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G. R. Ravichandran for the respondent in M. A. No. 375 of 2018.

Aashish Jain Lunia for the respondent in M. A. No. 376 of 2018.

ORDER

The order of the Bench was delivered by

B. S. V. Prakash Kumar ***(Judicial Member)***.—These are separate and independent miscellaneous applications, the applicant filed against several respondents who stood as personal guarantors to the loan the corporate debtor availed from this applicant (financial creditor-M/s. L & T Infrastructure Finance Co. Ltd.). 1

The applicant filed all of them under section 60(2) and (5) of the Insolvency and Bankruptcy Code, 2016 (in short "the Code") on one cause of action seeking common relief for initiation of the corporate insolvency resolution process against these personal guarantors in this company petition, which this Bench admitted on March 7, 2018 and initiated the corporate insolvency resolution process (CIRP) by appointing an interim resolution professional and the CIRP is now in progress. 2

The ground for filing these applications is that since the respondents stood as personal guarantors to the loan the corporate debtor availed from this financial creditor and having the debtor defaulted in repaying the loan despite being notified to repay it, then this financial creditor, notifying the fact of the debtor failing to discharge its obligation, demanded these respondents/personal guarantors to discharge the liability of the corporate debtor/principal borrower as they are bound to clear the obligation as per the guarantee agreements these respondents executed against rupee term loan the debtor availed from the financial creditor. When these respondents also failed to discharge the obligation despite the creditor notifying the fact of the debtor failing to repay the dues outstanding against the loan availed by the corporate debtor, this applicant moved these applications for the relief as stated above. 3

In the backdrop of this factual scenario, there being no difference of opinion between the parties regarding facts of the application, all applications being moved by the applicant in the company petition, this Bench having noticed the only point left to be decided in all these applications regarding maintainability, for the sake of brevity, this Bench is passing this common order covering all the applications moved by the applicant. 4

Facts in brief : The corporate debtor, namely, M/s. Surana Power Ltd. (principal borrower) availed loan facility of Rs. 1,800 crores from the consortium of lenders including the applicant by entering into an agreement dated September 24, 2010 to get that loan, since this corporate debtor/ 5

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principal borrower was required to procure an irrevocable and unconditional personal guarantee in favour of the security trustee guaranteeing the obligations, these respondents stood as personal guarantors by executing a deed of guarantee on September 24, 2010 on the corporate debtor behalf stating that they would unconditionally and irrevocably pay to the security trustee without demur or protest in the event the principal borrower failed to repay the loan as mentioned in the common rupee term loan agreement. Thereafter, the principal borrower from time to time entered into facility agreement and other agreements with the applicant for sanction of other loans agreements. When the corporate debtor failed to repay the loan, the applicant recalled the facility granted to the debtor vide recall notice dated August 7, 2015 consequently, the applicant also invoked the guarantee given by these respondents severally and independently calling upon them to pay total sum of Rs. 94,03,96,178 as on March 31, 2016. When payment was not made by these guarantors as well, this applicant has filed O. A. No. 122 of 2017 before the hon'ble Debts Recovery Tribunal-II, inter alia, seeking for issuance of a recovery certificate for a sum of Rs. 104,98,36,124 against the principal borrower as well as the guarantors, as of date, the same is pending.

6 In the meanwhile, when a company called M/s. Gimpex P. Ltd., filed this company petition against the principal borrower under section 7 of the Code, this Bench admitted the CP against the principal borrower (hereafter called as "corporate debtor") by appointing an IRP on March 7, 2018. Since this applicant is supposed to file its claim before the IRP, it has filed its claim form stating that the corporate debtors and the guarantors thereto are liable to pay Rs. 127,13,53,657 to this applicant, the same has been accepted by the IRP and there is no objection over the said claim till date.

7 Now this applicant has filed separate and independent miscellaneous applications against each of these respondents/guarantors under section 60(2)(5) of the Code stating that since the liability against the corporate debtor and these individual guarantors being co-extensive, this applicant has derived right to initiate corporate insolvency resolution process against each of these guarantors as evinced under section 60(2) of the Code, accordingly, it has filed these applications under section 60(5) of the Code seeking relief as mentioned in these applications.

8 In support of these applications, the applicant counsel has set up an argument that since section 60(2) of the Code has been notified on December 1, 2016 conferring power upon the National Company Law Tribunal to proceed against personal guarantors as well, this Bench shall invoke the jurisdiction under that sub-section to initiate CIRP against these guarantors

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for this Bench has already initiated the CIR process against the corporate debtor.

To pep up this argument, the applicant counsel relied upon paragraph 21 of the judgment of the hon'ble Supreme Court in between *State Bank of India* v. *V. Ramakrishnan* [2018] 210 Comp Cas 364 (SC), dated August 14, 2018 to say that the moment CIRP pending against the corporate debtor/ principal borrower before the National Company Law Tribunal, proceedings against personal guarantors shall lie before the respective National Company Law Tribunal only, not anywhere else. 9

As against this stand of the applicant counsel, the guarantors counsel refuted it as not maintainable because the jurisdiction conferred upon the National Company Law Tribunal under section 60(2) of the Code to initiate insolvency/bankruptcy proceedings against the guarantors alongside the CIRP pending against the corporate debtor/principal borrower is not exercisable for the reason that till now Part III of the Code to initiate insolvency/bankruptcy proceeding against individuals/partnership firms has not been notified. 10

As to the judgment supra, counsel has categorically stated that the judgment has nowhere held that the National Company Law Tribunal could exercise jurisdiction to initiate Part III proceedings against personal guarantors despite Part III of the Code has not been notified, and he says, the honourable Supreme Court laid bare only as to how various provisions of the Code would play when they come into force, nothing more nothing less, besides this, he says, the ratio the Supreme Court held is that moratorium under section 14 will not cover actions against guarantors, not on the point the applicant raised in this case. The honourable Supreme Court, he says, has only held that section 2(e) and section 60(2), (3) and (4) have come into existence for initiation of proceedings against personal guarantors as prescribed under Part III of the Code, not for suspending actions against the guarantors under the cover of moratorium. 11

In view of the submissions of either side, now the point for consideration is, though subject-matter/inherent jurisdiction regarding insolvency/ bankruptcy proceedings against individuals and partnership firms falling under Part III of the Code has not yet come into force and not yet conferred upon the Debts Recovery Tribunal, could it be said that this Bench (National Company Law Tribunal), looking at the territorial and the derivative/contingent jurisdiction vested with the National Company Law Tribunal under section 60(4) of the Code to initiate insolvency/bankruptcy proceedings against personal guarantors (individuals), arrogates subject-matter jurisdiction having regard to proceedings against individuals (in this 12

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case personal guarantors) supposed to be conferred upon the Debts Recovery Tribunal and then to be vested in the National Company Law Tribunal on the footing that the CIRP against the corporate debtor/principal borrower pending before this National Company Law Tribunal ?

13 To know as to whether National Company Law Tribunal presently has jurisdiction to deal with proceedings against the personal guarantor or not, it is crucial to know what provisions of this Code are in force as on date and whether, with the help of those provisions, this Bench can entertain these applications against the personal guarantors.

14 If we go by the order, it is true that territorial as well as derivative jurisdiction to deal with personal guarantors proceedings has come to the National Company Law Tribunal on December 1, 2016 itself. As to Part III (sections 78-187) of the Code, the subject-matter jurisdiction that has to be percolated to the National Company Law Tribunal (section 60(4)) in respect to personal guarantors to the loans availed of by the corporate debtor is not being notified, unless Part III of the Code is notified, how can it be taken for granted that despite sub-section (4) of section 60 was notified, this Bench could straightaway invoke provisions of Part III ? In fact under sub-section (4) of section 60 of the Code, unless powers are conferred upon the Debts Recovery Tribunal under Part III, the National Company Law Tribunal vesting with such powers of the Debts Recovery Tribunal would not arise. Sub-section (4) is indeed carved out in such a way that whenever proceedings against personal guarantors to be invoked under sub-section (2), the National Company Law Tribunal will take the avatar (incarnation) as the Debts Recovery Tribunal by virtue of sub-section (4) of section 60 of the Code.

15 So to get that jurisdiction to the National Company Law Tribunal, that avatar to the Debts Recovery Tribunal shall be in existence. Today the Debts Recovery Tribunal is in existence as before, but the Debts Recovery Tribunal in the avatar of the Adjudicating Authority as defined in section 79(1) of Part III of the Code is not in existence.

16 For this reason only, the jurisdiction to deal with proceedings against the personal guarantors has been coined as derivative jurisdiction, because the powers to deal with personal guarantors is to be percolated to the National Company Law Tribunal from that of the Debts Recovery Tribunal powers, which yet to come to it.

17 Let us contemplate a converse situation, if no CIRP is initiated against the principal borrower, in such situation, can the National Company Law Tribunal as the Adjudicating Authority will have jurisdiction to proceed independently against personal guarantor in the absence of CIRP against

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the principal borrower, certainly not because the personal guarantor being an individual, proceedings lie against him before the Debts Recovery Tribunal as the Adjudicating Authority. This jurisdiction to proceed against the personal guarantors before the National Company Law Tribunal is contingent upon the CIRP proceeding pending before the National Company Law Tribunal. So, this jurisdiction conferred upon the National Company Law Tribunal under section 60(4) of the Code is not only derivative but also contingent in nature. Therefore any proceeding against the personal guarantor in furtherance of the CIRP pending against principal borrower before the National Company Law Tribunal will be void ab initio so long as the jurisdiction in-built in Part III is not conferred upon the Debts Recovery Tribunal. It is syllogistic because this contingent jurisdiction will travel to the National Company Law Tribunal only upon happening of two events, one, when Part III has been notified and two when the CIRP/ liquidation proceeding pending against the principal borrower/corporate debtor before the National Company Law Tribunal. It makes no matter as to whether or not section 60(2), (3) and (4) have been notified. As of now since operation of law in respect insolvency/bankruptcy proceeding against individuals and partnership firms has not come into force, and the Debts Recovery Tribunal has not yet been conferred as the Adjudicating Authority to deal with Part III of the Code, the National Company Law Tribunal cannot act as the Debts Recovery Tribunal regarding proceedings against the personal guarantors disregarding the jurisdiction conferred upon the National Company Law Tribunal under section 60(2) and (3) and (4).

18 This applicant moved these applications under section 60(5) of the Code, like any other miscellaneous applications in the CP already admitted, instead of filing original application as prescribed under section 95 of the Code. The creditor could not have filed MAs under section 60(5) of the Code as a step enabling the progress of main petition. Had jurisdiction arrived under Part III of the Code, an occasion would have arisen to the applicant to file such independent applications. On the top of it, the applicant could not have sought for relief of initiation of the CIRP against a personal guarantor, who is an individual amenable to a separate set of process set out under Part III, of course since that separate power has not come into force, this creditor cannot initiate that insolvency resolution process meant for individuals. It is not that this creditor is remediless ; other remedies are available under other dispensations to initiate insolvency proceedings against the personal guarantors.

19 Another anomaly in these applications is, the applicant has sought for initiation of the CIR process against the personal guarantors (individuals),

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which is not permissible under law because CIR process is meant for proceedings in respect to the corporate persons, as to individuals the only recourse is to invoke proceeding under Part III of the Code which has not yet come into force.

20 As the judgment supra is concerned, the point decided by the hon'ble Supreme Court is as to whether moratorium under section 14 on admission of insolvency proceedings would apply to personal guarantor/corporate debtor. While deciding the said point, the hon'ble Supreme Court has scouted various provisions of the Code, notifications of various provisions and their applicability to find out as to whether moratorium is applicable to personal guarantors or not. While discussing various aspects of this Code, it has also been held that merely by notification of section 2(e) of the Code—application of the provisions of the Code to personal guarantors to the corporate debtors and section 60(2) cannot be construed as moratorium under section 14 is extendable against the proceedings initiated against personal guarantors pending before other forums.

21 The facts of the judgment supra are that on section 10 petition filed by the corporate debtor for initiation of the corporate insolvency resolution process against itself, when the National Company Law Tribunal declared moratorium by admitting the petition, the promoter of the corporate debtor (R2 in the case supra) filed an interim application before the National Company Law Tribunal saying that since 14 of the Code would apply to the personal guarantor (R2 supra) as well, he sought stay of the SARFAESI proceedings already initiated against the corporate debtor. On such application, National Company Law Tribunal passed an order stating that if a resolution plan is approved under section 31 of the Code, it would be binding on the personal guarantor as well, section 14 would apply in favour of the personal guarantor as well, on which when an appeal was filed before the hon'ble the National Company Law Appellate Tribunal, it held that moratorium would apply to the personal guarantor on the reasoning that since the personal guarantor can also be proceeded against, and forms part of the resolution plan which is binding on him, therefore the personal guarantor is very much part of the CIRP against the corporate debtor. In this background, when the financial creditor appealed before the hon'ble Supreme Court, it has set aside that impugned judgment of the Tribunal holding that the moratorium granted under section 14 against the corporate debtor is not extendable in respect to actions against the personal guarantors.

22 To say what mandate the honourable Supreme Court given, it is essential to read not only paragraph 21 cited by the applicant counsel, but also

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paragraphs 18, 19, 20 and 21 of the judgment supra which are as below (page 379 of 210 Comp Cas) :

> "However, sections 2(e) and 60 are strongly relied upon by learned counsel for the respondents as, according to them, the Code will apply to personal guarantors of corporate debtors, and by section 60 proceedings against such personal guarantors will show that such moratorium extends to the guarantor as well.
>
> We are afraid that such arguments have to be turned down on a careful reading of the sections relied upon. Section 60 of the Code, in sub-section (1) thereof, refers to insolvency resolution and liquidation for both corporate debtors and personal guarantors, the Adjudicating Authority for which shall be the National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located. This sub-section is only important in that it locates the Tribunal which has territorial jurisdiction in insolvency resolution processes against corporate debtors. So far as personal guarantors are concerned, we have seen that Part III has not been brought into force, and neither has section 243, which repeals the Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. The net result of this is that so far as individual personal guarantors are concerned they will continue to be proceeded against under the aforesaid two Insolvency Acts and not under the Code. Indeed, by a Press Release dated August 28, 2017 the Government of India, through the Ministry of Finance, cautioned that section 243 of the Code, which provides for the repeal of said enactments, has not been notified till date, and further, that the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part III of the Code are yet to be notified. Hence, it was advised that stakeholders who intend to pursue their insolvency cases may approach the appropriate authority/court under the existing enactments, instead of approaching the Debts Recovery Tribunal.
>
> It is for this reason that sub-section (2) of section 60 speaks of an application relating to the "bankruptcy" of a personal guarantor of a corporate debtor and states that any such bankruptcy proceedings shall be filed only before the National Company Law Tribunal. The argument of learned counsel on behalf of the respondents that 'bankruptcy' would include SARFAESI proceedings must be turned down as 'bankruptcy' has reference only to the two Insolvency Acts referred to above. Thus, SARFAESI proceedings against the guarantor can

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continue under the SARFAESI Act. Similarly, sub-section (3) speaks of a bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or Tribunal which shall stand transferred to the Adjudicating Authority dealing with the insolvency resolution process or liquidation proceedings of such corporate debtor. An 'Adjudicating Authority', defined under section 5(1) of the Code, means the National Company Law Tribunal constituted under the Companies Act, 2013.

The scheme of section 60(2) and (3) is thus clear—the moment there is a proceeding against the corporate debtor pending under the 2016 Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the corporate debtor, be transferred to the National Company Law Tribunal or, if initiated after such proceedings had been commenced against the corporate debtor, be filed only in the National Company Law Tribunal. However, the Tribunal is to decide such proceedings only in accordance with the Presidency-Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be. It is clear that sub-section (4), which states that the Tribunal shall be vested with all the powers of the Debts Recovery Tribunal, as contemplated under Part III of this Code, for the purposes of sub-section (2), would not take effect, as the Debts Recovery Tribunal has not yet been empowered to hear bankruptcy proceedings against individuals under section 179 of the Code, as the said section has not yet been brought into force. Also, we have seen that section 249, dealing with the consequential amendment of the Recovery of Debts Act to empower Debts Recovery Tribunal to try such proceedings, has also not been brought into force. It is thus clear that section 2(e), which was brought into force on November 23, 2017 would, when it refers to the application of the Code to a personal guarantor of a corporate debtor, apply only for the limited purpose contained in section 60(2) and (3), as stated hereinabove. This is what is meant by strengthening the corporate insolvency resolution process in the Statement of Objects of the Amendment Act, 2018."

23 On reading paragraph 18, it is ascertainable that the argument of the appellant-bank is prohibition under moratorium will not cover actions against the personal guarantors, whereas the respondent counsel argument is by virtue of notifying section 2(e) and section 60 of the Code, actions against the personal guarantors of the corporate debtor are covered under section 14 of the Code therefore the creditors shall not proceed against the

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personal guarantors of the corporate debtor, once CIRP is initiated against the principal borrower/corporate debtor.

When it comes to paragraph 20, in opening line itself, the hon'ble apex court says, "we are afraid that such arguments have to be turned down on careful reading of the sections relied upon". **24**

In paragraph 19 of the judgment, it has been sounded that sub-section (1) of section 60 deals with territorial jurisdiction in respect to actions against the corporate debtors, as to personal guarantors are concerned, it has been held that Part III has not been brought into force and the section repealing (section 243) the Presidency Towns Insolvency Act and the Provincial Insolvency Act have not yet been brought into force, the net result is as to individual personal are concerned, they continue to be proceeded against the guarantors under the aforesaid two Insolvency Acts and not under the Code. It has also referred that the Government has given a clarification August 28, 2017 clarifying that section 243 of the Code repealing the aforesaid two Insolvency Acts have not been notified till date. That apart, since Part III itself is not notified till date, the hon'ble Supreme Court reiterated that the Government of India has advised that the stakeholders intending to pursue their insolvency cases against the personal guarantors may approach appropriate authority/court under the existing enactments, instead of approaching the Debts Recovery Tribunal. **25**

In paragraph 20, the hon'ble apex court only speaks of bankruptcy proceedings that are different from the SARFAESI proceedings, and sub-section (3) of section 60 has been meant for transfer of the proceedings pending against the guarantors of the corporate debtor to the Adjudicating Authority dealing with the CIR process of the principal borrower/corporate debtor. In this paragraph, it has not been held anywhere that since sub-section (3) speaks about transfer of proceedings pending against the guarantor, such proceedings shall be transferred to the Adjudicating Authority dealing with CIRP of the corporate debtor. That is the relief precisely asked by the respondent in the MA filed before the hon'ble National Company Law Tribunal, but the hon'ble Supreme Court reversed the order of National Company Law Tribunal staying the independent proceedings against guarantor pending under the SARFAESI. Therefore, the only inference that could be drawn from paragraph 20 is that though section 60(3) has been notified on December 1, 2016 the hon'ble Supreme Court virtually turned down the plea of transfer from the Debts Recovery Tribunal to the Adjudicating Authority on the ground Part III of the Code has not been notified. **26**

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27 When it has been categorically clarified that such transfer is not possible, how could it be possible to assume that the hon'ble Supreme Court held that since section 60 has been notified, the proceedings against the guarantor as stated under sub-section (2) shall be initiated before the Adjudicating Authority dealing with CIR process of the corporate debtor.

