

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No. 57/2021

In the matter of:

Sri. K.M. Abdulla
S/o. late B.H. Mammi,
Rahathmanzil, Puthiya Road,
Vennala P.O, Ernakulam – 682 028.

... Appellant

V

Kerala Chamber of Commerce & Industry
CIN: U91110KL1957NPL001763
Reg: Off: XXXVII/801, Shanmugam Road,
Ernakulam, Kochi – 682 031.

...Respondent

Present :

For Appellant : Mr. Aravind Sreekumar, Advocate
For Respondent : Mr. Akhil Suresh, Advocate

ORDER
(Hybrid Mode)

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

02.06.2026:

The instant Company Appeal has been preferred by the Appellant by invoking the provisions contained under Section 421 of the Companies Act, 2013. This Company Appeal has been preferred as against order passed by Learned NCLT, Kochi Bench in CP/30/KOB/2020. The said company petition that was preferred by the Appellant invoking the provisions contained under Section 73(4) of the Companies Act, 2013, which has been rejected, by the impugned order.

2. Following are the brief facts, as it has been argued, though it may not be of much relevance to be considered at this stage, owing to the subsequent developments that have taken place. It is submitted by the Appellant that the

Respondent Company, along with another company had floated a special purpose vehicle for the construction of a building called as Kerala Trade Centre and since the Respondent Company was facing certain financial crisis, it requested the Appellant to deposit a certain amount, on which interest at the rate of 18% was offered. However, when the deposit along with the interest was demanded to be remitted back, there was a refusal on part of Respondent, on the ground that the said amount advanced was towards the booking of the space in Kerala Trade Centre, plus a reference was also made to a declaration made by the Respondent in compliance with the Rule 2(1)(c)(viii) of the Companies Act (Acceptance of Deposit Rules), 2014.

3. The petition was disposed of by the impugned order dated 06.10.2021, observing thereof that looking to the nature of the transaction, the money advanced by the Appellant was to the account of the Kerala Trade Centre, which is a separate entity altogether and not to the Respondent Company and hence the money advanced will not fall to be within the provisions of Section 73(4) of the Companies Act, 2013, as a deposit given to the Respondent Company. Hence the petition was dismissed, leaving it open for the Appellant to resort to an appropriate recourse as available to him against the Kerala Trade Centre, as per the procedure known tender law.

4. The provisions of Section 73 of the Companies Act, 2013, contemplates a prohibition on acceptance of deposits from public and Sub-Section (4) contemplates a situation where in case a company fails to repay the deposit or

part thereof, which is to be paid back along with the interest as intended by Sub-Section (3) of Section 73 of the Companies Act, it is left open for the depositor to apply to the Tribunal for issue of appropriate the directions to the company to pay the amount due or for the loss or damages incurred and henceforth. The provisions contained under Sub-Section (3) and Sub-Section (4) of Section 73 of the Companies Act, 2013, read as under: -

“(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.”

5. Brief facts of the case as recorded in the impugned order are that the petitioner of the Company Petition, i.e., the Appellant herein, was a shareholder in the Respondent company, i.e., “Kerala Chamber of Commerce and Industry,” and that the Respondent company was a Section 8 company, and no shares were issued to the petitioner. Further, on the request made by the Board of Directors of the Respondent Company, he had deposited an amount of Rs. 30,00,000/-, with the Respondent company and the payments thereof were made in five instalments through cheques as detailed in the impugned order. However, when the Appellant demanded return of the said deposit with interest promised, the same was not remitted, consequent to which the notice in that regard was issued by the

Appellant on 12.06.2019 to the Chairman and the Board of Directors of the Respondent company.

6. The reply to the notice dated 12.06.2019 as given by the Respondent reveal that the petitioner himself was on the Board of Directors from 2000 onwards till 2019 and was the chairman during 2009-2011 and during his tenure as chairman, when the company was altered into Section 8 non-profit, charity-oriented company with the aim to protect and promote the welfare of the traders. Further, during his tenure only, the joint venture project was started in association with Cherupushpam Films Pvt. Ltd. to construct a multi-storied building under the name and style of “Kerala Trade Centre” at Marine Drive, Kochi, that all the advances including the advance paid by the Appellant have been diverted to be utilized in the two projects i.e., (i) Kerala Trade Centre and (ii) M/s. Middle East Broadcasting Network Pvt. Ltd. As these projects incurred heavy financial losses to the Company, and the net worth of the Respondent has been completely eroded.

