$~9

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

% *Date of Decision: 09th November, 2021*

\+ W.P.(C) 1810/2020 & CM APPL. 6302/2020, 20845/2020, 21171/2021, 32218/2021

INDIA AWAKE FOR TRANSPARENCY ..... Petitioner

Through: Mr. Arnav Dash, Advocate

versus

UNION OF INDIA REP. BY SECRETARY MINISTRY OF CORPORATE AFFAIRS AND ANR. ..... Respondents

Through: Mr. Chetan Sharma, Additional Solicitor General with Mr. Harish V. Shankar, Central Government Standing Counsel for UOI.
Mr. P.B. Suresh, Advocate for R-2.
Mr. Mahesh Agarwal, Mr. Karan Luthra, Ms. Aarushi Tiku and Mr. Shravan Niranjan, Advocates for applicant in CM No. 32218/2021.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (ORAL)

CM APPL. Nos.21172/2021 & 32219/2021 (Exemptions)

Allowed, subject to all just exceptions.

Applications stand disposed of.

CM APPL. No.32218/2021 (Intervention)

Present application has been filed by M/s. Hasham Investment and Trading Company Private Limited seeking intervention in the present matter.

For the reasons stated in the memo of the application, this application is hereby allowed and intervention is permitted.

Application stands disposed of.

W.P.(C) 1810/2020 & CM APPL. Nos.6302/2020, 20845/2020 & 21171/2021

1. Present writ petition has been filed seeking issuance of a writ of *quo warranto* directing Respondent No.2 to set out the Authority under which the said Respondent is holding office as Technical Member of National Company Law Appellate Tribunal (hereinafter referred to as 'NCLAT').

2. Learned counsel appearing on behalf of the Petitioner submits that the appointment of Respondent No.2 is in the teeth of the amended provision of Section 411(3) of the Companies Act, 2013 (hereinafter referred to as the 'Act'). The original provisions of Section 411(3) of the Act provided for qualification for appointment of Technical Members of NCLAT which included a person of proven ability, integrity and standing having special knowledge and experience of not less than 25 years, in law, Industrial Finance, Industrial Management, etc. Challenge was laid to various provisions of the Act including in respect of qualification of Technical Members of NCLAT under Section 411(3) as well as composition of Selection Committees, which was allowed by the Supreme Court in the case of ***Madras Bar Association vs. Union of India, (2015) 8 SCC 583*** and provisions of Section 411(3) were specifically struck down. NCLT and NCLAT were brought into existence vide Notification dated 01.06.2016 and after the Company Law Board was wound up, most of the cases pending in the High Courts were transferred to NCLT with provision of appeal before NCLAT. On 12.01.2017, a Notification was issued by Respondent No.1 for

appointment of Technical Member, noting the decision of the Supreme Court in ***Madras Bar Association (supra)*** and the qualifications were amended, excluding the experience 'in law'. Subsequent thereto, on 01.06.2017, the Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2017 (hereinafter referred to as 'Rules, 2017') were notified which *inter alia* included in Eighth Schedule the earlier provisions of Section 411(3), which were struck down. On 21.08.2017, relying on the Tribunal Rules, Respondent No.1 modified the Notification dated 12.01.2017 and the revised eligibility criteria once again included experience of not less than 25 years in law.

3. Companies (Amendment) Act, 2017 was notified as coming into force on 09.02.2018 and one of the Amendments included amendment to Section 411(3), keeping in view the law laid down by the Hon'ble Supreme Court in ***Madras Bar Association (supra)*** and the experience 'in law' was excluded. An Advertisement was issued by Respondent No.1 on 10.05.2019 inviting applications for appointments including Technical Members of NCLAT. It is contended that despite amendment to Section 411(3) of the Act, the eligibility criteria set out was in accordance with the Tribunal Rules which too were subsequently struck down as illegal and *ultra vires* on 13.11.2019. In sum and substance, the primary contention of learned counsel for the Petitioner is that the appointment of Respondent No.2 as Technical Member of NCLAT is *ultra vires* the amendment to Section 411(3) and is not in consonance with the judgment of the Hon'ble Supreme Court in ***Madras Bar Association (supra)*** inasmuch as the Bio-data of Respondent No.2 reveals that Respondent No.2 is neither qualified to be a Judicial Member

under Section 411(2) of the Act nor fulfils the eligibility criteria under Section 411(3) post the amendment effective from 09.02.2018 and the appointment, therefore, deserves to be set aside.