28 Let us come to paragraph 21 relied upon by the applicant counsel to say that the applicant is entitled to initiate the CIR process against the guarantors of the corporate debtor. In this paragraph, the hon'ble Supreme Court has explained as to how section 60(2) functions, how section 60(3) functions and how section 60(4) functions. The applicant counsel has heavily relied upon a sentence amidst this paragraph, i.e., "However, the Tribunal is to decide such proceedings only in accordance with Presidency Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920 as the case may be". In the following lines to the line aforesaid, again held that the Debts Recovery Tribunal has not been empowered to hear the proceedings against individuals under section 179 of the Code as the said section has not yet been brought into force. Likewise, it has also been said that an amendment to the Recovery of Debt Act under section 249 of the Code has also not been brought into force. After explaining all these, the honourable Supreme Court clarified that insertion of section 2(e) of the Code was brought into force on November 23, 2017 for the limited purpose contained in section 60(2) and section 60(3) as stated above. The only point this judgment decided is, whether the action against the guarantor of the corporate debtor is covered under the prohibition provided under section 14 of the Code or not. It has nowhere held that the creditor can initiate the CIR process against the guarantors on the ground that CIR process pending against the corporate debtor.

29 As to insolvency proceeding either under the Presidency Towns Insolvency Act or under the Provincial Insolvency Act, the jurisdiction is conferred upon a civil court and the same is still in force, in case this Bench initiates insolvency proceedings under any of the Insolvency Acts aforementioned, it will become nothing but usurpation into the jurisdiction of some other forum.

30 Whenever any judgment is read and the ratio is culled out from the judgment, every sentence of the judgment has to be read in the context of the remaining portion of the judgment, reader shall not fork out a sentence, and spin another story disregarding the ratio decided and the context of that sentence, which is not the spirit of understanding the ratio of a judgment. Moreover as to jurisdiction is concerned, no court will confer jurisdiction upon somebody to whom the Legislature has not given such

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jurisdiction, moreover judges declare law, they do not make law. Therefore if the sentence referred by the applicant counsel from the judgment of the honourable Supreme Court is read along with the remaining portion of the judgment, it would be clear to understand that the honourable Supreme Court has not held that the parties can initiate insolvency proceedings against personal guarantors before the National Company Law Tribunal under either Presidency Towns Insolvency Act or Provincial Insolvency Act. As I said earlier, in the judgment supra, the hon'ble Supreme Court has only held that actions against the personal guarantors are not covered by moratorium granted under section 14 of the Code.

In view of the reasons, we have not found any merit in the applications, henceforth these applications are dismissed as misconceived with liberty to proceed in accordance with law.

[2020] 220 Comp Cas 379 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — CHENNAI BENCH]

STATE BANK OF INDIA

v.

1. VIJARAJ SURANA

(C. P. No. 713/IB/CB/2018)

2. DINESH CHAND SURANA

(C. P. No. 936/IB/CB/2018)

3. GOWTHAMRAJ SURANA

(C. P. No. 1031/IB/CB/2018)

4. SHANTILAL SURANA

(C. P. No. 1032/IB/CB/2018)

B. S. V. PRAKASH KUMAR *(Judicial Member)* and
S. VIJAYARAGHAVAN *(Technical Member)*

October 30, 2018.

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITORS—PETITIONS AGAINST GUARANTORS WHO GAVE PERSONAL GUARANTEE FOR CORPORATE DEBTOR—PROVISION PERTAINING TO GUARANTORS NOT YET NOTIFIED—NOT WITHIN JURISDICTION OF ADJUDICATING AUTHORITY TO ENTERTAIN PETITION—INSOLVENCY AND BANKRUPTCY CODE, 2016, s. 60(2).

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The financial creditor filed petitions under section 60(2) of the Insolvency and Bankruptcy Code, 2016 against the personal guarantors who had provided guarantee for the loan availed of by the corporate debtor from it. It contended that the insolvency resolution process against the individual personal guarantors could be initiated before the National Company Law Tribunal as the corporate insolvency resolution proceeding was pending against the principal borrower :

Held, *dismissing the petitions, that the National Company Law Tribunal did not yet have the jurisdiction to deal with these cases because the provisions confirming jurisdiction to try cases against the guarantors had not yet been notified by the Government*[1].

L AND T INFRASTRUCTURE FINANCE CO. LTD. *v.* DINESHCHAND SURANA [2020] 220 Comp Cas 366 (NCLT) *followed*.

L AND T INFRASTRUCTURE FINANCE CO. LTD. *v.* DINESHCHAND SURANA [2020] 220 Comp Cas 366 (NCLT) (para 2) *and* STATE BANK OF INDIA *v.* RAMAKRISHNAN (V.) [2018] 210 Comp Cas 364 (SC) (para 4) *referred to*.

C. P. Nos. 713, 936, 1031 and 1032/IB/CB/2018.

Ms. G. Anitha, *Ms. V. Gokulam* for *M/s. India Law LLP*, for the petitioner/financial creditor.

G. R. Ravichandran and *S. Raghupathi*, for the respondent in C. P. No. 713 of 2018.

Aashish Jain Lunia, for the respondent in C. P. No. 1032 of 2018.

ORDER

The order of the Bench was delivered by

1 B. S. V. PRAKASH KUMAR ***(Judicial Member)***.—These are separate and independent company petitions, the petitioner namely State Bank of India filed under section 60(2) of the Insolvency and Bankruptcy Code, 2016 (in short "the Code") against each of the personal guarantors namely Mr. Vijaraj Surana (C. P. No. 713 of 2018), Mr. Dinesh Chand Surana (C. P. No. 936 of 2018), Mr. Gowthamraj Surana (C. P. No. 1031 of 2018) and Mr. Shantilal Surana (C. P. No. 1032 of 2018), who provided guarantee for the loan availed by the corporate debtor/principal borrower from the petitioner, for initiation of insolvency resolution process against these personal guarantors/individuals under the assumption that section 60(2) is application section for creditors to proceed against the personal guarantors before

1. Since notified by Notification No. 4126(E), dated November 15, 2016, with effect from 1-12-2019 : See [2019] 8 Comp Cas-OL (St.) 99—Ed.

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this National Company Law Tribunal where CIRP pending against the corporate debtor/principal borrower.

Though none of the facts of the case are denied by any of the respondents, for the sake of completeness, I must introduce this case saying that the corporate debtor-company, namely M/s. Surana Power Ltd., owned by these respondents availed of loan from the petitioner-bank by themselves standing as guarantors for the loan availed of by the company stating that they would discharge the liability owed by their company, in the event the company failed to repay the loan, like in any other case, here also the company defaulted repaying loan to the bank, in the meanwhile, when section 9 proceeding was initiated against the company, this Bench appointed IRP by admitting C. P. No. 646 of 2017—(*L and T Infrastructure Finance Co. Ltd.* v. *Dineshchand Surana* [2020] 220 Comp Cas 366 (NCLT)) (filed under section 9 of the Code), that is how CIRP is in progress against the company owned by these respondents. In this background, since the petitioner-bank is entitled to realise its money from the guarantors as well, the petitioner has taken out these separate insolvency proceedings against each of the respondents under section 60(2) of the Code on the footing that creditors can initiate the insolvency proceedings against the guarantors before this National Company Law Tribunal Bench because the CIRP against the company on behalf of which these individuals stood as guarantors is pending before this Bench. **2**

The answer of the respondents against the petitioner's case is, National Company Law Tribunal is bereft of jurisdiction to deal with these cases because jurisdiction to try the cases against guarantors has not yet been notified by the Government till now. **3**

As to this point, this Bench has already decided that National Company Law Tribunal is bereft of jurisdiction as stated by the respondents in miscellaneous applications, M/s. L and T Infrastructure Finance Co. Ltd., another financial creditor, filed against more or less against the same respondents for they remained guarantors even to the loan availed by the same corporate debtor from M/s. L and T Infrastructure Finance Co. Ltd., under same section of law. So, since this point has already decided holding that the National Company Law Tribunal, as of now, is bereft of jurisdiction to try the cases against the guarantors, to avoid repetition of discussion, we have lifted the entire discussion to this case to say that this Bench is bereft of jurisdiction to decide these cases. The only difference is, in L and T cases, it moved miscellaneous applications in the company petition filed against the corporate debtor, here the SBI moved separate and independent company petitions. Nevertheless this point of filing independent petitions will not **4**

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make any difference to the legal point of want of jurisdiction to deal with these cases ; therefore we place that discussion to apply it in toto to these cases to say that these cases shall also be dismissed in limine on the same point. The discussion is as follows (page 370 of 220 Comp Cas) :

"In support of these applications, the applicant counsel has set up an argument that since section 60(2) of the Code has been notified on December 1, 2016 conferring power upon the National Company Law Tribunal to proceed against personal guarantors as well, this Bench shall invoke the jurisdiction under that sub-section to initiate CIRP against these guarantors for this Bench has already initiated CIR process against the corporate debtor.

To pep up this argument, the applicant counsel relied upon paragraph 21 of the judgment of the hon'ble Supreme Court in between *State Bank of India* v. *V. Ramakrishnan* [2018] 210 Comp Cas 364 (SC), dated August 14, 2018 to say that the moment CIRP pending against the corporate debtor/principal borrower before the National Company Law Tribunal, proceedings against personal guarantors shall lie before the respective National Company Law Tribunal only, not anywhere else.

As against this stand of the applicant counsel, the guarantors counsel refuted it as not maintainable because the jurisdiction conferred upon the National Company Law Tribunal under section 60(2) of the Code to initiate insolvency/bankruptcy proceedings against the guarantors alongside the CIRP pending against the corporate debtor/principal borrower is not exercisable for the reason that till now Part III of the Code to initiate insolvency/bankruptcy proceeding against individuals/partnership firms has not been notified.

As to the judgment supra, the counsel has categorically stated that the judgment has nowhere held that National Company Law Tribunal could exercise jurisdiction to initiate Part III proceedings against personal guarantors despite Part III of the Code has not been notified, and he says, the honourable Supreme Court laid bare only as to how various provisions of the Code play when they come into force, nothing more nothing less, besides this, he says, the ratio the Supreme Court held is that moratorium under section 14 will not cover actions against guarantors, not on the point the applicant raised in this case. The honourable Supreme Court, he says, has only held that section 2(e) and section 60(2), (3) and (4) have come into existence for initiation of proceedings against personal guarantors as prescribed under Part III of the Code, not for suspending actions against the guarantors under the cover of moratorium.

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In view of the submissions of either side, now the point for consideration is, though subject-matter/inherent jurisdiction regarding insolvency/bankruptcy proceedings against individuals and partnership firms falling under Part III of the Code has not yet come into force and not yet conferred upon the Debts Recovery Tribunal, could it be said that this Bench (NCLT), looking at the territorial and the derivative/contingent jurisdiction vested with the National Company Law Tribunal under section 60(4) of the Code to initiate insolvency/bankruptcy proceedings against personal guarantors (individuals), arrogates subject-matter jurisdiction having regard to proceedings against individuals (in this case personal guarantors) supposed to be conferred upon the Debts Recovery Tribunal and then to be vested in the National Company Law Tribunal on the footing that CIRP against the corporate debtor/principal borrower pending before this National Company Law Tribunal ?

To know as to whether the National Company Law Tribunal presently has jurisdiction to deal with proceedings against personal guarantor or not, it is crucial to know what provisions of this Code are in force as on date and whether, with the help of those provisions, this Bench can entertain these applications against the personal guarantors.

If we go by order, it is true that territorial as well as derivative jurisdiction to deal with personal guarantors proceedings has come to the National Company Law Tribunal on December 1, 2016 itself. As to Part III (sections 78-187) of the Code, the subject matter jurisdiction that has to be percolated to National Company Law Tribunal (section 60(4)) in respect to personal guarantors to the loans availed by the corporate debtor is not being notified, unless Part III of the Code is notified, how can it be taken for granted that despite sub-section (4) of section 60 was notified, this Bench could straight away invoke provisions of Part III ? In fact under sub-section (4) of section 60 of the Code, unless powers are conferred upon the Debts Recovery Tribunal under Part III, the National Company Law Tribunal vesting with such powers of the Debts Recovery Tribunal would not arise. Sub-section (4) is indeed carved out in such a way that whenever proceedings against personal guarantors to be invoked under sub-section (2), the National Company Law Tribunal will take the avatar (incarnation) as the Debts Recovery Tribunal by virtue of sub-section (4) of section 60 of the Code.

So to get that jurisdiction to the National Company Law Tribunal, that avatar to the Debts Recovery Tribunal shall be in existence.

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Today the Debts Recovery Tribunal is in existence as before, but the Debts Recovery Tribunal in the avatar of Adjudicating Authority as defined in section 79(1) of Part III of the Code is not in existence.

For this reason only, the jurisdiction to deal with proceedings against the personal guarantors has been coined as derivative jurisdiction, because the powers to deal with personal guarantors is to be percolated to the National Company Law Tribunal from that of the Debts Recovery Tribunal powers, which yet to come to it.

Let us contemplate a converse situation, if no CIRP is initiated against the principal borrower, in such situation, can the National Company Law Tribunal as the Adjudicating Authority have jurisdiction to proceed independently against the personal guarantor in the absence of CIRP against the principal borrower, certainly not because the personal guarantor being an individual, proceedings lie against him before the Debts Recovery Tribunal as the Adjudicating Authority. This jurisdiction to proceed against the personal guarantors before the National Company Law Tribunal is contingent upon the CIRP proceeding pending before the National Company Law Tribunal. So, this jurisdiction conferred upon the National Company Law Tribunal under section 60(4) of the Code is not only derivative but also contingent in nature. Therefore any proceeding against the personal guarantor in furtherance of the CIRP pending against the principal borrower before the National Company Law Tribunal will be void ab initio so long as the jurisdiction in built in Part III is not conferred upon Debts Recovery Tribunal. It is syllogistic because this contingent jurisdiction will travel to the National Company Law Tribunal only upon happening of two events, one, when Part III has been notified and two when CIRP/liquidation proceeding pending against the principal borrower/corporate debtor before the National Company Law Tribunal. It makes no matter as to whether or not section 60(2), (3) and (4) have been notified. As of now since operation of law in respect insolvency/bankruptcy proceeding against individuals and partnership firms has not come into force, and the Debts Recovery Tribunal has not yet been conferred as adjudicating authority to deal with Part III of the Code, the National Company Law Tribunal cannot act as the Debts Recovery Tribunal regarding proceedings against the personal guarantors disregarding the jurisdiction conferred upon the National Company Law Tribunal under section 60(2), (3) and (4).

This applicant moved these applications under section 60(5) of the Code, like any other miscellaneous applications in the CP already

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admitted, instead of filing original application as prescribed under section 95 of the Code. The creditor could not have filed MAs under section 60(5) of the Code as a step enabling the progress of main petition. Had jurisdiction arrived under Part III of the Code, an occasion would have arisen to the applicant to file such independent applications. On the top of it, the applicant could not have sought for relief of initiation of CIRP against a personal guarantor, who is an individual amenable to a separate set of process set out under Part III, of course since that separate power has not come into force, this creditor cannot initiate that insolvency resolution process meant for individuals. It is not that this creditor is remediless ; other remedies are available under other dispensations to initiate insolvency proceedings against the personal guarantors.

Another anomaly in these applications is, the applicant has sought for initiation of CIR process against the personal guarantors (individuals), which is not permissible under law because CIR process is meant for proceedings in respect to corporate persons, as to individuals the only recourse is to invoke proceeding under Part III of the Code which has not yet come into force.

As the judgment supra is concerned, the point decided by the hon'ble Supreme Court is as to whether moratorium under section 14 on admission of the insolvency proceedings would apply to the personal guarantor/corporate debtor. While deciding the said point, the hon'ble Supreme Court has scouted various provisions of the Code, notifications of various provisions and their applicability to find out as to whether moratorium is applicable to personal guarantors or not. While discussing various aspects of this Code, it has also been held that merely by notification of section 2(e) of the Code application of the provisions of the Code to the personal guarantors to corporate debtors and section 60(2) cannot be construed as moratorium under section 14 is extendable against the proceedings initiated against personal guarantors pending before other forums.

The facts of the judgment supra are that on section 10 petition filed by the corporate debtor for initiation of the corporate insolvency resolution process against itself, when the National Company Law Tribunal declared a moratorium by admitting the petition, the promoter of the corporate debtor (respondent No. 2 in the case supra) filed an interim application before the National Company Law Tribunal saying that since 14 of the Code would apply to the personal guarantor (respondent No. 2 supra) as well, he sought stay of the SARFAESI proceedings

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already initiated against the corporate debtor. On such application, the National Company Law Tribunal passed an order stating that if a resolution plan is approved under section 31 of the Code, it would be binding on the personal guarantor as well, section 14 would apply in favour of the personal guarantor as well, on which when an appeal was filed before the hon'ble National Company Law Appellate Tribunal, it held that moratorium would apply to the personal guarantor on the reasoning that since the personal guarantor can also be proceeded against, and forms part of the resolution plan which is binding on him, therefore the personal guarantor is very much part of the CIRP against the corporate debtor. In this background, when the financial creditor appealed before the hon'ble Supreme Court, it has set aside that impugned judgment of the Tribunal holding that moratorium granted under section 14 against the corporate debtor is not extendable in respect to actions against the personal guarantors.

To say what mandate the honourable Supreme Court given, it is essential to read not only paragraph 21 cited by the applicant counsel, but also paragraphs 18, 19, 20 and 21 of the judgment supra which are as below (page 379 of 210 Comp Cas) :

'However, sections 2(e) and 60 are strongly relied upon by learned counsel for the respondents as, according to them, the Code will apply to personal guarantors of corporate debtors, and by section 60, proceedings against such personal guarantors will show that such moratorium extends to the guarantor as well.

We are afraid that such arguments have to be turned down on a careful reading of the sections relied upon. Section 60 of the Code, in sub-section (1) thereof, refers to insolvency resolution and liquidation for both corporate debtors and personal guarantors, the Adjudicating Authority for which shall be the National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate person is located. This sub-section is only important in that it locates the Tribunal which has territorial jurisdiction in insolvency resolution processes against corporate debtors. So far as personal guarantors are concerned, we have seen that Part III has not been brought into force, and neither has section 243, which repeals the Presidency-Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. The net result of this is that so far as individual personal guarantors are concerned, they will continue to be proceeded against under the aforesaid two Insolvency Acts and not under the Code. Indeed, by a Press Release dated August 28, 2017,

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the Government of India, through the Ministry of Finance, cautioned that section 243 of the Code, which provides for the repeal of said enactments, has not been notified till date, and further, that the provisions relating to insolvency resolution and bankruptcy for individuals and partnerships as contained in Part III of the Code are yet to be notified. Hence, it was advised that stakeholders who intend to pursue their insolvency cases may approach the appropriate authority/court under the existing enactments, instead of approaching the Debts Recovery Tribunal.

