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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 9th January, 2018

+ W.P.(C) 9036/2017 & CM APPL.36957/2017

MCDONALD'S INDIA PRIVATE LIMITED

AND ANR.

..... PETITIONERS

Through: Mr. Rajiv Nayar, Sr. Adv. with
Mr. Rahul P. Dave, Ms. Niti
Dixit, Mr. Sumit Chopra, Mr.
Amit Dhingra, Mr. Rohan
Jaitley, Ms. Raunaq B. Mathur,
Mr. Shivam Kumar Raheja,
Mr. Suryaveer Berry, Ms.
Zahra Aziz, Ms. Manjira
Dasgupta & Mr. Mohit Negi,
Advs.

versus

UNION OF INDIA AND ORS.

..... RESPONDENTS

Through: Mr. Manik Dogra, Sr.
Government Counsel with Mr.
Amit Mahajan, CGSC & Mr.
Gaurang Kanth, CGSC with
Ms. Eshita Baruah & Ms. Biji
Rajesh, Advs. along with Mr.
Sanjay Shorey. Jt. Dir. (Legal),
for R-1.

Mr. Parag Tripathi, Sr. Adv.
with Mr. Tejas Karia, Mr.
Manu Krishnan, Mr. Gauhar
Mirza, Mr. Shubhaang Sinha,

Mr. Shikhar Khare & Mr.
Aditya Virkam & Mr. Ashvary
Vikram, Advs. for R-2 & R-3.

+ W.P.(C) 9433/2017 & CM APPL. 38403-05/2017

AYSEL MELBYE AND ANR.

..... PETITIONERS

Through: Mr. Darpan Wadhwa, Sr. Adv.
with Mr. Rahul P. Dave, Ms.
Niti Dixit, Mr. Amit Dhingra,
Mr. Rohan Jaitley, Ms. Raunaq
B. Mathur, Mr. Shivam Kumar
Raheja, Mr. Suryaveer Berry
Ms. Manjira Dasgupta & Ms.
Zahra Aziz, Advs.

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Mr. Shikhar Khare & Mr.

Aditya Virkam & Mr. Ashvary
Vikram, Advs. for R-2 & R-3.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The first of the above captioned writ petitions was filed on 12.10.2017 seeking the following reliefs :-

(a) Issue an appropriate writ, order or direction in the nature of certiorari or mandamus or such other appropriate writ, order or direction to declare that the notification of Section 425 of the Companies Act, 2013 by Respondent No.1 pursuant to Notification No. S.O. 1934 (E) dated June 1, 2016 published in the Gazette of India is ultra vires and unconstitutional and to strike down such modification;

(b) Issue an appropriate writ, order or direction in the nature of mandamus or such other appropriate writ, order or direction to Respondent No.1 to frame rules to regulate proceedings under Section 425 of the Companies Act, 2013 read with the Contempt of Courts Act, 1971, as amended;

(c) Issue an appropriate writ, order or direction in the nature of certiorari or such other appropriate writ, order or direction to quash or set aside the orders dated September 5, 2017 and September 26, 2017 issued by the National Company Law Tribunal, Principal Bench in Contempt Application No. 300 (PB) of 2017 in Company Petition No. 110 (ND) of 2013;

(d) Issue an appropriate order or direction to stay the proceedings in Contempt Application No. 300 (PB) of 2017 in Company Petition No. 110 (ND) of 2013 until

rules are framed by Respondent No.1 in relation to proceedings under Section 425 of the Companies Act, 2013 read with the Contempt of Courts Act, 1971, as amended;

(e) Issue a writ, order or direction as may be appropriate to call for the record of Contempt Application No. 300(PB) of 2017 in Company Petition No. 110 (ND) of 2013 pending in the National Company Law Tribunal, Principal Bench;

(f) Issue an appropriate writ, order or direction of or in the nature of mandamus or certiorari or such other appropriate writ, order or direction as this Hon'ble Court may deem fit in the facts and circumstances of the present case;

(g) Pass such other and further orders or directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case;

(h) For costs of the present petition."

2. The writ petition came up before a division bench of this court led by Hon'ble the Acting Chief Justice on 13.10.2017 when the following order was passed :-

"1. Right at the outset, Mr. Harish Salve, Id. Senior Counsel appearing on behalf of the petitioners, submits that he does not press prayers (a) and (b) of the writ petition.

2. Prayers (a) and (b) of the writ petition are dismissed as withdrawn.

3. *So far as the remaining prayers are concerned, the same would be the subject of consideration by a ld. Single Judge of this court.*

4. *On request of the petitioners, let this petition be placed today itself before a ld. Single Judge of this court as per Roster.”*

3. The roster judge having recused, the petition came up before this court against the above backdrop on 13.10.2017 and was taken up for hearing w.e.f. 16.10.2017.

4. On 26.10.2017, the second above-captioned writ petition came to be filed, it being almost a *verbatim* copy of the first said writ petition, the prayers made therein also being identically worded. Upon reference being made to the fact that the first writ petition had been pending before this court after withdrawal of the prayer clauses (a) and (b), the second petition was also listed before this court alongside the first petition on 26.10.2017. Thereafter, both the petitions have been heard together, it being also conceded by the petitioners in the second matter that they also do not press the prayer clauses (a) and (b).

