

## JURISDICTION OF NCLT IN SECTION 59 MATTERS

This Appeal arises out of impugned Order dated 29.08.2018, passed by the National Company Law Tribunal, Hyderabad Bench whereby the NCLT dismissed the Company Petition filed by the Appellant (*MAIF Investment India PTE Ltd.*) under Section 59 of the Companies Act, 2013. A petition had been filed under **Section 59 of the Companies Act, 2013** before the NCLT, Hyderabad Bench, seeking a rectification in the Register of Members of a company. The dispute involved allegations that certain Compulsory Convertible Debentures (“CCD”) had been converted without appropriate consent of the Debenture holder. It was contended that the CCDs were converted contrary to the applicable Articles of Association, following a board meeting held without the appropriate quorum. The Appellant had approached the NCLT to rectify the Register of Members with respect to entries concerning securities that had been issued in favour of the appellant against the conversion of CCDs. However, the NCLT declined to entertain the petition by stating that issue raised were complex or contentious issues which required examination of *Insolvency and Bankruptcy Code (IBC), 2016* as well as the *Arbitration Act, 1996*. In doing so, it also relied on Supreme Court order's in *Ammonia Supplies Corporation (P) Ltd. v. Modern Plastic Containers Pvt. Ltd. and others*, which had held that in case of a serious dispute as to title, the matter could be relegated to a civil suit. The appellant challenged this order, pointing out that the *Ammonia Supplies case* was no longer good law after the introduction of Companies Act, 2013. In the appeal before the NCLAT, it was highlighted that Section 430 of the Companies Act, 2013 bars the jurisdiction of civil courts in company law matters. It was further argued that in view of Section 430, “*even if there are contentious issues relating to company matters, even under Section 59 or under any other Section of the Act, the same can be and have to be decided by the NCLT.*” The respondents countered by arguing that the contentious issues involved in the case lay beyond the NCLT's jurisdiction. The contentious issues cited included those relating to arbitration, the effect of invoking IBC proceedings, the interpretation of an Investment Agreement and the Articles of Association.

### NCLAT VERDICT:

NCLAT concluded that “*In the present matter there were really no complex questions involved and even if it was to be said that there were any complex questions, the same had to be decided by the NCLT and in Appeal, this tribunal is bound to consider whether or not entry made in the Register of Members could be upheld.*”

It was noted that in the **Shashi Prakash Khemka** case, the Supreme Court had observed that if a dispute had emerged after the 2013 Act, “*the civil suit remedy would be completely barred and the power would be vested with the National Company Law Tribunal (NCLT) under Section 59 of the said Act.*”

The main dispute concerning improper conversion of CCDs and subsequent entries in the Register of Members was decided in favour of the appellant on merits. NCLT in its order directed cancellation of entry of the name of Appellant in the Register of Members of *M/s. Ind-Barath Thermotek Private Limited (Respondent No.2) showing 906599 equity shares purported to have been credited on the basis of conversion of 906599 CCDs standing in the name of the Appellant.*

The NCLAT thus set aside the NCLT judgment.

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