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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 8353/2016

PRACHIE JAIN ..... Petitioner

Through: Mr. Rishi Pal, Advocate with Mr.Sidhhartha Patra, Advocate.

Versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr. Krishanu Barua, Advocate for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

O R D E R
27.10.2016

1. By way of the present writ petition filed as a Public Interest Litigation the validity of Rule 64(1) of National Company Law Tribunal Rules, 2016 is sought to be challenged.

2. The Companies Act, 2013 replaced the Companies Act, 1956 and in exercise of the powers conferred by Section 408, the Central Government vide notification dated 01.06.2016 constituted the National Company Law Tribunal (hereinafter referred to as "NCLT"). By virtue of Section 466(1) of the Companies Act, 2013, the Company Law Board constituted under the repealed Companies Act, 1956 stood dissolved and vide notification dated 01.06.2016 issued by the Central Government under Section 434(1)(a) of the Companies Act, 2013 all matters or proceedings pending before Company

Law Board as on 01.06.2016 stood transferred to NCLT. Thereafter, vide notification dated 21.07.2016, the Central Government made the National Company Law Tribunal Rules, 2016 in exercise of the powers conferred by Section 469 of the Companies Act, 2013.

3. Rule 64(1) of the National Company Law Tribunal Rules, 2016, which is impugned in this petition may be reproduced hereunder for ready reference:

> "**64. Matter earlier dealt by Company Law Board**.- (1) Notwithstanding anything contained in any other law for the time being in force, an original civil action or case arising out of the Act, or any other corresponding provision of the Companies Act, 1956 or Reserve Bank of India Act, 1934 is filed or pending before the Company Law Board on the date on which the Tribunal is constituted, and the relevant provisions of the Act dealing with the Tribunal have been given effect, or the Company Law Board has been dissolved in pursuance of the provisions of the Act, then all the cases on such date pending with the Company Law Board or such Benches shall stand transferred to the respective Benches of the Tribunal exercising corresponding territorial jurisdiction as if the case had been originally filed in the Tribunal or its Bench to which it is transferred on the date upon which it was actually filed in the Company Law Board or its Bench from which it was transferred:
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> Provided that the Tribunal shall consider any action taken under the regulations of the Company Law Board as deemed to have been taken or done under the corresponding provisions of these rules and the provisions of the Act, and shall thereupon continue the proceedings, except in a case where the order is reserved by the Company Law Board or its Bench and in such a case, the Tribunal shall reopen the matter and rehear the case as if the hearing had not taken place:
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> Provided further that the Tribunal is at liberty to call upon the parties in a case to produce further evidence or such

other information or document or paper or adduce or record further depositions or evidence as may deem fit and proper in the interest of justice."

4. The contention of the petitioner is that the procedure prescribed in Rule 64(1) to the extent that NCLT shall re-open the matters where the orders were reserved by the Company Law Board and re-hear the cases as if the hearing had not taken place would invariably delay the disposal of the cases in spite of the fact that the hearing in such matters was already concluded by the erstwhile Company Law Board. It is contended that the said provision apart from resulting in avoidable delay in the justice delivery system, would also cause prejudice to the parties since NCLT has been empowered to call upon the parties to lead further evidence, give information and file records to improve their cases. It is contended that Rule 64(1) is also not in consonance with the Notification No.S.O.1936(E) dated 01.06.2016 under which 01.06.2016 has been appointed as the date on which all matters or proceedings or cases pending before the Company Law Board shall stand transferred to NCLT without drawing any distinction or difference or categorization of cases pending in the Company Law Board.

5. We have heard the learned counsel for both the parties.

6. The law is well settled that the court while considering the validity of a subordinate legislation will have to consider the nature, object and scheme of the enabling Act, and also the area over which power has been delegated under the Act and then decide whether the subordinate legislation conforms to the parent statute. (Vide ***State of T.N. v. P. Krishnamurthy;*** **(2006) 4 SCC 517**). In the said decision, the Supreme Court had also laid down the parameters of judicial review of subordinate legislation as under:

"15. There is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon him who attacks it to show that it is invalid. It is also well recognised that a subordinate legislation can be challenged under any of the following grounds:

(a) Lack of legislative competence to make the subordinate legislation.
(b) Violation of fundamental rights guaranteed under the Constitution of India.
(c) Violation of any provision of the Constitution of India.
(d) Failure to conform to the statute under which it is made or exceeding the limits of authority conferred by the enabling Act.
(e) Repugnancy to the laws of the land, that is, any enactment.
(f) Manifest arbitrariness/unreasonableness (to an extent where the court might well say that the legislature never intended to give authority to make such rules)."

7. None of the abovementioned grounds can be said to have been attracted to the case on hand. It is not the case of the petitioner that the Central Government lacks legislative competence nor that the impugned Rule is violative of the provisions of the Constitution of India or any other statute. As we could see, the only complaint of the petitioner is that the procedure prescribed under Rule 64(1) with regard to transfer of cases in which the orders were reserved by the Company Law Board would result in delay in concluding the proceedings. In our considered opinion, the same cannot be a ground to declare the impugned Rule as illegal and unconstitutional.

8. The NCLT has been constituted with the primary object of providing a simpler, speedier and a more accessible dispute resolution mechanism for company related disputes. It is relevant to note that the erstwhile CLB was functioning with only five Benches, whereas NCLT will be functioning with

eleven Benches. The NCLT, once fully functional, will consolidate the corporate jurisdiction of the CLB, the Board of Industrial and Financial Reconstruction, the Appellate Authority for Industrial and Financial Reconstruction and the jurisdiction relating to winding up, restructuring and etc. currently vested with the High Courts. It will enable other professionals such as Company Secretaries, Chartered Accountants, Cost Accountants and etc. to represent their clients in matters before the NCLT. A 'dedicated online portal' shall be enforced by which, all parties may electronically send and receive documents to and from the NCLT and make required payments. Lastly, electronic filing will be made mandatory, except when provided otherwise. Therefore, there is no reason to presume that the litigants would be prejudiced by reopening the matter and hearing the case in which the orders were reserved by the Company Law Board. Even assuming that there is some delay in a given case, the same cannot be a ground to declare Rule 64(1) as arbitrary and illegal. In fact, we found that identical procedure was followed when the Central Administrative Tribunal and Debts Recovery Tribunal were constituted and the matters pending before the Courts were transferred. Since the Company Law Board stood dissolved and all the matters including the matters in which the orders were reserved have been transferred to NCLT, it has been rightly provided under the impugned Rule that the cases where the orders were reserved by the Company Law Board would be reopened and reheard by NCLT. Such procedure is, in fact, necessary to enable the NCLT to arrive at the right conclusion and to meet the ends of justice.

9. The writ petition is, therefore, devoid of any merit and the same is accordingly dismissed.

CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J

OCTOBER 27, 2016
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