4. Learned Additional Solicitor General appearing on behalf of Respondent No.1 submits that appointment of Respondent No.2, as Technical Member of NCLAT, is in accordance with law and in consonance with the judgment of the Hon'ble Supreme Court in ***Madras Bar Association (supra).*** On 21.08.2017, Respondent No.1 had issued fresh advertisement in accordance with the qualifications prescribed under Rules 2017. However, in view of the constitutional validity of the Rules being challenged before the Hon'ble Supreme Court in various petitions, process of selection was kept on hold. Meanwhile, in order to comply with the judgment of the Hon'ble Supreme Court in ***Madras Bar Association (supra),*** with respect to qualifications of Members of NCLT and NCLAT and other allied issues, amendment to the Companies Act was notified on 09.02.2018 wherein amended qualifications under Section 411(3) for a Technical Member, NCLAT excluded the experience 'in law'.

5. It is further submitted by the learned Additional Solicitor General that in ***W.P.(C) 279/2017***, titled ***Kudrat Sandhu vs. UOI and Anr.***, certain suggestions were rendered by the Hon'ble Supreme Court and interim direction was passed, which have been detailed in the counter affidavit. On 22.02.2018, Hon'ble Supreme Court clarified that selection process for NCLAT shall continue and not be affected by the interim directions dated 09.02.2018. Vide judgment dated 25.01.2019 in ***Swiss Ribbons (P) Ltd. and Anr. vs. Union of India and Ors., (2019) 4 SCC 17***, Hon'ble Supreme Court directed Union of India to set up Circuit Benches of NCLAT, within a

period of six months. On 03.04.2019, the Appointments Committee of the Cabinet (ACC) approved the proposal for appointment against 02 posts of the Technical Members in NCLAT and pursuant thereto on 10.05.2019, Respondent No.1 advertised for filling up of 04 posts of Technical Members and 03 of Judicial Members. An interim Search-cum-Selection Committee was constituted under the Chairmanship of Hon'ble Judge of the Hon'ble Supreme Court to recommend names and the recommendations were submitted for consideration by the ACC; the ACC finally approved the appointments of 03 Judicial and 03 Technical Members in NCLAT, on 15.10.2019. On 20.01.2020, the ACC approved the appointment of Respondent No.2 herein as Technical Member against the remaining one vacancy. It is, therefore, submitted that the appointment of Respondent No.2 is in accordance with the provisions of law and the judgment of the Hon'ble Supreme Court and she has the necessary experience which was judged by the Search-cum-Selection Committee headed by Hon'ble the Chief Justice of India and approval thereto was accorded by the ACC. It is also submitted by the learned Additional Solicitor General that Respondent No. 2 is duly qualified to be appointed as a Technical Member of NCLAT and has the necessary experience. Respondent No.2 has been serving as Judicial Member of the District and State Consumer Forums and has been a Judicial Member of National Consumers Disputes Redressal Commission (hereinafter, referred to as the 'NCDRC') since 2015.

6. It is a settled law that in matters of appointments, it is the Selection Committee, which is the expert body to decide the merits and demerits of a candidate and it is not in the domain or jurisdiction of the Courts in a judicial review to substitute the wisdom, expertise and decision of the

Selection Committees. Relevant paragraphs of the counter affidavit filed on behalf of Respondent No.1 are as under :-