5. On 26.10.2017, the court framed the following preliminary issue :-

“The question of propriety of the writ jurisdiction of this Court being invoked at the stage of show cause notice alongside the submission of the respondents that the remedy of appeal under the special statute (Companies Act, 2013) is also available, needs to be examined first”.

6. It was, however, noted in the proceedings recorded on 07.11.2017 that the petitioners have insisted on and advanced arguments also covering the challenge on merits to the impugned orders not restricting themselves to the preliminary issue mentioned in the proceedings of 26.10.2017.

7. The background facts need to be noted at this stage, *albeit*, briefly.

8. McDonald's India Pvt. Ltd. (MIPL) was incorporated in August, 1993 under the Companies Act, 1956, it being a wholly owned indirect subsidiary of Mc Donald's Corporation US (hereinafter referred to as McDUS), in the wake of a joint venture agreement (JV) dated 31.03.1995 entered into by MIPL on one hand and by the second respondent in these petitions. A new company styled as Connaught Plaza Restaurants Ltd. (CPRL) was incorporated under Companies Act, 1956 as joint venture on 29.06.1995 in which each side held equal equity share capital. On 18.07.1995, Mr. Vikram Bakshi, the second respondent in these writ petitions came to be appointed as the Managing Director of CPRL, initially for a period of two years. The second respondent continued to be the Managing Director of CPRL, the term having been extended from time to time till it came to an end on 17.07.2013. On 09.09.2013, the second respondent and his company, Bakshi Holdings Pvt. Ltd., the third respondent in these writ petitions, instituted proceedings [Company Petition no.110(ND)/2013] before the erstwhile Company Law Board under Section 397 and other provisions of Companies Act, 1956, against MIPL, the principal relief sought being reinstatement of the

second respondent as the Managing Director of CPRL. It appears that by a notice issued on 28.11.2013, MIPL proceeded to terminate the joint venture agreement. On 29.11.2013, MIPL initiated arbitration proceedings in London, U.K., in respect of the claims arising consequent to termination of the joint venture agreement. On 21.06.2017, MIPL issued notice to CPRL alleging material breaches in terms of para 18(d) of the franchise agreement and demanding payment of royalty for the period October 2015 to May 2017. The company petition [no.110(ND)/2013] which had been instituted on 09.09.2013, before the erstwhile Company Law Board by the second and third respondents herein came up before the National Company Law Tribunal (NCLT) which had taken it over, it being the appropriate authority under the Companies Act, 2013. The said company petition [no.110(ND)/2013] was allowed by NCLT on 13.07.2017, the operative part whereof (as appearing at internal page 133 of the said judgment) reads as under :-

“41. As a sequel to the above discussion this petition succeeds. We consider it just and equitable to provide as under:-

(i) The proceedings of the meeting of the Board of Directors held on 06.08.2013 relating to re-election of Mr. Vikram Bakshi as Managing Director of the Company are set aside and declared illegal, unjust and malafide. Consequently, the uploading of Form-32 with the Registrar of Companies is also nullified and is declared illegal. The status of Mr. Vikram Bakshi as Managing Director of Connaught Plaza is restored. He shall continue to act as Managing Director of Connaught Plaza

subject to passing of any resolution under the chairmanship of learned Administrator.

(ii) All steps taken in pursuance of non-election of Mr. Vikram Bakshi as Managing Director, are also declared illegal, unlawful, unjust and malicious.

(iii) The Board of Director of Connaught Plaza is divided in 50-50. In order to break the impasse, we deem it just and equitable to appoint Hon'ble Mr. Justice G.S. Singhvi, Former Judge Supreme Court, 7 Padmini Enclave, Arvindoo Marg, New Delhi-110016 to act as Administrator with all the powers including the power to vote in the Meetings of Board of Directors. The Administrator shall settle his own fee.

(iv) The Administrator shall ensure that all resolutions in respect of Connaught Plaza are passed to advance the interest of the Connaught Plaza and none of the two groups is oppressed. The agenda for re-election of Mr. Vikram Bakshi as the Managing Director shall be taken up with the prior approval of the Administrator. No agenda should be placed before the Board of Directors without the prior approval of the learned Administrator.

(v) The Administrator may consider the possibility of even altering the Articles of Association so as to avoid any ugly situation to oust Mr. Vikram Bakshi as Managing Director unjustly and unfairly.

(vi) Respondent No.5 is restrained from interfering with the smooth functioning of Connaught Plaza and all its 154 restaurants open in the assigned territory of North/East India.

(vii) The petitioners are held entitled to costs which we quantified at Rs. 10 lacs. The cost shall be paid by McDonald India-Respondent No.2 to the petitioners."

9. It may be mentioned here that Mc. Donald's Corporation US (McDUS) was the fifth respondent in the afore-said proceedings and, thus, the restraint order included in the above quoted order of NCLT was directed against it. Further, the reference to respondent no.2 in the above quoted order was to Mc. Donald's India Pvt. Ltd. (MIPL).

10. It has been stated that on 06.08.2017, the Administrator appointed by the NCLT by the above extracted order dated 13.07.2017 issued a communication on 06.08.2017 proposing to hold a meeting on 21.08.2017, *inter alia*, requesting information to be given as to the issues to be discussed in addition to the subject of re-election of the second respondent to the board of CPRL.

