view of the contentions of the Appellant it appears necessary that the said proceedings of whether there is a deposit made by late Dr. M.A.M. Ramaswamy Chettiar to the Respondent No.1 company, what is the amount of such deposit and how much interest has accrued on it, whether the said deposit is still being held by the Respondent No.1 company in contravention of Section 73(4) and Section 74(1) of the Companies Act, 2013, and whether the said deposit along with interest accrued thereon will be permitted to be retained by the Respondent-1 company or else, where it should be deposited for safe keeping is to be decided by the Ld. NCLT because this aspect will come under the jurisdiction of Ld. NCLT, being a subject matter of Companies Act, 2013 and not that of Hon'ble High Court of Madras, who will decide who will inherit it.

14. Further, in view of the apprehension expressed by the Appellant that, Respondent No.2 and his wife indirectly control Respondent No.1 company, the deposit which is contended to be a valuable asset in the estate of late Dr.

M.A.M. Ramaswamy Chettiar may be frittered away and may not be restored back to the estate will be one of the factors that will necessitate proceedings to be taken up by Ld. NCLT, in this regard, without waiting for the conclusion of the probate proceedings.

15. Naturally the question will arise as to who will be prosecuting the proceedings before the Ld. NCLT, in view of the fact that the original petitioner is yet to be substituted and the question of legal heir of the deceased petitioner is yet to be determined. In our view, any or all of the parties who claim to be the beneficiary of the estate of the deceased petitioner will be entitled to pursue the proceedings in view of the ruling of Hon'ble Apex Court in the matters of **Binapani Kar Chowdhury v. Sri Satyabrata Basu & Anr. 2006 (10) SCC 442** that the right of the beneficiary to institute any suit / proceedings under law for protection of estate of the deceased until it is probated will not be hit by the bar under Section 213 of Indian Succession Act. In this case, the Appellant is one of the claimants to the estate of Dr. M.A.M. Ramaswamy Chettiar, Respondent No.2 being the other and both are parties to the company petition TCP No. 1/2016. Further, in any case, the Ld. Tribunal decides that the deposit was made by the deceased petitioner, that the deposit ought to be returned back by the Respondent No.1 company in view of the provisions of the Companies Act, 2013 and directs that the proceeds of the deposit thus alleged to have matured into the credit

of the Probate Proceedings as prayed for, it will not affect any of the claimants because the asset will be kept in safe hands till the final adjudication of the Probate Proceedings. Accordingly, we are of the view that Ld. NCLT may take up the proceedings of IA(CA)/93(CHE)/2024 and the principal proceedings of T.C.P. No.1 of 2016 on its merits and bring it to a conclusion on the question of the fate of the alleged deposit with the Respondent No.1 company.

16. Accordingly, the company appeal is 'allowed'. The matter is remanded back to the Ld. NCLT for passing appropriate orders on the said Interlocutory Application on its own merits without being influenced by any of the observations made by this Appellate Tribunal in this order.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

02/04/2026
AR/MS/AK