

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH**

**NEW DELHI**

**COMPANY APPEAL (AT)(INS) NO.945 OF 2020**

**(Arising out of judgement/order dated 23.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) in Contempt Application No.A-01(PB) of 2020 in CA-1081/2019 in (IB)-560(PB)/2017).**

**In the matter of:**

**Shailendra Singh,  
13, Babar Road, First Floor,  
Connaught Place,  
New Delhi-110001**

**Appellant**

**Vs.**

**Nisha Malpani,  
(Resolution Professional)  
Having her registered office at;  
Resurgent India Ltd,  
903-906, 09<sup>th</sup> Floor, Tower C,  
Unitech Business zone,  
Nirvana Country,  
Sector 50, Gurgaon  
Haryana 122018**

**1<sup>st</sup> Respondent**

**Insolvency and Bankruptcy Board of India,  
7<sup>th</sup> floor, Mayur Bhawan,  
Shankar Market, Connaught Circus,  
New Delhi.**

**2<sup>nd</sup> Respondent**

**Present:**

Ms Muskan Garg, Ms Perna Robin and Mr. Dhruv Goel, Advocates and Mr Shailendra Singh, Party in Person, for Appellant.

Mr Asish Makhija, Mr Deep Bisht, Advocates for R1.

Ms Nisha Malpani, RP.

Ms Saahila Lamba, Advocate for R2.

**JUDGEMENT**  
**(VIRTUAL MODE)**

**JUSTICE M. VENUGOPAL**

**BACKGROUND**

The Appellant/Applicant has projected the instant Company Appeal (AT)((Ins) No. 945 of 2020 being aggrieved against the 'Impugned Order' dated 23.09.2020 passed by the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) in Contempt Application No.A-01 of 2020 in CA-1081/2019 in (IB)-560(PB)/2017.

2. The Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) while passing the 'Impugned Order' dated 23.09.2020 in Contempt Application No.A-01 of 2020 in CA-1081/2019 in (IB)-560(PB)/2017 (filed by the Appellant/Applicant under Section 425 of the Companies Act, 2013 r/w Section 12 of the Contempt of Courts Act, 1971 and Rule 11 of the NCLT Rules, 2016) had, inter alia, observed the following:-

*"On perusal of Section 425 of the Companies Act, 2013, it is nowhere provided in the said section, extending contempt jurisdiction to IBC, nor has contempt jurisdiction been provided in IBC, amendments have come from time to time, stating that operation of a particular section is applicable to IBC, but with regard to section 425 of the Companies Act, 2013, so far no amendment has come stating about Section 425 that contempt jurisdiction is applicable to IBC as well. Applicability has been provided section wise. For example, Section 424 of the Companies Act 2013, wherein Companies Act Amendment allowed IBC to apply the said provision to the matters pending under IBC.*

*As we all know, contempt jurisdiction is an extraordinary jurisdiction, not exercisable by ordinary courts/Tribunals, unless it is specifically conferred upon. NCLT, when it deals with IBC matters, it is Adjudicating Authority created by IBC, no way connected with Companies Act, and the jurisdiction is not interchangeable between Adjudicating Authority under IBC and the Tribunal under Companies Act, 2013, except to the extent law permits.*

*Contempt jurisdiction is in fact a jurisdiction conferred upon Constitutional Courts, which is hardly percolated down. It is given in a few enactments, it cannot be stretchable in the way we perceive, therefore we make it clear, IBC is devoid of contempt jurisdiction, accordingly this Application is dismissed leaving it open to the Applicant to seek remedy through recourses available.”*

and dismissed the Contempt Application.

3. The Learned Counsel for the Appellant /Applicant submits that the Appellant/Applicant is an Advocate by profession who was appointed by the erstwhile IRP for the Corporate Debtor in IB-560 of 2017 vide letter dated 14.05.2018 and the Fixed Fees of Rs.33,000/- per appearance with 10% clerkage and fees for drafting, Photostat, court fee and other miscellaneous expenses was to be paid as per the invoices raised by the Appellant.

4. According to the Appellant, the Respondent is a Resolution Profession for the Corporate Debtor in Petition No.IB-560(PB) of 2017 and that, the then Interim Resolution Professional was replaced by the present Resolution Professional vide order dated 04.09.2018 passed by the Adjudicating Authority.

5. It is the stand of the Appellant that he has very diligently performed his duties as a Counsel while representing his client and duly raised the bills towards the legal fees and that the payment for the bills from 22.05.2018 to 28.07.2018 were duly made from time to time. Later, the Interim Resolution Professional was replaced by the Respondent on 04.09.2018.

6. The Learned Counsel for the Appellant brings to the notice of this Tribunal that the bills to the extent of Rs. 2,42,000/- from 9.8.2018 to 4.9.2018 remained pending as the Interim Resolution Professional was replaced by the Committee of Creditors and that the application for the

confirmation of Respondent was filed before the 'Tribunal' and later the Appellant/Applicant filed CA No. 1081/2019 to clear the professional dues of the Appellant alongwith litigation cost of Rs.1 lakh and that the Respondent, before the Tribunal on 07.11.2019 made an assurance of taking necessary steps to pay the arrears of fess to him and the Tribunal had directed the Respondent to pay the arrears of fee within two days.

7. On behalf of the Appellant, it is brought to the notice of this Tribunal that even after lapse of 3 ½ months of passing of the order on 07.11.2019 by the Tribunal, the Respondent did nothing, although a direction was issued to do the needful within two days.

8. Hence, the Appellant was constrained to file Contempt Application No.A-01(PB) of 2020 under Section 425 of the Companies Act, 2013 r/w Section 12 of the Contempt of Courts Act, 1971 and Rule 11 of NCLT Rules, before the Tribunal for initiating contempt proceedings against the Respondent for wilful disobedience of the Order dated 7.11.2019 and for issuance of appropriate directions to the Respondent for clearing the Bills of Rs.2,42,000/= together with interest and to pay litigation costs, compensation and damages.

**APPELLANT'S CONTENTIONS:**

9. The Learned Counsel for the Appellant submits that the Appellant's fees was fixed and cannot be denied in the light of the appointment letter of erstwhile IRP dated 14.5.2018 and the orders of the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) in CP(IB)560/2017 where all the appearances of Appellant were duly marked and recorded. Further the Appellant is entitled for compensation and

damages in respect of the harassment that he has suffered during the course of pursuing the matter for more than a year and further that he is entitled for litigation cost towards filing of CA No.1051/2019, Contempt Application No.A-01/2020 etc.