11. At this stage, it may be mentioned that Ms. Aysel Melbye and Mr. Robert Dale Larson (first and second petitioners respectively in the second above-mentioned writ petition) were party to the proceedings arising out of company petition no.110(ND)/2013, they having been impleaded as fourth and third respondents respectively in the said matter. They, it appears from the material on record, were nominees of MIPL on the board of the directors of CPRL since August and April 2008 respectively. The pleadings indicate that on 09.08.2017, both of them informed the Administrator appointed by NCLT that they would send their response to the communication proposing the meeting after consulting each other on 10.08.2017. The Administrator, in turn, asked them on 09.08.2017 to respond by 5.00 p.m. on 10.08.2017 failing which he intended to issue notice convening the meeting on 21.08.2017. On 10.08.2017, the first

petitioner in the second above-captioned petition on her own behalf and on behalf of the other co-petitioner informed the Administrator their inability to attend the meeting on 21.08.2017 requesting it to be rescheduled for 04.09.2017 or on any day thereafter. This request was declined by the Administrator and notice of the meeting of the board of directors of CPRL was circulated on 11.08.2017. On 14.08.2017, the second petitioner in the first captioned petition, who had earlier not been a party to the proceedings arising out of company petition no.110(ND)/2013, came to be appointed as Director of MIPL board, assumably he being the nominee of McDUS. The two petitioners of the second captioned petition reiterated their inability to attend the meeting of the board of directors of CPRL on 21.08.2017. By another communication dated 19.08.2017 in response to a further communication from the Administrator, they indicated that their external legal counsel would observe the proceedings of the board on the date for which the meeting had been convened.

12. On 21.08.2017, MIPL issued a notice of termination of the franchise agreement in respect of the restaurants operated by CPRL. For completion of the narration of facts, it may be added that the meeting of the board of directors of CPRL convened by the Administrator took place as scheduled on 21.08.2017 and was attended, amongst others, by the second respondent, and the representatives of the two petitioners in the second above-captioned petition, this against the objection taken on behalf of the second respondent.

13. On 22.08.2017, MIPL filed Company Appeal (AT) no.275/2017 before National Company Law Appellate Tribunal (NCLAT) challenging the judgment dated 13.07.2017 of the NCLT. Later, on 28.08.2017, the second and third respondents herein also filed their appeal (Company Appeal (AT) no.280/2017 assailing the said very judgment on some aspects.

14. On 31.08.2017, the second and the third respondents herein moved two applications before NCLT, one being registered as Company Appl. No.301(PB)/2017 and the other, registered as, Contempt Application no.300(PB)/2017. The cause of action pleaded for filing both the applications was primarily the issuance of notice of termination of the franchise agreement on 21.08.2017 by MIPL. The first application was filed under Section 242 of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal's Rules, 2016 and Sections 397, 402 and 403 of the Companies Act, 1956, the prayer made therein being as under :-

(a). Declare the subsequent acts of the Respondents as illegal, void and non-est including that of the Notice of Termination dated 21.08.2017 annexed herein as Annexure A-2 to this application;

(b). Set aside the Notice of Termination dated 21.08.2017 and declare each of the Operational Licence Agreements/franchisee Agreements in respect of the 145 restaurants as per Annexure-1 of the Notice of Termination dated 21.08.2017 to be valid and subsisting;

(c). Direct the Respondents 2 to 5 to execute Operational License Agreement/Franchisee Agreements

in respect to the 20 restaurants as per Annexure-2 of the Notice of Termination dated 21.08.2017 immediately;

(d). Restrain the Respondents and its officers, agents, employees or any representatives of respondents from taking any steps in pursuance of Notice of Termination dated 21.08.2017 of the Franchise Agreements;

(e). Restrain the Respondents 2 to 5 and its officers, agents, employees or any representatives of Respondents from parting with the franchise rights to any third party;

(f). Direct the Respondents No.1 to 11 to comply with the Final Judgment and Order dated 13.07.2017 passed by this Hon'ble Tribunal in Company Petition No. 110 (ND) of 2013 and

(g). Pass ex-parte, ad-interim orders in terms of Prayers (a) to (f) above.

(h). Pass any other or further orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

15. The second application was presented to invoke the jurisdiction of NCLT under Section 425 of the Companies Act, 2013 alleging willful disobedience by the parties shown in the array as contemnors, this with reference to the order dated 13.07.2017 of NCLT on Company Petition no.110(ND)/2013, the prayer made therein being as under :-

“(a) Pass appropriate orders to summon and punish the Contemnor Nos. 1 to 11 in contempt for willful breach and willful disobedience of Final Judgment and Order dated 13.07.2017 passed by this Hon'ble Tribunal in Company Petition No. 110 (ND) of 2013; and

(b) Direct the Contemnors Nos. 1 to 11 to purge the contempt and to comply with the Final Judgment and Order dated 13.07.2017 passed by this Hon'ble Tribunal in Company Petition No. 110 (ND) of 2013.

(c) Pass any other or further orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of this case."

16. Both the above mentioned applications presented on 31.08.2017 by the second and third respondents came up before NCLT on 05.09.2017 and were taken up by the said forum in the context of Company Petition no.110(ND)/2013 separately, in the presence of such of the respondents as were already present before it.

