NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI
Company Appeal (AT) No.110 of 2021

(Arising out of impugned order dated 31.08.2021 passed by the National Company Law Tribunal, Mumbai Bench in C.P. No.294/MB/2021)

In the matter of:

Arvind Bali
C-503, Palm Springs, Golf Course Road,
Sector-54,
Gurgaon 122002. ....**Appellant**

Vs

1. **Union of India, Ministry of Corporate Affairs,**
   Through Joint Directors in the Office
   Of Regional Director (Western Region 100,
   Everest, Marine Drive,
   Mumbai – 400002.

2. **Videocon Telecommunications Limited**
   (Through The Resolution Professional)
   Mr. Abhijit Guhathakurta,
   Flat No.701, A Wing, Satyam Springs,
   CTS No.272A/2/1, Opp BSD Marg,
   Deonar, Mumbai,
   Maharashtra - 400088. ....**Respondents**

For Appellant: **Mr. S.N. Mookherjee, Senior Advocate, Mr. Jayant Mehta, Senior Advocate with Mr. Nakul Mohta, Ms. Misha Rohatgi Mohta, Mr. Akshansh Animesh and Mr. Devang Kumar, Advocates.**

For Respondents: **Mr. Sanjay Shorey (Director Legal, MCA), Mr. Rakesh Tiwari (Joint Director), Ms. Rupa Sutar, for R1.**

Mr. Abhinav Vasisht, Senior Advocate with Ms. Meghna Rajadhyaksha, Mr. Vaijayant Paliwal, Mr.

Anoop Rawat, Ms. Zeeshan Khan, Ms. Priya Singh, Ms. Moulshree Shukla, Ms. Radhika Indapurkar, Advocates for R2.

With

COMPANY APPEAL (AT) No.111 of 2021

In the matter of:

Satpal Bansal **Appellant**

Vs

Union of India,
Ministry of Corporate Affairs & Anr. **Respondents**

For Appellant: **Mr. Jayant Mehta, Senior Advocate with Mr. Nakul Mohta, Ms. Misha Rohatgi Mohta, Mr. Akshansh Animesh and Mr. Devang Kumar, Advocates.**

For Respondents: **Mr. Sanjay Shorey (Director Legal, MCA), Mr. Rakesh Tiwari (Joint Director), Ms. Rupa Sutar, for R1.**

Mr. Abhinav Vasisht, Senior Advocate with Ms. Meghna Rajadhyaksha, Mr. Vaijayant Paliwal, Mr. Anoop Rawat, Ms. Zeeshan Khan, Ms. Priya Singh, Ms. Moulshree Shukla, Ms. Radhika Indapurkar, Advocates for R2.

J U D G E M E N T

(Virtual Mode)

M. VENUGOPAL (J)

PREFACE

The 'Appellants'/Respondent No.11 and 12 in (1) Comp. App. (AT) No.110/2021 and Comp. App (AT) No.111/2021 in CP No.294/MB/2021(filed by the First Respondent/Union of India) on the file of the 'National Company

Law Tribunal', Court No.1, Mumbai Bench, Mumbai have preferred these two 'Appeals' before this 'Tribunal' as 'Aggrieved persons' being dissatisfied with the impugned order dated 31.08.2021 passed in CP No.294/MB/2021 by the 'National Company Law Tribunal', Mumbai Bench.

2. Earlier, the 'National Company Law Tribunal', Mumbai Bench by means of an impugned order in CP No.294/MB/2021 (filed by the First Respondent /Union of India) had attached and froze the moveable and immoveable properties of the Appellants including Bank Accounts, Lockers, Demat Accounts including the jointly held properties.

Appellants' Submissions

3. Challenging an 'Ex-parte' interim order passed by the 'Tribunal' ('National Company Law Tribunal', Mumbai Bench) dated 31.08.2021 in CP No.294/MB/2021, the Learned Counsel for the Appellant/11th Respondent submits that the order of the 'Tribunal' in directing the Freezing of Assets and 'Bank Accounts' of the Appellant without providing a single 'Opportunity of Hearing' is *per se* an illegal one, because of the fact that the said "order" had affected the livelihood of the 'Appellants' and brought their families into a '*penury position'.*

4. According to the Learned Counsel for the Appellants, the Appellants were not a party to the main Company Petition No.294/MB/2021, which was filed on 28.8.2021 and further, an 'Interlocutory Application for Intervening' was filed by the First Respondent /Union of India, to implead the 'Appellants' on 31.8.2021 and in the said application, no notice was issued to them and

also orders were not passed except the allowing of impleadment of the 'Appellants' by means of an impugned order dated 31.8.2021.

5. The Learned Counsel for the Appellants contends that the application for arraying the 'Appellants' as 'Respondents' was handed over by the First Respondent/Union of India, before the 'Tribunal' during the arguments on 31.8.2021, and this implies, that the 'Application' was not even duly filed and registered, yet the 'Tribunal' had passed the impugned order against the 'Appellants'.

6. The Learned Counsel for the Appellants submits that as seen from the impugned order 31.8.2021 in the numerous Company Petitions that were listed together with the instant Company Petition, several Respondents made a request for an 'Adjournment', because of the non-service of the 'Petition' but an 'Adjournment' was denied and in this regard, the 'Tribunal' had violated the principle of '*Fair Play'* and '*Natural Justice'*, all the more, when it was brought to its notice that the '*Service*' was not completed.

7. The Learned Counsel for the Appellants refers to Section 424 of the Companies Act, 2013 read with Rule 23(5) of the NCLT Rules, 2016, it is mandatory on the part of 'Tribunal' (National Company Law Tribunal) to fulfil the requirements of the principles of '*Natural Justice'*, which were given a complete 'go by' in the present case.