10. The Learned Counsel for the Appellant projects a legal plea that the Tribunal by dismissing the Contempt Application No.A-01/2020 by passing the 'impugned order' dated 23.09.2020 has committed an error in not entertaining the Contempt Application filed under Section 425 of the Companies Act, 2013 which came into effect from 01.06.2016 vide Notification No.S.O. 1934€ dated June 1, 2016 published in Gazette of India and powers is conferred by Section 408 of the Companies Act, 2013 upon NCLT to exercise and discharge the powers and function as are, or may be, conferred on it by or under the said Act with effect from the 1<sup>st</sup> day of June, 2016.

11. The clear cut stand of the Appellant is that the Tribunal was not correct in observing in the 'impugned order' that this 'tribunal' cannot hear the Contempt for the reasons that they are not Constitutional Courts and that the contempt jurisdiction is an extraordinary one, which cannot be exercised by it.

12. The Learned Counsel for the Appellant points out that the Tribunal could have directed the release of the payment of the 'Bills' while exercising its inherent powers as per Rule 11 of National Company Law Tribunal Rules, 2016 read with Rule 51 of National Company Law Tribunal, Rules, 2016. In short to meet the ends of justice or to prevent an abuse of the process of the Tribunal, it has the power to regulate its own procedure, of course, in accordance with the Rules of Natural Justice.

13. The Learned Counsel for the Appellant submits that sub-clauses (1) and (3)(b) of Article 323B of the Constitution of India has given the power to the Legislature to empower the Tribunals, through appropriate legislation to exercise the jurisdiction of power to punish for the contempt and that the ingredients of Section 408 and 425 of the Companies Act, 2013 when read together is an appropriate legislation, whereby the National Company Law Tribunal has been given the power to punish for Contempt, irrespective of contempt being extra ordinary jurisdiction, to be exercised only by Constitutional Courts.

**Appellant's Citations:**

14. The Learned Counsel for the Appellant relies on the Judgement of the Hon'ble High Court of Delhi in **McDonald's India Pvt Ltd and Or Vs Union of India and Ors** wherein at paras 40, 41, 45 to 48 has held as under:

*40. The factual matrix in Mohd. Yaqoob Khan (supra) was slightly different and would not come to the aid of the petitioners. The stay matter in the writ petition was still pending before the High Court when the contempt case was proceeded with. It is in that context that the Supreme Court ruled that the High Court should have first taken up the stay matter without any threat to the respondents in the writ case of being punished for contempt or, to put it slightly differently, the matter relating to contempt should have been taken up only after decision had been rendered on the stay application. Unlike the facts of the said case, the NCLT has already rendered its final decision on 13.07.2017. It was the enforcement of the directions passed in the said order, if required by suitable action under the powers to punish for contempt, which were to be considered. There is no inhibition before the NCLT in proceeding with the matter of contempt so long as there is no stay issued by the appellate forum (NCLAT).*

*41. The initiation of contempt proceedings for non-compliance with the order of a learned single Judge of the High Court directing reinstatement and payment of back salary while the matter was pending in appeal for admission before a division bench was disapproved by the Supreme Court in Modern Food Industries (India) Ltd. and Anr. (supra) in the*

*peculiar facts and circumstances of the case, because the threat of proceedings of contempt compelling compliance with the order virtually amounted to rendering the stay application before the appellate court infructuous. In the case at hand, one of the parties bound by the restraint order has allegedly committed certain acts, in collusion with others, the objective statedly being to overreach and defeat the judicial process. The scrutiny of the impugned act by NCLT cannot be construed as impropriety so long as the order dated 13.07.2017 operates.*

*45. The proceedings recorded on 05.09.2017 and 26.09.2017 conjointly show that the NCLT is yet to take a call as to whether a case of contempt has actually been made out or not for the necessary process to follow. The language employed in the order dated 05.09.2017 clearly shows that the proceedings under the Contempt of Courts Act, 1971 in exercise of powers conferred on NCLT by Section 425 of Companies Act, 1923 are yet not initiated. This is why the forum has only issued a notice to the respondent in the application for contempt to “show cause... as to why (such) proceedings...be not initiated”. This limited purport and objective of the proceedings of NCLT is reinforced by the subsequent order dated 26.09.2017 whereby it has insisted on “reply to the contempt petitions (to) be filed” by the parties who are shown as the contemnors. Clearly, the NCLT is at the stage of threshold scrutiny of the matter. It is still gathering facts. Such proceedings are nothing but in the nature of a preliminary inquiry wherein response has been sought in the wake of which it hopes and expects to collect not only the necessary facts but also requisite material in support of the contentions of either side. The decision as to whether the alleged acts constituting contempt have actually been committed or not will undoubtedly have to be taken after replies have been secured. Such stage having not even been reached, the procedure followed in having the service of the copy of the contempt application effected through counsel for the opposite party (who are the applicants) is not in breach of but in accord with the rules of the National Company Law Tribunal’s Rules, 2016 which have been extracted above. [see Rule 38].*

*46. At the present stage of the proceedings before NCLT, where it is yet to take formal cognizance, if the party which has been shown in the array of the contemnors chooses not to cooperate by either not appearing, or not responding, the NCLT is within its jurisdiction and power to proceed ex parte against it. [see Rule 49]. Undoubtedly, after the facts have been gathered and process initiated and particularly in the event of cognizance eventually being taken of contempt under the Contempt of Courts Act, the NCLT will be within its jurisdiction and power to enforce appearance and attendance. But, till such stage arises, the preliminary scrutiny, or inquiry, can be continued with by recording the absence despite notice, the only inference to be drawn being that the party in question does not wish to say anything in the matter at such stage.*

47. *In absence of separate rules to govern the procedure to be followed by NCLT for exercise of power to punish for contempt, the NCLT is to follow the general rules. The statute and the rules, as extracted earlier, permit and authorize NCLT to “regulate” its own procedure [S. 424] and “be guided by the principles of natural justice” [see S. 424 read with Rules 11, 34 and 51].*