17. On the first above-said application – Company Appl. No.301 (PB)/2017 filed under Section 242 of the Companies Act, 2013 - the following order was passed by NCLT :-

"...This is an application filed by the petitioner in a disposed of matter with a prayer that subsequent to the disposal of the company petition no. 13.07.2017, non-applicant/respondent has issued notice dated 21.08.2017 (Annexure-Z) for terminating the contract with J.V. Company. A prayer has been made to set aside the notice of termination and declare each of the Operating Licence Agreements/Franchise Agreements in respect of 145 restaurants to be valid and subsisting. A further direction has been sought to non applicant-respondent Nos. 2 to 5 to execute Operating Licence Agreements/Franchise Agreements in respect of 20 restaurants as per the notice of termination dated 21.0.2017. Some other prayers have also been made.

On advance notice of the application Mr. Chagla, learned Senior Counsel has appeared and opposed the prayers made.

We have heard learned counsel for the parties at a considerable length and are of the view that this application at this stage would not be maintainable because both the applications as well as non applicant-Respondent No.1 have filed their respective appeals which are pending before the Learned National Company Law Appellate Tribunal.

A copy of the appeal filed by the applicant has been placed before us and the factum of notice for termination dated 21.08.2017 has been mentioned in support of the prayer that Connaught Plaza Restaurants Pvt. Ltd. should be put to buy out or sell out mode. There is thus no dispute that the present issue in question pertaining to notice of termination dated 21.08.2017 has already been placed before Hon'ble NCLAT in the pending appeal. We further feel that at this stage it would be unnecessary because Hon'ble Justice G.S. Singhvi, the administrator appointed by us by order dated 13.07.2017 granted applicant leave to file application for interim relief before the National Company Law Appellate Tribunal.

Both the appeals are pending consideration before the National Company Law Appellate Tribunal and propriety demands that any such application for interim relief be preferred before the National Law Appellate Tribunal.

As a sequel to above discussion this application is dismissed without any cost. We make it clear that we have not considered the issues on merit and this order shall not be

construed to have expressed any opinion on the controversy”.

18. In the second application – Contempt Appl. No.300(PB)/2017 - the applicants (i.e. the second and third respondents herein) had impleaded eleven parties as respondents describing them as contemnor nos.1 to 11, they including MIPL (contemnor no.1), Ms. Aysel Melbye (contemnor no.2), Robert Dale Larson (contemnor no.3) and Robert Vee Chong Hunghanfoo (contemnor no.5), the second and third whereof are the co-petitioners in the second above-captioned petition and the first and fourth whereof are the co-petitioners in the first captioned petition, the others being respondents in these matters.

19. It may be mentioned here that McDUS, the fifth respondent in Company Petition No.110(ND)/2013 against which the restraint order was passed earlier on 13.07.2017 was included in the aforesaid array as contemnor no.9.

20. The prime contentions raised in the aforesaid contempt application are that by various acts of commission and omission as set out therein, the parties impleaded as contemnors had acted in willful defiance of the aforesaid judgment dated 13.07.2017 of NCLT in a manner so as to defeat and overreach the same. It was alleged that contemnor nos.1 to 8 had acted in collusion with contemnor no.9 and its concerned officers, they being contemnors no.10 and 11, by terminating the licence agreement for all the 165 restaurants and 4 extension counters of CPRL under the Mc Donald's franchise by the notice of termination dated 21.08.2017. It is noted from the copy of

the proceedings recorded on 05.09.2017 on the contempt application by NCLT (pages 106-107 of the paper book of the first writ petition) that besides the counsel for the applicant (i.e. the second and third respondents herein), MIPL (wrongly referred to as HIPL) and the two petitioners of the second above captioned writ were duly represented through their respective counsel.

21. The NCLT recorded the proceedings on 05.09.2017 on the contempt application in the following manner :-

“We have heard learned counsel for the parties. It has been urged that on account on filing an appeal before the Hon’ble NCLAT, notice in the present application for contempt may not be issued. However, we are unable to accept the submission.

Notice to show cause to the respondent returnable on 20.09.2017 be issued as to why proceeding under Section 425 of the Companies Act, 2013 read with Contempt of Courts Act, 1971 be not initiated.

List for further consideration on 20.09.2017.”

22. It has been stated that the matter was not taken up for hearing by NCLT on 20.09.2017 as had been fixed. It eventually came up for effective proceedings on 26.09.2017. The copy of the proceedings dated 26.09.2017 (page 108 of the paper book of the first writ petition) would show that MIPL, the first petitioner in the first above-captioned writ petition and both the petitioners of the second above-captioned writ petition were duly represented besides some other parties shown in the array as respondent-contemnors. It may be

added that the second petitioner in the first captioned writ petition was reflected in the array as contemnor no.4. He alongwith certain others were, however, set *ex parte*. The proceedings recorded would read thus :-

“Reply to the contempt petition be filed within 10 days with a copy in advance to the counsel for the petitioner.

Rejoinder, if any, be filed within a week thereafter with a copy in advance to the counsel opposite.

Respondent Nos. 4,5,7,9, 10 & 11 are proceeded ex-parte.

List the matter for arguments on 23rd October, 2017.”

