NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
Company Appeal (AT) (CH) No. 43/2026
IA No. 607/2026
(With defects)

In the matter of:

SUNWAY OPUS INTERNATIONAL PRIVATE LIMITED
No. 8-2-120, pt Floor, Block A, Palace
View Estate, Road No. 2, Banjara Hills,
Hyderabad, Telangana 500034. **…Appellant No. 1**

SUNWAY CITY INDIA PRIVATE LIMITED
No. 20, Uniworth Plaza, Sankey Road,
Bangalore, Karnataka 560 020. **…Appellant No. 2**

SUNWAY CITY (SINGAPORE) PTE LTD
2 Venture Drive, # 11- 28,
Vision Exchange, Singapore 608 526. **…Appellant No. 3**

SUNWAY CITY SDN BERHAD
Level 17, Menara Sunway,
Jalan Lagoon Timur, Bandar
Sunway, 47500 Subang Jaya,
Selangor Darul Ehsan, Malaysia **…Appellant No. 4**

SUNWAY BERHAD
Menara Sunway, Jalan Lagoon Timur
Sunway City, Subang Jaya,
Salangor Darul Ehsan, Malaysia. **…Appellant No. 5**

V

OPUS DEVELOPERS AND BUILDERS PRIVATE LIMITED
Sy No. 162P and 164, Ameenpur village,
Post Miyapur, Bachupally Road
Sangareddy Dist., Telangana 502 302. **...Respondent**

Present:

For Appellant **:** Advocates Shrinivas Deshmukh, Vatsala Toprani,
S. Karthik, Vijayanand Mulla and Mulla

ORDER

(Hybrid Mode)

21.04.2026:

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

The instant Company Appeal, is reported to be defective. As per the report of the Registry, the defect that has been pointed out, was with regards to the non-supply of certain legible pages of some documents and the non-supply of the hard copy of the Company Appeal.

2. Looking into the nature of controversy involved herein, which is exclusively legal in nature, the rectification of defects may not be relevant at this stage, for the purposes of considering the propriety of the impugned order, which has the effect of permitting the amendment to be carried in the relief clause of a pending Company Petition.

3. The Company Petition, being Company Petition No. 35/241/HDB/2022, it stood instituted before the Ld. NCLT on 06.06.2022 for the following reliefs,

> *'.... **RELIEFS SOUGHT***
>
> *b. In view of the facts mentioned in the above paragraphs. in order to end the oppression and mismanagement in the 1st Respondent Company and to safeguard the interest of the Petitioners, the Petitioners pray for the following reliefs:*
>
> *(A) Direct the 3rd Respondent / Sunway Group to transfer its entire shareholding in the 1st Respondent Company to the Petitioner in terms of the proposal already agreed upon between the parties within a period of 30 days;*

(B) Any further orders as this Hon'ble Tribunal may deem fit and proper.'

4. The pleadings were exchanged, in relation to the subject matter under consideration in the principal Company Petition, that is the relief as extracted above. It is during the pendency of the Company Petition that, the Respondent who are the Petitioners to the Company Petition, had preferred an IA(CA)280/2024, seeking for amendment in the relief clause, as well as amendment in the interim relief clause, of the Company Petition. The said Application was preferred on 18.09.2024, and the amendment in the relief clause which was sought for by the Respondent is extracted hereunder,

'.... ***MAIN RELIEFS***

Relief (a): Pass an order declaring that Respondent No.3 and its nominee directors have been guilty of several acts of oppression and mismanagement of the Respondent No. 1 Company;

Relief (b). Pass an order declaring that the present Board of Respondent No. 1 Company has not been validly in existence and has been illegally constituted since 09.10.2019;

Relief (c): Declare the nominee directors of Respondent No.3 on the Board of Respondent No. 1 as not fit and proper, consequently, direct their removal as directors and direct them to vacate the office of Director forthwith; and

Relief (d): Pass any other consequential, incidental, or other order(s) as this Hon'ble Tribunal may deem fit.'

5. The Ld. Counsel for the Appellant had questioned the propriety of the impugned order from the following perspective,

i. He argues that the amendment Application itself was preferred at the belated stage, with a delay of 695 days.

ii. The nature of the amendment, which has been granted by the impugned order, would change the nature of the controversy and the case itself.

iii. The amendment that has been permitted to be undertaken is in violation of Rule 155 of the NCLT Rules, and hence cannot be sustained.

6. We have to be conscious of the fact that the instant Company Appeal has been preferred by invoking the provisions contained under Section 421 of the Companies Act, 2013, which is emanating from the proceedings that was drawn before the Ld. Tribunal by invoking the provisions contained under Section 241 of the Companies Act, 2013. By virtue of the preference of a Company Petition under Section 241, the proceedings before the Ld. NCLT would be governed by the provisions contained under Section 424 of the Companies Act, 2013, which reads as under,

> *'….**424. Procedure before Tribunal and Appellate Tribunal.**—*
> *(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be,*

an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act [or of the Insolvency and Bankruptcy Code, 2016 (31 of 2016)] and of any rules made hereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act [or under the Insolvency and Bankruptcy Code, 2016 (31 of 2016)], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act,1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed.