48. *There is no merit whatsoever in the grievance raised by the petitioners that the NCLT has flouted the law and the principles of natural justice by not framing the formal charge or not communicating in any manner the gravamen of the allegations on which the petitioners are to answer the charge of contempt. At the cost of repetition, one may say that the stage where formal charge (or notice of accusations) would require to be framed so as to inform the party in question of the allegations he is required to meet or the conduct he is required to explain, is yet to arrive. The procedure envisaged in Section 17 of Contempt of Courts Act, quoted earlier, would kick-in after and in the event of NCLT recording a finding that prima facie case of contempt is made out and thereby taking formal cognizance and summoning the parties in question to stand trial.*

15. The Learned Counsel for the Appellant refers to the Judgement of this Tribunal in Company Appeal (AT) Nos. 156, 157.....167/2019 dated 02.09.2019 in the matter of **Gireesh Kumar Sanghi vs Ravi Sanghi and Ors** wherein at para 12 to 17 it is observed as under:

*“12. Section 425 of the Companies Act, 2013 empowers the Tribunal and the Appellate Tribunal to punish for contempt of themselves, as quoted below:*

*“425. Power to punish for contempt.— The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—*

*(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and*

*(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.”*

*13. From the aforesaid provision, it will be evident that the Tribunal as also the Appellate Tribunal have been empowered with the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the ‘Contempt of Courts Act, 1971’, which shall have the effect subject to modifications that in place of High Court, it should be read as Tribunal or the Appellate Tribunal; and in place of Advocate-General, it is to be read as Law Officers as may be specified by the Central Government.*

*14. Article 215 of the Constitution of India makes it clear that the High Courts are courts of record and shall have powers of such a court including the power to punish for contempt of itself, as quoted below:*

*“215. High Courts to be courts of record.— Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.”*

15. However, Section 425 of the Companies Act, 2013, the Tribunal or the Appellate Tribunal has not been delegated with all the power of a Courts of record. Under Section 425, the Tribunal and the Appellate Tribunal are only empowered with powers under 'Contempt of Courts Act, 1971' in respect of contempt of itself as the High Court.

16. Section 7 of the 'Contempt of Courts Act, 1971' makes it clear that the said Act is not to imply enlargement of the scope of the contempt. The High Court is empowered to punish contempt of subordinate courts under Section 10 but such question does not arise in the case of Tribunal in absence of any court subordinate to it. Section 12 prescribes 'punishment for contempt of court' whereas Section 14 has laid down the procedure where contempt is in the face of the Hon'ble Supreme Court or a Hon'ble High Court.

17. From the aforesaid provisions, it is clear that the Tribunal and the Appellate Tribunal are empowered to punish a person for violation of its own order under the 'Contempt of Courts Act, 1971' and are required to follow procedure prescribed under Section 14 of the 'Contempt of Courts Act, 1971' before holding a person guilty of having committed contempt of the Tribunal or the Appellate Tribunal.”

16. The Learned Counsel for the Appellant cites the order of this Tribunal (Three Members Bench) in **Manoj K. Daga Vs ISGEC Heavy Engineering**

**Limited and Others reported in 2020 SCC OnLine NCLAT 869** wherein at

para 22 and 25 it is observed as under:

*“22. Taking conspectus of the whole developments in this CIRP proceeding and this Appeal, we are of the view that the Directors acted wholly illegally once moratorium had been applied, in going ahead and withdrawing monies from the accounts at the back of IRP by even issuing cheques “Self”. Such acts cannot be justified in any manner. The Appellant and Deepak Daga kept telling this Tribunal that they would return the money and in spite of undertaking given and time fixed, the money has not been returned and the CIRP process is seriously hampered. Consuming whole month stated in the Undertaking and without returning any money, we find no substance in the hollow statements in I.A. No.1075 of 2020 – Application seeking time to comply with Undertakings. The I.A. wrongly states that undertakings given were without prejudice. They were voluntarily given. There are no bona fides in seeking time. Looking to the statements made to this Tribunal by the Appellant and Deepak Daga through learned Counsel for the Appellant and the Affidavits and undertakings given, which have not been honoured, we are of the view that, prima facie, case is made out for proceeding against both the Directors in contempt. We are of the opinion that the Appellant and Deepak Daga since beginning were aware of nature of the acts they were committing in the illegal withdrawals. They disobeyed Orders of Adjudicating Authority and this Tribunal wilfully and there is wilful non-compliance of undertakings given. I.A. No.1075 of 2020 to seek time to comply undertaking is not honest and appears to have been filed to create grounds of defence to further abuse process to kill time. The I.A. is rejected. The acts of the two Directors have obstructed the proceedings of CIRP, the proceedings before Adjudicating Authority and this Tribunal. The acts prima facie disclose serious Contempt, violating mandate of law of IBC applied by Orders of Adjudicating Authority and this Tribunal and breach of undertaking given on oath, actionable as NCLT established under the Companies Act, 2013 acts as Adjudicating Authority and this Tribunal is empowered under Section 425 of Companies Act, 2013 read with enabling provisions to take action.*

*25. Copy of this Judgement and record of Appeal will be treated as Contempt Case to be registered as “State vs. Manoj K. Daga and Deepak Daga” as these Directors who will face the contempt case. The Registry will give it a Contempt Case number and the same be listed on **7<sup>th</sup> April, 2020**. Counsel for the Appellant states that on that date, Manoj K. Daga and Deepak Daga would both attend this Tribunal.”*

17. The Learned Counsel for the Appellant seeks in aid of the order of this Tribunal dated 31.08.2020 in Contempt Case (AT) No.23 of 2020 in Company

Appeal (AT)(Ins) No.388 of 2020 wherein this Tribunal had issued notice for alleged contempt and observed as under:-

*“(B) Issue Notice for alleged contempt, in Contempt Case (AT)No.23 of 2020.*

*(C) The Corporate Debtor and its Directors will file replies in both the matters and state as to why action for contempt may not be initiated against them. They should also state as to why the Orders as passed in the Appeal may not be recalled and the Impugned Order in Company Appeal (AT)(Ins) No.388 of 2020 as was passed by the Adjudicating Authority may not be restored to its original position dismissing the Appeal. The Directors of Corporate Debtor shall remain present in person on next date.*

*Advocate Shri Amish tendon appears on behalf of Corporate Debtor and its Directors. Service of formal Notice id dispensed with. The Replies may be filed within 10 days.”.*

### **1<sup>st</sup> Respondent’s Submissions**

18. The Learned Counsel for the 1<sup>st</sup> Respondent contends that the power to ‘punish for contempt’ relating to matters of Companies Act, 2013 is given to the National Company Law Tribunal as per Section 425 of the Companies Act, 2013 and not with respect to the I&B Code, 2016. In this connection, the Learned Counsel for the 1<sup>st</sup> Respondent relies on the decision of the Hon’ble Supreme Court of India in **‘Innoventive Industries Vs ICICKI Bank & Anr reported in (2018)1 SCC 407** wherein it is held as under:

*“There can be no doubt, therefore, that the Code is a Parliamentary law that is an exhaustive code on the subject matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the 7<sup>th</sup> Schedule.”*

and comes out with the plea that there is no provision under the I&B Code, 2016 which confer any power upon the 'Adjudicating Authority' to issue direction for contempt.