23. The Companies Act, 2013 has established authorities that include NCLT and NCLAT. Section 420(1) mandates that NCLT would pass such orders in the proceedings brought before it as it thinks fit after giving to the parties *“a reasonable opportunity of being heard”*. In terms of Section 421, any person aggrieved by an order of NCLT *“may prefer an appeal”* to the NCLAT, the exception being, per sub-section (2), in case the order has been passed by NCLT *“with the consent of parties”*. The mandate to NCLAT is similar in as much as Section 421(4) requires that NCLAT shall pass such orders on the appeal *“as it thinks fit”* by confirming, modifying or setting aside the order impugned before it *“after giving the parties to the appeal a reasonable opportunity of being heard”*. Section 424 (2) confers upon NCLT and NCLAT certain powers of the civil court

prescribed under the Code of Civil Procedure, 1908 (CPC) while clarifying, by sub-section (1), that the said forums while disposing of the proceedings brought before them be not “*bound by the procedure laid down in the Code of Civil Procedure, 1908*” but “*shall be guided by the principles of natural justice, and, subject to the other provisions of this Act and of any rules framed thereunder*”, also adding that both the said forums i.e. NCLT and NCLAT “*shall have powers to regulate their own procedure*”.

24. The Contempt of Courts Act, 1971 defines and limits the powers of certain courts in punishing contempt of courts and regulates the procedure in relation thereto. The expression “contempt of court”, as used in the said enactment, includes civil contempt or criminal contempt which are distinct expressions and separately defined. While the “*civil contempt*” means willful disobedience to any judgment, decree, direction, order, writ or other process of a court or willful breach of an undertaking given to a court, the expression “*criminal contempt*” means and includes the doing of any act which, inter alia, “*tends to lower the authority of any court*”, or “*prejudices... any judicial proceedings*” or one that “*obstructs or tends to obstruct the administration of justice.*” It confers jurisdiction, *inter alia*, on the High Courts to take cognizance of the contempt of court and to deal with the contemnors in accordance with its provisions. Section 12 generally deals with the subject of punishment for contempt of court that includes civil or criminal contempt. Section 14 relates to the procedure to be followed where the contempt is committed in the face of the Supreme Court or the High Court.

Section 15 lays down the procedure for taking of cognizance of criminal contempt in other cases. It clarifies that action may be initiated by the High Court “*on its own motion*” or “*on a motion made by the Advocate-General*” or “*any other person with the consent in writing to the Advocate- General*”. Section 10, it may be added, confers on the High Court the power to punish for contempt of the courts subordinate to it. Section 17 provides broadly for the procedure to be followed “*after cognizance*”.

25. For the benefit of the discussion that is to follow, the provision contained in Section 17 of the Contempt of Courts Act, 1971 may be noted *in extenso* :-

17. Procedure after cognizance.—

(1) Notice of every proceeding under section 15 shall be served personally on the person charged, unless the court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied—

(a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

(b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money,

and if, after such attachment, the person charged appears and shows to the satisfaction of the court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires.”

26. Section 18 requires that every case of criminal contempt under Section 15 shall be heard and determined by a bench of not less than two judges. Thus, the cases of civil contempt are generally heard and determined by single benches. In terms of Section 19, where the order or decision of the High Court in exercise of its jurisdiction to “*punish for contempt*” is rendered by a single judge, an appeal lies before a bench of not less than two judges of the court and in cases where such order or decision is that of a bench (of two judges), the appeal lies to the Supreme Court. Section 23 confers, *inter alia*, on the High Courts the enabling power to “*make rules*” for providing for any matter relating to its procedure though clarifying that the same be “*not inconsistent with the provisions of the Contempt of Courts Act, 1971*”.

27. Some enactments creating adjudicatory bodies or tribunals have extended the provisions of Contempt of Courts Act, 1971 to such forums, illustration thereof including the administrative tribunals

established under the Administrative Tribunals Act, 1985 (see Section 17). The Companies Act, 2013, by Section 425, confers the power on NCLT and NCLAT to “*punish for contempt*” in accordance with the provisions of the Contempt of Courts Act, 1971 thus :-

“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.”

28. Section 469 of the Companies Act, 2013 vests in the Central Government the authority to “*makes rules*” for carrying out the provisions of this law, by notification, clarifying by sub-section (2) that such enabling power confers the jurisdiction to make rules “*for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provision is to be or may be made by rules.*”

29. The Central Government issued notification no.S.O.1934 (E) on 01.06.2016 bringing into effect the provision contained in Section 425 of the Companies Act, 2013. By notification G.S.R. 716(E) issued and published in the official Gazette on 21.07.2016, the Central Government framed the rules, in exercise of the powers

conferred by Section 469, such rules being called “the National Company Law Tribunal Rules, 2016”. These rules, *inter alia*, deal with a variety of subjects and issues including definitions, forms, etc (Part-I), power and functions of the President, Registrar and Secretary (Part-II), institutions of proceedings, petitions, appeals, etc. (Part-III), general procedure (part-IV), issuance of orders and disposal of cases (part-V), etc. The following specific rules have been referred in the course of hearing and, thus, may be quoted to the extent relevant as under :-

11. Inherent Powers.- Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Tribunal to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

34. General Procedure. - (1) 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.

38. Service of Notices and processes.- (1) Any notice or process to be issued by the Tribunal may be served by post or at the e-mail address as provided in the petition or application or in the reply;

(2) The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal; -

(a) by hand delivery through a process server or respective authorised representative;

(b) by registered post or speed post with acknowledgment due; or

(c) service by the party himself.

(3) Where a notice issued by the Tribunal is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such other person duly authorised by the Registrar in this behalf, an affidavit of service of notice alongwith the proof of delivery.

(4) Notwithstanding anything contained in sub-rules (1) and (2), the Tribunal may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.

(5) A notice or process may also be served on an authorised representative of the applicant or the respondent, as the case may be, in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be a proper service.