It is for this reason that sub-section (2) of section 60 speaks of an application relating to the "bankruptcy" of a personal guarantor of a corporate debtor and states that any such bankruptcy proceedings shall be filed only before the National Company Law Tribunal. The argument of the learned counsel on behalf of the respondents that "bankruptcy" would include SARFAESI proceedings must be turned down as "bankruptcy" has reference only to the two Insolvency Acts referred to above. Thus, SARFAESI proceedings against the guarantor can continue under the SARFAESI Act. Similarly, sub-section (3) speaks of a bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or Tribunal, which shall stand transferred to the Adjudicating Authority dealing with the insolvency resolution process or liquidation proceedings of such corporate debtor. An "Adjudicating Authority" defined under section 5(1) of the Code, means the National Company Law Tribunal constituted under the Companies Act, 2013.

The scheme of section 60(2) and (3) is thus clear—the moment there is a proceeding against the corporate debtor pending under the 2016 Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the corporate debtor, be transferred to the National Company Law Tribunal or, if initiated after such proceedings had been commenced against the corporate debtor, be filed only in the National Company Law Tribunal. However, the Tribunal is to decide such proceedings only in accordance with the Presidency-Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be. It is clear that sub-section (4), which states that the Tribunal shall be vested with all the powers of the Debts Recovery Tribunal, as contemplated under Part III of this Code, for the purposes of sub-section (2), would not take effect, as the Debts Recovery Tribunal has not yet been empowered to hear bankruptcy proceedings against individuals under

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section 179 of the Code, as the said section has not yet been brought into force. Also, we have seen that section 249, dealing with the consequential amendment of the Recovery of Debts Act to empower the Debts Recovery Tribunal to try such proceedings, has also not been brought into force. It is thus clear that section 2(e), which was brought into force on November 23, 2017 would, when it refers to the application of the Code to a personal guarantor of a corporate debtor, apply only for the limited purpose contained in section 60(2) and (3), as stated hereinabove. This is what is meant by strengthening the corporate insolvency resolution process in the Statement of Objects of the Amendment Act, 2018.'

On reading paragraph 18, it is ascertainable that the argument of the appellant-bank is prohibition under a moratorium will not cover actions against the personal guarantors, whereas the respondent counsel argument is by virtue of notifying section 2(e) and section 60 of the Code, actions against the personal guarantors of the corporate debtor are covered under section 14 of the Code therefore the creditors shall not proceed against the personal guarantors of the corporate debtor, once the CIRP is initiated against the principal borrower/corporate debtor.

When it comes to paragraph 20, in opening line itself, the hon'ble apex court says, 'we are afraid that such arguments have to be turned down on careful reading of the sections relied upon'.

In paragraph 19 of the judgment, it has been sounded that sub-section (1) of section 60 deals with territorial jurisdiction in respect to actions against the corporate debtors, as to personal guarantors are concerned, it has been held that Part III has not been brought into force and the section repealing (section 243) the Presidency-Towns Insolvency Act and the Provincial Insolvency Act have not yet been brought into force, the net result is as to individual personal guarantors are concerned, they continue to be proceeded against the guarantors under the aforesaid two Insolvency Acts and not under the Code. It has also referred that the Government has given a clarification on August 28, 2017 clarifying that section 243 of the Code repealing the aforesaid two Insolvency Acts have not been notified till date. That apart, since Part III itself is not notified till date, the hon'ble Supreme Court reiterated that the Government of India has advised that the stakeholders intending to pursue their Insolvency cases against the personal guarantors may approach the appropriate authority/court under the existing enactments, instead of approaching the Debts Recovery Tribunal.

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In paragraph 20, the hon'ble apex court only speaks of bankruptcy proceedings that are different from the SARFAESI proceedings, and sub-section (3) of section 60 has been meant for transfer of the proceedings pending against the guarantors of the corporate debtor to the Adjudicating Authority dealing with the CIR process of the principal borrower/corporate debtor. In this paragraph, it has not been held anywhere that since sub-section (3) speaks about transfer of proceedings pending against the guarantor, such proceedings shall be transferred to the Adjudicating Authority dealing with the CIRP of the corporate debtor. That is the relief precisely asked by the respondent in the MA filed before the hon'ble National Company Law Tribunal, but the hon'ble Supreme Court reversed the order of National Company Law Tribunal staying the independent proceedings against guarantor pending under the SARFAESI. Therefore, the only inference that could be drawn from paragraph 20 is that though section 60(3) has been notified on December 1, 2016, the hon'ble Supreme Court virtually turned down the plea of transfer from the Debts Recovery Tribunal to the Adjudicating Authority on the ground Part III of the Code has not been notified.

When it has been categorically clarified that such transfer is not possible, how could it be possible to assume that the hon'ble Supreme Court held that since section 60 has been notified, the proceedings against the guarantor as stated under sub-section (2) shall be initiated before the Adjudicating Authority dealing with CIR process of the corporate debtor.

Let us come to paragraph 21 relied upon by the applicant counsel to say that the applicant is entitled to initiate the CIR process against the guarantors of the corporate debtor. In this paragraph, the hon'ble Supreme Court has explained as to how section 60(2) functions, how section 60(3) functions and how section 60(4) functions. The applicant counsel has heavily relied upon a sentence amidst this paragraph, i. e., 'However, the Tribunal is to decide such proceedings only in accordance with Presidency-Towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920 as the case may be'. In the following lines to the line aforesaid, again held that the Debts Recovery Tribunal has not been empowered to hear the proceedings against individuals under section 179 of the Code as the said section has not yet been brought into force. Likewise, it has also been said that an amendment to Recovery of Debt Act under section 249 of the Code has also not been brought into force. After explaining all these, the honourable

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Supreme Court clarified that insertion of section 2(e) of the Code was brought into force on November 23, 2017 for the limited purpose contained in section 60(2) and section 60(3) as stated above. The only point this judgment decided is, whether action against the guarantor of the corporate debtor is covered under the prohibition provided under section 14 of the Code or not. It has nowhere held that creditor can initiate CIR process against the guarantors on the ground that CIR process pending against the corporate debtor.

As to the insolvency proceeding either under the Presidency-Towns Insolvency Act or under the Provincial Insolvency Act, the jurisdiction is conferred upon a civil court and the same is still in force, in case this Bench initiates insolvency proceedings under any of the insolvency Acts aforementioned, it will become nothing but usurpation into the jurisdiction of some other forum.

Whenever any judgment is read and the ratio is culled out from the judgment, every sentence of the judgment has to be read in the context of the remaining portion of the judgment, reader shall not fork out a sentence, and spin another story disregarding the ratio decided and the context of that sentence, which is not the spirit of understanding the ratio of a judgment. Moreover as to jurisdiction is concerned, no court will confer jurisdiction upon somebody to whom Legislature has not given such jurisdiction, moreover judges declare law, they do not make law. Therefore if the sentence referred by the applicant counsel from the judgment of the honourable Supreme Court is read along with the remaining portion of the judgment, it would certainly be clear to understand that the honourable Supreme Court has not held that the parties can initiate insolvency proceedings against personal guarantors before the National Company Law Tribunal under either Presidency-Towns Insolvency Act or Provincial Insolvency Act. As I said earlier, in the judgment supra, the hon'ble Supreme Court has only held that actions against the personal guarantors are not covered by moratorium granted under section 14 of the Code.

In view of the reasons, we have not found any merit in the applications, henceforth these applications are dismissed as misconceived with liberty to proceed in accordance with law."

Accordingly, these company petitions are hereby dismissed as misconceived giving liberty to proceed in accordance with law.

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[2020] 220 Comp Cas 391 (NCLAT)

[BEFORE THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL — NEW DELHI]

MONA AGGARWAL AND ANOTHER

v.

GHAZIABAD ENGINEERING CO. LTD. AND OTHERS

JARAT KUMAR JAIN J. ***(Judicial Member),***
BALVINDER SINGH and
DR. ASHOK KUMAR MISHRA ***(Technical Members)***

March 18, 2020.

HF ▸ Appellant/Remanded

WINDING UP—PETITION FOR WINDING UP—NAME OF COMPANY STRUCK OFF FROM REGISTER OF COMPANIES—NOT A REASON TO REJECT WINDING UP PETITION—WINDING UP PETITION TO BE DECIDED ON MERITS—MATTER REMITTED—COMPANIES ACT, 2013, SS. 248, 271.

A petition for winding up of respondent No. 1-company was filed by the appellant. Subsequently the petition was transferred to the Tribunal and during the pendency of the petition the name of the company was struck off under sub-section (5) of section 248 of the Companies Act, 2013. The Tribunal rejected the winding up petition with liberty to file a fresh one when the name of the company was revived. On appeal :

Held, *that section 248 in no manner would affect the powers of the Tribunal to wind up the company, the name of which had been struck off from the Register of Companies. Therefore, even after removal of the name of the company from the Register of Companies the Tribunal could proceed with the petition for winding up under section 271 of the Act. The order was to be set aside and the matter was to be remitted to the Tribunal to decide the winding up petition on the merits.*

HEMANG PHOPHALIA *v.* GREATER BOMBAY CO-OPERATIVE BANK LTD. [2019] 8 Comp Cas-OL 263 (NCLAT) *relied on.*

Order of the National Company Law Tribunal set aside.

HEMANG PHOPHALIA *v.* GREATER BOMBAY CO-OPERATIVE BANK LTD. [2019] 8 Comp Cas-OL 263 (NCLAT) (paras 4, 15) *referred to.*

Company Appeal (AT) No. 320 of 2019.

Jeevesh Nagrath and *Chandan Dutta*, for the appellants.

Simran Mehta with *Javed Akhtar* and *Rohit Puri*, for respondents Nos. 2 and 3.

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JUDGMENT

The judgment of the Appellate Tribunal was delivered by

1 JARAT KUMAR JAIN J. ***(Judicial Member)***.—This appeal filed by late Smt. Mona Aggarwal (since deceased) through her legal heirs Mr. Vijay Kumar Aggarwal and other shareholders of respondent No. 1-company against the order dated August 7, 2019 passed by the National Company Law Tribunal, New Delhi in Company Petition No. 1176 of 2016 thereby dismissing the petition with liberty to file fresh one as and when the company's name is revived.

2 Brief facts of this appeal are that on November 22, 2016 the appellants as shareholder of respondent No. 1 filed a petition before the hon'ble High Court of Delhi seeking winding up under the provisions of section 433(c), (f) and (g) of the Companies Act, 1956. On April 12, 2017 the hon'ble High Court as per notification Regd. No. D. L. 33004/99, dated December 7, 2016 issued by the Ministry of Corporate Affairs transferred the said petition to the National Company Law Tribunal, Principal Bench, New Delhi. The National Company Law Tribunal vide order dated July 28, 2017 directed the petition to be amended to refer to the relevant sections of the Companies Act, 2013. In compliance with the directions the petition was amended, i. e., the petition treated as filed under section 271 of the Companies Act, 2013. On September 19, 2017, the National Company Law Tribunal issued notice on the petition for winding up of respondent No. 1 to the respondents herein. During the pendency of the petition, the Registrar of Companies vide order dated June 30, 2017 exercising powers under subsection (5) of section 248 of the Companies Act, 2013 struck off the name of the company from the register of companies with effect from June 7, 2017. Respondent No. 2 filed an appeal No. 632-252-ND-2018 before the National Company Law Tribunal, Delhi under section 252 of the Companies Act, 2013 for revival of the company which is pending for adjudication before the National Company Law Tribunal. The petition for winding up was adjourned from time-to-time to await the outcome of the appeal under section 252 of the Companies Act, 2013 filed for revival of respondent No. 1-company. However on August 7, 2019 the National Company Law Tribunal rejected the petition for winding up with liberty to the petitioner (appellants) to file a fresh one as and when the respondent-company is revived.

3 Being aggrieved with this order the appellants have filed this appeal.

4 Learned counsel for the appellant submitted that the petition for winding up filed before the hon'ble High Court on November 22, 2016 which was subsequently transferred to the National Company Law Tribunal and

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during the pendency of the petition the name of the company was struck off by the Registrar of Companies under section 248 of the Act for which an appeal under section 252 of the Companies Act, 2013 for revival of the company is pending. However, the National Company Law Tribunal has rejected the company petition on the ground that the company's name has been struck off by the Registrar of Companies and after revival the appellants herein are at liberty to file the petition. This order is erroneously passed. Even if the name of the company has been struck off the power of National Company Law Tribunal to wind up the company shall not be affected as per the provisions under section 248(8) of the Companies Act, 2013. For this purpose learned counsel for the appellant placed reliance on the judgment of this Tribunal in the case of *Hemang Phophalia* v. *Greater Bombay Co-operative Bank Ltd.* [2019] 8 Comp Cas-OL 263 (NCLAT), Company Appeal (AT) No. 765 of 2019 decided on September 5, 2019. It is submitted that the impugned order be set aside and the matter be remitted to the National Company Law Tribunal for deciding the petition afresh on merit.

5 Learned counsel for the respondents submits that the appeal is not maintainable as the appellants have sought the same relief on the same ground and cause of action as they have filed this appeal as well as filed the application before the National Company Law Tribunal for review of the impugned order. The appellant cannot be permitted to exercise concurrent jurisdiction over the same dispute over the same parties for the same relief and on same ground and same cause of action. In such circumstances the possibility of conflicting decisions cannot be ruled out.

6 For the objection learned counsel for the appellants filed the copy of the order dated February 25, 2020 passed by the National Company Law Tribunal thereby Application No. 2255/PB/2019 for review of the impugned order is disposed of as withdrawn.

7 Thus the objection in regard to maintainability of the appeal does not survive.

8 Learned counsel for the respondents opposing the prayer and submitted that appellant No. 1 late Ms. Mona Agarwal has passed away and as per her will the beneficiaries of her estate are Vikas Agarwal and Sohini Sama, the son and daughter respectively of the deceased. Therefore, they can file the appeal but not Mr. V. K. Agarwal. It is also submitted that the outcome of the appeal filed under section 252(3) of the Act seeking restoration should be awaited before this company petition for winding up is heard on merits as the National Company Law Tribunal will be exercising two conflicting jurisdictions at the same time ; one for restoration of the company

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and the other for winding up. The National Company Law Tribunal has also given liberty to the appellant that they can file fresh petition after revival of the company. Thus there is no illegality in the order and the appeal is liable to be dismissed.

9 After hearing learned counsel for the parties, we have perused the record.

10 We have considered whether the appeal is filed by the competent person on behalf of late Ms. Mona Agarwal. Ms. Mona Agarwal by way of her will dated September 7, 2015 bequeathed her all movable and immovable property for her husband Mr. Vijay Kumar Agarwal alone as the sole beneficiary. Thus on the basis of this will Mr. Vijay Kumar Agarwal has filed this appeal on behalf of Ms. Mona Agarwal as a legal heir. In the will it is mentioned that only in the unfortunate event if her husband pre-deceases her than her property devolved on her son and daughter, Mr. Vikas Agarwal and Sohini Sama, equally. Thus learned counsel for the respondents has misconstrued the will. Mr. Vijay Kumar Agarwal is fully competent to file this appeal.

11 Admittedly the appellants have filed petition for winding up of respondent No. 1-company on November 22, 2016. Subsequently this petition was transferred to the National Company Law Tribunal, New Delhi. During the pendency of this petition the name of the company has been struck off with effect from June 7, 2017 by the Registrar of Companies exercising power under sub-section (5) of section 248 of the Companies Act, 2013. The learned National Company Law Tribunal by the impugned order has rejected the winding up petition with liberty to file a fresh one when the name of the company is revived.

12 The question for consideration before us that during the pendency of winding up petition the name of the company has been struck off under section 248 of the Companies Act 2013. In such circumstances whether the National Company Law Tribunal can proceed with winding up petition or not.

13 For the purpose we would like to refer section 248 of the Companies Act, 2013 which is as under :

"CHAPTER XVIII

Removal of names of companies from the Register of Companies

248. *Power of Registrar to remove name of company from register of companies.*—(1) Where the Registrar has reasonable cause to believe that—

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(a) a company has failed to commence its business within one year of its incorporation ; or . . .

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455,

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, by a special resolution or consent of seventy-five per cent. members in terms of paid-up share capital, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner :

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company :

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Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies."

14 From sub-section (8) of section 248, it is clear that section 248 in no manner will affect the powers of the Tribunal to wind up the company, the name of which has been struck off from the register of companies. Therefore, even after removal of the name of the company from the register of companies the National Company Law Tribunal can proceed with the petition for winding up under section 271 of the Companies Act, 2013.

15 We have taken the same view in the case of *Hemang Phophalia* v. *Greater Bombay Co-operative Bank Ltd.* [2019] 8 Comp Cas-OL 263 (NCLAT).

16 With the aforesaid, we are of the considered view that the impugned order is not sustainable in law. Hence the order is hereby set aside and the matter is remitted to the National Company Law Tribunal, New Delhi for deciding the winding up petition on the merit as per law. However, no order as to costs.

17 The Registrar to send the copy of this order to the National Company Law Tribunal, Delhi. Parties are directed to appear before the National Company Law Tribunal, New Delhi on April 7, 2020.

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[2020] 220 Comp Cas 397 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — AHMEDABAD BENCH]

UNION BANK OF INDIA

v.

GREENDIAMZ BIOTECH LTD.

HARIHAR PRAKASH CHATURVEDI *(Judicial Member)* and
PRASANTA KUMAR MOHANTY *(Technical Member)*

May 27, 2020.

HF ▸ Applicant

INSOLVENCY RESOLUTION—APPLICATION BY FINANCIAL CREDITOR—EXISTENCE OF DEFAULT—APPLICATION TO BE ADMITTED—INSOLVENCY AND BANKRUPTCY CODE, 2016, S. 7.

On a petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of the corporate insolvency resolution process against the corporate debtor :

Held, *that it was undisputedly established that the financial creditor duly sanctioned and had disbursed various loan facilities to the corporate debtor and the corporate debtor had availed of and utilized them. The corporate debtor also confirmed its liability, through a one-time settlement by offering Rs. 1,600 lakh to the creditor by its letter dated December 7, 2017 which did not materialize. The corporate debtor was irregular in making repayment of its loan and the last payment was made by it on May 31, 2017. Hence, the petition was filed well within limitation and maintainable. The petition was to be admitted, a moratorium was to be declared and an interim resolution professional was to appointed.*

INNOVENTIVE INDUSTRIES LTD. *v.* ICICI BANK [2017] 205 Comp Cas 57 (SC) *relied on.*

INNOVENTIVE INDUSTRIES LTD. *v.* ICICI BANK [2017] 205 Comp Cas 57 (SC) (para 15) *referred to.*

C. P. (I. B). No. 17/7/NCLT/AHM/2019.

Mahendra P. Parmar, for the petitioner-financial creditor.

Aditya J. Pandya and *Ms. Urvashi Jindal*, PCA, for the respondent-corporate debtor.

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ORDER

The order of the Bench was delivered by

1 HARIHAR PRAKASH CHATURVEDI ***(Judicial Member)***.—The present petition is filed by the Union Bank of India (hereinafter referred to as the petitioner), through its authorized signatory (under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "I and B Code") read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("Adjudication Rules" for short) for initiation of the corporate insolvency resolution process (CIRP) against M/s. Greendiamz Biotech Ltd., the corporate debtor.

2 The corporate debtor-company, viz., M/s. Greendiamz Biotech Ltd., was incorporated on May 8, 2009 under the provisions of the Companies Act, 1956, CIN : U36990GJ2009PLC056869, having its registered office at Setu, Suite 303-4-5, Ship Cross Road, Off C. G. Road, Navrangpura, Ahmedabad-380 009, Gujarat.