19. The Learned Counsel for the 1<sup>st</sup> Respondent takes a stand that on asking for the payment of bills, 1<sup>st</sup> Respondent had informed the Appellant about the non-availability of the funds in the Corporate Debtor Bank Account maintained by their Resolution Professional and that, on verification of the documents it was observed by the Resolution Professional that out of the total bills raised for Rs. 556,600/-, bills amounting to Rs.314,600/- were already paid by the Interim Resolution Professional.

20. The other version of the 1<sup>st</sup> Respondent is that he was unable to make the payment of the 'Bills' and the bills were not approved by the Members of the Committee of Creditors and the payment of the bills was subject to the approval of the Members of the Committee of Creditors and added further, the 1<sup>st</sup> Respondent had acted in good faith as per Section 233 of the I&B Code and as such, no contempt can lie. The Learned Counsel for the 1<sup>st</sup> Respondent brings to the notice of this Tribunal that the invoices furnished by the Appellant in Serial No.4 and 5 towards appearance in the matter of Corporate Debtor on 04.09.2018 and drafting of application under Section 22(4) of the Code, it is observed from the perusal of the application (filed under Section 22(4) that the same was drafted by the former Interim Resolution Professional itself and not by the Appellant. Apart from this, Mr. Rajesh Kumar Gautam made his submission in respect of the Application filed under

Section 22(4) of the I&B Code as seen from the order dated 04.09.2018, in regard to appointment of the Resolution Professional.

21. The Learned Counsel for the 1<sup>st</sup> Respondent points out that CIRP of the Corporate Debtor was terminated and the Resolution Plan was approved as per order dated 26.11.2020.

### **2nd Respondent Pleas**

22. The Learned Counsel for the 2<sup>nd</sup> Respondent/IBBI submits that the 'National Company Law Tribunal' is constituted as per Section 408 of the Companies Act, 2013 to exercise and discharge such power and functions as are, or may be, conferred on it by or under it or any other law for the time being in force, and this indicates that the 'National Company Law Tribunal' may discharge such powers and functions given under other Laws than the Companies Act.

23. Advancing the argument, the Learned Counsel for 2<sup>nd</sup> Respondent contends that Section 5(1) of the I&B Code 2016 defines 'Adjudicating Authority' for the purpose of Part II, meaning National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013 (18 of 2013).

24. The Learned Counsel for the 2<sup>nd</sup> Respondent refers to Section 420 and 424 of the Companies Act, 2013 which indicate the procedure to be followed by the 'National Company Law Tribunal' and the 'National Company Law Appellate Tribunal' before passing orders. The Learned Counsel for the 2<sup>nd</sup> Respondent relies on the Judgement of Hon'ble Supreme Court in ***M/s Embassy Property Development Pvt Ltd Vs State of Karnataka & Ors***

**(Civil Appeal No.9170 of 2019)** wherein at para 30 under the caption Jurisdiction and Powers of NCLT it is observed as under:-

*“30. NCLT and NCLAT are constituted, not under the IBC, 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. In so far as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the Orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT.”*

25. The Learned Counsel for the 2<sup>nd</sup> Respondent cites the decision of the Hon'ble Supreme Court in the matter of B.K. Educational Services Pvt Ltd Vs Parag Gupta and Associates (Civil Appeal No.23988 of 2017) wherein it is observed that 'Adjudicating Authority' under Section 5(1) of the Code means the National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013.

26. The Learned Counsel for the 2<sup>nd</sup> Respondent contends that after the advent of I&B Code, 2016 the 'National Company Law Tribunal' is defined as Adjudicating Authority as per Section 5(1) of the Code for the purpose of Insolvency resolution and liquidation and bankruptcy and that the Code has not restricted their power in any manner.

**EVALUATION:**

27. At the outset, this 'Tribunal' relevantly points out that the 'Adjudicating Authority' (National Company Law Tribunal) in Contempt Application No.A-01(PB) of 2020 in CA-1081/2019 in (IB)-560(PB)/2017 (filed under Section 425 of the Companies Act, 2013 r/w Section 12 of Contempt of Courts Act and Rule 11 of the NCLT Rules, 2016) seeking to initiate the contempt proceedings against the Respondent therein (1<sup>st</sup> Respondent in the Appeal) for wilful disobedience of the Order dated 7.11.2019 passed by the Tribunal in **Contempt Application No.A-01(PB) of 2020 in CA-1081/2019 in (IB)-560(PB)/2017** on 23.9.2020, had finally dismissed the application by observing that 'IBC' is devoid of 'contempt jurisdiction', leaving it open to the Appellant/Applicant to seek remedy through recourses available.

28. In the Contempt Application No.A-01(PB) of 2020 in CA-1081/2019 in (IB)-560(PB)/2017, the Applicant/Appellant had mentioned that the Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) the Appellant/Applicant had mentioned that the Adjudicating Authority on 7.11.2019 had issued directions to the Respondent to take appropriate action to release the arrears of fees within two days and the same runs as under:

*“Mr. Makhija, learned counsel for the RP stated that necessary steps shall be taken to pay the arrears of fee to applicant namely Mr. Shailendra Singh. The needful be done within two days.*

*The application stands disposed of.”*

29. It comes to be known that the Appellant/Applicant because of the non-compliance of the order dated 07.11.2019 in regard to the wilful breach of undertaking furnished by the Respondent through counsel, had filed Contempt Application No.A-01(PB) of 2020 in CA-1081/2019 in (IB)-560(PB)/2017 praying for initiation of contempt proceedings against the Respondent (1<sup>st</sup> Respondent in Appeal).

