

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

30.09.2026

Present: JUSTICE SHARAD KUMAR SHARMA, MEMBER (JUDICIAL)
INDEVAR PANDEY, MEMBER (TECHNICAL)

COMP. APP. (AT) NO. 8 OF 2023

&

I.A. NO. 5944 OF 2026

(Arising out of Order dated 07.12.2022 passed by the Adjudicating Authority, in CP (IB) No. 157/73(4)/ND/2020.)

IN THE MATTER OF:

ET Infra Developers Pvt. Ltd.

...Appellant

Versus

Electrotherm (India) Ltd.

...Respondent

Present:

For Appellant : Mr. Sunil Fernandes, Sr. Advocates with Ms. Shankari Mishra and Ms. Aprajita, Advocates.

For Respondent : Mr. Chandra Shekhar Yadav and Mr. Manan Shishodia, Advocates.

J U D G M E N T

Per Justice Sharad Kumar Sharma Member (Judicial)

The Appellant is an opposite party to the proceedings of CP NO. 157/73(4)/ND/2020.) *ET INFRA DEVELOPERS PVT. LTD Vs. M/S ELECTROTHERM (INDIA) LIMITED*. Those proceedings were initiated under Section 241, to be read with Section 242 and 244 of the Companies Act,

2013. In those proceedings, the Respondent to the Company Appeal, the petitioners therein, had filed I.A. No. 19/2022 praying for grant of certain interim reliefs as extracted herein:

“a) "Permit the Petitioner through its authorized representative(s) to inspect the register of members and other records including Financial records, bank statements etc. of Respondent No. 1 and take copies thereof in accordance with the provisions of Companies Act, 2013;

b) Direct the Respondent Nos. 1 to 3 to give notice of meeting of Shareholders/Annual General Meeting to the Petitioner which may be scheduled to be held in accordance with the Companies Act, 2013 and to permit the Petitioner to participate in the said meetings;

c) Restrain Respondent Nos. 1 to 3 from selling, transferring, mortgaging or in any manner alienating or creating any third-party interest on the moveable and immoveable assets of Respondent No.1 Company.

d) Restrain the Respondent Nos. 1 to 3 from changing the capital structure of the Respondent No. 1 and from allotting any new Shares etc.;

e) Direct the Respondent Nos. 1 to 3 to place on record the complete list of all meetings of members/shareholders of the Respondent No. along with the respective resolutions, attendance register, notices of meetings along with proof of service on the respective members/shareholders and restrain the Respondents from giving effect to the Resolutions passed in all illegal meetings of members/shareholders

inter alia where notices were not served to the Petitioner in accordance with law;

f) Direct the Respondent Nos. 1 to 3 to place on record the complete list of all meetings of Board of Directors along with the respective Resolutions, attendance register, notices of meetings along with proof of service on the respective Directors and restrain the Respondents from giving effect to the Resolutions passed in the Board meetings of all illegal meetings of Board of Directors;

g) Direct the Respondent No. 1 to 3 to furnish the complete list of allottees and the unsold inventory in the World Trade Tower developed and constructed by the Respondent No. 1 and the charges created over there; and/or"

2. The Ld. Tribunal, by virtue of the Impugned Order, had allowed the interim prayers, and hence the Appellant is before us contending:

- (i) Its argued that when the principal proceedings under Section 241 and Section 242 of the Companies Act are not maintainable at the behest of the Respondent, in the absence of there being any waiver sought by them under Section 244 of the Companies Act, in that eventuality an interlocutory application for the grant of relief in the shape of I.A. No. 19/2022 would not be maintainable.
- (ii) When the Respondent was not competent to, even pursue the main proceedings, the interlocutory proceedings would not lie at their behest.

3. In relation thereto, the Ld. Counsel for the Appellant had referred to the pleadings raised in the application, that was preferred on 08.09.2021, wherein the Respondent had sought the interim prayers as extracted in the preceding paragraph. The argument of the Learned Counsel for the Appellant is that according to the Respondent's own case, as pleaded in the application and particularly in Paragraph 6, the applicant has described its shareholding pattern in the following manner:

“Share Holding after fraudulent transfer of shares by the Petitioner to Respondent Nos. 2 and 3 on 30.04.2017:-

Sr No.	Name of Shareholder	No. of Share	% Share
1.	Sushant Agarwal	2,53,000	66.61%
2.	Vaibhav Aggarwal	1,27,050	33.39%
3.	Electrotherm (India) Ltd.	0	0%
	Total	3,80,050	100%