3 The authorised share capital of the corporate debtor company is Rs. 5,00,00,000 (rupees five crores only) divided into 50 lakhs equity shares of Rs. 10 each and paid-up share capital is Rs. 5,00,00,000 (rupees five crores only) divided into 50 lakhs equity shares of Rs. 10 each.

4 The petitioner states that various loan/credit facilities have been granted to the corporate debtor. The details/particulars thereof and the total outstanding debts are described well in the prescribed format of the present application, which are stated as under :

PART IV

Particulars of financial debt

1. Total amount of debt granted — Date of last sanction/renewal : 28-03-2013 vide Sanction letter No.VAD/ADV/549/13

Date(s) of disbursement

CC Hyp.

Date of disbursement	*Amount (Rs.)*
30-12-2009	28,50,00,000

LC/LG

Date of disbursement	*Amount (Rs.)*
17-12-2013	4,45,00,000

Term loan I

Date of disbursement	*Amount (Rs.)*
29-09-2009	8,00,00,000

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Term loan II

Date of disbursement	*Amount (Rs.)*
13-04-2012	1,11,00,000

Term loan III

Date of disbursement	*Amount (Rs.)*
28-09-2012	6,40,00,000

Total Rs. 48,46,00,000

2. Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and days of default in tabular form) Rs. 85,71,54,265.28

Tabular form given hereunder (as on 30-09-2018)

Account No.	*Nature of loan and amount*	*Ledger balance (Rs.)*	*Unpaid interest + penalty*	*Other expenses*	*Date of default*	*Total days of default*	*Total amount claimed to be in default*
313505010077425	CC Hyp	327435305.54	269377492.14	226554	24-07-2013	1894	597039351.68
313507030002711	LC devolved	17362495.98	15370580.00	0.00	17-12-2013	1748	32733075.98
313506110000879	Term loan I	63977243.95	54292575.00	924490	24-09-2013	1832	119194308.95
313506110000887	Term loan II	9708409.00	7632539.00	0.00	31-10-2013	1795	17340948.00
313506310000004	Term loan III	50293835.67	40552745.00	0.00	24-09-2013	1832	90846580.67
Total :		468777290.14	387225931.14	1151044			857154265.28
Statements of accounts (account wise) enclosed from page Nos. 175 to 197 A/32 to A/36							

It is submitted that at the request of the respondent-corporate debtor, the petitioner has sanctioned and disbursed aforesaid loan/credit facilities by executing necessary loan agreements with the respondent-corporate debtor, such loan disbursed is recoverable with interest at applicable rate of interest. 5

In order to secure above stated credit facilities, the respondent-corporate debtor, through its authorized signatory/director, borrower/co-borrowers/ guarantors, has duly executed various security documents, in favour of the petitioner-bank (financial creditor), which are annexed with the present IB petition, and described as under : 6

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Part V

Particulars of financial debt (documents, records and evidence of default)

1. Particulars of security held, if any, the date of its creation, its estimated value as per the creditor :

(i) Hypothecation agreement of goods and debts (SD-06) was executed on March 29, 2013 to the extent of Rs. 48,46,00,000. Total value of plant and machinery assessed at about Rs. 6,05,90,000 as per valuation report dated December 30, 2017, annexure A/24.

(ii) Equitable mortgage registered with the Sub-Registrar, Ahmedabad-3 (Memnagar) bearing No. 9260 dated September 30, 2009 for Rs. 31,10,00,000 created on the immovable properties jointly belonging to (i) Mr. Champatbhai Rikhabhai Sanghvi, and (ii) Mr. Deepak Champatbhai Sanghvias described in Schedule A of this application, annexure A/18.

(iii) Equitable mortgage registered with Sub-Registrar, Ahmedabad-3 (Memnagar) bearing No. 8255 dated June 14, 2010 for Rs. 31,10,00,000 created on the immovable properties jointly belonging to the corporate debtor as described in Schedules B and C of this application, annexure A/19.

(iv) Supplemental equitable mortgage registered with the Sub-Registrar, Ahmedabad-3 (Memnagar) bearing No. 13210 dated December 20, 2011 for Rs. 48,49,00,000 (enhanced from Rs. 31,10,00,000) created on the immovable properties as described in Schedules A, B and C of this application, annexure A/20.

Estimated market value of three immovable properties Rs. 9,00,26,892 assessed vide valuation report dated August 21, 2017 and August 23, 2017, annexure A/25 (colly.)

(v) The Registrar of Companies search report dated November 6, 2009, given by Abhishekkumar Associates showing charge of hypothecation over movables and mortgage over three immovable properties filed/created on September 26, 2009 on aggregate amount of Rs. 31.10 crores, annexure A/21.

(vi) The Registrar of Companies certificate of charge dated November 25, 2012 showing mortgage/charge created on September 28, 2012 for an amount of Rs. 6,40,00,000 bearing charge ID No. 10387591, annexure A/22.

(vii) The Registrar of Companies certificate of charge dated April 30, 2013 with Form 8 (charge of hypothecation) bearing charge ID No. 10178083, annexure A/23. Charge/mortgage created on September 26, 2009 and modified on March 29, 2013 for Rs. 48,46,00,000.

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2. Particulars of an order of a court, the Tribunal or arbitral panel adjudicating on the default, if any :

(i) The applicant has filed an original application bearing No. 123 of 2015 on March 2, 2015 in the Debts Recovery Tribunal-I, Ahmedabad against the corporate debtor which is pending for adjudication. Presently the matter is listed on December 10, 2018 for final hearing.

(ii) The corporate debtor has filed a securitization application bearing No. 161 of 2018 before the Debts Recovery Tribunal-I, Ahmedabad on August 30, 2018 against the measure taken by the applicant which is pending for adjudication and presently listed on November 22, 2018.

3. List of other documents attached to this application in order to prove the existence of financial debt, the amount and date of default :

(1) Corporate debtor's board resolution dated March 29, 2013, accepting the terms and conditions of sanction and authorizing its director Mr. Champat R. Sanghvi to execute various security documents as stated in the resolution.

(2) Letter dated March 29, 2013, from the corporate debtor regarding various undertakings to the applicant.

(3) Letter to be obtained from the directors in cases where advances have been permitted to private limited/limited companies (AD-10).

(4) Demand promissory note dated March 29, 2013, for Rs. 28,50,00,000.

(5) Demand promissory note dated March 29, 2013, for Rs. 8,00,00,000.

(6) Demand promissory note dated March 29, 2013, Rs. 1,11,00,000.

(7) Demand promissory note dated March 29, 2013, Rs. 6,40,00,000.

(8) Demand promissory note dated March 29, 2013, for Rs. 14,45,00,000.

(9) Composite deed of hypothecation (SD-20) dated March 29, 2013, for Rs. 48,46,00,000 executed by the corporate debtor.

(10) Hypothecation agreement of goods and debts (SD-06) dated March 29, 2013, for Rs. 48,46,00,000 executed by the corporate debtor.

(11) Letter of undertaking not to alienate hypothecated goods (AD-12) dated March 29, 2013, for Rs. 48,46,00,000.

(12) Letter of continuity (AD-09) dated March 29, 2013 for Rs. 28,50,00,000.

(13) Text of the consent clause executed by corporate debtor.

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(14) Agreement on rate of interest (for base rate) dated March 29, 2013.

(15) Memorandum of entry for deposit of title deeds for Rs. 31.10 crores registered with the Sub-Registrar, Ahmedabad-3 (Memnagar) at serial No. 9260, dated September 30, 2009.

(16) Supplemental memorandum of deposit of title deeds for Rs. 31.10 crores registered with the Sub-Registrar, Ahmedabad-3 (Memnagar) at serial No. 8255, dated June 14, 2010.

(17) Supplemental equitable mortgage to secure the credit facility aggregating to Rs. 48.49 crores enhanced from Rs. 31.10 crores registered with the Sub-Registrar, Ahmedabad-3 (Memnagar) at serial No. 13210, dated December 20, 2011.

(18) Recall notice dated January 1, 2014, issued by the applicant to corporate debtor.

(19) Notice dated February 4, 2014 by the applicant under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 issued to the corporate debtor.

(20) Company's master data of the corporate debtor.

(21) Balance-sheet of the corporate debtor for the year ending March 31, 2012.

(22) Schedule of properties mortgaged by corporate debtor.

(23) List of related parties.

7 The petitioner submits that at the time of availing of the credit facilities, the corporate debtor-company, including the co-borrowers/guarantors had agreed to and assured the petitioner-financial creditor that the loan/credit facilities as availed of by it would be repaid as per the terms and conditions of the repayment schedule of the loan agreement(s), but the same could not been materialised despite its repeated requests, reminders and personal follow up, the respondent-corporate debtor and its guarantors have failed to pay the outstanding amount to the petitioner-financial creditor.

8 It is further stated that the corporate debtor had submitted an one-time settlement (OTS) offer for Rs. 1,600 lakhs and the same could not be considered by the applicant and the same was communicated to the corporate debtor vide letter dated July 12, 2018.

9 It is further stated that total outstanding dues payable to the applicant by the corporate debtor in all the accounts is Rs. 85,71,54,265.28 (rupees eighty-five crores seventy one lakhs fifty four thousand two hundred sixty five and paise twenty eight only) inclusive of unpaid interest + penalty and other expenses up to September 30, 2018.

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In the light of above stated statutory provisions and by perusal of the record, it goes to show that the present IB petition has been filed by the petitioner-financial creditor, through its authorized signatory, namely, Mr. Rajesh Kumar Mishra, Chief Manager, Union Bank of India, Asset Recovery Branch, Ahmedabad, he has filed an affidavit in support of the present petition. The relevant paragraphs of the said affidavit are stated as under : **10**

"5. I say that the corporate debtor, vide letter dated August 5, 2015, requested the applicant for allowing operations on cutback basis. The applicant has approved provision of cutback facility of 20 per cent. on credit turnover in the month of September, 2015 subject to the terms and conditions conveyed vide letter dated August, 12, 2015 (acknowledged by the corporate debtor on August 13, 2015). As per the said terms accepted by the corporate debtor, corporate debtor has opened a new CD account in Vadaj Branch of the applicant and started the operations and agreed by the corporate debtor, 20 per cent. of the credits received in the CD account was to be appropriated as cutback towards the recovery in the NPA accounts of the corporate debtor. The applicant opened the said current account on September 24, 2015 in the name of corporate debtor and regular credits payments were arranged by the corporate debtor through their current account towards repayment of dues in their loan account. The corporate debtor has arranged the repayment of dues in its loan account on various dates starting from February 11, 2016 and the last such payment received from the corporate debtor is on May 31, 2017. Thereafter, the corporate debtor vide their letter dated December 7, 2017 submitted one-time settlement offer of Rs. 16 crores to the applicant towards settlement of dues in their loan account. Regular repayments arranged by the corporate debtor and OTS-cum-acknowledgment letter dated December 7, 2017 signed by the corporate debtor, fresh period of limitation started for recovery of dues from the corporate debtor. Hence the default of the corporate debtor in payment of debts stood revived from time-to-time and is still continuing as on the date of the present application. Thus, the present application has been filed within the limitation under section 238A of the Code (inserted by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 with effect from June 6, 2018 read with article 137 of the Limitation Act.

6. I say that as per my utmost knowledge there are no other financial creditors except the applicant.

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7. I say that the corporate debtor is carrying on the business of manufacturing and trading of bio-degradable material.

8. I say that vide FGMO Note No. GM (FGMO) 1615 dated September 18, 2009, the applicant sanctioned to corporate debtor initially (i) an Import L. C. of Rs. 725 lakhs, (ii) L.G. of Rs. 100 lakhs, (iii) C.C.-Hyp. of Rs. 700 lakhs, (iv) PC/FDBP of Rs. 300 lakhs and (v) Term loan of Rs. 1285 lakhs aggregating total credit facilities for Rs. 31.10 crores for which the corporate debtor has executed required security documents in favour of the applicant, (hereinafter referred to as the credit facilities).

9. I say that the credit facilities were renewed vide FGMO Note No. FGMO/ADV/160 dated November 30, 2011 where the credit facilities were enhanced by increasing import LC from Rs. 725 lakhs to Rs. 1,685 lakhs along with interchangeability of Rs. 500 lakhs to CC(H) limit, LG at existing level of Rs. 100 lakhs, CC(H) limit was enhanced from Rs. 700 lakhs to Rs. 1550 lakhs, PC/PDBP limit of Rs. 300 lakhs, term loan at outstanding level 1064 lakhs and sanction of fresh term loan of Rs. 250 lakhs.

10. I say that subsequently, the corporate debtor faced trouble in production activities and liquidity crunch resulting into excess/overdue in the accounts. Hence, the import L/C of Rs. 240 lakhs was devolved and paid by opening devolved L/C loan account.

11. I say that in September 2012, at the request of the corporate debtor vide FGMO Note No. FGMO/ADV/262/(B) dated September 28, 2012, the credit facilities of the corporate debtor were restructured by sanctioning WCTL of Rs. 640 lakhs comprising of irregular portion of Rs. 205 lakhs from CC account, overdue (instalment + interest) of Rs. 180 lakhs of term loans-I and II and LC devolved of Rs. 240 lakhs.

12. I say that despite restructuring of limits, the corporate debtor failed to serve the interest to the desired extent and overdue instalments of term loans and hence, the account of the corporate debtor was classified as non-performing asset (NPA) on December 31, 2013."

11 On being notice issued to the corporate debtor, in respect of the present IB petition, the corporate debtor-company caused appearance, through its counsel, and filed its reply wherein it did not categorically deny its debts liability towards the petitioner-financial creditor bank, but only sought some time for making acceptable one-time settlement proposal to the petitioner. The relevant paragraphs of the reply are stated as under :

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"29. That the corporate debtor is trying everything in its power to settle the liability of the petitioner-bank before the admission of this insolvency petition in this hon'ble Tribunal."

In paragraphs 35 and 36, it is stated as under :

"35. That the corporate debtor requests for grant of some time to come up with a one-time settlement proposal that would be feasible to the corporate debtor and acceptable to the petitioner-bank.

36. In view of the abovementioned circumstances we would request the hon'ble authority to not admit the insolvency resolution petition filed against us by Union Bank of India and give us some time to come up with an acceptable one-time settlement proposal for the applicant-bank."

In the light of above given facts and circumstances of the present case, **12** we examined the merits and admissibility of the present IB petition, under the discipline of the Insolvency and Bankruptcy Code, so as to find it complete or otherwise.

The relevant provisions of section 7 of the IB Code speaks as under : **13**

"7. *Initiation of corporate insolvency resolution process by financial creditor.*—(1) A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant-financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified ;

(b) the name of the resolution professional proposed to act as an interim resolution professional ; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the

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basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application ; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application :

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor ;

(b) the order under clause (b) of sub-section (5) to the financial creditor,

within seven days of admission or rejection of such application, as the case may be."

14 In support of the present IB petition, the petitioner-bank has further proposed name of the IRP, Mr. Chandra Prakash Jain (Registration No. IBBI/IPA-001/IP-P00147/2017-18/10311 (having address at C. P. Jain and Co., Chartered Accountants, D-501, Ganesh Meridian, Opp. High Court, S. G. Road, Ahmedabad-380 060, e-mail : *cpjain@cpjain.com ; jain_cp@yahoo.com*, Mobile : 98240 36127). The petitioner has also annexed a written communication, annexure A/2, received from the proposed interim resolution professional, Mr. Chandra Prakash Jain, by giving his consent in prescribed format by declaring that there is no disciplinary proceeding pending against him.

15 We have heard the submissions of the learned counsel for both the parties and perused the pleadings of both sides and material available on record. We place reliance on a decision of the hon'ble Supreme Court in the matter of *Innoventive Industries Ltd.* v. *ICICI Bank* (Civil Appeal Nos. 8337-8338 of 2017) [2017] 205 Comp Cas 57 (SC) has ruled such that if the

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Adjudicating Authority is satisfied that there is a debt and default has been occurred, then the Adjudicating Authority is bound to admit the application. For the sake of convenience, the relevant portion of the aforesaid judgment of the hon'ble Supreme Court is being reproduced hereinbelow (page 87) :

> "The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of 'debt', we have to go to section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a 'claim' and for the meaning of 'claim', we have to go back to section 3(6) which defines 'claim' to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under section 5(21) means a claim in respect of provision of goods or services.
>
> When it comes to a financial creditor triggering the process, section 7 becomes relevant under the *Explanation* to section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor—it need not be a debt owed to the applicant-financial creditor. Under section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed Form in 5 Parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under rule 4(3),

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the applicant is to dispatch a copy of the application filed with the Adjudicating Authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the Adjudicating Authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of section 7(5), where the Adjudicating Authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the 'debt', which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the Adjudicating Authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within seven days of receipt of a notice from the Adjudicating Authority. Under sub-section (7), the Adjudicating Authority shall then communicate the order passed to the financial creditor and corporate debtor within seven days of admission or rejection of such application, as the case may be."

16 By placing reliance on the above stated decision of the hon'ble Supreme Court, the debt is well established and the default has been occurred because the outstanding loan is still unpaid. This satisfies the requirement of section 3(11) and (12) of the Insolvency and Bankruptcy Code for triggering the corporate insolvency resolution process in respect of the corporate debtor-company.

17 On perusal of the record, it is undisputedly established that the petitioner-financial creditor duly sanctioned and have disbursed various loan facilities to the corporate debtor and the same were availed of and utilized by it. The corporate debtor also confirmed its debts liability, through one-time settlement by offering Rs. 1,600 lakhs to the petitioner by its letter dated December 7, 2017 which could not be materialized. The corporate debtor was irregular in making repayment of its loan and the last payment was made by it on May 31, 2017. Hence, the present IB petition is found to be filed well within limitation and maintainable.

18 Consequently, this Adjudicating Authority hereby admits the IB petition filed under section 7 of the Insolvency and Bankruptcy Code, 2016, for initiation of the corporate insolvency resolution process, in respect of the corporate debtor. Further this the Adjudicating Authority declares moratorium under section 14 of the Code, with following orders and directions :

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(i) This Adjudicating Authority hereby appoints proposed IRP, by the petitioner, Mr. Chandra Prakash Jain (Registration No. IBBI/IPA-001/IP-P00147/2017-18/1031, having address at C. P. Jain and Co., Chartered Accountants, D-501, Ganesh Meridian, Opp. High Court, S. G. Road, Ahmedabad-380 060, e-mail : *cpjain@cpjain.com ; jain_cp@yahoo.com*, Mobile : 98240 36127) under section 13(1)(c) of the Code.

(ii) That the order of moratorium under section 14 of the Code shall come to effect from May 27, 2020 till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33 as, the case may be.

(iii) That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel or other authority ; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein ; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFAESI Act, 2002 ; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(iv) That the supply of essential goods or services to corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the corporate debtor.

(v) That the provisions of section 14(1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(vi) The IRP so appointed shall make public announcement of corporate insolvency resolution process be made immediately as specified under section 13 of the Code and by calling for submissions of claim under section 15 of the Code.