8. The Learned Counsel for the Appellants takes a stand that the First Respondent's plea is that it filed the 'Company Petition' based on 'Auditor's Report' dated 23.1.2018, but there was not even a 'whisper' of an allegation

against the 'Appellants' in the said 'Report'. Moreover, in the 'Avoidance Application' filed by the 'Resolution Professional' of Second Respondent, on the basis of the said 'Report', there is no allegation against the 'Appellants'. Also, it is represented that no relief was claimed against the 'Appellants' and no order was passed in the *'Avoidance Application'*.

9. Advancing his arguments, the Learned Counsel for the Appellants comes out with a *plea* that even in the instant Company Petition No.294/MB/2021 as well as in the ''Application'' for arraying the ''Appellants'' as 'Party Respondents', there is no averment/allegation that any business of the Second Respondent was conducted wrongfully, within the knowledge of the ''Appellants'' and as such, there was no justification on the part of the 'Tribunal' to pass an 'impugned'' order against the 'Appellants'.

10. The Learned Counsel for the Appellants contends that the ''Appellants'' had demitted the office of the Second Respondent w.e.f. 31.03.2017 and later, had no control in respect of *''Affairs of the Second Respondent''*. Apart from this, it is projected on the side of the ''Appellants'' that the whole issue revolves around the *''Writing Off from the Net Receivable''* of INR 21.18 crores from the Books of the Accounts of ''Corporate Debtor'' which was supposedly effected on 31.05.2018 (vide Note of Approval). Moreover, it is brought to the notice of this 'Tribunal' that the Appellants had resigned from the employment of the Second Respondent on 31.03.2017. Therefore, a *plea* is raised on behalf of the Appellants, that no inference can be drawn that they were involved in the said *'Writing Off'*.

11. It is represented on behalf of the Appellants that *'Writing Off'* is only an 'accounting entry' and cannot be equated to a 'Transaction/Trading' which concerns the 'Transfer of Funds'/Assets. Added further, the *''Write Off''* does not bar recoveries and hence, it cannot be the foundation of action.

12. The Learned Counsel for the Appellants comes out with an argument that the Second Respondent is under "CIRP" and the moratorium as per Section 14 of 'I&B' Code, 2016 is continuing. As such, the Company Petition filed by the First Respondent against the Second Respondent and other persons is not maintainable, because of the express prohibition as per Section 14 read with Section 238 of the 'I&B' Code.

13. The Learned Counsel for the Appellants points out that to press into service of the ingredients of Section 241(2) of the Companies Act, 2013 the 'Central Government' should be of the opinion that the "Affairs of the Company" are being conducted in a manner prejudicial or oppressive to any 'Member'/'Public Interest' and in respect of previous events, the said Section cannot be pressed into service, especially to the events which are three years old. In this connection, the Learned Counsel for the Appellants refers to the order of the ***Hon'ble High Court of Delhi dated 10.09.2020 in W.P. (Crl) 1285/2020 between B.D. Panwar Vs Union of India, through the Ministry of Corporate Affairs and Anr.*** wherein the further proceedings under Section 241 of the Companies Act, 2013 were stayed because of the fact that the said provisions were invoked in respect of 'past events'.

14. The Learned Counsel for the Appellants submits that the main Company Petition is filed under Sections 241(2), 242(2)(m), 246 read with 339 of the Companies Act, 2013 and that there is no power in the said provisions of the Companies Act, 2013, to pass an order freezing the 'Assets' and 'Bank Accounts', 'Employees' or 'Ex-employees' of the 'Company'. In short, the stand of the Appellants is that the "Tribunal" cannot exercise jurisdiction beyond the 'strict letter of Law'.

15. The Learned Counsel for the Appellants contends that the 'impugned order' is cryptic, unreasoned and non-speaking one. Further, the 'Tribunal' had not applied its mind to the aspect as to whether the "Appellants" was a "necessary" or 'proper' party. At this juncture, the Learned Counsel for the Appellants points out that the Appellants' case is squarely covered by an order dated 13.11.2018 passed by the ***Hon'ble Supreme Court of India in the matter of Gopal Krishna Karunakar Nair Vs Union of India (vide Civil Appeal No. 7282-83 of 2018)*** and connected matters wherein likewise orders of the 'Tribunal' was stayed, in so far as the 'Officers' who had resigned from the Company in issue.

16. The Learned Counsel for the Appellants refers to the order of the ***Hon'ble Supreme Court dated 14.9.2018 in Sujal Anil Shah Vs Union of India (Civil Appeal No.8731-8732 of 2018)*** wherein, while admitting the 'Civil Appeal', in the meanwhile, an 'order of stay' of operation of the impugned judgement and order of the 'National Company Law Tribunal', New Delhi was

granted and the matter was directed to be tagged with C.A. No.7282-7283 of 2018.

17. The other argument raised by the Learned Counsel for the Appellants is that the impugned order is like an order of 'Attachment Before Judgement' as per 'Order 38 Rule 5 of Civil Procedure Code'. Furthermore, the conditions precedent for passing an order under Order 38 Rule 5 of C.P.C. are not even pleaded or averred in the petition under Section 241 of the Companies Act, 2013 and in this regard, the Learned Counsel for the Appellants falls back upon the decision of ***Hon'ble Supreme Court in Raman Tech & Process Engg. Co and others V Solanki Traders (2008) 2 Supreme Court Cases Page 302*** wherein it is observed that "*where particulars of the claim in the plaint were not specific, no relief could be granted".*

18. The Learned Counsel for the Appellants submits that the 'impugned order' is 'penal' in character and that the Appellants' assets were freezed without providing an 'opportunity of hearing'. Further, compliance with the *'principles of natural justice'* are *'mandatory'* and the "impugned order" is nullity in the *'eye of Law'*, because the said 'order' was passed without adherence to the '*principles of natural justice'*.