30. On behalf of the 1<sup>st</sup> Respondent the plea taken before this Tribunal is that the powers of contempt vested with National Company Law Tribunal pertains to powers relating to the matters under the Companies Act and not with regard to the I&B Code. Further that the 1<sup>st</sup> Respondent was unable to make payment of the bills since they were not approved by the Members of the Committee of Creditors and the payment of bills were subject to the approval of the Members of the Committee of Creditors. Furthermore, the bills were without any ‘proof’ that the Appellant had carried out any work. Besides this the CIRP of the Corporate Debtor was completed and Resolution Plan of the Corporate Debtor was approved by the Adjudicating Authority on 26.11.2020.

31. The definition of Section 5(1) of the I&B Code under Part II ‘Insolvency Resolution and Liquidation for Corporate Persons’ Chapter I ‘Preliminary’ means the ‘Adjudicating Authority’ for the purpose of this Part as ‘National

Company Law Tribunal' constituted under Section 408 of the Companies Act, 2013. Section 408 of the Companies Act, 2013 provides for the constitution of 'National Company Law Tribunal'. Section 410 of the Companies Act, 2013 pertains to 'constitution' of the 'Appellate Tribunal'.

32. Section 420 of the Companies Act, 2013 deals with 'orders of Tribunal'. Section 421 speaks of 'Appeals from orders of Tribunal'. Section 424 of the Companies Act, 2013 provides for procedure before Tribunal and Appellate Tribunal. In fact, the 'Tribunal' and the 'Appellate Tribunal' shall be guided by the principles of natural justice (although not bound by the procedure laid down under Civil of Procedure Code) while disposing of any proceedings before it and also it can regulate its procedure as it deems fit and proper as per Section 424 of the Companies Act, 2013. Section 60 of I&B Code, 2016 showers powers on the 'National Company Law Tribunal' having territorial jurisdiction over the place, where the registered office of the Corporate Person is located (as an 'Adjudicating Authority' in relation to Insolvency Resolution and Liquidation for Corporate Persons including Corporate Debtors and personal Guarantors). Section 61 of the Code speaks of filing of 'Appeals' and Appellate Authority (as National Company Law Appellate Tribunal).

33 It is useful to refer to the Statement and Objects and Reasons (SOR) of the Insolvency and Bankruptcy Code Bill, 2016 as regards the designation of the Adjudicating Authority which reads as under:

*"3. The Code seeks to provide for designating the NCLT and DRT as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy.*

*The Code separates commercial aspects of insolvency and bankruptcy proceedings from judicial aspects...”*

Therefore, from the aforesaid Object and Reasons of Insolvency & Bankruptcy Code Bill, 2016 it is quite clear that the National Company Law Tribunal is to act as an Adjudicating Authority for the purpose of matters pertaining to the I&B Code.

34. At this juncture, this Tribunal worth recalls and recollects the decision of the Hon’ble Supreme Court in **Ashok Paper Kamgar Union V Dharam Godha Manu/SC/0679/2003: (2003) 11 SCC 1**, wherein it is observed as under:-

*“17. Section 2(b) of the Contempt of Courts Act defines 'civil contempt' and it means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of undertaking given to a Court. 'Wilful' means an act or omission which is done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say with bad purpose either to disobey or to disregard the law. It signifies a deliberate action done with evil intent or with a bad motive or purpose. Therefore, in order to constitute contempt the order of the Court must be of such a nature which is capable of execution by the person charged in normal circumstances. It should not require any extra ordinary effort nor should be dependent, either wholly or in part, upon any act or omission of a third party for its compliance.....”*

35. Also, this Tribunal aptly points out the decision of the Hon’ble Supreme Court in **Noorali Babul Thanewala V K.M.M. Shetty, MANU/SC/0077/1990 : (1990) 1 SCC 259** wherein it is held and observed as under:

*“11. When a court accepts an undertaking given by one of the parties and passes an order based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the Court by or on behalf of a party to a civil proceeding is, therefore, regarded as tantamount to a breach of injunction although the remedies were not always identical. For the purpose of enforcing an undertaking that*

*undertaking is treated as an order so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. In the light of this Court's finding in the instant case, that there was a breach of the undertaking mere imposition of imprisonment or fine will not meet the ends of justice. There will have to be an order to purge the contempt by directing the first respondent 1-contemnor to deliver vacant possession immediately and issuing necessary further and consequential directions for enforcing the same.”*

### **SUPREME COURT DECISIONS:**

36. Apart from the above, this Tribunal cites the decision of the Hon'ble Supreme Court of India in **T. Sudhakar Prasad Vs Govt of A.P. & Ors reported in MANU/SC/0811/2000** wherein at para 7, 17 to 18, 20 to 22 it is observed as under:-

“7 In pursuance of Article 323A the Constitution the Parliament enacted the Administrative Tribunals Act, 1985 to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation or society owned or controlled by the Government. On coming into force of the Act and constitution of the Central Administrative Tribunal all the jurisdiction, powers and authority exercisable immediately before that day by all courts, which would include the High Courts (except the Supreme Court) in relation to the matters specified in Section 14(1) of the Act came to be conferred on the Tribunal. Section 17 gives the Tribunal power to punish for contempt which reads as under :

17. Power to punish for contempt. - A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971), shall have effect subject to the modifications that :

(a) the references therein to a High Court shall be construed as including a reference to such Tribunal;

(b) the references to the Advocate- General in Section 15 of the said Act shall be construed.

(i) in relation to the Central Administrative Tribunal, as a reference to the Attorney- General or the Solicitor-General or the Additional Solicitor- General; and

(ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate-General of the State or any of the States for which such Tribunal has been established.