(vii) The interim resolution professional shall perform all his functions strictly which are contemplated, inter alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all the personnel connected with the corporate debtor, its promoter or any other person associated with management of the corporate debtor are under legal obligation under section 19 of the Code extend every assistance and co-operation to the interim resolution professional. Where any personnel of the corporate debtor, its promoter or any other person required to assist or co-operate with IRP,

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does not assist or co-operate, IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the "corporate debtor-company" and manage the operations of the corporate debtor-company as a going concern as a part of its obligation imposed by section 20 of the Insolvency and Bankruptcy Code, 2016.

(ix) The petitioner-financial creditor is directed to communicate a copy of this order to the interim resolution professional, the corporate debtor and the Registrar of Companies, Gujarat.

19 The registry is directed to communicate a copy of this order to the petitioner-financial creditor, corporate debtor and to the interim resolution professional Mr. Chandra Prakash Jain (having address at C. P. Jain and Co., Chartered Accountants, D-501, Ganesh Meridian, Opp. High Court, S.G. Road, Ahmedabad-380 060, E-mail : *cpjain@cpjain.com ; jain_cp@yahoo.com*, Mobile : 98240 36127) and the concerned Registrar of Companies completion of necessary formalities.

20 The commencement of corporate insolvency resolution process shall be effective from the date of this order.

[2020] 220 Comp Cas 410 (Mad)

[IN THE MADRAS HIGH COURT]

CEE DEE YES HEALTH CARE SERVICES P. LTD. AND OTHERS

v.

RESERVE BANK OF INDIA AND ANOTHER

C. V. KARTHIKEYAN J.

February 28, 2020.

HF ▶ Respondent

WRIT—MAINTAINABILITY—BANK AND CUSTOMER—RECOVERY OF LOAN—RECOVERY BEFORE COMPLETION OF MORATORIUM ON RECOVERY—ISSUE GOVERNED BY AGREEMENT BETWEEN BANK AND CUSTOMER—INVOLVING EXAMINATION ON FACTS—CANNOT BE EXAMINED BY RESERVE BANK OF INDIA OR HIGH COURT—PROCEEDINGS ALREADY INITIATED BEFORE DEBTS RECOVERY TRIBUNAL—BORROWER TO RAISE ISSUE BEFORE TRIBUNAL—NO DIRECTION CAN BE GIVEN TO RESERVE BANK OF INDIA TO EXAMINE ISSUE—CONSTITUTION OF INDIA, art. 226.

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The petitioners who had obtained loan from the second respondent-bank were aggrieved that their accounts had been declared as non-performing assets before the expiry of the moratorium period for repayment of the loan. Their complaints in this regard to the Reserve Bank of India did not yield the desired results. Therefore, they filed writ petitions seeking directions to the Reserve Bank :

Held, *dismissing the petition, that according to the Reserve Bank of India, each individual bank had its own guidelines with respect to the moratorium period and the term was governed by a contract. The court would not examine the terms of the contract, its effect and such other details, which had to be established only after evidence was let in. The petitioners would have to examine the agreement under which they had availed of the loans and take recourse under the agreement. The loan accounts had become non performing assets as on date. There had been default in the repayment of the loan. The bank had a right to initiate necessary proceedings. The proceedings were pending. It was for the Debts Recovery Tribunal to decide the issues. The petitioners could raise those issues before the Debts Recovery Tribunal. In view of the categorical stand taken by the Reserve Bank of India that it could not examine the complaints in view of the fact that the relief revolved around the interpretation of the agreement between the customers and the bank, no mandamus could be issued to the Reserve Bank of India to compel it to examine the representation and pass orders.*

Cases referred to :

Central Bank of India *v.* Ravindra [2001] 107 Comp Cas 416 (SC) (paras 13, 14)

Federal Bank Ltd. *v.* Sagar Thomas [2004] 120 Comp Cas 63 (SC) (para 16)

Reserve Bank of India *v.* Jayantilal N. Mistry [2016] 3 SCC 525 (para 15)

Sardar Associates *v.* Punjab and Sind Bank [2009] 8 SCC 257 (para 14)

United Bank of India *v.* Satyawati Tondon [2010] 158 Comp Cas 251 (SC) (para 17)

W. P. Nos. 17128, 17134 and 17136 of 2019 and W. M. P. Nos. 16683, 16684 and 16685 of 2019.

R. Thiagarajan, Senior Counsel for *N. Premkumar*, for the petitioners.

Chevanan Mohan, for *M/s. King and Partridge*, for respondent No. 1.

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E. Om Prakash, Senior Counsel for *M/s. Ramalingam Associates*, for respondent No. 2.

JUDGMENT

W. P. No. 17128 of 2019 :

1 C. V. KARTHIKEYAN J.—In the affidavit filed in support of the writ petition, it had been stated that the petitioner had availed a term loan of Rs. 23 crores from the second respondent on lease rental discounting facility in the year 2010 by mortgaging a property to an extent of 48,000 sq.ft., in S. No. 329, in Velachery. The original title deeds have been deposited. The second respondent then enhanced the loan to Rs. 27 crores. The period of repayment was 144 months. The moratorium was one year. It was stated that therefore, the repayment schedule was 132 months commencing from May, 2018. It was stated that the loan was sanctioned on May 22, 2017. The first disbursement was on May 24, 2017 and the last disbursement was on January 25, 2018 and the moratorium period was for 12 months and therefore, the first equated monthly installment should commence only from May, 2018. It was however stated that the loan was declared as non-performing asset on May 3, 2018, declaring that the total outstanding was Rs. 27,51,36,847.10. In this connection, the petitioner had given an objection letter on May 8, 2018. It was stated that declaring the account as non-performing asset is illegal and it was further stated that the accounts have been manipulated. It was stated that the first respondent had an obligation to examine into the complaint given. Further complaints were given on May 27, 2019 and on May 28, 2019. Since the first respondent had not taken any action, the writ petition had been filed.

W. P. No. 17134 of 2019 :

2 In the affidavit filed in support of the writ petition, it had been stated that the petitioner had obtained a short-term loan of Rs. 3.20 crores for business activities by mortgaging the apartment bearing No. 10/262, measuring 2,560 sq.ft., in Regal Palm Garden, Velachery Tambaram Main Road, Velachery. It was stated that the loan was sanctioned on December 19, 2017. It was disbursed on December 22, 2017. The moratorium period was six months. It was therefore stated that the first instalment fell due only on July, 2018. However, the loan was declared as a NPA on May 4, 2018 and the amount due was declared to be Rs. 3,23,96,634. Claiming that the second respondent could not have declared the loan as a NPA and should have granted the benefit of the moratorium, complaints have been given to the first respondent on May 27, 2019 and again on May 28, 2019.

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Since the first respondent had not taken any action, the writ petition has been filed.

W. P. No. 17136 of 2019 :

In the affidavit filed in support of the writ petition, it had been stated that the writ petitioner had obtained a short-term loan of Rs. 12 crores by mortgaging the residential apartments and depositing original documents. It was stated that the last disbursement of the loan was on March 10, 2017. It was sanctioned on December 26, 2016. It was stated that a moratorium period of six months had been provided. However, the loan was declared as a NPA on May 4, 2018 and a total sum of Rs. 6,92,98,634 was declared as outstanding. In this connection, complaining about the declarations of the loan as a NPA and not granting the aforesaid of the moratorium period, the petitioners had given complaints to the first respondent on May 27, 2019 and May 28, 2019. Since no action had been issued, the writ petition has been filed. 3

The writ petitioners also filed additional affidavits pending the writ petitions. In the additional affidavits, they stated that they came to know from the first respondent website and press release dated June 24, 2019 that the first respondent had launched a complaint management system to facilitate members of the public to lodge the complaint to the first respondent against any of the entities regulated by the first respondent. A copy of the press release was enclosed along with the additional affidavit. 4

Common written submissions by the first respondent :

The first respondent had filed their written submissions. It had been stated that the complaints dated May 27, 2019 and May 28, 2019 have been disposed of by the reply of the first respondent dated July 17, 2019. It had been stated that the petitioners are primarily aggrieved declaration as non-performing assets. It was stated that the complaint mechanism is not a legal recourse mechanism and is purely a grievance redressal methodology. It had been stated that the Reserve Bank of India had taken up the issue with the second respondent and they had returned the title deeds. With respect to the declaration of the accounts as a NPA, it had been stated that the same is pending, SARFAESI action before the Debts Recovery Tribunal and consequently, the first respondent cannot interfere with such issue. It had been further stated that this court had narrowed down the issue to "whether the moratorium period has to be computed from the date of sanction of loan or from the date of disbursement of the last installment of loan". 5

It had been stated that with respect to the moratorium period of loan, there was no specific guidelines issued by the first respondent. However, 6

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the Master Circular dated July 1, 2015 permitted the banks where moratorium is available for payment of interest and stated that it was for the individual banks to lay out policies to decide the moratorium period. It was therefore stated that since the complaints had been addressed by the e-mail dated July 17, 2019, the writ petition had been dismissed.

Counter affidavit of the second respondent :

7 In the counter affidavit filed by the second respondent, it had been stated that the writ petitioner in W. P. No. 17128 of 2019, had sought for enhancement of lease rental discount facility from Rs. 23 crores to Rs. 27 crores. This enhancement was given on the basis of letter of intent executed with M/s. Kauvery Medical Care, Trichy for leasing out the entire space on long-term lease for 30 years. It was stated that the amount was agreed to be repaid in 132 monthly installments starting from May, 2018. It was stated that the amount of Rs. 27 crores was sanctioned but the monthly installments were not paid. It was stated that the petitioner company was classified as a NPA on May 24, 2017. Thereafter, the entire loan had been assigned to M/s. Pegasus Asset Reconstruction P. Ltd., by assignment deed dated September 27, 2019. It was stated that proceedings under the SARFAESI Act was also instituted and possession notice was also served and possession has also been taken. It was stated that the petitioner was a chronic defaulter.

8 With respect to W. P. No. 17134 of 2019, it was stated that the writ petitioner had sought a short-term loan of Rs. 3.20 crores. It was stated that the amount was sanctioned on mortgage of a flat. It was stated that the equated monthly installments were not repaid. Therefore, the loan was declared as a NPA. It was assigned to M/s. Pegasus Asset Reconstruction P. Ltd., who had also instituted SARFAESI proceedings and it was stated that possession has also been taken.

9 With respect to W. P. No. 17136 of 2019, it had been stated that the writ petitioner had availed a short-term loan of Rs. 12 crores and had mortgaged the properties towards the said loan. Since the amount was not repaid. It was classified as a NPA on May 24, 2017, in accordance with Reserve Bank of India guidelines. It was stated that even in this case, SARFAESI proceedings had been instituted and possession had been taken.

10 Arguments in the writ petitions were heard along with W. P. No. 25226 of 2019 which the writ petition had been filed challenging the order dated July 17, 2019, of the first respondent. In the counter filed to the writ petitions, the first respondent stated that even with respect to the complaints in the present writ petition, they have passed the order dated July 17, 2019. The order dated July 17, 2019 is extracted below :

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"CEPC, Chennai Wed, July 17, 2019 at 1.07 p.m.

Dear Sir,

Please refer to your complaint dated May 17, 2019, on the captioned subject. We advise that, we have taken up the matter with the bank and bank has informed that they have adhered to our guidelines in classifying the group accounts of M/s. Cee Dee Yes IT Park P. Ltd. as NPA by them in the financial year 2017-18 due to default in repayments in terms of Reserve Bank of India guidelines and the same was also mentioned by their statutory auditors in their LFAR.

2. Further, bank stated that they have released the subject documents of the property to you vide their letter dated July 8, 2019.

3. Hence, we regret to express that Reserve Bank of India do not intervene in the recovery process of the bank, and in their internal policy/commercial decision of the bank. In view of the above, we treat the complaint as dealt with and closed at out end.

R. Ravishankar
Assistant Manager
CEPC, RBI
Chennai."

It is claimed by the learned senior counsel for the writ petitioners that **11**
the order does not answer the issue, namely whether the moratorium period was to be calculated from the date of sanction of loan or from the date of disbursement of the last instalment of the loan. However, this has been clarified by the first respondent, who had stated as follows in their counter affidavit :

"3. Respondent No. 1-Reserve Bank of India has not issued any specific guidelines with regard to moratorium period of loan. However, Reserve Bank of India issued a Master Circular on Prudential Norms on Income Recognition and Asset Classification dated July 1, 2015, wherein it has specifically allowed bank's finance given for industrial projects or agricultural plantation where moratorium is available for payment of interest, interest does not become overdue during the moratorium period and hence, do not become a NPA. This respondent No. 1-Reserve Bank of India would further highlight that the credit related issues are mostly deregulated. The Reserve Bank of India had advised banks to have documents of investment policy, loan policy, loan recovery policy, etc., to be prepared and duly vetted by the bank's board of directors. The banks are required to take credit decisions based on their internal assessment and the commercial

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viability of the loan within their board approved policies and regulatory guidelines. It is submitted that the banks could decide on the commencement of moratorium period. It is for the second respondent bank to clarify the terms and conditions of the loan sanctioned agreed with the borrower.

4. In addition to the above, this respondent No. 1-Reserve Bank of India deems it necessary to bring to the attention of this hon'ble court that under section 47A of the Banking Regulation Act, (B. R. Act) it deals with the powers of the Reserve Bank of India to impose monetary penalties which could be imposed for specific defaults/contraventions made by a banking company referred to under section 46(2), (3) and (4) which are applicable or invoked for specific violations/defaults committed under the provision of the Banking Regulation Act. This also includes violation/non-compliance of directions issued by Reserve Bank of India from time-to-time. Section 47A also stipulates the procedure to be followed for the adjudication of penalties. A separate grievance redressal mechanism under the Ombudsman Scheme and complaints handled by the Consumer Education and Protection Cell (CEPC) are provided to redress grievances of banking customers. With reference to the complaint about non-return of title deeds, it is submitted that the bank has stated that petitioners have entered into a Master Agreement dated December 23, 2014, wherein they have agreed in terms of clause 10.1.(t)(vi) under default and termination clause, agreeing for liability on cross defaults. Therefore, this respondent, Reserve Bank of India is not in a position to intervene in such issues mutually agreed to by both parties."

12 The learned senior counsel for the petitioners and the learned counsel for the first respondent had relied on the very same judgments which they had relied on in W. P. No. 25226 of 2019.

13 Mr. R. Thiagarajan, learned senior counsel relied on *Central Bank of India* v. *Ravindra* [2001] 107 Comp Cas 416 (SC) ; [2002] 1 SCC 367 wherein the hon'ble Supreme Court had stated as follows (page 449 of 107 Comp Cas) :

"The power conferred by sections 21 and 35A of the Banking Regulation Act, 1949 is coupled with the duty to Act. The Reserve Bank of India is prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any

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banking company generally. The Reserve Bank of India is one of the watchdogs of finance and economy of the nation. It is, and it ought to be, aware of all relevant factors, including credit conditions as prevailing, which would invite its policy decisions. The Reserve Bank of India has been issuing directions/circulars from time-to-time which, inter alia, deal with rate of interest which can be charged and the periods at the end of which rests can be struck down, interest calculated thereon and charged and capitalised. It should continue to issue such directives. Its circulars shall bind those who fall within the net of such directives. For such transaction which are not squarely governed by such circulars, the Reserve Bank of India directives may be treated as standards for the purpose of deciding whether the interest charged is excessive, usurious or opposed to public policy."

14 Reliance was also made on *Sardar Associates* v. *Punjab and Sind Bank* [2009] 8 SCC 257 wherein the hon'ble Supreme Court had, once again relied on the judgment referred above, namely, *Central Bank of India* v. *Ravindra* [2001] 107 Comp Cas 416 (SC) ; [2002] 1 SCC 367 and had also again referred to paragraph No. 55(5) which has been extracted above.

15 The learned senior counsel also relied on *Reserve Bank of India* v. *Jayantilal N. Mistry* [2016] 3 SCC 525, wherein it had been stated as follows in paragraph 62 :

"62. The Reserve Bank of India is supposed to uphold public interest and not the interest of individual banks. The Reserve Bank of India is clearly not in any fiduciary relationship with any bank. The Reserve Bank of India has no legal duty to maximize the benefit of any public sector or private sector bank, and thus there is no relationship of 'trust' between them. The Reserve Bank of India has a statutory duty to uphold the interest of the public at large, the depositors, the country's economy and the banking sector. Thus, the Reserve Bank of India ought to act with transparency and not hide information that might embarrass individual banks. It is duty bound to comply with the provisions of the RTI Act and disclose the information sought by the respondents herein."

16 Mr. Chevanan Mohan, learned counsel for the Reserve Bank of India relied on *Federal Bank Ltd.* v. *Sagar Thomas* [2003] 10 SCC 733 ; [2004] 120 Comp Cas 63 (SC), wherein it had been stated as follows in paragraph Nos. 32 and 33 (page 86 of 120 Comp Cas) :

"Merely because the Reserve Bank of India lays the banking policy in the interest of the banking system or in the interest of monetary stability or sound economic growth having due regard to the interests

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of the depositors, etc., as provided under section 5(c)(a) of the Banking Regulation Act does not mean that the private companies carrying on the business of or commercial activity of banking, discharge any public function or public duty. These are all regulatory measures applicable to those carrying on commercial activity in banking and these companies are to act according to these provisions failing which certain consequences follow as indicated in the Act itself. Provision regarding acquisition of a banking company by the Government, it may be pointed out that any private property can be acquired by the Government in public interest. It is now judicially accepted norm that private interest has to give way to the public interest. If a private property is acquired in public interest it does not mean that the party whose property is acquired is performing or discharging any function or duty of public character though it would be so for acquiring authority.

For the discussion held above, in our view, a private company carrying on banking business as a scheduled bank, cannot be termed as an institution or company carrying on any statutory or public duty. A private body or a person may be amenable to writ jurisdiction only where it may become necessary to compel such body or association to enforce any statutory obligations or such obligations of public nature casting positive obligation upon it. We don't find such conditions are fulfilled in respect of a private company carrying on a commercial activity of banking. Merely regulatory provisions to ensure such activity carried on by private bodies work within a discipline, do not confer any such status upon the company nor puts any such obligation upon it which may be enforced through issue of a writ under article 226 of the Constitution. Present is a case of disciplinary action being taken against its employee by the appellant-bank. The respondent's service with the bank stands terminated. The action of the bank was challenged by the respondent by filing a writ petition under article 226 of the Constitution of India. The respondent is not trying to enforce any statutory duty on the part of the bank. That being the position, the appeal deserves to be allowed."

17 Further reliance was placed on *United Bank of India* v. *Satyawati Tondon* [2010] 158 Comp Cas 251 (SC) ; [2010] 8 SCC 110, wherein it had been stated as follows in paragraph No. 55 (page 272 of 158 Comp Cas) :

"It is a matter of serious concern that despite repeated pronouncement of this court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and SARFAESI Act and

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exercise jurisdiction under article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will exercise their discretion in such matters with greater caution, care and circumspection."

18 In view of the specific stand taken by the first respondent that each individual bank have their own guidelines with respect to the moratorium period and that the said term it is governed by a contract, it would highly be inappropriate on the part of this court to examine the terms of the contract, its effect and such other details, which have to be established only after evidence is let in. The petitioners will have to examine the agreement under which they had availed of the loans and had taken recourse under the said agreement. In a writ petition filed under article 226 of the Constitution of India, this court cannot examine these disputed facts.