19. The Learned Counsel for the Appellants contends that in view of *proviso* to Section 241(2) of the Companies Act, 2013, the application under Section 241(2) filed by the 'Central Government' can lie only before the 'Principal Bench' and the said *proviso* runs to the effect *'provided that the applications under this sub-section in respect of such company or class of companies, as*

may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench' (Inserted by Act 22 of 2019, S.33(a) (w.e.f. 15.08.2019). But, in the instant case, the order is passed by the Mumbai Bench of the Tribunal. Hence, for "coram non judice" the "impugned order' is a nullity.

Appellants' Citations:

20. The Learned Counsel for the Appellants' cites the order dated 13.11.2018 of the ***Hon'ble Supreme Court in Civil Appeal No.(s) 7282-7283 of 2018 in Gopal Krishna Karunakaran Nair Vs Union of India & Ors.*** wherein it is observed as under:-

> *"On 10.09.2018, this Court in CA No.7282-7283 of 2018 (Gopal Krishna "Karunakaran Nair Vs Union of India & Ors) and certain other cases, while issuing notice stated that pleadings be completed and the matters be listed on 13.11.2018.*
>
> *We clarify that this Court's order of 10.09.2018 granting stay cover only the appellants in the Civil Appeal Nos. mentioned as they were either independent directors, persons who had resigned or persons who are not at all concerned with the affairs of the Company.*

On 14.09.2018, Civil Appeal Nos 8731-8732 of 2018 (Sujal Anil Shah Vs Union of India & Ors) we admitted the petition and stayed the operation of the impugned judgment and order of the NCLT, New Delhi.

We clarify that this stay order will operate only in the case of Sujal Anil Shah."

21. The Learned Counsel for the Appellants refers to the order dated 02.08.2021 of the ***Hon'ble High Court of Delhi in B D Pawar V Union of India through the Ministry of Corporate Affairs & Anr***. wherein it is observed as under:

"1. Learned senior counsel for the petitioner states that the question of law, which arises in the present petition is still pending consideration before the Hon'ble Supreme Court of India.

2. At request, list on 18th November, 2021.

3. Interim order to continue."

22. The learned Counsel for the Appellants refers to the judgment of this Tribunal in ***Union of India, Ministry of Corporate Affairs vs. Gitanjali Gems Ltd. and Ors. reported in (2018) SCC Online NCLAT 307*** wherein at paragraph 11 it is observed as under:

11. "The following reason was shown to pass restraint order:

24. But at the same time, it is the duty of this Court to see that innocent people are not burdened by this restraint order therefore as and when any innocent comes before this Bench saying that he has no involvement in the fraud spiraling from day to day to day, this Bench has to diligently respond to the reliefs sought by such people. Of course, it is true that this Bench cannot decide who is innocent and who is culprit, but to the extent order passed by this Bench, it should not become helpless to vacate that order if no material is found against whom this order is in force. In view of the same, for there being neither an averment nor any incriminating material placed against this applicant, this applicant deserves vacation of the restraint order in force against him, accordingly this MA is disposed of vacating the restraint order dated 23.02.2018 against this applicant."

23. The Learned Counsel for the Appellants cites the decision of the ***Hon'ble Supreme Court in Salim Akbarali Nanji vs. Union of India & Ors. reported in (2006) 5 SCC at page 302 at special page 306 and 307***, wherein at paragraph 9 it is observed as under:

9. *"It was further explained that the write-off is an internal accounting procedure to clean up the balance sheet of the Bank. Such write-off is resorted to even in cases where the Bank has not exhausted all the avenues for recovery of dues. Such write-off does not affect the right of the Bank to proceed against the borrowers to collect the dues. The legal proceedings initiated by the Bank to recover the loans or to enforce the security against the borrowers may continue. The write-off does not bar the Bank from following up recoveries. Further recoveries, if any, in these accounts are credited to the income account, in turn improving the net worth of the Bank. Replying to the petitioner's allegation that Reserve Bank under the various provisions of the Banking Regulation Act, 1949 to restrain it from taking any steps or acting in furtherance to write-off the secured debts of the sum of Rs. 120 crores, which is detrimental to the interests of the Bank, its depositors, investors and shareholders, it was submitted that the banking companies do not need Reserve Bank's permission to write-off bad debts. As mentioned earlier, the banking companies are also not under statutory obligation to seek the Bank's approval for appropriation of sums from their reserves. However,*

as a matter of practice, the banking companies do approach Reserve Bank for permission, before utilising their reserves, for writing-off the bad debts and Reserve Bank grants approval, if it is in order, on considering their financial position and other related facts as stated above."

First Respondent's Contentions:

24. According to the First Respondent/ Union of India, the Applicant/ State Bank of India, preferred a petition in terms of Section 7 of the 'I&B' Code, 2016 against the 'Videocon Telecommunication Ltd.', which was admitted by the 'Adjudicating Authority' in which an 'Interim Resolution Professional' was appointed. Moreover, a 'Group Insolvency' order dated 08.08.2019 was passed in respect of the 'Videocon Group'.

25. It is represented on behalf of the First Respondent that a reading of the 'Avoidance Transactions' pointed out in the 'Transaction Audit Reports' conducted during 'CIRP' of 'Videocon Telecommunications Ltd.' and other Group Companies exhibit and 'Avoidance Transactions', amounting to INR 5991 crores. Besides this, in terms of the 'Approved Resolution Plan' the total realization of the 'Financial Creditors' is INR 200 crores upfront cash plus INR 2700 crores in 'Non-Convertible Debentures' and cash with company after deduction of expenses. In addition to this, the lenders who received 8% equity holding in the resolved entity.

26. On behalf of the First Respondent, it is projected that resting upon the opinion arrived at in the light of representation made and the material placed by the 'Resolution Professional', the Ministry of Corporate Affairs as per Section 212(1)(c) of the Companies Act, 2013 had among other things on 08.07.2021 had ordered an investigation by 'Serious Fraud Investigation Office' into the affairs of 'Videocon Telecommunications Ltd.' and its Group Companies with a view to unravel the whole web of transactions involving Videocon Telecommunications Ltd. and to create entire picture of the siphoning of funds – fraud and the said investigation is pending.

