

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
CHENNAI

(APPELLATE JURISDICTION)

Comp App (AT) (CH) No.84/2024

(Arising out of the 'Impugned Order' dated 11.12.2024 in
IA(CA)/229(CHE)/2024 IN CP(CA)/129(CHE)/2023),
passed by the (National Company Law Tribunal', Chennai Bench)

In the matter of:

1. Mr. Nagaraj V. Mylandla,
A/1/5, Chitra Apartments,
23rd Cross Street, Besant Nagar,
Chennai – 600 090.

2. Mrs. Sharada Mylandla,
A/1/5, Chitra Apartments,
23rd Cross Street, Besant Nagar,
Chennai – 600 090.

3. Mr. Archit Mylandla,
A/1/5, Chitra Apartments,
23rd Cross Street, Besant Nagar,
Chennai – 600 090.

.... Appellants

v.

1. Financial Software and Systems Pvt. Ltd. and Ors.
Represented by its authorized representative
“Saradha”, Ground Floor, No. 42,
Third Main Road, Gandhi Nagar,
Adayar, Chennai – 600 020.

2. PI OPPORTUNITIES FUND – I
#134, Doddakannelli, Next to Wipro corporate office,
Sarjapur Road, Bangalore,
Karnataka - 560 035.

3. NYLIM JACOB BALLAS INDIA (FVCI) III LLC,
4th Floor, Ebene Heights,
34 Cybercity, Ebene 72201,
Republic of Mauritius.

4. NYLIM JACOB BALLAS INDIA FUND III LLC

4th Floor, Ebene Heights,
34 Cybercity, Ebene 72201,
Republic of Mauritius.

5. MILLENNA FVCI LTD.

Sanne House, Bank Street,
Twenty Eight, Cybercity,
Ebene 72201, Mauritius.

6. Mr. Vijendar Dwarakanath,

Nominee Director of Financial Software and Systems
Private Limited,
Representative of PI Opportunities Fund – I,
Having office at #134, Doddakannelli,
Next to Wipro Corporate Office
Sarjapur Road, Bangalore,
Karnataka – 560 035.

7. Mr. Srinivas Chidambaram,

Nominee Director of Financial Software and Systems
Private Limited,
Representative of Nylim Jacob Ballas FVCI India III
and Nylim Jacob Ballas Fund India,
Having office at 4th Floor, Ebene Heights,
34 Cybercity, Ebene 72201, Republic of Mauritius.

8. Ms. Bala Deshpande,

Nominee Director of Financial Software and Systems
Private Limited,
Representative of Millena FVCI LLC (formerly known
as NEA FVCI LLC),
Having office at Sanne House, Bank Street,
Twenty Eight, Cybercity, Ebene 72201, Mauritius.

9. Mr. Rudhraapathy J,

No.9, Sarvam Pranavam Apartments,
Luz Church Road, 1st Street Mylapore,
Chennai – 600 004.

10. Mr. Anand Mitkari,

Senior Vice President – Finance
Financial Software and Systems Private Limited,
“Saradha”, Ground Floor, No. 42,
Third Main Road, Gandhi Nagar,
Adayar, Chennai – 600 020

11. V. Balasubramanian,

Chief Executive Officer – Cashtech Division,
Financial Software and Systems Private Limited,
“Saradha”, Ground Floor, No. 42,
Third Main Road, Gandhi Nagar,
Adayar, Chennai – 600 020

12. Mr. Gautam Rohidekar,

Senior Vice President – Legal
Financial Software and Systems Private Limited,
“Saradha”, Ground Floor, No. 42,
Third Main Road, Gandhi Nagar,
Adayar, Chennai – 600 020.

13. Mr. Rakesh Singh,

Company Secretary
Financial Software and Systems Private Limited
“Saradha”, Ground Floor, No. 42,
Third Main Road, Gandhi Nagar,
Adayar, Chennai – 600 020.

....Respondents

Present:

For Appellants : Mr. P.H. Arvindh Pandian, Senior Advocate
For Mr. Rajkumar Jhabakh, Advocate

For Respondents : Mr. P.S. Raman, Senior Advocate
Mr. R. Parthasarathy, Senior Advocate
For Mr. P. Giridharan, Mr. H. Siddarth &
Mr. PSS Bhargava, Advocates for R2
Mr. Prabhav Sharoff, Advocate for R3
Ms. Mrudula Dixit, Advocate for R4
Mr. Suhrith Parthasarathy, Advocate for R5
Ms. Amritha Sathyajith, Advocate for R8
Mr. T.K. Bhaskar, Advocate for R9 to R13

JUDGMENT
(Hybrid Mode)

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

This is a Company Appeal which has been preferred under Section 421 of the Companies Act, 2013, where the Appellant/Petitioner puts a challenge to the Impugned Order dated 11.12.2024, as it has been rendered by the Learned Adjudicating Authority in IA(CA)/220(CHE)/2024 in CP(CA)/129(CHE)/2023. As a consequence of the Impugned Order, which has been passed, the Learned Adjudicating Authority had only granted time to the Respondents to file a reply and had permitted the AGM to be carried and further directed that the outcome of the AGM particularly in so far it related to Agenda No.1 be kept in abeyance, subject to the orders of the Tribunal.