19 It is an admitted fact that the loan share become non-performing assets as on date. There has been default in the repayment of the loan. Naturally, the second respondent has a right to initiate necessary proceedings. The proceedings are pending. It is for the Debts Recovery Tribunal to decide the issues. It is for the petitioners to raise those issues before the Debts Recovery Tribunal.

20 In view of the categorical stand taken by the first respondent that they cannot examine the complaints in view of the fact that the relief revolves around the interpretation of the agreement between the petitioners and the second respondent, I am afraid, I am not able to issue any mandamus to the first respondent to compel them to examine the representation and pass orders.

21 In view of the said fact, the writ petitions are dismissed. No order as to costs. Consequently, connected miscellaneous petitions are also closed.

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[2020] 220 Comp Cas 420 (Delhi)

[IN THE DELHI HIGH COURT]

RAJEEV AGARWAL

v.

UNION OF INDIA AND OTHERS

SURESH KUMAR KAIT J.

August 20, 2019.

HF ▶ Directions

DIRECTORS—REMOVAL—STANDARDS OF CONDUCT AND PERFORMANCE—DISCIPLINARY PROCEEDINGS—INQUIRY COMMITTEE—MANAGING DIRECTOR AND CHIEF EXECUTIVE OFFICER COMPETENT AUTHORITY—COMPANIES ACT, 2013, S. 178.

On a petition filed under article 226 of the Constitution of India for quashing the ex parte report of the Inquiry Committee dated December 18, 2018 and charge sheet dated August 21, 2018 issued to the petitioner and further seeking direction to the respondents to hold inquiry against respondent No. 6 for financial corruption :

Held, *that under section 178 of the Companies Act, 2013, if any penalty of removal was to be imposed the procedure prescribed under section 178 would be required to be followed. However, for minor and other penalties not envisaged under the Companies Act, 2013, the managing director and chief executive officer would be the competent authority. Thus if any punishment was awarded other than under clauses 4.4.3(e) and (f) of the standards of conducts and performance of the company's human resources policy, the managing director and chief executive officer was the competent authority. If the punishment fell under clauses 4.4.3(e) and (f), then the managing director and chief executive officer would forward the case to the nomination and remuneration committee under section 178 of the Act, since any removal or demotion of senior management personnel category should be recommended to the board by the nomination and remuneration committee. However, section 178 had no role to play with respect to the initiation of the disciplinary proceedings. It would come into the picture only at the time of imposition of penalty. Thus, the managing director and chief executive officer was empowered and authorized under the delegation of authority as well as the standards of conducts and performance of the human resources policy to initiate the disciplinary proceedings including the issuance of the charge sheet and the appointment of the inquiry committee. [Since the petitioner had challenged the charge sheet and inquiry proceedings and had not filed response to the*

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findings of the inquiry authority, liberty was given to file response within three weeks from the receipt of the order. The Chief Vigilance Commissioner was directed to inquire into the allegations made by the petitioner against respondent No. 6].

Cases referred to :

Ajay Hasia *v.* Khalid Mujib Sehravardi [1981] AIR 1981 SC 487 (para 17)

Busali (E.) *v.* Commandant [1994] FLR (68) Karn 993 (para 34)

Government of Andhra Pradesh *v.* Majeed (M. A.) [2006] 1 ALD 823 (para 29)

Inspector General of Police *v.* Thavasiappan [1996] 2 SCC 145 (para 22)

Kraipak (A. K.) *v.* Union of India [1969] 2 SCC 262 (para 30)

Sahani Silk Mills P. Ltd. *v.* ESI Corporation [1994] AIR 1994 SCW 3832 (para 28)

Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust *v.* Rudani (V. R.) [1989] AIR 1989 SC 1607 (para 18)

State of Punjab *v.* Khanna (V. K.) [2001] AIR 2001 SC 343 (para 35)

State of Uttar Pradesh *v.* Saroj Kumar Sinha [2010] AIR 2010 SC 3131 (para 33)

Transport Commissioner *v.* Radha Krishna Moorthy (A.) [1995] 1 SCC 332 (para 22)

Union of India *v.* Gopinath (B. V.) [2014] 1 SCC 351 (paras 21, 22, 23)

Union of India *v.* Mohd. Nasseem Siddiqui [2005] ILLJ 931 (MP) (para 32)

W. P. (C) No. 89 of 2019 and C. M. Appls. Nos. 486 and 14962 of 2019.

Raj Kishor Choudhary, *Shakeel Ahmed*, *Anupam Bhati* and *Nukul Chaudhary* for the petitioner.

Ripu Daman Bhardwaj, Central Government Standing Counsel with *T. P. Singh*, for respondents Nos. 1 to 3/Union of India.

Sudhir Nandrajog, Senior Advocate, with *Shishir Prakash*, *Vijay M. Chauhan* and *Ms. Karuna Krishan Thareja*, for respondents Nos. 4 to 6.

Sandeep Prabhakar, *Amit Kumar* and *Vikas Mehta*, Advocates.

JUDGMENT

SURESH KUMAR KAIT J.—Vide the present petition, the petitioner seeks mandamus for quashing of ex parte report of inquiry committee dated **1**

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December 18, 2018 and charge sheet dated August 21, 2018 issued to the petitioner and further seeks direction to the respondents to hold CBI/CVC inquiry against respondent No. 6 for financial corruption being committed by the said respondent.

2 The brief facts of the case are that the petitioner, who is an officer of president level and senior most permanent employee of the company, Petronet LNG Ltd., is the victim of highhandedness of corrupt officers present within the company. Since the petitioner is a whistle blower against the corruption and has made various financial corruption charges against respondent No. 6, he being in the commanding position victimizing the petitioner without any rhyme and reason so that the petitioner be kept silence against the corruption.

3 Petronet LNG Ltd., is a joint venture company formed by the Government of India to import LNG and set up LNG terminals in the country. It involves India's four leading central public undertaking companies namely GAIL, ONGC, IOCL and BPCL and these four public sector undertakings have 50 per cent. share equity in Petronet LNG Ltd., thus, falls within the definition of "State" under article 12 of the Constitution of India. As per section 17.3.2 of the HR policies of Petronet LNG Ltd., the person equal to the post of vice-president and above is entitled to one club membership. The petitioner being in the position of senior vice-president applied for one club membership and the company made direct payment to the club and thereby he was allowed to take one club membership by the company itself in the year 2013 as per the prevailing rules. The said company invited a tender for August 3, 2015 for construction of one LNG storage tank at Dahej. Three parties purchased the tender documents and out of that, two bids were received on March 31, 2016. One bid was received from M/s. L and T Hydrocarbon Engineering Ltd., and another was from M/s. IHI Corporation, Japan. Since the bid of M/s. L and T Hydrocarbon Engineering Ltd., did not meet the technical eligibility criteria, its bid was rejected. The only single qualified bid of M/s. IHI Corporation, Japan was opened on May 10, 2016 and it was found that the bidder had quoted around Rs. 640 crores EPC (engineering, procurement and construction) costs (without taxes and duties). The petitioner being the member and the other members of the tender committee and the director (technical) and director (finance) objected to this high value tender, comparing the same bidder had been awarded contract for construction of two LNG storage tank at Dahej for Rs. 1,042 crores and, therefore, value of one tank is around Rs. 521 crores. The petitioner as well as the others of the tender committee along with both directors mentioned above were fully justified in objecting the same as prima facie the tender for Rs. 640 crores was very high. Respondent

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No. 6 being the managing director and chief executive officer of the company instead of accepting the recommendation of tender committee, recommended to award the tender for Rs. 537.50 crores. However, M/s. IHI Corporation, Japan did not agree with the present value of the tender and, accordingly, it was cancelled and the tender was reinvited. Since the tender was cancelled due to the stand taken by the tender committee of which the petitioner was also a member, respondent No. 6 became annoyed with the petitioner. Despite, outstanding career of the petitioner throughout his service, his annual performance report 2016-17 was lowered from outstanding to good and he was transferred to Dahej from Headquarters, Delhi without having any position of President level at Dahej. Respondent No. 6 favoured one Mr. Pushp Khetrapal who was a President (O & M) and also Chief Ethical Officer (Chief Vigilance Officer) in the company and he was made President (BD and Projects) and his reporting also got changed from Director (Technical) to Director (Finance) in order to promote unethical business practices as Chief Vigilance Officer, who is also made in charge of business development, head of procurements, head of projects and finance with him.

4 Being aggrieved by the aforesaid unethical practice of respondent No. 6, the petitioner made a confidential letter/representation to the chairman of the company as well as Chief Vigilance Commissioner and Director CBI. The petitioner on July 2, 2018 wrote a letter to the chairman of Petronet LNG Ltd., about the financial and procedural irregularities committed by respondent No. 6 in awarding foundation day celebrating contract to M/s. Pine Tree Pictures P. Ltd., owned by his family friends on the basis of nomination despite of the fact that the candidature of M/s. Pine Tree Pictures P. Ltd., had not been considered by the tender committee and without inviting any further tender, respondent No. 6 without approval of tender committee awarded contract in favour of M/s. Pine Tree Pictures P. Ltd., for Rs. 55 lakhs and made advance payment without any bank guarantee violating rules and regulations of the company and with this letter the petitioner attached a copy of the approval note and the page of facebook showing, the proprietor of M/s. Pine Tree Pictures P. Ltd., family friend of respondent No. 6 in evidence.

5 Being aggrieved by all these confidential communications made by the petitioner to the chairman of the Petronet LNG Ltd., respondent No. 6 started victimizing the petitioner and in this process, he issued a charge sheet to the petitioner without any preliminary inquiry. The petitioner was asked to submit his reply on the above charges on August 31, 2018 through e-mail but the senior manager (HR) wrote a letter to the petitioner on September 8, 2018 that the reply submitted by the petitioner did not find to be

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satisfactory, therefore, an inquiry committee was constituted and the petitioner was asked to defend himself before the inquiry committee. The petitioner sent a representation to the member of inquiry committee as well as the chairman and the managing director and chief executive officer/ respondent No. 6 of the company stating therein that the present inquiry committee has no legal force as the same has not been constituted with the approval of chairman/board of directors and the inquiry is being conducted at the instance of respondent No. 6 against whom an inquiry is already going on since earlier at the instance of the petitioner which is yet to be concluded. Just to pressurise the petitioner a false, frivolous and incompetent charge sheet has been handed over to the petitioner for disclosing financial as well as the procedural corruption being committed by respondent No. 6 repeatedly.

6 Further case of the petitioner is that on November 21, 2018 the petitioner submitted an application before the chairman of Petronet LNG Ltd., for requesting to allow him an Assisting Officer for his defence before the inquiry committee but till date no Assisting Officer has been allowed to defend the petitioner before the inquiry committee and the inquiry committee proceeded ex parte and concluded the inquiry against the petitioner by recording findings that all the three charges as levelled in the charge sheet dated August 21, 2018 are proved. After recording of finding against the petitioner, the senior manager (HR) wrote a letter to the petitioner to submit his representation within one week up to December 31, 2018 failing which the competent authority will pass order on the charges levelled against him. After receiving the e-mail dated December 24, 2018 sent by the company to the petitioner, on December 31, 2018 he sent an e-mail to the chairman with copy to board of directors, Prime Minister Office, hon'ble corporate office and Finance Minister, Petroleum Minister, Cabinet Secretary, CVC, CBI, CAG, Secretary, Ministry of Corporate Affairs, CVO, etc.

7 Learned counsel for the petitioner submits that it is established that respondent No. 6 has repeatedly violated the Companies Act, 2013, rules made thereunder and rules and regulations of PLL and Board approved policy for doing corruption. The corruption by the managing director and chief executive officer (respondent No. 6) of a company having significant role in energy security of country is a matter of national concern and cannot be confined to company alone. If the managing director and chief executive officer (respondent No. 6) of the company is involved in corrupt practices, employees are duty bound to object and can write with supporting information/documents to higher authorities, various transparency,

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accountability, investigation bodies of Government, etc., for urgent action in the matter to prevent damage to company and country. Accordingly, the petitioner being "whistle blower" informed about following serious financial irregularities by the managing director and chief executive officer (respondent No. 6), mentioned in paragraph 20k in a tabular form of "grounds" in the petition to various authorities such as chairman PLL, Board member of PLL, CVC as well as CBI. However, no action has been taken against respondent No. 6 on these following corruption charges so far :

(a) Award of contract to respondent No. 6's daughter's firm M/s. Custom Made Films without tender at exorbitant price of Rs. 16 lakhs for making film of Dahej LNG Terminal, the highly sensitive film was uploaded on internet.

(b) Award of work of Rs. 55 lakhs without tender to family friend's firm M/s. Pine Tree Pictures P. Ltd.

(c) Appointment of Shri Manoj Pawa as senior vice-president (HR and BE) in a single day in violation of provision of the Companies Act, 2013, without any advertisement. Shri Pawa is neither having requisite qualification nor experience.

(d) Award of contract of Rs. 36.27 lakhs to M/s. Giant Reel related to daughter firm M/s. Custom Made Films without tender. An additional amount of Rs. 4.65 lakhs for travel/lodging and boarding was also paid to the firm illegally. Apart from this Rs. 3.19 lakhs was also paid to M/s. MAD Dance Co., wrongly for appreciation of performance. Miscellaneous cases of corruption/unethical business practices, misconduct of Shri Manoj Pawa, CEA to respondent No. 6, while on deputation in Petronet LNG Ltd., from GAIL with the support of respondent No. 6.

(e) Shri Manoj Pawa, who is a crony of respondent No. 6, took special incentive of Rs. 1.5 lakhs form PLL, without approval by board.

(f) Shri Manoj Pawa got his personal car-Honda City No. HR26BV1963 repaired many times from M/s. Sugoi Motors at the cost of PLL.

(g) Shri Manoj Pawa engaged Munna Kumar Singh, driver at the cost PLL, for which he is not entitled.

(h) Shri Manoj Pawa has taken a laptop and ipad from PLL for which he was not entitled.

(i) Shri Manoj Pawa and respondent No. 6 with their wives visited Munnar Hill Station in September, 2016 on holidays and used high end hired cars at the cost of PLL.

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8 Learned counsel for the petitioner further submitted that the respondents in their counter affidavits could not specifically deny these corruption charges levelled by the petitioner but argued various points with respect to maintainability of the writ petition and justifying in issuing charge sheet and proceedings, etc.

9 On the issue of maintainability of the writ petition under article 226 of the Constitution of India is concerned, learned counsel for the petitioner argued that the name of the company is "Petronet LNG Ltd.", so it is a "public limited company" as per section "4—Memorandum—(1)" of the Companies Act, 2013 and not a "private company" as wrongly mentioned at several places in counter affidavits by the respondents. PLL was formed as a joint venture company by the Government of India in 1998, in pursuance of cabinet decision on July 4, 1997. The PLL is the instrumentality of the Government because it comes under purview of "other authorities" of "State" under article 12 of the Constitution of India, because :

(a) That the deep and pervasive control is exercised by the Government over administrative, financial and functional activities of PLL.

(b) That the Central Government directive dated March 6, 2007 to PLL regarding fixation of gas prices was upheld by the hon'ble Supreme Court of India.

(c) That there is significant financial control by 50 per cent. shareholding by the four Central Government PSUs.

(d) That the PLL fall within the purview of CVC.

10 Thus, it is submitted that the writ petition is maintainable as PLL is "State" within the meaning of article 12 of the Constitution of India. To strengthen his arguments, reliance is placed on the case of *Essar Steel Ltd.* v. *Union of India* (Civil Appeal No. 4610 of 2009) the directive of Central Government to PLL under their letter dated March 6, 2007 was upheld by the hon'ble Supreme Court of India on April 19, 2016. Thus, it is obvious that the Government exercises administrative as well as financial control over PLL.

11 In addition to above, in the case of *Delhi Integrated Multi Model Transit System Ltd.* v. *Rakesh Aggarwal* in W. P. (C) 2380-81 of 2010, this court under paragraphs 48, 55 and 59 of its judgment delivered on July 6, 2012 held as below :

> "48. The argument of the petitioner that the directors nominated by the GNCTD are non-executive directors, whereas those nominated by the IDFC are executive or functional directors, whereas those nominated by the IDFC are executive or functional directors—is

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neither here nor there. Merely because the directors nominated by the GNCTD on the board of directors of the petitioner-company are non-executive directors, it does not mean that they have no role to play, or responsibility to share, in the decision-making process of the board. They are entitled to, and do participate in the board meeting and are entitled to raise issues and even obstruct or oppose any move proposed by the directors nominated by IDFC, if they are so instructed by the GNCTD, or if they are of the opinion that the same may not be in the overall interest of the company, or of the shareholder GNCTD—whom they represent on the board of the petitioner-company. They perform a higher duty of participating on policy making, and, therefore, discharge a higher responsibility than the routine and mundane the day-to-day tasks, which are left to be performed by others. Mere lack of the day-to-day responsibility on the shoulders of the nominee directors of GNCTD does not dilute their powers, responsibilities and privileges as directors of the petitioner-company."

From the above judgment, it is obvious that four directors from the Central Government public sector undertaking and chairman from Ministry of Petroleum and Natural Gas and one director from Government of Gujarat on the Board of PLL exercise substantial administrative, functional and financial control over PLL : **12**

"55. In the present case, the petitioner-company had been initially incorporated/established by the GNCTD. The equity share capital of the company, before GNCTD entered into the SHA with IDFC, had been fully subscribed to and paid-up by the GNCTD. Even after having entered into the SHA with IDFC, GNCTD's share capital contribution continues to be 50 per cent. which is significant and therefore 'substantial' for the purpose of the Act."

From the above judgment, it is obvious that 50 per cent. shareholding subscribed by the Central Government public sector undertaking in PLL is a significant holding : **13**

"59. Merely because, the petitioner-company is not receiving financial aid or assistance in the form of debt from the Government, and the salaries and other expenses of the petitioner are being paid out of the conclusion that the petitioner-company is not 'substantially financed' by the Government (annexure J2)."

Moreover, in the case of *Petronet LNG Ltd.* v. *Indian Petro Group* in C. S. (OS) No. 1102 of 2006, this court, under paragraph 64 of its judgment pronounced on April 13, 2009 held as under : **14**

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"64. Though the plaintiff disputes that it performs any Governmental or public function, it does not deny being a company with an equity base of Rs. 1,200 crores, of which 50 per cent. is subscribed by the Central Government public sector undertakings. Although such undertakings are not majority equity holders, and narrowly miss that description by one per cent., nevertheless, they have a significant shareholding. Equally, the plaintiff does not deny—rather it even asserts that the negotiations conducted for the purpose of gas and allied products, are meant to service the needs of the community and the consumer base in India. Understood in a broad sense, therefore, it is engaged in a vital public function. Its other shareholders are no doubt, non-state entities. Yet, there is a crucial public interest element in its functioning ; 50 per cent. of Rs. 1,200 crores shareholding is controlled by the public sector undertaking which are directly answerable to the Central Government and Parliament. Therefore, the claim for confidentially had to be necessarily from the view of the plaintiff's accountability to such extent as well as its duties which have a vital bearing on the availability and presence of gas in the country (annexure J3)."