27. The stand of the First Respondent is that in order to make sure that the ill-gotten gains by the perpetrators are not fritted away, the Union of India had filed a Company Petition seeking 'Freezing of Assets' of the concerned Appellants, pending investigation. However, at the time of preferring the 'Company Petition' before the 'Tribunal' the Appellants, were inadvertently left out from the array of 'Respondents' and that the vital and necessary parties being Key Managerial Personnel(s) viz: 'Chief Executive Officer' and 'Chief Financial Officer', the error was sought to be corrected and their names were added to the array of 'Respondents' in main 'Company Petition' through an application CA 275 of 2021.

28. It is the version of the First Respondent that on 31.08.2021 the 'Tribunal' in CP NO.294/MB/2021 had passed an order in 'Union of India vs. Videocon Telecommunications Ltd.', thereby restraining the Respondents from alienating, creating third party rights, disposal etc. of the 'Personal

Properties', Assets against which the 'Appellants' (1) Shri Arvind Bali – (Comp. App (AT) 110 of 2021), (2) Satpal Bansal – (Comp. App (AT) 111 of 2021)) were added as Respondents in CA 275 of 2021, in the petition before the 'Tribunal' and they had filed the present 'Appeals' before this 'Appellate Tribunal' by taking a plea there was a violation of the 'Principles of Natural Justice' and that the 'impugned order' was passed 'without hearing' them and 'without effecting service' of the petition and the 'Impleadment Application'.

29. The submission made on behalf of the First Respondent/ Union of India is that the Appellant (1) Arvind Bali (2) Satpal Bansal were serving as 'Chief Executive Officer' and 'Chief Financial Officer' and they were the 'Key Managerial Personnel' as per definition of Section 2(51) of the Companies Act, 2013, which reads as under:

> *Section (51) "Key managerial personnel", in relation to a company, means –*
>
> *(i) the Chief Executive Officer or the managing director or the manager;*
>
> *(ii) the company secretary;*
>
> *(iii) the whole-time director;*
>
> *(iv) the Chief Financial Officer; and*
>
> *(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and*
>
> *(vi) such other officer as may be prescribed."*

30. It is the contention of the First Respondent that a Company/ an artificial person can act/ function through natural persons like (i) 'promoters', (ii) Board of Directors, (iii) Manager or Key Managerial Personnel and these individuals, are the 'mind and will of the company'. Furthermore, an argument is raised on behalf of the First Respondent that in case, if any 'Fraudulent Transaction' occurs in a 'Company' then, such a decision could have been taken only by the natural persons who had applied 'their mind' and 'will' to that act. Also that, the 'Chief Executive Officer' and 'Chief Financial Officer' being a 'Key Managerial Personnel' and individuals in 'Authority', in the Company have the 'necessary powers' and 'responsibilities' to perform its functions and it is their duty, to prevent such fraudulent activities in their Company, which they had failed to perform.

31. It is projected on the side of the First Respondent/ Union of India that the 'Auditor' was assigned to perform a 'Transaction Review' and identify the transaction undertaken by the First Respondent in the 'Petition' before the 'Tribunal' in respect of the period, which fall within any of the categories:

> *"(a) preferential transactions under Section 43 of the I&B Code, 2016;*
>
> *(b) Undervalued transactions under Section 45 of the Code;*
>
> *(c) Extortionate Credit Transactions in terms of Section 50 of the Code.*
>
> *(d) Fraudulent transactions as per Section 66 of the Code."*

32. On behalf of the First Respondent, it is brought to the notice of this 'Tribunal' that in regard to the subject company Videocon

Telecommunications Ltd. that an application for 'Avoidance Transactions' of the undermentioned transactions is pending before the Tribunal. As a matter of fact, the relevant particulars of alleged transactions stated in Section 66, 'Application' of the Code are shown below:

Sr. No.	Date	Particulars
1.	16/03/2016	Agreement between VTL and Airtel to transfer right to use spectrum to Airtel
2.	15/06/2016	Supplementary Agreement between VTL and Airtel to transfer of Rs. 145.65 Crore out of the total consideration in an Escrow Account for potential claims of DOT and any amount left after such adjustment to be subsequently remitted to VTL.
3.	16/01/2017	Mutual understanding recorded in a letter between VTL and Airtel that after deductions of DOT's claim from the balance amount, Airtel can adjust dues for services provided by it to Quadrant Televentures Ltd. (QTL)
4.	25/05/2018	Airtel informed VTL that it shall adjust INR 21.18 Crore outstanding from QTL towards SMS, NLD and Data charges.
5.	31/05/2018	Note prepared for writing off Rs. 21.18 Crore along with other recoverable and payables of QTL. The note was not put in system and not booked in SAP.
6.	11/06/2018	Commencement of CIRP

33. The clear cut stand of the First Respondent is that the 'Appellants' had admitted that they had served/working as 'Key Managerial Personnel' in respect of the period of 'Audit Review' and they resigned on 31.03.2021 i.e. during the period of 'Transaction Audit Review' and hence they are necessary and proper party to the litigation before the Tribunal because of the 'inadvertent error' the Appellants (in two Appeals) were left out and this was sought to be corrected by filing of CA No. 275/2021, to array them as 'Respondents', by the First Respondent/ Applicant, before the 'Tribunal'.