*“17. Subordination of Tribunals and courts functioning within the territorial jurisdiction of a High Court can be either judicial or administrative or both. The power of superintendence exercised by the High Court under Article 227 of the Constitution is judicial superintendence and not administrative superintendence, such as one which vests in the High Court under Article 235 of the Constitution over subordinate courts. Vide para 96 of L. Chandra Kumars case, the Constitution Bench did not agree with the suggestion that the tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall, as our constitutional scheme does not require that all adjudicatory bodies which fall within the territorial jurisdiction of any High Court should be subject to its supervisory jurisdiction. Obviously, the supervisory jurisdiction referred to by the Constitution Bench in para 96 of the judgment is the supervision of the administrative functioning of the tribunals as is spelt out by discussion made in paras 96 and 97 of the judgment.”*

*18. Jurisdiction should not be confused with status and subordination. The Parliament was motivated to create new adjudicatory fora to provide new, cheap and fast-track adjudicatory systems and permitting them to function by tearing of the conventional shackles of strict rule of pleadings, strict rule of evidence, tardy trials, three/four-tier appeals, endless revisions and reviews \_\_ creating hurdles in fast flow of stream of justice. The administrative tribunals as established under Article 323-A and the Administrative Tribunals 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Court, consistently with the amended constitutional scheme but at the same time not to negate judicial review jurisdiction of constitutional courts. Transfer of jurisdiction in specified matters from the High Court to the administrative tribunal equates the tribunal with the High Court in so far as the exercise of judicial authority over the specified matters is concerned. That, however, does not assign the administrative tribunals a status equivalent to that of the High Court nor does that mean that for the purpose of judicial review or judicial superintendence they cannot be subordinate to High Court.*

*It has to be remembered that what has been conferred on the administrative tribunal is not only jurisdiction of the High Court but also of the subordinate courts as to specified matters. High Courts are creatures of Constitution and their judges hold constitutional office having been appointed under the Constitution. The Tribunals are creatures of statute and their members are statutorily appointed and hold statutory office. In State of Orissa Vs. Bhagaban Sarangi, (1995) 1 SCC 399, it was held that administrative tribunal is nonetheless a tribunal and so it is bound by the decision of the High Court of the state and cannot side-track or bypass it. Certain observations made in the case of T.N. Seshan, Chief Election Commr. of India Vs. Union of India, (1995) 4 SCC 611, may usefully be referred to. It was held that merely because some of the service conditions of the Chief Election Commissioner are akin to those of the Supreme Court judges, that does not confer the status of a Supreme Court judge on the C.E.C.. This court observed "Of late it is found that even personnel belonging to other fora claim equation as High Court or Supreme Court Judges merely because certain jurisdictions earlier exercised by those Courts are transferred to them not realising the distinction between constitutional and statutory functionaries." We are therefore clearly of the opinion that there is no anathema in the tribunal exercising jurisdiction of High Court and in that sense being supplemental or additional to the High Court but at the same time not enjoying status equivalent to High Court and also being subject to judicial review and judicial superintendence of the High Court."*

*20. Section 20 of the Act was also referred to by the High Court to support its conclusions. Section 30 is merely declaratory of the proceedings before a tribunal being judicial proceedings within the meaning of Sections 193, 219, and 228 of the Penal Code. By no stretch of reasoning, Section 30 could have been held as impinging upon the power conferred on the tribunal by Section 17 of the Act and to hold further that in case of contempt of its lawful authority the only remedy available to tribunal was to have recourse to Section 30 to the exclusion of power to punish for contempt conferred by Section 17..*

*21. Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of judicial system as also of the courts and tribunals entrusted with the task of administering delivery of justice. Power of contempt has often been invoked, as a step in that direction, for enforcing compliance of orders of courts and punishing for lapses in the matter of compliance. The majesty of judicial institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective. The proceedings for contempt of court cannot be used merely for executing the decree of the court. However, with a view to preserving the flow of the stream of justice in its unsullied form and in unstinted purity willful defiance with the mandate of the court is treated to be contemptuous. Availability of jurisdiction to punish for contempt provides efficacy to functioning of the judicial forum and enables the enforcement of the*

*orders on account of its deterrent affect on avoidance. Viewed from this angle the validity of Section 17 of the Act is protected not only by sub-clause (b) of Clause (2) of Article 323-A but also by sub-clause (g) thereof.*

*22. For the foregoing reasons the appeals are allowed. The judgment of the High Court is set aside. CWP No.34841 of 1998 filed in the High Court of Andhra Pradesh laying challenge to the jurisdiction of the Tribunal to deal with its own contempt is directed to be dismissed. The Tribunal shall now proceed ahead with the proceedings pending before it as per law. Contempt Case No.1054/1998 filed before the High Court invoking its contempt jurisdiction is directed to be transferred to the Tribunal for being dealt with under Section 17 of the Administrative Tribunals Act, 1985. Complete record of the proceedings shall be transmitted by the High Court to the Tribunal. The appeals stand disposed of accordingly. No order as to the costs.”*

37. Further, the Hon’ble Supreme Court of India in the decision of **Committee of Creditors of Amtek Auto Limited through Corporation Bank Vs Dinkar T. Venkatasubramanian and Ors reported in MANU/SC/0110/2021** at para 30 to 32 and at para 37 and 38 had observed under:-

*“30. The premise of the contempt proceedings which has been initiated by the CoC is that despite the order of this Court dated 18 June 2020, DVI has by its conduct*

*(i) Obstructed the implementation of the resolution plan; and*

*(ii) Set up a plea in the teeth of the rejection of its IA by this Court on 18 June 2020.*

*31 Dr Abhishek Manu Singhvi, learned Senior Counsel is correct in the formulation of legal principle but it is in the application of those principles where the fine-print of this case lies. There can be no manner of doubt that*

*(i) the contempt jurisdiction is to be exercised with circumspection;*

*(ii) the acceptance or rejection of a plea on merits is distinct from whether a party is in breach of the order of court;*

*(iii) the disobedience of an order must be willful before it constitutes contempt;*

*(iv) a willful breach must appear clear by the conduct of a party not by implication;*

*and*

*(v) the exercise of legal rights and remedies would not constitute contempt.*

*32 We must at the outset note that on 8 June 2020, this Court relegated the matter to the NCLT to decide upon the approval application within a fortnight. NCLT passed an order approving the resolution plan submitted by DVI on 9 July 2020. DVI having taken recourse to its appellate remedy before the NCLAT under the provisions of Section 61 of the IBC does not constitute contempt. The plea of contempt however proceeds on the conduct of DVI. Bearing on this issue, the following circumstances have to be noted:*

*(i) the pleas which were set up by DVI in paragraphs 9,12,13,15 and 17 of its IA filed on 12 June 2020, clearly sought to setup a foundation for force majeure. In paragraph 9, DVI pleaded that “Covid-19 pandemic has materially and adversely impacted commercial assumptions underlying the business plan and financial proposal for revival of the corporate debtor and the feasibility and viability of the resolution plan”. In paragraph 12, DVI urged that the execution of a letter of intent and submission of an additional bank guarantee “would mean that the approved resolution plan is being implemented without taking into consideration the changed circumstances, and would be directly in conflict with the intent of discussing the plan after understanding the impact of the changed financial position of the Company and the market as a whole”;*