15 Learned counsel from the above judgments submitted that it is obvious that PLL is engaged in vital public function.

16 In the case of *Indian Olympic Association* v. *Veeresh Malik* vide W. P. (C) No. 876 of 2007, this court held as under :

"60. This court therefore, concludes that what amounts to 'substantial' financial cannot be straight-jacketed into rigid formulae, of universal application. Of necessity, each case would have to be examined on its own facts. That the percentage of funding is not 'majority' financing, or that the body is an impermanent one, are not material. Equity, that the institution or organization is not controlled, and is autonomous is irrelevant ; indeed, the concept of non-Government organization means that it is independent of any manner of the Government control in its establishment or management. That the organization does not perform—or predominantly perform 'public' duties too, may not be materials, as the object for funding is achieving a felt need of a section of the public, or to secure larger societal goals. To the extent of such funding, indeed. The organization may be a tool, or vehicle for the executive Government's policy fulfilment plan. This view, about coverage of the enactment, without any limitation, so long as there is public financing (annexure J4)."

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In the case of *Ajay Hasia* v. *Khalid Mujib Sehravardi*, AIR 1981 SC 487, the hon'ble Supreme Court has also emphasized in paragraph 11 as below : **17**

> "11. The court emphasized that the concept of agency or instrumentality of the Government is not limited to a corporation or society created by a statute but is equally applicable to a company or a society and in each individual case would have to be decided on a consideration of relevant factors (annexure J5)."

In the case of *Shri Anandi Mukta Sadguru Shree Muktajee Vandasjiswami Suvarna Jayanti Mahotsav Smarak Trust* v. *V. R. Rudani*, AIR 1989 SC 1607, the hon'ble Supreme Court of India in paragraph 19 considered the scope and extent of power of High Court to issue writs to those bodies performing public functions. The Supreme Court after referring to De Smith's *Judicial Review of Administrative Action* and relevant case law held as under : **18**

> "19. The term 'authority' used in article 226, in the context, must receive a liberal meaning unlike the term in article 12. Article 12 is relevant only for the purpose of enforcement of fundamental right under article 32. Article 226 confers power on the High Court to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words 'any person or authority' used in article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied. It is also held that if any private organization discharge public function and public duties a writ of mandamus can be issued under article 226 of the Constitution of India (annexure J6)."

Accordingly, learned counsel for the petitioner concluded his arguments on the maintainability and submitted that it is obvious that the words "any person or authority" used in article 226 of the Constitution of India, are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover other person or body performing public duty. Thus, the present petition is maintainable to be adjudicated by this court. **19**

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20 On the issue of charge sheet and appointment of committee, learned counsel for the petitioner submitted that learned counsel of the respondents argued that section 178(2) of the Companies Act, 2013 does not mention that charge memo should be approved by the disciplinary authority and it can be approved by a subordinate to the disciplinary authority. Learned counsel for the petitioner contradicted to the argument of learned counsel for the respondents by arguing that charge memo/sheet issued to the petitioner is not approved by the disciplinary authority (board of directors) and it is signed by an officer five ranks junior to the petitioner and, therefore, is non est in the eye of law.

21 To strengthen his arguments on the point raised above, learned counsel for the petitioner cited the judgment of the hon'ble Supreme Court of India in the case of *Union of India* v. *B. V. Gopinath* [2014] 1 SCC 351 wherein in paragraphs 41 and 55 held as under :

> "41. We are unable to interpret this provision as suggested by the Additional Solicitor General, that once the disciplinary authority approves the initiation of the disciplinary proceeding, the charge sheet can be drawn up by an authority other than the disciplinary authority. This would destroy the underlying protection guaranteed under article 311(1) of the Constitution of India. Such procedure would also do violence to the protective provision contained under article 311(2) which ensures that no public servant is dismissed, removed or suspended without following a fair procedure in which he/she has been given a reasonable opportunity to meet the allegations contained in the charge sheet. Such a charge sheet can only be issued upon approval by the appointing authority, i. e., Finance Minister.
>
> 55. Although number of collateral issues had been raised by learned counsel for the appellants as well as the respondents, we deem it appropriate not to opine on the same in view of the conclusion that the charge sheet/charge memo having not been approved by the disciplinary was non est in the eye of law (annexure J7)."

22 Learned counsel for the petitioner argued that the respondents placed reliance on two judgments of the hon'ble Supreme Court of India and had filed copy of these two judgments in the court during arguments of the present case on April 26, 2019. One judgment was in the case of *Inspector General of Police* v. *Thavasiappan* [1996] 2 SCC 145 and the second one was in the case of *Transport Commissioner* v. *A. Radha Krishana Moorthy* [1995] 1 SCC 332. The judgment in the case of *Transport Commissioner* v. *A. Radha Krishana Moorthy* [1995] 1 SCC 332 is cited in the judgment in

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the case of *Inspector General of Police* v. *Thavasiappan* [1996] 2 SCC 145. The judgment of *Inspector General of Police* v. *Thavasiappan* [1996] 2 SCC 145 is cited under paragraph 16 in the judgment of *Union of India* v. *B. V. Gopinath* [2014] 1 SCC 351. As such both the judgments are quoted in the abovementioned case of *Union of India* v. *B. V. Gopinath* [2014] 1 SCC 351. The view taken in these two judgments has been rejected by the hon'ble Supreme Court of India in the case of *Union of India* v. *B. V. Gopinath* [2014] 1 SCC 351.

23 It is further submitted that these two Supreme Court judgments on which reliance is placed by respondents are also quoted under paragraph 29 of the judgment in the case of *Union of India* v. *Sunny Abraham* in the matter of W. P. (C) No. 7649 of 2015 wherein this court has held under paragraph 30 as under :

> "30. It is clear from the aforesaid quotation that earlier the view taken was that initiation of disciplinary proceedings can be by an authority subordinate to the appointing authority. This view was also responsible for the belief and foundation that the charge memo could be issued by an authority subordinate to the appointing authority and another approval, viz. the formal charge sheet to be issued, was not required. This view has been specifically rejected and not accepted in *Union of India* v. *B. V. Gopinath* [2014] 1 SCC 351. The ratio in *Union of India* v. *B. V. Gopinath* [2014] 1 SCC 351 has to be applied with full vigour force in cases where there is violation of rule 14(3) of the rules for after the departmental proceedings are over, possibility of ex post facto approval is unacceptable and it is in this context that the term non est has been used (annexure J8)."

24 Learned counsel for the petitioner argued that from the judgment of the hon'ble Supreme Court of India in paragraph 3(ii) and judgment of this court in paragraph 3(v) above, it is well-settled that charge memo/sheet require approval of the disciplinary authority before conducting disciplinary proceedings. It is, therefore, inferred that charge sheet issued to the petitioner having not been approved by the board of PLL being disciplinary authority under section 178(2) of the Companies Act, 2013, is non est in the eye of law. The disciplinary process is to germinate from Board of PLL being the disciplinary authority.

25 It is further argued that counsel for the respondents has shown the noting on the file to this court containing alleged approval of charge sheet by the managing director and chief executive officer, i. e., respondent No. 6 and placed reliance on this approval. Learned counsel further argued that the competent authority (CA) towards the disciplinary action and punishment is the managing director and chief executive officer, i. e., respondent

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No. 6 and placed reliance on clauses 4.4.3 and 4.4.3.6 of HR policies—section 4—standards of conducts and performance annexed as annexure SA1 and copy of minutes of nomination and remuneration committee meeting annexed as annexure SA2 with the supplementary affidavit filed by respondents Nos. 4, 5 and 6. Thus, it is necessary for clarification in the matter to reproduce relevant sections 6, 178(2), 179(1) and (3) of the Companies Act, 2013 and the same are, therefore, reproduced as below :

"6. *Act to override memorandum, articles, etc.*—Save as otherwise expressly provided in this Act—

(a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its board of directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act ; and

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

178. (2) The Nomination and Remuneration Committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the Board their appointment and removal and shall carry out evaluation of every director's performance.

179. *Powers of Board.*—(1) The board of directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do :

Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting :

Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting . . .

(3) The board of directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely :—

(a) to make calls on shareholders in respect of money unpaid on their shares ;

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(b) to authorise buy-back of securities under section 68 ;

(c) to issue securities, including debentures, whether in or outside India ;

(d) to borrow monies ;

(e) to invest the funds of the company ;

(f) to grant loans or give guarantee or provide security in respect of loans ;

(g) to approve financial statement and the Board's report ;

(h) to diversify the business of the company ;

(i) to approve amalgamation, merger or reconstruction ;

(j) to take over a company or acquire a controlling or substantial stake in another company ;

(k) any other matter which may be prescribed :

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify :

Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section."

Accordingly, on perusal of provision statutorily approval of the Companies Act, 2013, it is crystal clear that : **26**

(a) The disciplinary authority in the petitioner is only the board of PLL under section 178(2) of the Companies Act, 2013 the petitioner being a senior management level officer holding the post of "president" as the board of PLL is the appointing/removal authority.

(b) As per provision in section 6(1) of the Companies Act, 2013, the provision of the Companies Act, 2013, shall have effect not withstanding anything to the contrary contained in the memorandum, article of the company or any agreement executed by it in any resolution passed by company in general meeting or by the board of directors, whether the same be

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registered, executed or passed, as the case may be before or after the commencement of this act.

(c) As per provision in section 6(b) of the Companies Act, 2013, any provision contained in the memorandum, article, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this act, become or to be void, as the case may be.

(d) As per provision under section 179(1) of the Companies Act, 2013, the board of directors of the company shall exercise power as per the provision in this Act and not inconsistent therewith. The powers of the board of directors are specified under section 179(3) of the Act.

(e) The board of directors can delegate powers mentioned in clauses (d) to (f) of section 179(3) only. It is obvious that board of directors is not empowered to delegate disciplinary power to anybody.

27 Counsel for the petitioner further argued that the reliance placed by the respondents on the provisions of clauses 4.4.3 and 4.4.3.6 of HR policies—section 4—standards of conducts and performance is totally wrong, bad in law and utter violation of provision of sections 6, 178(2), 179(2) and (3) of the Companies Act, 2013. The board of PLL has no power to delegate its disciplinary powers to anybody including the managing director and chief executive officer under section 179(3) of the Companies Act, 2013. Such power has never been delegated by the board of PLL to the managing director and chief executive officer, i. e., respondent No. 6. The HR policies—section 4—standards of conducts and performance (SA/1) are outdated, inconsistent and at variance with the provision under sections 178(2), 179(1) and (3) of the Companies Act, 2013. Thus, the approval of the charge sheet by the managing director and chief executive officer, i. e., respondent No. 6 is illegal and bad in law as he has no authority of disciplinary action against the petitioner under provision of the Companies Act, 2013. Therefore, approval of the charge sheet by the managing director and chief executive officer is null and void and non est in the eye of law.

28 In the case of *Sahani Silk Mills P. Ltd.* v. *ESI Corporation*, AIR 1994 SCW 3832, it is held as below :

> "6. By now it is almost settled that the Legislature can permit any statutory authority to delegate its power to any other authority, of course, after the policy has been indicated in the statute itself within the framework of which such delegatee is to exercise the power. The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed authority to discharge a function, it cannot be readily presumed that it had

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intended that its delegate should be free to empower another person or body to act in its place."

29 Reliance is also placed on *Government of Andhra Pradesh* v. *M. A. Majeed* [2006] 1 ALD 823 and submitted that a statutory authority is required to do something in a particular manner, the same must be done in that manner only. The State and other authorities, while acting under the statute, are the creatures of the statute and they must act within the four corners of the statute.

30 In the case of *A. K. Kraipak* v. *Union of India* [1969] 2 SCC 262, the Supreme Court has held as under :

"The concept of natural justice has undergone a great deal of change in recent years. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. The rule that enquiries must be held in good faith and without bias, and not arbitrarily or unreasonably, is now included among the principles of natural justice."

31 Learned counsel for the petitioner corroborated from the submissions made under paragraph 3(i) to (xii) mentioned above and the judgments mentioned above that the charge sheet dated August 21, 2018 which does not have the approval of the disciplinary authority (board of PLL) is without jurisdiction, illegal, bad in law and non est and deserves to be quashed. Moreover, the constitution of the committee does not have the approval of the board of PLL being the disciplinary authority and therefore, it is illegal and without jurisdiction.

32 To strengthen his argument, counsel for the petitioner has relied upon the case of *Union of India* v. *Mohd. Nasseem Siddiqui* [2005] ILLJ 931 (MP) of the Madhya Pradesh High Court, which is held as under :

"7. One of the fundamental principles of natural justice is that no man shall be a judge in his own cause. This principle consists of seven well recognised facets : (i) The adjudicator shall be impartial and free from bias, (ii) The adjudicator shall not be the prosecutor, (iii) The complainant shall not be an adjudicator, (iv) A witness cannot be the adjudicator, (v) The adjudicator must not import his personal knowledge of the facts of the case while inquiring into charges, (vi) The

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adjudicator shall not decide on the dictates of his superiors or others, (vii) The adjudicator shall decide the issue with reference to material on record and not reference to extraneous material or on extraneous considerations. If any one of these fundamental rules is breached, the will be vitiated."

33 In *State of Uttar Pradesh* v. *Saroj Kumar Sinha*, AIR 2010 SC 3131, the hon'ble Supreme Court of India in paragraphs 26 and 28 has held as under :

"26. Inquiry officer acting in a quasi judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved.

28. When a department inquiry is conducted against the Government servant it cannot be treated as a casual exercise. The inquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done."

34 In the case of *E. Busali* v. *Commandant* [1994] FLR (68) Karn 993 it is held that "Inquiry conducted by a subordinate's officer of the complainant would be vitiated on the account of bias. The court held that in their view the learned single judge ought to have accepted the contention of the writ petitioner that the inquiry officer, being a subordinate officer to the complainant, the entire proceedings relating to were vitiated".

35 The hon'ble Supreme Court in the case of *State of Punjab* v. *V. K. Khanna*, AIR 2001 SC 343 has held that when administrative actions are coloured with bias and malice, the courts are within their jurisdiction to quash the charge sheets. The court has also held that the existence of elements of bias depends on the facts and circumstance of each case and can be judged from the surrounding circumstances of the case. The court has held as under :

"8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained : If on the other hand allegations pertain to rather fanciful apprehension in administrative

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action, question of declaring them to be unsustainable on the basis therefor would not arise."

36 It is submitted that appointment of Shri V. K. Mishra, who is a subordinate of the complainant (respondent No. 6), as member of committee is in utter violation of principles of natural justice and court judgments mentioned above and vitiates the disciplinary proceedings. From the submissions mentioned above, it is substantiated that the committee has been constituted arbitrarily, unreasonably and colours with bias and, therefore, deserves to be quashed.

37 On the issue of findings of the committee, it is submitted by counsel for the petitioner that the petitioner has written several letters through e-mail informing the respondents that his disciplinary authority is board of PLL and charge sheet issued to him without approval of board of PLL is wrong and illegal. However, all the representations of the petitioner were ignored by the respondents. The petitioner was, therefore, compelled not to represent on the findings of the committee.

38 As regards charge No. 1 is concerned, it is submitted that a confidential letter dated May 1, 2018 (P/2), written by the petitioner to Shri K. D. Tripathi, Secretary, MOPNG with a copy to CVC and director CBI, wherein, he made false allegation. Thus, the allegation against the petitioner is highly sensitive and confidential information is disclosed into public domain by writing that letter which amounts to misconduct under HR Policy of PLL.

39 The findings of the inquiry committee (EC) as recorded under paragraph 5.6, 5.7 and 8 of the EC report dated December 18, 2018 (P/9) are reproduced below :

"5.6 In the opinion of EC, all these authorities (except Secretary, MOPNG and Chairman PLL) are public functionaries of the country and any communication addressed to them amounts to putting the communication into public domain.

5.7 Disclosure of the confidential information relating to the tender process as contained in the letter dated May 1, 2018 clearly amount to 'disclosing into public domain' and hence violation of secrecy and confidentiality of the said information relating to tender processes.

5.8 The said acts/omissions clearly amount to misconduct under clauses 4.3.1(o) and 4.3.1(m) of General Standards of Conduct and Performance."

40 The conclusion arrived at by the EC under paragraph 5.6, 5.7 and 5.8 of its reports is not based on evidence adduced during the inquiry but on con-

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jecture. The opening words of paragraph 5.6, viz., "In the opinion of EC, all these authorities . . ." itself that conclusion is arrived at on conjecture by importing personal knowledge by the inquiry Committee and is tainted with bias. Writing confidential letter to CVC and CBI director cannot be said to be disclosing information under public domain. If information is disclosed to the press, newspapers, electronic media, etc., for information of public at large then it would be in public domain. Inquiry committee has failed to establish if any prejudice is caused or if any harm is done to PLL by writing confidential letter dated May 1, 2018 by the petitioner to CVC or CBI director. In the contents of the letter dated May 1, 2018 there is nothing like "highly confidential and sensitive" as termed by respondent No. 6 deliberately. As such charge No. 1 is wrongly proved against the petitioner.

41 As far as charge No. 2 is concerned, it is submitted that a complaint letter dated July 2, 2018 (P/3) and its enclosure approval note dated June 1, 2018 (P/21) written by the petitioner to Dr. M. M. Kutty, Secretary, Ministry of Petroleum and Natural Gas and copy sent to other various Government authorities. Accordingly, the allegation against the petitioner is that the approval note neither belongs to the department of the petitioner nor its possession thereof belongs to the work domain of petitioner and that petitioner unauthorisedly got access to the approval note and communicated to various public authorities and thus misconduct. The findings of the inquiry committee (EC) report as recorded under paragraph 15 of the EC report dated December 18, 2018 are reproduced below :

> "15. EC also finds that sharing of approval note amounts to unauthorised communication/disclosure of official document/information relating to the company's business to unrelated persons and wilful damage to the property of the company and the same are misconduct under clause 4.3.1(m) and (o) of the HR policy on standards of conduct and performance."

42 The petitioner being a "whistle blower", blew a whistle by lodging a complaint dated July 2, 2018 under "Public Interest Disclosure and Protection of Informs Resolution, 2004" exposing corruption of respondent No. 6 by misusing office. The petitioner enclosed approval note dated June 1, 2018 with complaint dated July 2, 2018 as documentary evidence in support of his allegation against respondent No. 6. From the complaint it is clear that respondent No. 6 awarded a work order of Rs. 55 lakhs to a already disqualified firm M/s. Pine Tree Pictures P. Ltd., on nomination basis in utter violation of company's laid down procedure. The director of M/s. Pine Tree Picture P. Ltd., Shri Gautam Chaturvedi, is a family friend of respondent No. 6. Respondent No. 6 approved 75 per cent. advance

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payment without any bank guarantee in gross violations of rules and regulations.