34. The Learned Counsel for the First Respondent adverts to the order of the 'Tribunal' dated 08.08.2019 in the matter of ***State Bank of India vs. Videocon Industries Limited. (vide C.P. 02 of 2018)*** wherein at paragraph No.17, the learned Counsel had inter-alia stated as under:

> "*The Ld. Counsel for SBI Mr. Ravi Kadam submits that since the Corporate Debtor have been running their business and operations as if they were a single entity and a single economic unit and all the lendings have been done on such basis, therefore, the entire line of credit by Banks and Financial Institutions to the Corporate Debtor was extended relying upon their unity in business and operations. So the loans were extended with the understanding that the Corporate Debtors will 'jointly and severally' liable for the obligation owed to the lenders."*

35. Adverting to the above, on behalf of the First Respondent/ Union of India, a contention is raised that the 'Lenders' to the 'Videocon Group' had held them 'jointly or severally' liable and that the 'Appellants' who were occupying their position of '*Key Managerial Personnel'* in one group of entities of 'Videocon Group' cannot shrug off or avoid the responsibility and hence, they were included as 'Respondents'.

36. As regards the 'issue of jurisdiction' raised by the Learned Counsel for the Appellant in Company Appeal (AT) No.111 of 2021 by placing reliance on the proviso to Section 241(2) of the Companies Act, 2013, which reads as

'*provided that the applicants under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the principal Bench of the Tribunal which shall be dealt with such bench'* and as such the application filed by the Central Government as per Section 241(2) of the Companies Act, 2013 can only be filed before the Principal Bench and further that in the instant case the impugned order was passed by the Mumbai Bench and hence, on the principle of 'coram non-judice' the 'impugned order' is nullity, the same is repelled on behalf of the First Respondent/ Union of India by pointing out that the aforesaid proviso to Section 241(2) of the Companies Act, 2013 shall come into force only when such company or class of companies were prescribed to be covered by this proviso and till the time, Central Government has not made any rule thereof, this proviso is inapplicable.

37. On behalf of the First Respondent/ Union of India, a reference is made to the judgment of this Tribunal, in the matter of ***63 Moons Technologies Ltd. v. Union of India, Comp. App. (AT) 03 of 2017*** wherein it is held that Benches, including the Principal Bench have territorial jurisdiction on the companies exclusively, on the basis of location of the registered office of such company and that the decision of the Principal Bench of National Company Law Tribunal, New Delhi transferring the case from Principal Bench, National Company Law Tribunal, New Delhi to NCLT Chennai and the relevant portion of paragraph 25 and 26 of the judgment reads as under:

"25. *Section 434(a) read with sub-section (1) of Section 419 of Companies Act, 2013 and Notification dated 1st June, 2016 issued by the Central Government under sub-section(1) of Section 419 and Rule 64 of NCLT Rule it is clear the Benches, including Principal Bench have territorial jurisdiction on the companies exclusively on the basis of location of the registered office of such company. In fact, this law is also being followed by the Principal Bench of NCLT, New Delhi for placing all the petitioners before one or other Bench and that Section 488-B of Act, 1956, cannot be exception of the same.*

26. For the reasons aforesaid we set aside the impugned order dated 6th December 2016 passed by the "Principal Bench" of NCLT, New Delhi in C.P. No.01/2015 with the direction to the Registry, if the Principal Bench, NCLT, New Delhi to transfer the C.P. No.01/2015 to the NCLT Bench at Chennai, where registered office of the appellant company is situated."

38. The Learned Counsel for the First Respondent contends that the 'principles of natural justice' are 'paramount' but the same cannot be 'sacrosanct' when it becomes an 'impediment to justice'.

First Respondent's Decisions (in Both Appeals)

39. On behalf of the First Respondent judgment of the ***Hon'ble Supreme Court in the matter of Union of India v. W.N. Chadha, (vide Criminal***

Appeal 567 of 1992, reported in AIR 1993 SC at page 1082) wherein at paragraph 80 to 83 it is observed as under:

> *80. "The rule of audi alterm partem is a rule of justice and its application is excluded where the rule itself lead to injustice. In S.A. de Smith's Judicial Review of Administrative Action (4th Edn.) at page 184, it is stated that in administrative law, a prima facie right to prior notice and opportunity to be heard may be held to be excluded by implication in the presence of some factors, singly or in combination with another. Those special factors are mentioned under terms (1) to (10) under the heading Exclusion of the audi alteram partem rule.*
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> 81. *Thus, there is exclusion of the application of audi alteram partem rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. This rule cannot be applied to defeat the ends of justice or to make the law lifeless, absurd, stultifying and self-defeating or plainly contrary to the common sense of the situation and thus rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands.*
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> *82. Bhagwti, J. (as the learned Chief Justice then was) in Maneka Gandhi speaking for himself, Untawalia and Murtaza Fazal Ali, JJ. Has stated thus: Now, it is true that since the right to prior notice and opportunity of hearing arises only by implication*

from the duty to act fairly, or to use the words of Lord Morris of Borth-Y-Gest, from 'fair play in action', it may equally be excluded where, having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion.

83. Thus, it is seen from the decision in Maneka Gandhi that there are certain exceptional circumstances and situations whereunder the application of the rule of audi alteram pattern is not attracted."

40. Another decision of the ***Hon'ble Supreme Court in the case of Union of India v. J.N. Sinha and Ors. reported in AIR 1971 Supreme Court 40***, wherein at paragraph 8 it is observed as under:

8. "Fundamental Rule 56(j) in terms does not require that any opportunity should be given to the concerned government servant to show cause against his compulsory retirement. A government servant serving under the Union of India holds his office at the pleasure of the President as provided in Article 310 of the Constitution. But this "pleasure" doctrine is subject to the rules of or law made under Article 309 as well as to the conditions prescribed under this Article 311. Rules of natural justice are not embodied

rules nor can they be elevated to the position of fundamental rights. As observed by this Court in Krapak and Ors. V. Union of India MANU/Sc/0427/1969: [1970]1SCR457 "the aim of rules of natural justice is to secure justice or to put negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law but supplement it. "It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power

conferred, the purpose for which it is conferred and the effect of the exercise of that power."