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situate; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

7. By virtue of the procedural aspect as governed by the provisions contained under Section 424 of the Companies Act, 2013, it is basically governed by the adherence of the principles of natural justice, but it also prescribes that the procedures contemplated therein, would be guided by the principles laid down under the Code of Civil Procedures.

8. If the argument extended by the Ld. Counsel for the Appellant is taken into consideration from the said perspective, the principles as enshrined under order 6 Rule 17 of C.P.C, would come to play, and particularly in context of the proviso, added by virtue of the amendment in the CPC of 2022, wherein it is prescribed that the amendment should not be permissible after the commencement of trial.

9. The said aspect, as how the commencement of trial has to be construed, has been determined by the courts of law that commencement of trial is the stage where the issue is framed and the stage where court applied its mind, we have already observed that the process before the Ld. NCLT,

when it relates to a proceedings under Section 241, would be guided by the principles of Code of Civil Procedures and that under the Companies Act, there is no specific provision, which contemplates the framing of an issue. Hence, the Ld. Counsel for the Appellant's contention that the amendment itself was barred by 695 days may not be acceptable by us, because, under law, it prescribes that, the amendment in the pleading could be permitted to be carried at any stage of the proceedings and at any stage of the proceedings has been construed as to be, even at the Appellate stage also. Hence, a rigid interpretation is not be assigned to the stage, at which the amendment could be permitted to be carried.

10. The Ld. Counsel for the Appellant has substantiated his arguments from the perspective that the nature of the amendment, which has been sought for, i.e the amendment in the relief clause will amount to alteration of the nature of the case, which is one of the prime objectives, which governs the principles of carrying out the amendment. However, on a close scrutiny it is seen that the principal relief, which has been sought in the Company Petition, as extracted above, when it is compared to be read with the proposed amendment that was sought in the relief clause, which was in the shape of a declaration, does not appear to change the nature of the case at all nor it has an effect of withdrawing any admission, but it only augments to facilitate an effective adjudication of the controversy interse between the parties. Even otherwise also, since there is no commencement of trial

contemplated under the procedure prescribed under the Companies Act, 2013, mere exchange of pleadings may not be taken to be the commencement of trial so as to make it a basis to reject the amendment application because the sole objective of the courts of law, is to enable the parties to get the lis decided effectively, after enabling the parties to exchange their pleadings and contentions, as well as, the relief, which also has been determined as to be the part of the pleadings.

11. In that view of the matter, the grant of permission for carrying out the amendment would go indeed with the principles of law laid down by the Hon'ble Apex Court in the matters of B.K.N. Pillai vs P. Pillai as reported in 2000(1) SCC Page 712, which speaks about and has laid down that, normally, the amendment should not be rejected, which aims at or leads to defeating the right of parties to the proceedings, or any right to litigate on a issue. Hence, a liberal view has to be taken when the amendment application is being considered by the Courts of law.

12. This could be looked into from yet another perspective, that the nature of the amendment, which has been permitted to be carried, which is partial in nature, though the amendment sought in the interim relief has been denied, but the amendment sought in the principal relief has been permitted to be carried. All rights of the Appellant, would still be protected to be opposed, once the amendment is being permitted to be carried in the pleadings of the Company Petition, because all contentions contrary to the

reliefs sought could still be agitated by the Appellant by filing a relevant objection before the Ld. NCLT.

13. Lastly, the Ld. Counsel for the Appellant has referred to Rule 155 of the NCLT Rules, which reads as under,

> *'…155.* ***General power to amend****.- The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.'*

14. The Ld. Counsel for the Appellant has contended that, as per the mandate of Rule 155, the liberty open for the Tribunal to allow the amendment is 30 days from the date of completion of pleadings. This contention may be taken to be persuasive in value, because once we determine the aspect pertaining to the period within which the amendment was required to be carried, we cannot be oblivious of the fact of the subsequent provisions contained under Rule 155 of the NCLT Rules, which still leaves it open for the NCLT to allow an amendment subject to the payment of cost as it thinks fit. The restrictions of time contemplated under Rule 155 of the NCLT Rules, is not absolute in nature. In that eventuality, the arguments extended by the Ld. Counsel for the Appellant in context of the provision contained under Rule 155 of the NCLT Rules, may not be accepted to be directly applied in the circumstances of the present case.

15. In that view of the matter, since the nature of amendment, which has been permitted to be carried, it only enables the parties to contest the petition or an issue before the Ld. Tribunal on merits and since the rights of the Appellant are still preserved to be agitated by virtue of filing of an objection against the amended relief, there is no immediate prejudice caused to the Appellant by permitting the amendment to be carried by virtue of the impugned order.

16. Hence, the Company Appeal (AT) (CH) No. 43/2026, lacks merit and the same is accordingly dismissed. But having said so, all contentions qua the amended pleadings would be left open to be agitated by the Appellant before the Ld. Tribunal.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

DD/MS/RS