> *"23. It is submitted that on 03.04.2019, the Appointments Committee of the Cabinet (ACC) has approved the proposal for appointment against 02 posts of Technical Member in the National Company Law Appellate Tribunal (NCLAT).*
>
> *24. That ministry of corporate affairs issued advertisement notification dated 10.05.2019 for filling of post of 4 Technical and 3 Judicial Members in NCLAT. Since, by that time, the Tribunal, Appellate Tribunal and Other Authorities (Qualification, experience and other conditions of service of members) Rules, 2017 were not struck down by the court, ministry proceeded with the selection process following the directions issued in the matter of WP (C) 279 of 2017 (Kudrat Sandhu vs UOI) and related petitions. As per supreme court order dated 09.02.2018 in WP (C) 279 of 2017, an interim Search-cum-Selection Committee was constituted under the chairmanship of Hon'ble Judge of Supreme court to recommend names for the appointment of Judicial and Technical Members in NCLAT.*
>
> *25. That on the basis of recommendations of the aforesaid Search-cum-Selection Committee a panel of candidates was submitted for consideration of the ACC, and ACC finally approved the appointments of 3 Judicial and 3 Technical Members for appointments in NCLAT on 15.10.2019.*
>
> *26. That requests were made to Department of Personnel and Training to approve one name for remaining vacancy of one technical member from the already sent panel, and accordingly on 20.01.2020 the Appointments Committee of the Cabinet approved the appointment of Ms. Shreesha Meral as Technical Member in NCLAT.*
>
> *28. It is humbly submitted that Respondents/Technical Members against whom this petition is filed is having adjudicatory experience or legal knowledge. It is reiterated that all steps in the selection process are as per existing rules, law and directions of the Supreme Court only."*

7. Without prejudice to the above, learned Additional Solicitor General questions the locus of the Petitioner to file the present petition. At the outset, attention of the Court is drawn to page 204 of the paper book to point out that the status of the Petitioner Company is 'inactive' as reflected in the MCA portal and, therefore, what follows is that there is no entity by the name of 'India Awake for Transparency'. It is submitted that Petitioner's license as a Company under Section 8 of the Act has been cancelled by the Regional Director, Ministry of Corporate Affairs, vide order dated 17.08.2018. It is further submitted that whenever NCLT or NCLAT has passed adverse orders against the Petitioner and/or other Companies related to Mr. R. Subramanian, petitions are filed questioning the very appointment of the Members passing the adverse orders as the Petitioner never has a case on merits. It is also submitted that several Companies in direct or indirect control of Mr. Subramanian have been subjected to investigation by Serious Fraud Investigation Office (SFIO) in connection with fraud or irregularities committed by Mr. Subramanian along with Companies M/s. Viswapriya and M/s. Subhiksha, of whom Mr. Subramanian is a Promoter.

8. We have heard learned counsel for the Petitioner and learned Additional Solicitor General for Respondent No.1. Counter affidavit filed on behalf of Respondent No.1 reveals that a Search-cum-Selection Committee was constituted under the Chairmanship of Hon'ble the Chief Justice of India to make recommendations for appointment against the posts of 04 Technical and 03 Judicial Members in NCLAT, pursuant to an advertisement dated 10.05.2019. The panel was submitted for consideration of the Appointments Committee of Cabinet (ACC) for its approval. Names of 03 Judicial and 03 Technical Members were approved by the ACC on

15.10.2019. The name of Respondent No.2 herein against the remaining one vacancy of Technical Member, NCLAT was approved by the ACC on 20.01.2020. Learned Additional Solicitor General has brought out that Respondent No.2 has the necessary experience and qualification and has been appointed in accordance with law. The Search-cum-Selection Committee has examined the eligibility conditions as well as the merits of the candidates and recommended the panel. There is no allegation of bias or *malafides* against the Selection Committee. It is a settled law that it is the domain of the Selection Committees to make selections and the Courts, while sitting in a judicial review, cannot substitute the decision of the Selection Committees, which are expert bodies unless there are allegations of bias or *malafides* or there is a challenge to the composition of the Committee, which is admittedly not the case here. Petitioner has itself averred in the writ petition that Respondent No.2 has been serving as a Judicial Member of the District and State Consumer Forums and has been a Judicial Member of the NCRDC since 2015. Assessment of qualifications, experience, etc. as eligibility conditions of a candidate is purely the domain of the Executive and the Selection Committees. Petitioner has been unable to make out a case, which would lead to a conclusion that Respondent No.2 did not fulfil the eligibility criteria for selection. It needs no emphasis that the recommendations of the Search-cum-Selection Committee were duly approved by none other than the Appointments Committee of Cabinet and needless to state, there are no allegations of bias or *malafides* against any Member of the ACC. In our view, therefore, no grounds have been made out by the Petitioner to interfere in the selection and appointment of Respondent No.2.