7. The Respondent Company had further contended that, the deposits taken from the petitioner was for the purpose for purchase of space in the Kerala Trade Centre, the joint venture project and that the accounts of the Respondent company were duly audited. When the Appellant remained as a director, that the chairman of Kerala Trade Centre and the petitioner had colluded with each other, and made the fraudulent claim by falsifying and altering the documents to show the amount paid by the Appellant as a deposit to the company. He has further stated that as per the audited accounts of Kerala Trade Centre for FY 2013-14, a sum of Rs.25

lakhs is shown under the heading of advance for space (booking charges) against the name of the Appellant which was later on claimed to be deposits given to the company.

8. The Learned Tribunal considered the issue and observed that: -

(i) When the Appellant was raising a financial claim of the alleged advances extended by him, the onus of proof was on the Appellant to show that it was an advance extended by the Appellant owing to the financial difficulties being faced by the company, which was not discharged by the Appellant.

(ii) There was no proof on record placed by the Appellant that the so-called advances made by the Appellant were ever credited into the account of the Respondent company, Kerala Chamber of Commerce and Industry.

(iii) Upon scrutiny of bank account details produced by the Respondent, the said amount of Rs.25 lakhs was shown to have been credited into the account of the Kerala Trade Centre, which happens to be a separate entity to Respondent No.1.

(iv) Since the Company Petition has been exclusively preferred against the Kerala Chamber of Commerce and Industry, which did not receive the amount, the petition against the said company will not stand scrutiny with these observations, Learned NCLT passed the impugned order, dismissing the company petition while leaving all other avenues open for the Appellant to pursue his remedies in accordance with law.

9. In order to substantiate his arguments, the Learned Counsel for the Appellant had made reference to an independent branch auditor's report, which shows that the maintenance of the books of account and preparation of the trial balances, was the responsibility of the sub-committee formed by the Kerala Chamber of Commerce and Industry for the construction of a multi-storied building, Kerala Trade Centre and therefore KTC was only a project of Kerala Chamber of Commerce and Industry. But however, there was no specific denial by the Appellant as to in whose books the amount was deposited. Owing to the fact that the extension of the financial benefit and the deposit of the amount with Kerala Chamber of Commerce and Industry were the necessary facts, which were not established by the Appellant and that, the issuance of Form TM-1, under the Trade Marks Act, 1999, shows the Kerala Trade Centre as to be an independent entity, though it is owned by Kerala Chamber of Commerce and Industry, the claim that advance amount of Rs.25 lakhs has placed with Kerala Chamber of Commerce and Industry, has not been conclusively proved by the Appellant. In that view, the petition was rightly dismissed, with recourse left open for the Appellant to resort to an appropriate remedy as against the Kerala Trade Centre for recovery of the amount.

10. Even otherwise also if we see the receipt of 14.09.2013, it was rather the Kerala Trade Centre who had issued the receipt of the advances made by the Appellant. Be that as it may. The Respondent in his counter affidavit, has disclosed the fact that Kerala Chamber of Commerce and Industry has been admitted into CIRP vide order dated 21.02.2022 as per the orders passed in

CP(IB)/33/KOB/2021 and the moratorium under Section 14 of the I & B Code, 2016, has been declared by the Learned NCLT, which prohibits the initiation or continuance of any legal proceedings. Owing to the effect of Section 14 of the I & B Code, 2016, coupled with the implications of Section 238 of the I & B Code, 2016, which has an overriding effect, for all practical purposes, the Company Appeal has been rendered infructuous, for the reason being that the rights of the Appellant has still been reserved, as he could raise the claim under Section 30(2) to be read with Section 53(1) of the I & B Code, 2016. Owing to the aforesaid, apart from the fact that the Company Appeal lacks merit, but owing to the subsequent development of Kerala Chamber of Commerce and Industry having been admitted to the CIRP process, the **Comp App (AT) (CH) No.57/2021** has been rendered infructuous. Ordered accordingly.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

VG/MS/AK