41. A reference is made on behalf of the First Respondent/ Union of India to the decision of ***Hon'ble Supreme Court in Asha Kiran v. Union of India (Civil Appeal Nos.2765-2766 of 2020)*** wherein it is observed that '*we do not find any merit in these Appeals. The same are accordingly dismissed'* on the premise that the purview of Section 339 of the Act is much wider and covers any person used in it under the order passed by the 'National Company Law Tribunal' and the 'National Company Law Appellate Tribunal' were upheld.

42. On the side of the First Respondent, reliance is placed upon the decision of the ***Hon'ble High Court of Delhi in Padmini Technologies Ltd. v. Union of India, (CO (Appeal) No.31 of 2005)*** wherein an interim order was passed against the persons who were not even respondents and at paragraph 24 it is observed as under:

"*However in the meanwhile, interim order is required to be passed. The allegations made, as discussed above, against the appellant are very serious. Prima facie merit in the allegations has been examined and discussed. 70% shares in the appellant company are held by the general public and the management only holds 15% shares. Interest of general public is required to be protected. Balance of convenience requires some restraint and embargo on the powers of the management. The appellant company and its officers are restrained from encumbering, selling, transferring,*

alienating, creating any third-party-rights, inducting any person, parting with possession in any of their properties or assets including immovable properties and fixed assets till the matter is disposed of by the Company Law Board. However, the appellant company will be entitled to deal with, sell and dispose of the stock in trade, raw material and finished products in usual course of business. This interim order will be subject to the rights of the secured creditors and also subject to order(s) passed by Debt Recovery Tribunal."

43. It is represented on behalf of the First Respondent/ Union of India that on 27.09.2021 the ***Hon'ble High Court of Bombay in W.P. No.21058 of 2021 between Chandrashekhar Ashok Nagarkar v. Union of India and in Major General Sudhir Chintamani Nilakanth Jathar v. Union of India in W.P. No.20882 of 2021*** had sustained the interim order dated 31.08.2021 of the 'Tribunal'.

Second Respondent's Decision (in Both Appeals)

44. On behalf of the Second Respondent, a reference to the order of the ***Hon'ble High Court of Bombay dated 27.09.2021 in the matter of Major General Sudhir Chintamani Milkanth Jatar & Ors. V. Union of India & Ors. in W.P.(L) No. 20882 of 2021*** is made wherein at paragraph 12 to 21 it is observed as under: -

12. "We have already noted the reliefs claimed by Union of India in the Petitions filed before the

Tribunal and the order passed by the Tribunal on 31/08/2021 under sections 241 and 242 of the Companies Act, 2013.

13. At the outset we would like to extract a portion from the order dated 31/08/2021 which deals with service of notice and hearing of the Respondents. The said portion reads as under: -

"Before we proceed to discuss the merits of the Petition, we would like to make it clear that the Union of India had made all the possible efforts to serve the copy of this Petition, also with regard to the other companies to all the Respondents either by email or by delivering physical copies or by post. Some of the Respondents have received the copy and some have not received the entire paper book and hence they have stated to be not in a position to defend the matter in any manner, as of now and requested for the adjournment. Adjournment denied."

14. From the above we find that Union of India had made all possible efforts to serve copies of the Petitions to the Respondents either by email or by delivering physical copies or by post. Tribunal recorded that some of the Respondents had received copies and

some had not received entire paper book. Therefore, they had stated that they were not in a position to defend the matter in any manner. Though on this count adjournment was not sought for, the same was denied.

15. Thus there is no finding recorded by the Tribunal as to which of the Respondents were served and as to which of the Respondents did not receive entire paper book.

16. Tribunal is the adjudicating authority and it discharges judicial functions. Proceedings before a Tribunal while discharging judicial functions must be conducted in just, fair and judicious manner. Notice is the first point of fair hearing. Even a person against whom there are most serious allegations is also entitled to a notice and hearing. That apart, the adjudicating authority, in this case the Tribunal, should not be seen to be in hurry or in haste to decide a case or to pass an order.

17. At this stage we may refer to section 424 of the Companies Act, 2013 which says that though the Tribunal is not bound by the procedure laid down in the Code of Civil Procedure, 1908, nonetheless it shall be guided by the principles of natural justice.

18. It is fundamental to the judicial system which we follow that before adverse order is passed against a party it is required to be duly served and a reasonable opportunity of hearing should be granted to it. Failure to do so will strike at the very root of the justice delivery system.

19. That being the position, we are of the view that it is a case for remand.

20. We make it clear that we have not expressed any opinion on the merits of the matter. All that we have stated is that the Petitioners were entitled to a fair hearing which they have complained they were not afforded. In such circumstances relegating the Petitioners to the forum of alternative remedy of appeal would not be just and proper.

21. Consequently and having regard to fact that the order dated 31/08/2021 is interim in nature, we direct the Tribunal to hear the Petitioners afresh and thereafter pass appropriate order (s) in accordance with law. Order dated 31/08/2021 qua the Petitioners would be subject to such decision that the Tribunal may arrive at after hearing the Petitioners. As stated above, all contentions are kept open. Tribunal shall pass

appropriate order (s) after hearing the Petitioners within a period of four weeks from the date of receipt of a copy of this order."

Natural Justice

45. It must be borne in mind that the *'Rules of Natural Justice'* are not the edicts of a statute. As a matter of fact, the rudimentary requirement is that (i) Fair play (ii) a Determination/An Adjudication is to be made after ascribing necessary reasons in a fair, just, and objective manner of course, based on the relevant facts/materials in a given case.

46. In reality, an opportunity of hearing is to be afforded to an 'individual' to air / put forward is point of view by either contradicting or raising objection, in regard to the claim which is *'Detrimental'* to him. No wonder, the 'Rules of Natural Justice' do supplement the Law and they do not *'Supplant the Law'*.

47. It cannot be forgotten that the 'Tribunal' has the trappings of a *'Court'* and its powers are limited to the ingredients of the Companies Act, 2013 in that behalf and exercised in specified matters mentioned therein. The 'Tribunal' and the 'Appellate Tribunal' are to be guided by the '*Principles of Natural Justice'*.