The brief facts as pleaded by the Learned Counsel for the Applicant, while pressing upon the relief in relation to the Impugned Order are that he had initiated the proceedings under Sections 241, 242, and 128 of the Companies Act, 2013, wherein he had contended that the Appellants collectively hold 33.9% shareholding in the Respondent No.1 Company, that Appellant No.1 is the founder; chairman, and a erstwhile managing director on the Board of Directors of the Respondent No.1 Company, that Respondent Nos.2 to 5 are investor-shareholders in the company holding 51.78% of the shares of the company, that Respondent Nos.6 to 8 are nominee directors of the investors in the Board & Respondent No.9 is a promoter and whole-time Director, that the Board of the

company consists of 6 Directors, the Appellant Nos.1 & 2 and Respondent Nos.6 to 9 and that all the Respondents have conspired together and engages in acts of oppression and mismanagement against the interest of the Appellants and the Respondent No.1 Company.

During the pendency of the Company Petition, the Appellant had filed the aforesaid Interlocutory Application in IA(CA)/229(CHE)/2024 on which the Learned Adjudicating Authority has passed orders which is being challenged here. By virtue of the said Order, the Learned Adjudicating Authority had refused to entertain the pleadings extended by the Learned Counsel for the Appellant regarding the action of Respondents being violative of Section 134 of the Companies Act, 2013, based on which, the Appellant had opposed holding of the AGM. The Appellant had contended that though the Application before the NCLT was filed with sufficient justifications and grounds, the NCLT decided not to interfere in the course of action of the Respondents and the Respondents were allowed to continue operating in absolute disregard to the specific mandate of the Companies Act, 2013.

In the main Company Petition, CP(CA)/129(CHE)/2023, the Appellant had raised a dispute pertaining to the management of the Company and oppression of his rights, more particularly, the concerns regarding the financial affairs and accounting practices followed by the Company, such as removal of advances worth Rs.52.33 crores, from the books of accounts of the Company, reversal of

entries and backdating of entries, regarding illegal manner in which the Board meetings are being conducted and financial statements are being signed and regarding denial to inspect Company's financial records in contravention of Section 128 of Companies Act. While the said petition was in hearing stage, the Respondents conducted Board meeting on 12.11.2024 with Respondent No.9 as the Chairman of the meeting and passed certain resolutions such as approval of financial statements for financial year 2023-24, fixing date for AGM, appointment of directors and adoption of financial statements and Director's Report in the AGM. Since these actions were highly irregular, he moved an Interlocutory Application IA(CA)/229(CHE)/2024 before Learned NCLT, challenging the aforesaid actions and praying to restrain the Respondents from placing financial year 2024 financials for shareholder approval in the AGM to be held on 11.12.2024.

In the Application thus preferred by the Appellant, being IA(CA)/229(CHE)/2024, the precise prayer of the Appellant was to set aside Resolutions, which were passed by the Board of Respondent No.1 Company in its meeting on 12.11.2024, to approve the financial statements for the financial year ended on 31.03.2024, to approve the director's report of the Company for the financial year ended on 31.03.2024, and to convene the 33rd Annual General Meeting of the Company on 11.12.2024. As the AGM was scheduled to be held on 11.12.2024, as the Learned Counsel for the Appellant has submitted, the

Appellants also requested that since they want to place their objections qua the Agenda No.1, to adopt the financial statement of the Company for the Financial Year ending on 31.03.2024 and since they will not be able to attend the meeting on the proposed date, the AGM may be postponed to 18.12.2024 to enable him to attend it. The request for the postponement of the meeting was denied by Learned NCLT and it was instead directed that the AGM is to be held as scheduled, but the outcome of the same will be subject to the orders to be passed by the Tribunal. The relevant observation made by the Learned Adjudicating Authority in the Impugned Order is extracted hereunder: -

“Having heard the Ld. Counsels for the parties and that Ld. Counsel for the Respondents seek and are granted time to file reply, we directed that let the AGM be held, however, the outcome of the AGM on Agenda No.1 shall be subjected to the order of this Tribunal”.

In fact, looking at the nature of the order, which has been subjected to challenge by invoking Section 421 of the Companies Act, 2013, it takes the shape of an Interlocutory Order, where the right of the Appellant in the context of provisions contained under Section 134 of the Companies Act, 2013, which though being procedural in nature and it's not being a substantive provision, has been left open to be considered and thus the Impugned Order permitting holding of the AGM as scheduled would be an Interlocutory Order.

Since no material right of the Appellant has been addressed or effected on the merits and all objections of the Appellant have been left open to be considered

at the stage of the AGM, it will not fall to be an appealable order under Section 421 of the Companies Act, 2013, as it has been left open for him to agitate all his grievances, when the Company Petition itself is taken up on merits qua the decision taken on the AGM as directed to be held in pursuance to the Impugned Order. Thus, the appeal since being premature as it arises out of an Interlocutory order, it will not amount to be an adjudication of a right to sustain the appeal. Thus, the appeal lacks merits and the same is accordingly dismissed, reserving all the rights of the Appellant to be agitated at an appropriate stage in the proceedings of the Company Petition being CP(CA)/129(CHE)/2023.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranatha Swain]
Member (Technical)

24.12.2024
VG/TM/MS