4. In accordance with the above shareholding pattern, which was even the case of the Respondent in I.A. No. 19 of 2021, the number of shares shown to be held by the Respondent, was shown to be zero. In that eventuality, it is argued by the Learned Counsel for the Appellant that, if it is the own case of the Respondent that they were holding 0 per cent of shares, in that eventuality, their Interlocutory Application, being I.A. No. 19/2021, would not be maintainable. That being, so particularly, when in the proceedings under the Company Petition under Sections 241 and 242, the Respondent had not sought any waiver under Section 244 of the

Companies Act, 2013 and when the Company Petition itself is not maintainable, in that eventuality, the application for the grant of interim relief in a proceeding of the Company Petition, which is otherwise not maintainable under law at the behest of the Respondent, the interim prayer too would not be maintainable. It is argued by the Ld. Counsel for the Appellant that though the impugned order is of an interlocutory nature, but yet it is flawed under law for the reason that the Tribunal has proceeded to pass an interlocutory order granting the interim relief that, was prayed for in I.A. No. 19/21 without even recording any reasons or recording any prima facie case to justify for the grant of the interim relief. If we scrutinise the order itself, what could be seen is that the Ld. Tribunal observes that, despite the time being granted to the Appellants herein in the proceedings of the Company Petition, the Appellants are accused of having not filed the counter or a Reply to the main Company Petition and no reply was filed even to the Interlocutory Application that was preferred by the Respondent for the grant of the interim relief. The Ld. Counsel for the Appellant submits that the finding recorded that, the Appellant was not able to file a Reply, as observed in the impugned order, has to be read in the context of the Reply which was directed to be filed by the Appellants in the proceedings of Company Appeal No. 157/73(4)/ND/2020. Hence, he submits that even non-filing of the Reply in a Company Petition, in itself, cannot be taken to be a justifiable reason to grant an interim order, and that too without recording any finding on the merits of the matter or assigning reasons for the same. Thirdly, the Ld. Counsel for the Appellant had submitted that it was procedurally incumbent upon the Tribunal that, even when the Interlocutory

Application was being considered, and particularly in the context of and in relation to the nature of relief that was sought in the application, because of the fact that it was touching upon various vital intricacies affecting the rights of the parties to the proceedings of the Company Petition. Hence, it is argued by the Ld. Counsel for the Appellant that even if any interim order was required to be granted, then it was incumbent upon the Tribunal:-

(i) To have granted an opportunity to the Appellant to controvert the contents of the pleading of Interlocutory Application No. 19/2021, and it is then only after considering the Reply, to be submitted that any interim application, the interim relief application could have been considered and granted by the impugned order. It is argued by the Counsel for the Appellant that, apart from the fact that no opportunity was granted, the impugned order has proceeded primarily on the premise that, since the Appellant has not filed the counter to the main Company Petition, the interim order deserves to be granted. The Ld. Counsel for the Appellant argues that this reasoning assigned by the Tribunal for grant of the interim order, which may be even because of non-filing of the Reply in the Company Petition, that itself may not be an exclusive ground to grant interim relief by a non reasoned order.

(ii) Grant of an interim relief, and that too particularly when it affects the material rights of the parties to the proceedings, even if at all there was any justification to pass any interim order, then the Tribunal, being an adjudicatory body, even at the interim stage, ought to have assigned

reasons after considering the pleadings raised in the application, even if taken for granted that there was no Reply submitted by the Appellant.

5. Heard Learned Counsel for the parties. Upon considering the pleadings raised in Para 6 of I.A. No. 19/2021, where it is an admitted case of the Respondent itself that they were holding zero per cent of shares and, as such, if that is the situation, then in the light of the provisions contained under Sections 244 of the Companies Act, the application at the behest of the Respondent would not be maintainable particularly when the principal proceeding under Section 241 and 242 of Companies Act itself was not maintainable at their behest, since the respondents were not satisfying the cut-off threshold of holding a minimum 1/5th of the shares to maintain a petition. Even otherwise also, once it is an admitted case of the Respondent that they are not holding the required shares, in that eventuality, the application in itself, being I.A. No. 19/2021, would not be maintainable, and that too more importantly when the Company Application that, was preferred by the Respondent was not accompanied with any application for the grant of waiver under Section 244 of the Companies Act.

