NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No. 64/2026
(IA Nos. 892 & 893/2026)

In the matter of:

Mrs. Govindaraj Prathibha
Door No.28, Srinivasa Nagar,
Press Colony,
Coimbatore - 641 019.

… Appellant / Applicant / Petitioner

V

1. **Caliber Interconnect Solutions Pvt Ltd**
   Regd office at: 9B/1, Poombukar Nagar,
   Thudiyalur, Coimbatore - 641 034.

2. **K. Suresh Babu**
   37, NGR Street, Ramasamy Nagar
   Kavundampalayam, Coimbatore - 641 030.

3. **Thiyagarajan Kodeeswaran**
   6/60, A.D. Street, Kokkarayanpettai
   Namakkal – 638 007.

4. **Maheswari Ayyathurai**
   18/1, Shanmuga Nagar,
   Edayarpalayam
   Coimbatore - 641 025.

5. **Gowrishankar Arumugasamy**
   M11, Near 3rd Street, Thendral Nagar,
   Narasimhanaickenpalayam
   Coimbatore – 641 031.

6. **Prabhakaran Krishnasamy**
   25A/10, Krishna Street,
   Kambar Nagar, Chettipalayam,
   Vellalur, Coimbatore – 641 111.

7. Ciyes Systems Private Limited
18/1, Shanmuga Nagar, Edayarpalayam,
Coimbatore - 641 025.

8. Caliber Interconnects Private Limited
18, Boon Lay Way
No.09-127C, Tradehub 21,
Singapore – 609966.

… Respondents

Present :

For Appellant	:	Mr. BSV Prakash Kumar & Mr. A. Akash Balagee, Advocates
For Respondents	:	Dr. K.S. Ravichandran, PCS for R1, R2, R4 & R5

O R D E R
(Hybrid Mode)

01.07.2026:

Oral : Justice Sharad Kumar Sharma, Member (Judicial)

The Appellant is the petitioner to the company petition, being CP/51/(CHE)/2022, that was preferred by the petitioner on 20.04.2022, by filing the same before Ld. NCLT, Chennai Bench, invoking the proceedings under Section 241 and 242, to be read with Section 59 of the Companies Act, 2013.

2. In the instant company appeal, though the issue restrictively pertains to a direction given by the impugned order dated 01.04.2026, as it was passed by the Ld. Tribunal on IA/130(CHE)/2023, that was preferred by the Appellant / petitioner, seeking impleadment of the proposed Respondent Nos. 7 & 8 to the company petition. The Ld. Tribunal after consideration of the said application had opined that, looking to the current stage of the proceedings of the company petition being carried before Ld. Tribunal, the immediate consideration of the impleadment

application, seeking to implead the proposed Respondent Nos. 7 & 8, was not found to be necessary and that the issue and necessity of impleading the proposed Respondent Nos. 7 & 8, will be considered at the stage when the company petition is taken up for hearing.

3. In other words, the decision of the Ld. Tribunal vide impugned order of 01.04.2026, has been that, consideration of IA/130(CHE)/2023, as preferred by the Appellant for impleading the proposed Respondent Nos. 7 & 8, to the company petition has not been closed and it has been deferred to be considered in case the Ld. Tribunal feels the need for the same at the stage of final hearing of the company petition.

4. The governing principles for considering an application for impleadment in a Company Petition will be guided by the provisions contemplated under Order I Rule 10 of the Code of Civil Procedure, which has to be read with the provisions contained under Section 424 of the Companies Act, 2013. The said principles, in context of the proceedings under Section 241 and 242 of the Act, would be that when the Court feels that, there cannot be an effective adjudication of the proceedings in the absence of a party who is required to be heard, or in whose absence there cannot be an effective adjudication, the said party has to be made as a party and added to the proceedings, either upon or without the application of either party after hearing all the parties who are likely to be affected.