*(ii) Para 13 of the IA stated that DVI “has been placed in an impossible situation where, on one hand the impact of the changed circumstances needs to be taken into consideration for examining the impact of the same on the resolution plan...”;*

*(iii) In para 15, DVI submitted that it was “imperative that the CoC and the resolution professional do not move forward without first giving it [DVI] the opportunity to examine the impact of the changed circumstances on the plan and its feasibility and to thereupon discuss the same with the CoC”; and*

*(iv) Finally, in para 17, DVI pleaded that it “may be allowed to assess the impact of the COVID-19 pandemic on the overall business and financial health of the Corporate Debtor, and the consequential impact of these circumstances on feasibility and viability of DVI’s resolution plan and a period of 2 (two) months [...] may be granted to the parties to negotiate the terms of DVI’s resolution plan [...]”.*

*These averments clearly indicate a foundation for the defence of force majeure.*

37. *The provisions of the IBC are premised on a time bound process for the resolution of corporate insolvencies. Effectively, the conduct of DVI after the CoC approved the resolution plan on 11 February 2020 has thwarted the entire process, thus, bringing things to a stand-still. Alive to the realities of the situation, Dr Abhishek Manu Singhvi, learned Senior Counsel has stated before the Court that in the proceedings which are pending before the NCLAT, DVI shall not plead force majeure based on the outbreak of the Covid-19 pandemic.*

38 *The issue which needs to be addressed is whether recourse to the contempt jurisdiction is valid and whether it should be exercised in the facts of this case. Undoubtedly, as we have noted earlier, the conduct of DVI has not been bona fide. The extension of time in the course of the judicial process before this Court enures to the benefit of DVI as a resolution applicant whose proposal was considered under the auspices of the directions of the Court. DVI attempted to resile from its obligations and a reading of its application which led to the passing of the order of this Court dated 18 June 2020 will leave no doubt about the fact that DVI was not just seeking an extension of time but a re-negotiation of its resolution plan after its approval by the CoC. Then again, despite the order of this Court dated 18 June 2020 rejecting the attempt of DVI, it continued to persist in raising the same pleas within and outside the proceedings before the NCLAT. The conduct of DVI is lacking in bona fides. The issue however is whether this conduct in raising the untenable plea and in failing to adhere to its obligations under the resolution plan can per se be regarded as a contempt of the order of this Court dated 18 June 2020. DVI was undoubtedly placed on notice of the order that should it proceed in such terms, it would invite the invocation of the contempt jurisdiction. Having said that, it is evident that the order of this Court dated 18 June 2020 rejected the IA moved by DVI and as a necessary consequence, the basis on which the reliefs in the IA were sought. Therefore correctly, it has been now stated on behalf of the DVI that it will not set-up a plea of force majeure in view of the dismissal of its IA on 18 June 2020.*

*However lacking in bona fides the conduct of DVI was, we must be circumspect about invoking the contempt jurisdiction as setting up an untenable plea should not in and by itself invite the penal consequences which emanate from the exercise of the contempt jurisdiction. Likewise, the default of DVI in fulfilling the terms of the resolution plan may invite consequences as envisaged in law. On the balance, we are of the considered view that it would not be appropriate to exercise the contempt jurisdiction of this Court.*

*During the course of the hearing, Dr Abhishek Manu Singhvi, learned Senior Counsel has relied on the affidavit filed in response to the*

*contempt petition while seeking to urge that DVI will be within in its rights to urge whether the conditions precedent to the enforcement of the resolution plan have been fulfilled. Since DVI is in appeal before the NCLAT, we express no opinion on the merits of the submission. The NCLAT will take a view on the tenability and merits of the submission of DVI that the conditions precedent under the resolution plan have not been fulfilled after hearing the parties. This is not an issue which arises before the Court in the present proceedings either upon the application for rectification moved by DVI or the contempt petition moved by the CoC.”*

38 It is to be pointed out that Section 424(3) of the Companies Act, 2013 enjoins that any order made by the Tribunal may be enforced in the same manner as if it was a ‘decree’ made by Civil Court in ‘suit’ before it, and the ‘Tribunal’ may either enforce order itself or may send it for execution to the Court within a local limits of whose jurisdiction the registered office of the company is situated in case the order is against the company, or (b) the person concerned voluntarily resides or carries on business, in case the order is against any such person.

39. Section 425 of the Companies Act, 2013 confers powers on the ‘Tribunal’ (National Company Law Tribunal) to punish for ‘Contempt’. The language employ in Section 425 of the Companies Act, 2013 are that the power of the Contempt of Courts Act, 1971 are vested with the National Company Law Tribunal while adjudicating all the proceedings that come before it. In this connection, this Tribunal significantly points out that the ingredients of Section 425 of the Companies Act, 2013 donot mention that the provisions of power under the Contempt of Courts Act, 1971 are applicable only in respect of proceedings before ‘Tribunal’ confining in respect of the provisions of Companies Act, 2013.

40. Under the I&B Code, 2016 the Adjudicating Authority (National Company Law Tribunal) adjudicates all proceedings before it and renders its decision. Just because the I&B Code does not specifically mention about the contempt provisions, it cannot be said that the 'Adjudicating Authority' (National Company Law Tribunal) has no powers of contempt. If one is to give such a restricted interpretation that the Adjudicating Authority (National Company Law Tribunal) has no jurisdiction of contempt, then its orders cannot be implemented and in fact, the I&B Code will remain in 'Black Letters' without a teeth to bite, in the considered opinion of this Tribunal.

41. Besides the above, as per Section 425 of the Companies Act, 2013 it is clear that the 'Contempt proceedings' can be exercised by the 'National Company Law Tribunal', being the 'Adjudicating Authority' as per Section 5(1) of the I&B Code. Also that a conjoined reading of Section 408 and 425 of the Companies Act, 2013 will unerringly point out that the power to punish for 'Contempt' is vested with the 'Tribunal' shall be while adjudicating on matters not only confined to the Companies Act, 2013 but also to matters relating to the I&B Code, 2016.

42. A mere perusal of Section 429(1) of the Companies Act, 2013 will indicate that it was amended to extend the power of 'Tribunal' to seek the help of Chief Metropolitan Magistrate, Chief Judicial Magistrate or District Collector within whose jurisdiction any property, books of accounts or other documents of such company under this Act or of Corporate Person under the said Code are situated or found, to take possession thereof. In fact, the amendment to Section 429(1) of the Companies Act, 2013 was made to remove

‘sick companies’ and extend its scope of application to the Insolvency and Bankruptcy Code.