6. Even let us presume for the time being, that this question about the impact of Section 244 is left to be considered by the Ld. Tribunal when the Company Petition itself would have been considered for admission on merits. But so far as the impugned order is concerned, the sole rationale for passing an interim order had been merely on the basis that the Appellant has not filed a reply. That by itself may not be justified to grant an interim order, for the reason that there is nothing on record to show that there was

sufficient opportunity granted to the Appellant to controvert the contents of I.A. No. 19/2021, which widely affected the rights of the parties. In the absence of any effective opportunity, being granted to the Appellant to controvert the pleadings of I.A. No. 19/2021, without granting even an opportunity to file a reply to IA, passing of the impugned order granting the interim relief by the impugned order 07.12.2022 would be in under derogation of principles of natural justice and would be in violation to the spirit and purpose of Section 424 of the Companies Act, 2013.

7. We are of the view that, even if it is presumed that the Appellant has not filed Reply to the proceedings, either of the Company Petition or even to the application, I.A. No. 19/2021, even then the Ld. Tribunal was required to record its reasoning and the basis on which the Tribunal thought it apt to grant an interim relief. Non-consideration of the reasons or non-assigning of the reasons to justify for the grant of the interim relief, particularly if it is read in the context of the nature of vital interim reliefs, those were sought, will have an adverse bearing on the merits of the matter. In that eventuality, mere non-filing of reply to IA, still required determination on merits, because that cannot be an exclusive ground to grant an interim relief without adopting a rational view of calling for a Reply from the Appellant and then only to consider and to pass an appropriate order on I.A. No. 19/2021. Having not done so, that would vitiate the order in itself.

8. There could be yet another facet which is required to be considered that the basic governing principle of adjudication of justice is that any order,

which is passed by the Tribunal on its judicial side has had to be attached with reasons for accepting or rejecting the stand taken by the parties to the proceedings before it. Even it is presumed that the Appellant has not filed any reply before the Appellate Tribunal, then too it was procedurally incumbent in the process of justice dispensation system that, any order which is passed by the Tribunal affecting rights of the parties on merits of the application that is I.A. No. 19/2021, then it was mandatory on part of the Learned Tribunal that it ought to have assigned reasons to justify passing of the interim order and particularly to the nature of the interim order as prayed for in I.A. No. 19/2021, it should have been only after assigning reasons. In the absence of there being any reason assigned in it, it may be inferred that it must be actuated by bias, Because of the following;-

- I. The main company petition suffered from the restriction contained under Section 244 of Companies Act, and it was not maintainable until and unless the issue was decided on an application to be preferred by Respondent/Petitioner.
- II. If the main proceedings of the Company Petition were barred by Section 244, then obviously the Interlocutory Applications preferred in it would to be not be decided until and unless the waiver had been sought.
- III. Passing of interim order is an non maintainable proceedings, need more justifiable reasons to grant interim order.

9. The previous act of the Appellant of not filing a Reply in the Company Petition, that itself cannot be exclusively relied upon by the Tribunal to grant an interim relief by taking into consideration the past conduct of the Appellant in carrying out future proceedings. Lastly, even if it is presumed that there was no Reply filed by the Appellant, then too it was incumbent upon the Tribunal that, before recording any orders on merits, while allowing the application for the grant of interim relief, the Tribunal was bound to assign reasons. The order does not show that any reasons have been assigned by the Ld. Tribunal justifying to grant of the interim order, vide its impugned order dated 07.12.2022. In that eventuality itself, the order dated 07.12.2022 would stand vitiated. Thus, considering the aforesaid backdrop, the impugned order cannot be sustained since having been passed in an ex-parte manner and without consideration of the entire facts in totality and based upon the consideration of the previous conduct, it cannot be sustained.

10. Hence, the impugned order dated 07.12.2022 is hereby quashed. The I.A. No. 19/2021 is remitted back to be considered by the Ld. NCLT, New Delhi Bench afresh. Subject to the aforesaid, the Interlocutory Application, I.A. No. 5944/2026, preferred by the Respondent seeking clarification of the interim order dated 17.01.2023, does not call for any answer to it. Hence, I.A. No. 5944/2026 would stand closed.

11. The Company Appeal would stand allowed. The matter is remitted back to the Ld. NCLT, Delhi, to reconsider I.A. No. 19/2021 afresh and to decide the same after providing an effective opportunity of hearing to the

Appellant, after considering the grounds taken in the Memorandum of Appeal, as being grounds in opposition to I.A. No. 19/2021. If the Appellant furnishes the copy of the order to the Tribunal within 2 weeks from the date of uploading of the order, I.A. No. 19/2021 is expected to be decided on its own merits, within two weeks thereafter.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

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