(6) Where the Tribunal directs a service under sub-rule (4), such amount of charges, as may be determined by the Tribunal from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the registry of the Tribunal by the petitioner or applicant.

49. Ex-parte Hearing and disposal.- (1) Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, the Tribunal may adjourn the hearing or hear and decide the petition or the application ex-parte.

(2) Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to the Tribunal for an order to set it aside and if such respondent or respondents satisfies the Tribunal that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing (when the petition or the application was called) for hearing, the Tribunal may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.

Provided that where the ex-parte hearing of the petition or application is of such nature that it cannot be set aside as against one respondent only, it may be set aside as against all or any of the other respondents also.

51. Power to regulate the procedure.- The Tribunal may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Act.

59. Procedure for imposition of penalty under the Act.- (1) Notwithstanding anything to the contrary contained in any rules or regulations framed under the Act, no order or direction imposing a penalty under the Act shall be made unless the person or the company or a party to the proceeding, during proceedings of the Bench, has been given a show cause notice and reasonable opportunity to represent his or her or its case before the Bench or any officer authorised in this behalf.

(2) In case the Bench decides to issue show cause notice to any person or company or a party to the proceedings, as the case may be, under sub-rule (1), the Registrar shall issue a show cause notice giving not less than fifteen days asking for submission of the explanation in writing within the period stipulated in the notice.

(3) The Bench shall, on receipt of the explanation, and after oral hearing if granted, proceed to decide the matter of imposition of penalty on the facts and circumstances of the case.”

(emphasis supplied)

30. It is an admitted case on both sides that no separate rules have been framed either by the Central Government in exercise of powers conferred upon it under Section 469 of the Companies Act, 2013 or by NCLT or NCLAT in terms of the provision contained in Section 23 of the Contempt of Courts Act, 1971 on the specific subject of the procedure relating to the exercise of powers to punish for contempt as conferred upon such forum by Section 425 of the Companies Act, 2013.

31. As noted at the outset, the prime contention with which these writ petitions were presented, as reflected by prayer clauses (a) and (b) quoted above was that the power to punish for contempt conferred upon NCLT by Section 425 of Companies Act, 2013 cannot be exercised till rules relating to the procedure therefor are framed by NCLT or NCLAT and further that the issuance of the notification on 01.06.2016 by the Central Government bringing into force the provision contained in Section 425 was *ultra vires* and Unconstitutional. But, prayer clauses (a) and (b) having been given up, the legality and propriety of the orders passed by NCLT on 05.09.2017 and 26.09.2017 on the contempt application no.300 (PB)/2017 is challenged on the grounds that the action is wholly uncalled for, illegal and arbitrary, in gross breach of the principles of natural justice. The petitioners attribute bias alleging that NCLT has shown undue hurry and haste in taking cognizance on the contempt application committing impropriety, not only by not awaiting the decision of NCLAT on the appeals which have been brought before it by both sides assailing the order of the NCLT (dated 13.07.2017), the

alleged breach of which constitutes the contempt, but also failing to apply its mind appropriately to the averments made in the contempt application which, if done, would have shown that there is not even a *prima facie* case made out for any willful disobedience, defiance or any act committed reflecting deliberate disregard of the final judgment of the NCLT, there being no case of any collusion between the parties impleaded as contemnors.

32. The petitioners argue that on facts, no case of contempt was made out, particularly as the restraint order issued on 13.07.2017, the effort to overreach which is alleged, was directed only against McDUS, the fifth respondent in the Company Petition no.110(ND)/2013, some of the parties shown in the array as contemnors being not even a party to the said proceedings, reference in this context being made particularly to the case of second petitioner in the first captioned writ petition besides contemnor nos.4, 6, 8, 10 and 11.

33. Aside from offering some explanation as to the *bona fide* of their conduct so as to deny the attribute of “collusion” by the petitioners of the second captioned petition and to plead that no case of contempt is made out against them and submitting that the order passed on 05.09.2017 on the contempt application is inherently contradictory to the approach taken on the same date by the other order passed on the application under Section 242 of the Companies Act, 2013 [Company application no.301(PB)/2017], the petitioners in these two matters seek to question the procedure followed by NCLT, submitting that the same is not only improper but also invalid and in

breach of not only the NCLT rules but also of the principles of natural justice. It was submitted that NCLT did not issue any formal notices through its Registry on the contempt application and instead proceeded to act on the affidavit of service of the notices submitted by the counsel for the applicants (i.e. the second and third respondents) who, per the submissions, most improperly had issued an unauthorized communication on the subject to the petitioners and others referring to the proceedings taken out on 05.09.2017 by NCLT.

34. The core argument of the petitioners in these proceedings is that the procedure followed by NCLT is flawed in as much as it has not recorded till date its satisfaction that a *prima facie* case of contempt is made out, nor communicated the “charge”, nor indicated in any other manner the gravamen of the case of contempt which the petitioners are called upon to answer. It was submitted that a summary procedure has been adopted wherein show cause notice has been arbitrarily issued and some of the respondents have been proceeded *ex parte* without it even being examined as to whether they had been served or not with the notices on the contempt application thereby denying to such parties an effective opportunity to be heard in relation to the issuance of notice.

