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NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

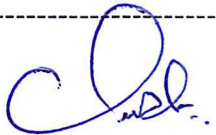
ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 14/06/2017 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL
SHRI S. VIJAYARAGHAVAN, MEMBER-TECHNICAL

APPLICATION NUMBER :
PETITION NUMBER : CP/19/2017
NAME OF THE PETITIONER(S) : CASCADE ENERGY PTE LTD
NAME OF THE RESPONDENT(S) : ZYNERGY SOLAR PROJECTS AND SERVICES PVT LTD + 4
UNDER SECTION : 241/242

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
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REPRESENTATION BY WHOM

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| 1. | CAVINOD JAIN | Chartered Accountant
Counsel & AR of
Petitioner, |  |
| 2. | P. H. Arvinth Pandian
Sr. Advocate
Per M. Srinathan | Counsel for | 1 |
| 3. | R. Sankar Narayan
Sr. Advocate
Per T. V. P. Saivitha | Counsel for | T. V. P. Saivitha |

ORDER

1. Counsel for Petitioner and representative of the Petitioner present. Counsel for R2, Counsel for R3, R4 and R5 also present. The Company Petition No.19/2017 came to be filed u/s 241, 242, 243, 244, 230 and 408 of the Companies Act 2013. The allegations against the Respondents with regard to oppression and mismanagement of the funds. The Petitioner in detail made averments to that effect in the petition and prayed for grant of reliefs contained at Para I and interim reliefs contained at Para II. At this stage, counsel for petitioner is pressing hard for grant of interim relief under sub para (f) of Para II of the petition. The reliefs contained under sub para (f) of Para II is as follows :-

“Pass appropriate orders, reliefs and directions to Respondent Nos.1 and 3 to cooperated with the internal auditor appointed by the Board of Directors and to provide all necessary information, documents and records to enable a smooth conduct of audit and preparation of the report.”

2. In this matter, at the first hearing dated 12.04.2017 the arguments were submitted by the Petitioner in relation to the admission of the petition and interim relief sought. The next date of hearing was fixed on 13.04.2017 when we have recorded in the order, “we are not inclined to grant interim relief at this stage” and the Counsel for the Respondent was directed to file a detailed counter in the Company Petition before the next date of hearing and the matter was posted for arguments in relation to the interim prayers. This matter came up on 27th April

2017, again the parties were directed to complete all the pleadings before the next date of hearing and the matter was posted for final arguments on 14.06.2017 i.e., today itself. However, the Respondents have neither filed any interim counter nor a detailed counter in the main CP. The Counsel representing R2 has filed an application wherein it has been stated that the competent authority has issued a notice under Benami Transaction Prohibition Act, 2016 and passed provisional attachment orders of the shares of the Petitioner on the ground that it is benami holding and because no declaration was made as required under law. Counsel for Respondent has drawn our attention towards the provisions under Sec.187 C (6) of the Companies Act 1956 and Sec.89(8) of the Companies Act, 2013 and submitted that since the attachment order has been passed in relation to the shares held by the Petitioner in the 1st Respondent Company, he cannot enjoy any right attached thereto. The Counsel for the Respondent has raised an issue of maintainability of the Petition under Section 244 of the Companies Act, 2013, stating that the Petitioner is not fulfilling the requirements, because the attachment order of the shares held by the petitioner came to passed by the competent authority. Based on these arguments the counsel for respondents prayed for dismissal of the company Petition.


3. It is on record that the Petition has been filed on 07.04.2017 and at that point of time, there was no legal bar as to filing of the Petition and the Petitioner fulfilled the requirements under section 244 of the Company's Act, 2013 as

reflected from our order dated 13.04.2017. The order of attachment of shares of the petitioner and the issuance of notice to the Petitioner is dated, 19.05.2017 which is subsequent to the filing of the petition. It is also on record that the Competent Authority is yet to complete investigation to reach a final conclusion with regard to the status of the shares, i.e., whether or not the shares are falling within the purview of the benami property. Therefore, as per our understanding, unless any final order is passed, to declare that the shares held by the Petitioner are falling within the purview of the benami property, the Petition cannot be thrown out on the ground that a provisional order for attachment of shares of the petitioner is passed by the Competent Authority.

4. In view of the above, we proceed to consider the prayer of the petitioner for grant of interim relief contained under sub para (f) of Para II of the Petition. Counsels for Respondents have vehemently opposed the grant of interim relief. However, considering the facts and circumstances involved in the case, as detailed in the petition, we are inclined to grant interim relief as prayed, and appoint Mr.S.Santhanakrishnan as Chartered Accountant and Mr.R.Sridharan as Company Secretary, whose names have been recommended by the Petitioner and direct them to undertake forensic audit of the state of affairs of the company including accounts-cum-banking and statutory compliance including Sales Tax, Excise, Customs, FEMA, Companies Act, GATT and other laws applicable and

statutory records of R1 company including the Income and Expenditure of Respondent No.1. The audit report shall be submitted to this Bench within four weeks from the date, the copy of the order is received. The Chartered Accountant and the Company Secretary shall also report on the aspects of the Corporate governance and compliance of effecting contractual commitments of R1 and its shareholders. The report shall be submitted in a sealed cover to this Bench. The Petitioner and Respondents are directed to co-operate with the Chartered Accountant and Company Secretary by making available the accounts, books and other records as may be required by the Chartered Accountant and the Company Secretary. Regarding the payment of remuneration to the Chartered Accountant and the Company Secretary, both are at liberty to fix their remuneration as per the practice in vogue. The payment of remuneration to them shall be borne by the Petitioner and Respondents equally. Accordingly, the relief as prayed is granted to the petitioner.

5. It is also on record that an application has been filed by the Counsel for R2. The Petitioner is directed to file the counter within two weeks and thereafter within ten days the Counsel for Respondent may file rejoinder, if any. Matter is posted for arguments on the application. Put up on **13.07.2017 at 10.30 A.M.**


(S.VIJAYARAGHAVAN)
MEMBER (TECHNICAL)


(CH. MOHD. SHARIEF TARIQ)
(MEMBER (JUDICIAL))