48. In this connection, this Appellate Tribunal makes a significant mention that whether a certain '*Principles of Natural Justice'* is applicable to a particular situation or whether in a given case there is violation of *'Principle of Natural Justice' is* to be judged on the facts and circumstances of each case, which float on the surface.

Necessary Party / Proper Party

49. It is an axiomatic principle in Law that a 'necessary party' is a person / Respondent who should have joined and without whom no order can be passed in an efficacious and effective manner. However, a 'proper party' / Respondent is one without whom no effective order can be passed, but whose presence is very much essential for a complete and ultimate decision of the issues/controversies revolving/centering around the 'proceedings' in a given case.

50. It is to be pointed out that the settled legal proposition is that plaintiff / petitioner / Applicant in a given 'Proceeding' is the Dominus Litis he / it may elect person(s) against whom he/it desires to 'litigate'. Furthermore, with a view to completely, effectively and comprehensively to settle once for all issues / questions concerned in a given proceedings of a case, either on an application / petition being filed or without filling of the same by either party, an impleadment of parties can be ordered, by a 'Tribunal'.

51. It cannot be brushed aside that the 'Tribunal' has the requisite power to add not only 'persons' who are 'necessary parties' on the date of filing of the 'main petition' but also persons who will be subsequently added (as necessary parties) for the purpose of final adjudication and they were originally / initially were omitted to be impleaded in the main petition. Even at a belated stage of a 'given proceeding' or at an 'Appellate stage', a proper party can be arrayed as a Respondent, in the considered opinion of this Tribunal.

The Government's power (To notify)

52. The Government's power to notify any other individual in the category of 'Key Managerial Personnel' rests with the Government. In fact, Section 170 of the Companies Act, 2013 requires that every Company shall keep at its registered office of the Company, a register containing such particulars of its Directors and 'Key Managerial Personnel' as may be prescribed.

53. In terms of Section 189(2) of the Companies Act, 2013, the 'Key Managerial Personnel' within a period of 30 days of his appointment or relinquishment of his Office are required to disclose to the Company the particulars of contracts were or arrangements in which they are directly or indirectly concerned or interested and particulars of which are required to be included in the register of 'Contracts' or 'Arrangements'.

Evaluation

54. At the outset, this Tribunal, relevantly points out that in CA 275 of 2021 in C.P. 294/MB/2021 (filed by the First Respondent/Union of India/Applicant), at paragraph 2 to 4 it is averred as follows: -

> "2. *That a Company Petition no. 294 of 2021 has been filed under Section 241, 242 and 246 read with section 339 of the Companies Act, 2013 and is fixed for hearing today i.e. 31.08.2021.*
>
> 3. *That in the petition Sh. Arvind Bali as Respondent no. 11 and Sh. Sat Pal Bansal as Respondent no.*

12, has been inadvertently left out from the array of respondent(s).

4. That it is most humbly prayed that Shri Arvind Bali and Sh. Sat Pal Bansal are necessary parties as they were CEO and CFO respectively, therefore, may kindly be added as respondent No. 11 and 12 in the petition and also interim orders and final orders as sought in the petition may also be allowed to be applicable against them."

55. The plea of the Appellants is that they were added as Respondent No. 11 and 12 in the main petition on the very same day itself on 31.08.2021 the subject petition in the said case was listed before the 'Tribunal' together with other petitions.

56. It is to be pointed out that Rule 37(1) of the 'National Company Law Tribunal' Rules, 2016 enjoins that: -

(1) 'Tribunal' shall issue notice to the Respondent to show cause against the application or petition on a date of hearing to be specified in the notice. Such notice in Form No. NCLT5 shall be accompanied by a copy of the application with supporting documents.

(2) If the respondent does not appear on the date specified in the notice in Form No. NCLT-5, the Tribunal, after according reasonable opportunity to

the respondent, shall forthwith proceed ex parte to dispose of the application.

(3) If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record."

57. Further, Rule 38 of the 'National Company Law Tribunal Rules', 2016 pertains to 'Service of notices and processes'. Rule 39 deals with 'production of evidence by affidavit'. Rule 40 pertains to 'production of additional evidence before the Bench'. Rule 41 provide for 'filing of reply' and other documents by the Respondents'. Rule 42 concerns with filing of rejoinder.

58. Apart from the above, Rule 44 of the 'NCLT' Rules, 2016 pertains to hearing of petition or applications. Rule 45 deals with 'rights of a party to appear before the Tribunal'. Rule 49 speaks of Ex parte hearing and disposal. Rule 51 refers to 'Power to regulate the procedure'. Rule 55 says that 'No pleadings subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

59. There is no two opinion of a primordial fact that the 'Tribunal' in a given case is not to pass an order in a flurry manner and of course, it is to pass an order with utmost care, caution and circumspection. Ordinarily, no man shall be condemned without being heard. 'Notice' is the initial element and integral part of the principle of natural justice.

60. In this connection, it is worthwhile for this Tribunal to refer to Section 424(1) of the Companies Act, 2013 which reads as under: -

> *"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 thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure."*

61. In the instant case on behalf of the First Respondent / Union of India it is represented before this Tribunal that the application for impleadment was served on e.mail and that copy of the application was also served. However, the Appellants have taken a stand that (i)

'without notice', (ii) 'without hearing them' and (iii) recording no finding against them the impugned order was passed.

62. A mere running of the eye of the impugned order dated 31.08.2021 in CP 294/MB/2021 passed by the 'National Company Law Tribunal' Court No. I, Mumbai Bench, indicates that there was no mentioning / noting as to the particular 'Respondent' being served and which of the Respondent had not received the Paper Book(s) (materials) together with annexures.