35. There can be no quarrel with the proposition that the proceedings under the Contempt of Courts Act, 1971 are *quasi criminal* in nature. Initiation of action under the criminal law is one of great import and therefore, a serious matter. The burden and standard of proof in contempt proceedings is the same standard of

proof as required in criminal proceedings. Great circumspection is required to be exercised by the court or the forum conferred with power to punish for contempt. Such action cannot be undertaken merely based on conjectures or surmises. The proceedings of contempt of court are generally treated as *sui generis*. Though the procedure adopted both under the common law and the statute in this context has invariably been summary in nature and the provisions of the Code of Criminal Procedure or the Evidence Act do not strictly control the same, it is essential that the court or the forum follows the procedure that is fair and objective. Before issuing notice calling upon the alleged contemnor to answer the charge of contempt, the court or the forum must record satisfaction that there is a clear, unambiguous and unequivocal case made out showing willful and contumacious conduct by the respondent. The procedure to be followed, after formal cognizance is taken, must include framing of a precise and specific charge or notice so as to inform the party in question as to the charge he is to meet. It may be added that it is not always necessary to frame a formal charge as in a criminal trial. It is sufficient if the gist of the specific allegations is made clear to the alleged contemnor affording him the opportunity of being heard in his defence. Further, the charge must be substantiated by clear and reliable evidence to be adduced at the trial. [see *Sukhdev Singh vs. Hon'ble C.J.S. Teja Singh & the Hon'ble Judges of the Pepsu High Court at Patiala*, AIR 1954 SC 186; *State of Bihar Vs. Rani Sonabati Kumari*, AIR 1961 SC 221; *B.K. Kar vs. Hon'ble the Chief Justice and his companion Justices of the Orissa High Court & Anr.*, AIR

1961 SC 1367; *S. Abdul Karim vs. M.K. Prakash & Ors.*, AIR 1976 SC 859; *in re: Vinay Chandra Mishra (the alleged contemnor)*, (1995) 2 SCC 584; *T.R. Dhananjaya Vs. J. Vasudevan*, AIR 1996 SC 302; *Daroga Singh & Ors., Vs. B.K. Pandey*, (2004) 5 SCC 26; *R.K. Anand Vs. Registrar, Delhi High Court*, (2009) 8 SCC 106; and *Sahdeo Alias Sahdeo Singh Vs. State of Uttar Pradesh & Ors.*, 2010(3) SCC 705].

36. The first objection of the second and third respondents herein is to the maintainability of the writ petitions before this court against the impugned orders of NCLT on the ground that the appropriate remedy for the aggrieved party is to approach the appropriate appellate court in terms of the provisions contained in the Contempt of Courts Act, 1971 and the Companies Act, 2013. This objection, however, cannot be accepted in view of the law that is well settled. Reference may be made to just three decisions of the Supreme Court reported as *T. Sudhakar Prasad Vs. Govt. of A.P. and Ors.*, (2001) 1 SCC 516; *Midnapore Peoples' Coop. Bank Ltd. and Ors. Vs. Chunilal Nanda and Ors.* (2006) 5 SCC 399 and *Sujitendra Nath Singh Roy Vs. State of West Bengal and Ors.*, (2015) 12 SCC 514. In *Midnapore Peoples' Coop. Bank Ltd.* (supra), the question was examined at length with reference to a series of previous rulings of the Supreme Court holding that appeal under Section 19 of the Contempt of Courts Act was maintainable only in respect of orders “*punishing for contempt*”. The court reiterated the position of law on the subject as declared in *Mahboob Vs. Allibhoy*, (1996) 4 SCC 411 as under :

“On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words ‘any order’ have to be read with the expression ‘decision’ used in the said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. ‘Any order’ is not independent of the expression ‘decision’. They have been put in an alternative form saying ‘order’ or ‘decision’. In either case, it must be in the nature of punishment for contempt. If the expression ‘any order’ is read independently of the ‘decision’ then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.”

(emphasis supplied)

37. In *Sujitendra Nath Singh Roy* (supra), the maintainability of a writ petition under Articles 226 and 227 of the Constitution of India against an order of the Administrative Tribunal, *albeit* declining to initiate contempt proceedings, was examined reiterating the ruling in *L. Chandra Kumar Vs. Union of India*, 1997 (3) SCC 261 to the effect that the power of judicial review of the High Court under Articles 226

and 227 of the Constitution of India cannot be taken away by law or even by Constitutional amendment vis-à-vis the order of any inferior court or of the tribunal which is a creature of statute. The Supreme court held that it would be a rare case where the High Court can hold that such writ petition is “*not maintainable*” though adding that “*it is always open for the High Court, in appropriate cases, to hold that a writ petition is not entertainable on account of propriety, the constitutional scheme, some settled rules of self-restraint or its peculiar facts.*”

38. Since the impugned orders have been passed only at the threshold scrutiny by NCLT and there is no order issued holding any of the petitioners or other parties arrayed as contemnors as being guilty, not the least punishing any person for contempt of court, the remedy of appeal may not be even available. Be that as it may, the judicial review, if called for in the facts and circumstances of the case, can neither be grudged nor denied.