5. We will have to consider the need of impleadment in context of the subject, which was under consideration in the company petition that, was preferred by the Appellant before the Ld. Tribunal. The relief that was sought for by the Appellant in CP/51/(CHE)/2022 is extracted hereunder: -

> *"(1) To declare that the complained acts of the 2nd Respondent are oppressive and prejudicial to the interest of the 1st Respondent Company, its shareholders and the Petitioner; and*
>
> *(2) To appoint an Administrator to take charge, control and custody of all books, records, documents and assets of the Company and to authenticate, execute and file all required statutory records, forms and documents of the Company pending the final disposal of this Petition; and*
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> *(3) To declare that the alleged allotment of shares in favour of the 2nd Respondent on 30.03.2021 is null and void; and*
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> *(4) To declare that the Resolution alleged to have been passed on at the alleged proceedings of the Extra-Ordinary General Meeting dated 05.07.2021 is null and void; and*
>
> *(5) To declare that the shareholding of the Petitioner and 2nd Respondent as on date is 50% :: 50% of the total issued, subscribed and paid-up share-capital of the Company and to consequently, direct rectification of the Register of Members accordingly;*
>
> *(6) To direct the 2nd Respondent to purchase the shares of the Petitioner;*
>
> *(7) To appoint an Auditor to surcharge the 2nd Respondent for the diversion of the Company's funds;*

(8) *Appropriate reliefs be passed under and in accordance with Sections 241 and 242 of the Companies Act, 2013;*

(9) *Order costs of this Petition be paid by the 2nd Respondent;*

(10) *Such further order or orders and/ or direction or directions be given as to this Hon'ble Tribunal may deem fit and proper;"*

6. If the aforesaid reliefs are taken into consideration, the principal relief is as against the complained act of Respondent No.2, holding it to be oppressive and prejudicial to the interest of Respondent No.1 company, and the subsequent reliefs as extracted above would be incidental and consequential in nature.

7. The question that, would arise for consideration is as to whether at all in the light of the relief sought in the company petition, where the action complained of is the action of Respondent No.2, alleging it to be detrimental to the interest of Respondent No.1 company and its shareholders, when the proceedings of the company petition were carried, the pleadings had been exchanged and after the exchange of pleadings the matter had matured to be heard finally, the impleadment sought for by the Appellant by filing the impleadment application on 10.04.2023, being IA/130(CHE)/2023, needs to be considered at this stage.

8. It is to be noted that the application for impleadment, IA/130(CHE)/2023, preferred under Rule 11 of the NCLT Rules, 2016, has been filed on basis of the pleadings made in Para 21-22 of the application that Respondent No.2, while managing the affairs of Respondent No.1 Company, with a deliberate intent has colluded with the proposed Respondent Nos. 7 & 8, M/s Ciyes Systems Pvt. Ltd.

& M/s Caliber Interconnects Pvt. Ltd. to siphon the money of Respondent No.1, and that, under their name the Respondent No.2 has been carrying out the activities in a fashion, which is detrimental to the interests of Respondent No.1 company and hence the impleadment of the aforesaid two entities as Respondent Nos.7 & 8 became imminent and indispensable.

9. If the contents of the impleadment application is taken into consideration, the applicant/petitioner, in fact, was trying to project the necessity to implead proposed Respondent Nos.7 & 8 to the company petition, in order to show the malicious act performed by Respondent No.2, in collusion with the proposed Respondent Nos. 7 & 8, who were the beneficiaries from the act of Respondent No.1 company. Thus, it was contended in the impleadment application that, the impleadment of proposed Respondent Nos. 7 & 8 becomes necessary in order to better elucidate the acts of oppression and mismanagement committed by Respondent No.2 and other Respondents to the company petition. Further, the Ld. Counsel for the Appellant submitted that, the application for impleadment preferred on 10.04.2023, deserves to be allowed, owing to the allegations mentioned therein which are that, the funds and business are being directed to R8 Company, where R2 & R4 are directors, and that new customer enquiries of Respondent No.1 Company are being requested to submit their job offers to the Respondent No.7 company incorporated by the Respondent Nos. 2 & 4 in the name of M/s. Ciyes Systems Private Limited, that husband of Respondent No.4, is a director in the said 7th Respondent Company, that investments for CIYES is being

diverted from Respondent-1 Company, that many of the employees of R1 Company have been forced to resign and join CIYES, and that CIYES (R7) has been incorporated to cause loss to R1 Company.