9. As far as the *locus standi* of the Petitioner is concerned, we find merit in the contentions raised by learned Additional Solicitor General. The order passed by Regional Director (Southern Region), Ministry of Corporate Affairs, on 17.08.2018 clearly reveals that the license of the Petitioner Company as a Section 8 Company has been cancelled and the Petitioner is legally debarred from using the name 'India Awake for Transparency', by which name the present petition has been filed. We also find that the Ministry of Corporate Affairs' portal shows the status of the Petitioner Company as 'inactive'. Apparently, investigations by the SFIO are also underway as stated in the said application. For ready reference, relevant paragraphs from the order dated 17.08.2018 passed by Regional Director are as under:-

> *"18. The SFIO team has collected information from Enforcement Directorate, Banks, Income Tax Department, Statutory Auditors, CBI, Commissioner of Services Tax, Regional Provident Fund Commissioner and analyzed the documents during the course of investigation and finalized its report based on available information. Based on the case filed by CBI, Enforcement Directorate has started an enquiry with respect to money laundering by STSL and its Managing Director. ED has filed a provisional attachment order dated 21.03.2016. The detailed investigation report of the SFIO dated (..illegible).03.2017 has been submitted to the Ministry of Corporate Affairs which is a 'Secret' document.*
>
> *19. From the foregoing, it may be noted that there is a clear nexus by the Directors of the Respondent Company with 197 STSL and its Promoter/Director who is Mr. R. Subramanian. Although the name of the Respondent is not a part of investigation conducted by the SFIO, the shareholders of the Respondent have been investigated. Thus, it can be presumed that the Respondent Company and its Director are also a shadow of Mr. S. Subramanian and his entities.*

23. It is to be added here that the Times of India, Chennai in its publication dated 20.07.2018 has published on article under the head "ED probing 49 shell companies floated by Subhiksha founder" has highlighted that the Enforcement Directorate (ED) is investigating 49 shell companies floated by Subhiksha Founder R. Subramanin through which Rs.800 crore is believed to have been laundered. Subramanian, who was arrested and remanded in custody on February 27, is yet to come out with any explanation on how the amount was utilized. So far, the ED has been able to attach properties worth only Rs.4.5 crore which is less 200 than 1% of the money involved in the offence. Based on these details, the Madras High Court, on July 11, denied bail to Subramanian for the second time. The Court also relied on the ED's submission that since Subramanian was a practicing advocate before various Company Law Tribunals, he might interfere with the investigations pertaining to shell companies after which the ED would not be able to trace the whereabouts of the money. During the hearing, a counsel for Vishwapriya Investor Welfare Association represented that retirement benefit of 680 investors to the tune of Rs.150 crore were also stuck with Vishwapriya India Limited, a company floated by Mr. R. Subramanian. The Court observed that "This is a case where not only financial institutions of the country have been affected but innocent and gullible investors have also been affected by financial jugglery".

25. In the light of the above, and in exercise of power granted under Section 8(6) of the Companies Act, 2013, I deem it appropriate to revoke/cancel the license issued to the Respondent Company vide License No.102249 dated 22nd June, 2012 with immediate effect and the Registrar of Companies, Tamil Nadu, Chennai is hereby directed to upload this order into the portal of the Respondent Company and direct the company to convert itself into a Non-Section 8 Company within 30 days as well as obtain change of name from the Registrar of Companies, Tamil Nadu, Chennai to add the words "Private Limited" to its name. It is further directed that in case of default in compliance of the above directions by the company, the Registrar of Companies, Tamil Nadu, Chennai is directed to *effect changes in the master data of the company by adding the words "Private Limited" to its name and to treat the company as a non-section 8 company i.e. a Non-Government Private Limited Company, without prejudice to the liability of the directors of the Respondent Company for penal action in terms of Section 8(11) of the Companies Act, 2013."*

10. We, thus, find that the Petitioner not only lacks the locus to file the present petition, but has also deliberately concealed and suppressed the aforementioned crucial facts, which have been brought to our knowledge by Respondent No.1 and the intervener.

11. For all the aforesaid reasons, this writ petition along with all the pending applications is accordingly dismissed, with costs of Rs.25,000/- to be deposited by the Petitioner with the Delhi State Legal Services Authority within four weeks from today. The aforesaid amount shall be utilised for the programme 'Access to Justice'.

12. A copy of this order be sent forthwith to the Member Secretary, Delhi State Legal Services Authority, Patiala House Courts, New Delhi.

CHIEF JUSTICE

JYOTI SINGH, J

NOVEMBER 09, 2021/N/rk