43. In law, a ‘purposeful’, meaningful, practical and rational construction of ‘Statute’ ought to be given, so that the provisions of ‘Statute’ cannot be rendered a ‘nugatory’ and a ‘futile’ one.

44. This Tribunal, pertinently points out in the decision of Court of Appeal in ***Seaford Court Estates Ltd V Asher, reported in (1949) 2 KB 481*** ***Denning, L.J. observed*** “when a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament.....and then he must supplement the written word so as to give “force and life” to the intention of the legislature.....A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.”

45. It is to be remembered that Article 323A and Article 323 B of the Constitution of India merely authorise the certified Legislature to make laws to set up such ‘Tribunals’ and to include therein ancillary provisions. Also that word ‘adjudication’ in Article 323A(1) and 323B(1) indicates that the ‘jurisdiction of the Tribunal’ set up under both the Articles shall be confined to adjudication of quasi judicial issues relating to administrative matters as the case may be.

**NATIONAL COMPANY LAW TRIBUNAL RULES**

46. It is significantly pointed out that National Company Law Tribunal Rules, 2016, Part IV, General Procedure, Rule 34(1) under the caption 'General Procedure' enjoins that in a situation not provided for in these Rules, the 'Tribunal', may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice. No wonder, the 'Tribunal' as per Rule 51 of the National Company Law Tribunal Rules, 2016 has the power to regulate its own procedure in accordance with the Rules of natural justice and equity, for the purpose of discharging its functions under the Act. Furthermore, Rule 59 of the National Company Law Tribunal Rules, 2016 pertains to the 'procedure' for imposition of penalty under the 'Act'. As a matter of fact, Rule 59(1) of the National Company Law Tribunal Rules, 2016 states that a reasonable opportunity to represent his or her or its case before the Bench or any other officer authorised in this behalf before passing an order or direction imposing penalty under the Companies Act is to be given.

47. Rule 59(2) of National Company Law Tribunal Rules, 2016 points out that 15 days' time for submission of explanation in writing, is to be given to any person or company or a party to the proceedings in the event of 'Bench' deciding to issue the 'show cause notice'. As per Rules 59(3) of National Company Law Tribunal Rules, 2016 the 'Bench', shall on receipt of explanation and after oral hearing if granted, is to proceed in deciding the matter of imposition of penalty on the circumstances of the case.

### **Tribunals**

48. It cannot be gainsaid that the 'Tribunals' are created under a relevant 'Statute' to decide upon the disputes arising under the said 'Statute' or dispose of a particular category. But the fact of the matter is that 'Courts' which are established by the 'State' concerned are entrusted with the 'State' inherent judicial powers for 'Administration of Justice' in general. Moreover, the Tribunal can regulate their own procedure. As per Section 430 of the Companies Act, 2013 the 'National Company Law Tribunal' has the exclusive jurisdiction to deal with the disputes arising under the Act, thereby meaning that the jurisdiction of the Civil Court is ousted.

### **Punishment:**

49. The purpose of 'punishment' under 'Contempt jurisdiction' is not only curative but also 'corrective' and in fact one cannot be permitted to bring disrepute to the 'Majesty and Supremacy of Law' and the image of 'Temple of Justice'. It will be a travesty of justice if the 'Tribunals' are to permit 'gross contempt of court' to go 'unpunished', if there are no mitigating factors. In the instant case on hand, IN IA No. **CA-1081/2019 in (IB)-560(PB)/2017**, the 'Adjudicating Authority' (National Company Law Tribunal, Principal Bench, New Delhi) on 7.11.2019 had granted two days time to 1<sup>st</sup> Respondent (Respondent therein) to pay the arrears of 'Fee' to the Appellant/Applicant because of the non-compliance of the said order dated 7.11.2019, the Appellant/Applicant had filed the Contempt Application and that was dismissed by the 'Tribunal' holding that IBC is devoid of contempt jurisdiction.

**Disposition**

50. Although Section 5(1) of the I&B Code, 2016 defines 'Adjudicating Authority' for the purpose of Part II (Insolvency Resolution and Liquidation for Corporate Persons Chapter I Preliminary meaning National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013 and further that the BLRC Report coupled with Statement and Objects and Reasons of the IBC Bill 2016 visualise the 'National Company Law Tribunal' to act as 'Adjudicating Authority' for the purpose of matters pertaining to I&B code, as per Section 425 of the Companies Act, 2013. The 'Tribunal' (i.e. NCLT) and the 'Appellate Tribunal' (i.e NCLAT) have the same 'jurisdiction', 'powers' and 'Authority' in respect of contempt of it as the 'High Court' viewed in that perspective, the conclusions arrived at by the Adjudicating Authority (National Company Law Tribunal) in the impugned order by making it clear that the IBC is devoid of contempt of jurisdiction and thereby dismissing the application, leaving it open to the Appellant/Applicant to seek remedy through recourses available, are clearly unsustainable in the eye of Law and the same is interfered with by this 'Tribunal' in furtherance substantial cause of justice, sitting in 'Appellate Jurisdiction'. Consequently, the Appeal succeeds.

51. In fine the Comp.App;(AT)(Ins) No.945/2020 is allowed. The impugned order dated 23.09.2020 is hereby set aside by this Tribunal for the reasons ascribed in this Appeal. No costs.

52. The Adjudicating Authority is directed to restore the **Contempt Application No.A-01(PB) of 2020 in CA-1081/2019 in (IB)-560(PB)/2017)**

to its file within two weeks from the date of the receipt of the copy of the Judgement and dispose of the same on merits as expeditiously as possible in a fair, just and dispassionate manner by providing due opportunity to both sides, of course, untrammelled and uninfluenced with any of the observations made by this Tribunal in this Appeal. Liberty is granted to the respective parties to raise all factual and legal pleas before the Adjudicating Authority (National Company Law Tribunal) who shall take into accounts of the same at the time of passing fresh order in subject matter in issue.

53. IA No.2568 of 2020 in this Company Appeal seeking exemption from filing certified copy of impugned order and annexures is closed.

**(Justice M. Venugopal)**  
**Member (Judicial)**

**(Mr. V.P. Singh)**  
**Member (Technical)**

**(Dr. Alok Srivastava)**  
**Member (Technical)**

**22.11.2021**

*bm*