10. The said application, was opposed by the proposed Respondent Nos.7 & 8, before Ld. NCLT along with other Respondents, on the grounds that, for the purposes of deciding the issue, in context of the relief that, was sought for by the Appellant in the company petition, even if the proposed Respondent Nos. 7 & 8 have been benefited by any act of Respondent No.2 directly or indirectly, that in itself will not make it necessary to implead proposed Respondent Nos.7 & 8, as a necessary party to the proceedings of the company petition, for the reason being that, if at all the diversion of funds and business from R1 to R7 & R8 is proved, it would be for Respondent No.2 to make good the loss consequent upon the decision to be made in CP/51/(CHE)/2022, and to recompense R1 Company for any illegal gains extended to proposed Respondent Nos.7 & 8, and that when the principal proceedings are decided on merits, consequential orders can always be passed. Thus, we can say that, all allegations raised by the Appellant in the interlocutory application, being IA/130(CHE)/2023, is still left open to be considered at the stage when the Ld. Tribunal considers the company petition itself finally on its own merits, which implies that, as of now, there is no finality to the decision on the impleadment application and the order that has been passed on IA for impleadment, doesn't attach any finality, which has been still left open to be considered by the Ld. Tribunal at the final stage.

11. One of the incidental questions that would be falling for consideration for us, is as to whether at all, at this stage, the proposed Respondent Nos.7 & 8, could be permitted to be impleaded at the behest of filing an application for impleadment by the Appellant, because in case the impleadment of R7 & R8 is needed for the purposes of proving the documents and allegations based on which the application was preferred, that would still be open to be considered at the stage when the Ld. Tribunal considers the company petition on its merits. If we go through the contents of the application, the sole basis is the alleged diversion of fund and business from the Respondent No.1 company, by way of incorporation of R8 Company in the name of M/s. Caliber Interconnects Private Limited, Singapore, and R7 Company CIYES where Respondent No.2 & 4 are said to be the directors of the said company. The Ld. Counsel for the Appellant had drawn our attention to various documents, to show the relevant transactions, as well as the transfer of shares in favour of M/s. Caliber Interconnect Solutions Private Limited, to justify his prayer to implead the proposed Respondent Nos.7 & 8, as parties to the company petition.

12. However, it is seen that Ld. Tribunal has recorded that the pleadings in the main company petition is complete, no evidence has been submitted to establish alleged collusion between R7, R8 and R2, that R7 and R8, they are **independent entities** with the common directors and **they are not subsidiaries of Respondent No.1 company,** that their **business activities are independent** in nature and hence they are not necessary parties to be impleaded in the proceedings, and that during the hearing of the main Petition, R7 & R8 can be impleaded if it becomes necessary

to do so. We are of the view that allegation of diversion of funds and business to Respondent Nos.7 & 8 by Respondent No.2, cannot be a ground to implead R7 & R8 because ultimately they at the present stage would only, at the most be the beneficiary of an act of Respondent No.2, that it is the alleged acts of Respondent No.2, which is under judicial scrutiny in the proceedings, and therefore the beneficiaries of the said alleged acts of Respondent No.2, may not be the necessary parties to decide the subject in the company petition, for the reason being that, the entire burden to prove an act of misconduct, oppression or mismanagement has to be established by the Appellant qua the conduct of the Respondent No.2 and for establishing the same we cannot permit the proposed Respondents to be brought on record to aid the Appellant's case, particularly, when they will not be facilitating the proceedings and would rather be supporting the case of Respondent No.2. Thus, the observation made by the Ld. Tribunal that, because of the fact that, the proceedings of the company petition has reached an advanced stage where the pleadings of all the parties have already been completed, there is no necessity to pass any orders on the impleadment application and the same be reserved to be considered if needed at the stage of hearing, does not appear to be violated.