39. The petitioners have relied on the decisions in *State of J. & K. Vs. Mohd. Yaqoob Khan and Ors.*, 1992 (4) SCC 167 and *Modern Food Industries (India) Ltd. and Anr. vs. Sachidanand Dass and Anr.*, 1995 Supp (4) SCC 465 to argue that NCLT has committed impropriety by not awaiting the decision of the NCLAT in the two appeals, which had been taken out by both sides against the judgment dated 13.07.2017 of the NCLT and which are still pending before the said superior appellate forum. It is submitted that while the prayer in the Company Appl. 301(PB)/2017 under Section 242 of the Companies Act, 2013 on these very grounds was accepted on

05.09.2017, NCLT taking an inherently contradictory approach has proceeded to act on the contempt application by way of separate order passed on the same date issuing notice for show cause.

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.

42. A careful reading of the two orders passed by the NCLT on 05.09.2017, one on the company application under Section 242 of the Companies Act, 2013 and, the other, on the contempt application which is impugned before this court, would show that there is no inherent contradiction. As noted earlier, the prayer made in the company application under Section 242 of the Companies Act, 2013 moved on 31.08.2017 was essentially to have the notice of termination dated 21.08.2017 declared illegal, void and rendered non-est with additional prayer for further restraint order to be issued to the opposite party (i.e. the petitioners herein and others who were impleaded in the company petition in the first place). The NCLT, while declining to entertain the said application made it clear that the parties were already before NCLAT in appeals and, therefore, it was appropriate that they make all the prayers in view of the subsequent developments for “*interim relief*” before NCLAT only, particular reference being made to the fact that the Administrator appointed by NCLT by order dated 13.07.2017 had already granted leave for such application for interim relief to be presented before NCLAT. The applicants having already secured leave of the Administrator to approach the NCLAT for interim relief, could not have conceivably

been entertained by NCLT at the same time when the superior forum was expected to be in *seisin* of similar prayer. The NCLT made it clear in last para of its order on application under Section 242 that it was not expressing any opinion on the controversy at that stage. In these circumstances, the ruling in *Modern Food Industries (India) Ltd.* (supra) would not help the petitioners.

43. There is no merit in the argument that an action for contempt cannot be initiated or taken against a party who was not already a party to the *lis* or, that in contempt proceedings there cannot be a charge of “*collusion*” or, of the parties having acted “*in concert*”. It is not difficult to conceive of cases where a party to the litigation, with aid, assistance or abetment of a stranger to the proceedings, may indulge in acts of commission or omission so as to overreach the judicial orders passed in such proceedings and to defeat or obstruct the administration of justice. The parties which are strangers to the judicial proceedings can be proceeded against if there is material to support the allegation that they had knowledge of the *lis* and the orders passed therein and that they shared the guilty intent. In this view, this court rejects the argument that a party who was not a party to the company petition cannot at all be proceeded against in the contempt proceedings.

44. It does appear that aside from the directions in the two orders which are impugned before this court in these proceedings i.e. the orders dated 05.09.2017 and 26.09.2017, which have been quoted in *extenso* earlier, no formal order, or notice, or communication has emanated from the Registry of NCLT till date. It also does appear

from the submissions of the parties on both sides that aside from the information gathered by such parties, as were present before NCLT at the hearing on the two said dates (or some of the dates thereafter), when the impugned orders were passed, the only communication served (or attempted to be served) on the contemnors has been in the form of communication sent by the counsel representing the second and third respondents in the writ petitions i.e. the applicants in the contempt application. From this, argument is raised that it was impermissible to allow the counsel for the opposite party to unauthorisedly communicate its decision and further that it was improper to act upon the service effected by the counsel for the opposite party on its own.

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.

49. The NCLT, rather than acting in hurry or undue haste, as is alleged, has taken the neutral course of treating the application seeking initiation of contempt proceedings or for the parties in question to be asked to purge, merely as an application filed in the wake of its order dated 13.07.2017. The decision as to whether or not a *prima facie* case of willful disobedience, defiance or commission of any act constituting contempt is made out, would undoubtedly be

taken by the NCLT after it has secured the replies and considered the contentions having heard the parties in question. The argument that NCLT has acted arbitrarily, or with bias, is without basis. By giving opportunity to show cause, it has instead acted in most fair manner, following the spirit of the rules. [Rule 59].

50. As regards the grievance that some of the parties shown in the list of contemnors were not even properly served and yet proceeded *ex parte*, all that needs to be said is that, if such were the facts, it is a matter of irregularity of the proceedings. This court is confident that if any such lapse has occurred, and brought to the notice of NCLT, it would take suitable corrective action and pass the necessary orders in terms of rules. [Rule 49(2)]. This, by itself, cannot be allowed to be used by the petitioners to impel this court to interdict in exercise of the writ jurisdiction.

51. The petitioners have not been able to show violation of the principles of natural justice in the proceedings thus far conducted by NCLT on the contempt application. As noted above, the said proceedings cannot be said to be without jurisdiction. There is no element of arbitrariness as necessitates the writ court's intervention. Thus, this court declines exercise of writ jurisdiction. [see *L. Chandra Kumar* (supra) and *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.*, (1998) 8 SCC 1].

52. On the above facts and in the circumstances, the NCLT being seized of the matter, it would not be proper for this court in proceedings at hand to make any observations either way on the

merits of the allegations made in the contempt application, lest the same prejudices either side.

53. To sum up, this court is of the view that grievances raised by the petitioners are a result of unfounded apprehensions about NCLT having prejudged the issue and reflect *paranoia* rather than substance.

54. The writ petitions are, thus, dismissed. The interim orders stand vacated.

55. The pending applications are rendered infructuous and also stand disposed of.

JANUARY 09, 2018

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R.K.GAUBA, J.