63. In the instant case the First Respondent / Union of India has come out with a specific plea that the Appellants were inadvertently left out from the array of Respondents in the main CP 294/MB/2021 on the file of the NCLT, Mumbai and, therefore, CA 275/2021 was filed by the First Respondent / Union of India which was allowed on the same day.

64. It is to be remembered that in an application for impleadment the 'Tribunal' is to determine whether the presence of the prospective Respondent(s) before it, is just and necessary with a view to 'enable the Tribunal' to completely and comprehensively decide and settle the controversies concerned in the proceeding. In this regard, as far as possible and keeping in view Rule 37 of the 'NCLT' Rules, 2016 it is palatable/desirable to put the other side *'on notice'* so that the procedural wrangle cannot be allowed to be shaked or shackled with, much to the detriment / prejudice of the 'opposite side'. However,

by such determining, the merits of the claims of the parties are not decided. Viewed in that perspective, and also bearing in mind that some parties are omitted to be added or arrayed in the main company petition (at the time of its filing) and later, when they were sought to be arrayed through an application in a 'Bonafide Manner', for the purpose of effectively and completely adjudicating the controversies involved, then, the same may not be fatal, to save an honest and bonafide petitioner on technical ground.

65. After the impleadment of the Appellants as Respondent No. 11 and 12, in main CP 294/MB/2021 on the file of the National Company Law Tribunal, Mumbai, they are necessarily to be permitted to file the Reply/Response/Counter, in the considered opinion of this Tribunal.

66. In the main CP 294/MB/2021 (filed u/s 241(2) r/w 242(2)(m) r/w Section 246 r/w 339 of the Companies Act, 2013) by the First Respondent/Union of India, against the Videocon Telecommunications Ltd., Aurangabad, Maharashtra & Ors., as main relief, an attachment of moveable and immoveable properties of Respondent No. 2 to 10 therein is sought for an encashment and that the Petitioner (Union of India/ First Respondent) may be allowed to pay the victims of the fraud.

67. Continuing further, the First Respondent / Petitioner / Union of India in the main CP 294/MB/2021 had sought the following interim reliefs: -

1. "That the Petitioner be permitted to serve the Respondents through post, publication in the newspapers, email, WhatsApp messaging wherever required, in order to ensure due service of notice to all Respondents present in India and overseas;

II. That the Respondent Nos. 2 to 10 be immediately directed to disclose on affidavit their moveable and immoveable properties/assets, including bank accounts, owned by them in India or anywhere in the world;

III. That the Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) be directed that securities owned/held by the Respondent nos. 2 to 10 in any company/society be frozen, and be prohibited from being transferred or alienation and details thereof be shared with the Petitioner;

IV. That the Central Board of Direct Taxes (CBDT) may be directed to disclose information about all assets of the Respondent Nos. 2 to 10, in their knowledge or possession, for the purpose of

freezing and restrain on alienation of such assets;

V. That the Reserve Bank(RBI) and the Indian Banks Association(IBA) be directed to facilitate disclosure of the details of the remaining bank accounts, lockers owned by the Respondent Nos. 2 to 10 and such bank accounts and lockers also be frozen with immediate effect;

VI. That the State Government and the Union Territories be directed to identify and disclose all details of immovable properties owned/ held by the Respondent Nos. 2 to 10;

VII. The Petitioner seeks the leave of the Hon'ble Tribunal to enlarge the scope of the reliefs sought and prayers made in this petition by filing any other documents or applications in view of the extraordinary nature of the circumstances pertaining to the present petition."

68. To be noted, that Section 241(2) of the Companies Act, 2013 empowers the Central Government, if it is of the opinion that the affairs of the Company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order etc. under the Companies Act, there is no restriction on the generality of the power of a Tribunal. Section 242 of the

Companies Act is verbatim similar to that of Section 402 of the Companies Act. As per Section 242(m) of the Companies Act, 2013, the Tribunal, for any other matter, in its opinion it is just and equitable that a provision should be made can pass orders on just and equitable ground.

69. Be that as it may, keeping in mind of the fact that the impugned order dated 31.08.2021 in Company Petition No.294/MB/2021 on the file of 'National Company Law 'Tribunal' (Mumbai Bench) is an interim one, the Appellants (Respondent No. 11 and 12) are permitted by this Appellate Tribunal to file their Reply/Response to the main Company petition filed by the First Respondent / Union of India and that the 'National Company Law Tribunal', is directed to pass necessary fresh recent orders in a fair, just, dispassionate manner on merits, afresh (because of the fact that there was a *'negation of principles of natural justice'* in not adhering to the 'National Company Law Tribunal' Rules, 2016, in so far as the Appellants/Respondents 11 and 12 are concerned) within a period of five weeks from the date of receipt of the order, of course, in the manner known to Law and in accordance with Law, uninfluenced and untrammelled with any of the observations made by this 'Tribunal' in this 'Appeal'. It is made crystalline clear that the impugned order dated 31.08.2021 of the 'National Company Law Tribunal', Mumbai Bench in C.P. No.294/MB/2021 in so far as the Appellants/Respondents 11 and 12 are concerned it is subject to the fresh determination which the 'Tribunal' will arrive at after taking into account of the pleadings/Reply/Response/Counter of the Appellants / Respondents No. 11 and 12 in main Company Petition, after providing

'*opportunity of hearing*' and following the principles of natural justice. Liberty is granted to the respective parties to raise all factual and legal pleas in the subject matter in issue before the 'Tribunal'. Before parting with the case, this 'Tribunal' makes a pertinent mention that it has not delved in deep and also not expressed any opinion on the merits of the matter.

Result

With the aforesaid observation(s) and directions the instant Company Appeals (AT) No.110 & 111 of 2021 stand disposed of. No Costs.

[Justice M. Venugopal]
Acting Chairperson

[V.P. Singh]
Member (T)

[Dr. Ashok Kumar Mishra)
Member (T)

21st October, 2021

Shashi