13. The Ld. Counsel for the Appellant has contended that, the impugned order under challenge dated 01.04.2026, cannot be said to be a reasoned order it has not dealt with the material evidence and documents placed on record by the Appellant. However, inferences to be made from the said evidences & documents qua the parties to the company petition is still an issue to be considered when the matter is

taken up on merits of the company petition. Therefore, the Ld. Tribunal rightly observed that, due to the fact that the pleadings have been exchanged and the proceedings are to be heard finally, there is no necessity for impleading R7 & R8 at this stage and that the company petition may be proceeded to be considered on merits, with the direction that, if the necessity so arises to implead the proposed Respondent Nos.7 & 8, the same is still left open to be considered at the stage of hearing.

14. Another finding has been recorded by the Ld. Tribunal, which remains uncontroverted is that, the proposed Respondent Nos.7 & 8, are entities, conducting their independent business and that they are not the subsidiaries of Respondent No.1 Company and therefore, they would not be the necessary and proper parties who are at all required to be heard when the company petition is to be heard finally, in the absence of, there being any nexus between the activities of proposed Respondent Nos.7 & 8 and the alleged acts of Respondent No.2 effecting the functioning of Respondent No.1 Company which is the subject matter of the CP. These facts as recorded by the Ld. Tribunal in itself would render the impugned order to be just and proper, where the impleadment of proposed Respondent Nos.7 & 8 is yet left to be open to be considered whenever the Ld. Tribunal would deem it appropriate that, the participation of proposed Respondent Nos.7 & 8, would be necessary for an effective adjudication of the company petition.

15. So, at this stage, where there is a deferment of considering the impleadment application it cannot be held that the Appellant had any cause of action to file the instant appeal against the impugned order as the necessity for impleadment is yet reserved to be considered by the Ld. Tribunal by passing an appropriate order, when required.

16. Owing to the aforesaid facts, and particularly considering the nature of the impugned order, since, it doesn't directly or indirectly, as on today, affect the rights of the Appellant owing to the conduct of Respondent No.2, which is still left open to be scrutinized by the Ld. Tribunal and not passing an order on the impleadment application doesn't decide the *lis* against the Appellant, which could enable them to file the instant company appeal.

17. One of the factors, though we are half-heartedly observing the same in the absence of the entire documents, being placed on record by the Appellant, is that there has been a certain civil suit filed by the Respondent in the Civil Court at Coimbatore, and during its pendency, the Appellant had filed an application under Order VII Rule 11 of the Code of Civil Procedure (CPC), challenging the maintainability of the civil suit proceedings, which has been rejected and it has been stated by the Ld. Counsel for the Appellant that, after the rejection of the application filed under Order VII Rule 11 of the CPC, a revision thereof is already pending consideration. The Ld. Tribunal has made a reference of those proceedings observing thereof that, any allegation of fraud qua the conduct of Respondent No.2

in collusion with proposed Respondent Nos.7 & 8 will have to be adjudicated only by the Civil Court and not by the NCLT under the summary jurisdiction and for the purposes of the present company petition, the proposed Respondent Nos.7 & 8 are not immediately required to be impleaded for deciding the company petition. Thus, the impugned order doesn't suffer from any apparent error because all rights are still reserved by the Appellant though at the wisdom of the Ld. Tribunal to implead proposed Respondent Nos.7 & 8 as and when it is necessary.

18. Owing to the aforesaid reason, the company appeal is held to be without any merits and the same is accordingly 'dismissed'. All interlocutory applications would stand 'closed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

AR/MS/AK