43 As regards charge No. 3 is concerned, it is as per clause 17.4.2 of HR policies that the petitioner is entitled to one club membership. Accordingly petitioner acquired membership of Chelmsford club in Delhi. The charge against the petitioner is that he is entitled to corporate membership club and that he acquired individual membership of the Chelmsford club by misrepresenting the facts and thus misconducted. The findings of the inquiry committee (EC) as recorded under paragraphs 1, 6 and 7 are reproduced below :

> "1. A perusal of club membership policy (P/1) shows that the management provides one club membership to V. P. and above.
>
> 6. Therefore, in the opinion of EC, the club policy of the company only refers to the corporate membership which is in favour of the company and any eligible employee is required to be nominated by the company under the said membership.
>
> 7. It is clear that CSE was entitled only to a corporate club membership and he fraudulently obtained an individual and permanent membership in his own name, which is not transferable under the Rules of Chelmsford club, as it is evident from their letter (exhibit MW-1/5)."

44 Learned counsel for the petitioner submits that as per clause 17.4.2 of HR policies, the company shall provide one club membership to V. P. and above as admitted by EC under paragraph 1 of its report. It does not mention corporate club membership. The conclusion is arrived at by the EC, under paragraph 6 mentioned above, by importing personal knowledge and is tainted with bias. It is as well in utter violation of provision under clause 17.4.2 of HR policies.

45 It is pertinent to mention here that Shri A. K. Chopra, Senior Vice President (L and D) is also having same type of membership of Chelmsford club as the petitioner, as would be evident from PLL's letter No. PLL/HR-CM-CC/2018-19/002, dated July 4, 2018 copy annexed as P24). Although petitioner has been charge sheeted on August 21, 2018 for allegedly having wrong membership of the club but no charge sheet has been issued to Shri A. K. Chopra along with petitioner. It is thus obvious that respondent No. 6 is not impartial and is biased and vindictive against the petitioner.

46 On the other hand, Mr. Sudhir Nandrajog, senior advocate appearing for respondents Nos. 4 to 6 submitted that the petitioner did not attend the committee proceedings in spite a number of chance given to him and,

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therefore, ex parte was concluded. In this connection, the petitioner submits as under :

(i) In e-mail dated October 10, 2018 (P/28) the petitioner informed chairman PLL and others that inquiry committee has been constituted without approval of chairman/board of directors in violation of the Companies Act, 2013 and that it would be illogical for the petitioner to attend the inquiry committee.

(ii) In e-mail dated October 12, 2018 (P29) the petitioner informed respondent No. 6 and others if approval of the board of directors was obtained for setting up of the inquiry committee. If so, a copy of the approval was sought by the petitioner from respondent No. 6, which was not supplied.

(iii) In e-mail dated October 29, 2018 (P30) the petitioner informed that respondent No. 6 has not furnished copy board of directors approval for constituting the inquiry committee. The petitioner also informed that it would be illogical for the petitioner to attend the unconstitutional inquiry committee.

(iv) In e-mail dated November 13, 2018 (P31) the petitioner informed respondent No. 6 that appointing authority of the petitioner is board of directors through NRC (nomination and remuneration committee) and that approval of board had not been obtained before proceeding. On bogus charge sheet and that in the absence of approval of board, charge sheet cannot be issued to the petitioner. The petitioner further informed that it would be illogical for the petitioner to attend unconstitutional inquiry committee.

47 Accordingly, the petitioner has attempted to establish that the entire disciplinary proceedings are unconstitutional, void, wrong and against the principles of natural justice and in contravention of provision of article 311 of the Constitution of India. As such findings of the committee are wrong, ultra vires and not impartial as the disciplinary proceedings are not held in good faith and without bias.

48 Learned senior counsel submits that the present petition has been filed to challenge the inquiry report of the inquiry committee dated December 18, 2018 pursuant to a charge sheet dated August 21, 2018. The writ had been filed at the stage when the inquiry report dated December 18, 2018 was sent to the petitioner vide letter dated December 24, 2018 and one weeks' time was granted to him to make the representation. Therefore, at his request, vide letter dated January 4, 2019 he was granted further

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extension to submit his representation against the report by January 11, 2019 however, instead of making the representation, the petitioner filed the present writ petition challenging the inquiry report as well as charge sheet.

49 Learned counsel further submits that main challenge of the petitioner is that ; the charge sheet has been issued by an incompetent authority as it has been issued by the senior manager HR ; under section 178 of the Companies Act, 2013 the appointing authority of the petitioner is the board of directors ; since the approval of the board of directors was not obtained the charge sheet is liable to be quashed and finding of guilt by inquiry committee on the allegedly incompetent charges is violative of principles of natural justices.

50 The learned senior advocate submits that the petitioner was issued a charge sheet dated August 21, 2018. It was sent through his reporting officer, i. e., director (technical) and was communicated by senior manager HR. It was duly approved by the managing director and chief executive officer of PLL as stated below. The initiation of disciplinary proceedings is in accordance with the applicable rules of the company, including delegation of authority manual, HR policy amended from time-to-time, and is also not in variance with the Companies Act, 2013 and rules thereof. As per clause 4.14 of the DOA manual, powers pertaining to HR vests with the managing director and chief executive officer in consultation with the head of the HR department. Clause 4.14 of DOA manuals is reproduced as under :

> "4.14 Powers pertaining to HR will be exercised by CEO and MD in consultation with the head of the HR department."

51 As per clause 4.4.3.6 of the HR policy the competent authority (CA) towards disciplinary action and purpose of punishment is CEO and MD for the officers and directors concerned for the operational and supporting staff . . ." Relevant clause 4.4.3.6 is reproduced as under :

> "4.4.3.6 The competent authority (CA) towards disciplinary action and purpose of punishment is CEO and MD for officers and directors concerned for the operational and supporting staff . . ."

52 Section 4 of the standard of conducts and performance of the HR policy (PLL) which is duly approved by the board of directors and applicable on the employees including the petitioner clearly lays down the process to be followed by HR department in consultation with the functional head and the managing director and chief executive officer for any action including disciplinary proceedings against a delinquent employee and powers of the

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managing director and chief executive officer (respondent No. 6). The relevant clauses are extracted below :

"4.4.3 If any act of misconduct is proved against an employee any of the following punishments, commensurate with the offence can be inflicted :

- Fine
- Warning or censure
- Stoppage not exceeding four days
- Reduction to a lower grade or lower stage in the grade
- Discharge or dismissal

In the case of misconduct for which any of the above penalties other than the fine is proposed to be imposed, a charge sheet clearly setting out the allegations and charges, will be given to the employee concerned. He will within 7 days from the date of the receipt of said communication furnish his written explanation. An enquiry will be held by an enquiry committee nominated by the management of the company into the competent authority to drop the alleged charges arid the facts so communicated to the employee in writing. During the enquiry the employee concerned will be afforded reasonable opportunity of explaining and defending himself. The enquiry committee will establish the truth or otherwise of the charges and present its findings to the competent authority, which after due consideration of all relevant facts, will decide the action to be taken. In the event it is decided by the competent authority that employee is innocent, this fact will be so communicated to him in writing. If, however, the competent authority finds the employee to be guilty of some or all the charges and therefore decides to inflict punishment on him, a show-cause notice will be issued to the employee concerned, informing the employee as to show cause within 7 days from the date of receipt of the communication by him as to why the proposed penalty should not be imposed on him. The reply to the show-cause notice will then be considered by the competent authority and final orders communicated to the employee."

53 Hence it is evident that the managing director and chief executive officer is the competent authority and has full power for initiation of disciplinary action against any officer of PLL.

54 Relevant extracts of section 178 of the Companies Act, 2013 are as follows :

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"178. *Nomination and Remuneration Committee and Stakeholders Relationship Committee.*—(1) The board of directors of every listed company and such other class or classes of companies, as may be prescribed shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent directors :

Provided that the chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such committee.

(2) The nomination and remuneration committee shall identify persons who are qualified to become directors and who may be appointed in senior management in accordance with the criteria laid down, recommend to the board their appointment and removal and shall carry out evaluation of every director's performance."

It is thus clear that in view of section 178, if any penalty of removal is **55** imposed then the procedure prescribed under section 178 of the Companies Act, 2013 would be required to be followed. However, for minor and other penalties not envisaged under the Companies Act 2013, the managing director and chief executive officer would be the competent authority. Hence if any punishment is awarded other than clause 4.4.3(e) and (f) of standards of conducts and performance of the HR Policy, managing director and chief executive officer is the competent authority. If the punishment falls under clause 4.4.3(e) and (f) of standards of conducts and performance of the HR policy, then the managing director and chief executive officer will forward the case to the NRC under section 178 of the Companies Act, 2013, since any removal or demotion of senior management personnel category should be recommended to the board by the NRC. However, section 178 has no role to play with respect to the initiation of the disciplinary proceedings. It will come into picture only at the time of imposition of penalty. The managing director and chief executive officer is clearly empowered and authorized under the delegation of authority as well as the standards of conducts and performance of the HR policy (PLL) to initiate the disciplinary proceedings including the issuance of the charge sheet and the appointment of the inquiry committee. The original file showing that the managing director and chief executive officer has approved the issuance of the charge sheet has been perused by this court during the hearing on July 2, 2019.

I have heard learned counsel for the parties at length and perused the **56** material available on record.

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57 Regarding maintainability of the petition is concerned, the respondent-company is "public limited company" as per section "4—Memorandum—(1)" of the Companies Act, 2013. The company was formed as a joint venture company by the Government of India in 1998 in pursuance of Cabinet decision on July 4, 1997. Thus, it is an instrumentality of the Government because it comes under purview of "other authorities" of "State" under article 12 of the Constitution of India.

58 In addition, deep and pervasive control is exercised by the Government over administrative, financial and functional activities of the respondent-company. Moreover, there is significant financial control by 50 per cent. shareholding by the four Central Government PSUs mentioned above and it falls within the purview of CVC. Moreover, in the case of *Essar Steel Ltd.* v. *Union of India* (supra), the directive of the Central Government to company under their letter dated March 6, 2007 was upheld by the Supreme Court of India on April 19, 2016. In the case of *Petronet LNG Ltd.* (supra), it is held by this court that there is crucial public interest element in its functioning and 50 per cent. of Rs. 1,200 crores shareholding is controlled by public sector undertaking which are directly answerable to the Central the Government and Parliament. Thus, in my considered opinion, the respondent-company is "State" under article 12 of the Constitution of India. Accordingly, the present writ petition is maintainable.

59 It is admitted fact that the petitioner did not attend the committee proceedings in spite a number of chance given to him and, therefore, proceedings were concluded ex parte. The case of the petitioner is that the entire disciplinary proceedings are unconstitutional, void, wrong and against the principles of natural justice and in contravention of provision of article 311 of the Constitution of India.

60 The challenge before this court is the inquiry report of the inquiry committee dated December 18, 2018 pursuant to a charge sheet dated August 21, 2018. The present petition has been filed at the stage when the inquiry report dated December 18, 2018 was sent to the petitioner vide letter dated December 24, 2018 and one weeks' time was granted to him to make the representation. It is not in dispute that, at his request, vide letter dated January 4, 2019 he was granted further time to submit his representation by January 11, 2019 against the representation. However, instead of making the representation, the petitioner filed the present writ petition challenging the inquiry report as well as charge sheet.

61 Further case of the petitioner is that the charge sheet has been issued by an incompetent authority as it has been issued by the senior manager HR ;

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under section 178 of the Companies Act, 2013 the appointing authority of the petitioner is the board of directors. Since the approval of the board of directors was not obtained, the charge sheet is liable to be quashed and finding of guilt by inquiry committee on the allegedly incompetent charges is violative of the principles of natural justices.

62 The charge sheet dated August 21, 2018 was issued to the petitioner and the same was sent through his reporting officer, i. e., director (technical) and was communicated by the senior manager HR. It was duly approved by the managing director and chief executive officer of PLL. The initiation of disciplinary proceedings is in accordance with the applicable rules of the company, including delegation of authority manual, HR policy amended from time-to-time and is also not in variance with the Companies Act, 2013 and rules thereof.

63 As per clause 4.14 of the DOA Manual, the powers pertaining to HR vests with the managing director and chief executive officer in consultation with the head of the HR department. The said powers pertaining to HR will be exercised by CEO and MD in consultation with the head of the HR department.

64 As per clause 4.4.3.6 of the HR policy, the competent authority (CA) towards disciplinary action and purpose of punishment is CEO and MD for the officers and directors concerned for the operational and supporting staff.

65 Section 4 of the standard of conducts and performance of the HR policy (PLL) which is duly approved by the board of directors and applicable on the employees including the petitioner clearly lays down the process to be followed by HR department in consultation with the functional head and the managing director and chief executive officer for any action including disciplinary proceedings against a delinquent employee and powers of the managing director and chief executive officer (respondent No. 6). Thus, managing director and chief executive officer is the competent authority and has full power for initiation of disciplinary action against any officer of PLL.

66 As per section 178 of the Companies Act, 2013, if any penalty of removal is imposed then the procedure prescribed under section 178 would be required to be followed. However, for minor and other penalties not envisaged under the Companies Act, 2013, the managing director and chief executive officer would be the competent authority. Thus if any punishment is awarded other than clause 4.4.3(e) and (f) of standards of conducts and performance of the HR policy, managing director and chief executive

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officer is the competent authority. If the punishment falls under clause 4.4.3(e) and (f), then the managing director and chief executive officer will forward the case to the NRC under section 178 of the Companies Act, 2013, since any removal or demotion of senior management personnel category should be recommended to the board by the NRC. However, section 178 has no role to play with respect to the initiation of the disciplinary proceedings. It will come into picture only at the time of imposition of penalty. Thus, the managing director and chief executive officer is clearly empowered and authorized under the delegation of authority as well as the standards of conducts and performance of the HR Policy (PLL) to initiate the disciplinary proceedings including the issuance of the charge sheet and the appointment of the inquiry committee.

67 In addition to above, it is pertinent to mention here that during the hearing of the present petition, on July 2, 2019 this court has perused the original file whereby it is established that the managing director and chief executive officer has approved the issuance of the charge sheet. Thus, the arguments of the counsel for the petitioner and the ratio of the judgments relied upon, has no help in the facts and circumstances of the present case.

68 However, before parting with this judgment, it is the duty of the court that if any information regarding corrupt practices of any official including respondent No. 6 is on record, then this court cannot lay hand.

69 Accordingly, Chief Vigilance Commissioner is directed to inquire into the allegations made by the petitioner against respondent No. 6, mentioned in paragraph 7 above, and take action as per law.

70 Since the petitioner has challenged the charge sheet and inquiry proceedings and not filed response to the findings of inquiry authority, therefore, I hereby give liberty to file response within three weeks from the receipt of this order. On receipt of reply, the respondent is directed to consider the same and pass order as per law, dealing with the fact that Shri A.K. Chopra, senior vice-president is also having same type of membership of Chelmsford club as the petitioner has, but no action has been taken against him.

71 In view of above directions, the writ petition is disposed of.

72 Registry is directed to send copy of this judgment to Chief Vigilance Commissioner for compliance.

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C. M. Appl. Nos. 486 and 14962 of 2019

In view of the order passed in the writ petition, these applications have been rendered infructuous and are, accordingly, disposed of. 73

[2020] 220 Comp Cas 447 (SC)

[IN THE SUPREME COURT OF INDIA]

COGNIZANCE FOR EXTENSION OF LIMITATION, *In re*

S. A. BOBDE C. J. I., **L. NAGESWARA RAO** and **SURYA KANT** JJ.

March 23, 2020.

HF ▸ Directions

LIMITATION—EFFECT OF CORONA VIRUS—DIFFICULTIES LIKELY TO BE FACED BY LAWYERS AND LITIGANTS IN FILING PROCEEDINGS WITHIN PERIOD OF LIMITATION—SUPREME COURT—TAKING SUO MOTU COGNIZANCE OF SITUATION—DIRECTION THAT IRRESPECTIVE OF LIMITATION PRESCRIBED UNDER GENERAL OR SPECIAL LAWS, AND WHETHER CONDONABLE OR NOT, PERIOD OF LIMITATION IN ALL SUCH PROCEEDINGS TO STAND EXTENDED WITH EFFECT FROM MARCH 15, 2020 TILL FURTHER ORDERS—ORDER OF SUPREME COURT BINDING ON ALL AUTHORITIES AND COURTS AND TRIBUNALS—CONSTITUTION OF INDIA, arts. 141, 142.

Taking suo motu notice of the situation arising out of the challenge faced by the country on account of the Covid-19 virus and resultant difficulties that might be faced by litigants across the country in filing their petitions, applications, suits or appeals and all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central or State) and to obviate such difficulties and to ensure that lawyers and litigants do not have to come physically to file such proceedings in respective courts or Tribunals across the country including the Supreme Court, the Supreme Court, in exercise of power under article 142 read with article 141 of the Constitution of India, ordered that irrespective of the limitation prescribed under the general law or special laws, whether condonable or not, the period of limitation in all such proceedings, shall stand extended with effect from March 15, 2020 till further orders to be passed by the Supreme Court. The court declared that this order would be binding within the meaning of article 141 on all courts, Tribunals and authorities.

Suo Moto Writ Petition (Civil) No. 3 of 2020.

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Counsel for the appearing parties :

Tushar Mehta, Solicitor General, and *Dushyant Dave* Senior Advocate.

Other Advocates : *Ms. Swati Ghildiyal, Ankur Talwar, G. S. Makkar, Raj Bahadur* and *B. V. Balaram Das.*

JUDGMENT

1 This court has taken suo motu cognizance of the situation arising out of the challenge faced by the country on account of the Covid-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under special laws (both Central and/or State).

2 To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective courts/Tribunals across the country including this court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended with effect from March 15, 2020 till further order/s to be passed by this court in present proceedings.

3 We are exercising this power under article 142 read with article 141 of the Constitution of India and declare that this order is a binding order within the meaning of article 141 on all courts/Tribunals and authorities.

4 This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction.

5 Issue notice to all the Registrars General of the High Courts, returnable in four weeks.

———————

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*Notice of disclaimer of lease**

Take notice that pursuant to an order of the Tribunal, dated the . . . . . day of . . . . ., 20 . . . , I, the undersigned, the company liquidator of the above-named company, by writing under my hand bearing date the . . . . . day of . . . . . 20 . . . , disclaimed all interest in the lease dated the . . . . . day of . . . . . 20 . . . ., whereby the premises (here insert description of property disclaimed) were demised to . . . . . at a rent of Rs. . . . . per annum (or per mensem) for a term of . . . . . years.

The above-mentioned disclaimer was filed in Tribunal on the . . . . . day of . . . . . 20 . . .

Dated this . . . . . day of . . . . . 20 . . . . . .

Company Liquidator.

*Form to be suitably altered in the case of property other than lease.

FORM WIN 87

[*See* rule 162]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Application No. . . . . of 20 . . .

A.B.—*Applicant*

C.D.—*Respondent*

Order requiring parties interested in disclaimed lease to apply for vesting order or to be excluded from all interest in the leasehold premises

1. Whereas it appears by the affidavit of . . . . . and the affidavit of . . . . . filed respectively in the above matter on the . . . . . , 20 . . . , and the . . . . . , 20 . . . , that :—

(a) By a lease dated the . . . . . , 20 . . . . . , and made between A.B., the applicant herein of the one part and the above-named company (hereinafter called "the company") of the other part, the premises comprising . . . . . (give particulars) were demised unto the company for a term of . . . . . years from the . . . . . , 20 . . . . ., at a rental of Rs. . . . . per annum (or per mensem) ;

(b) By a sub-lease dated the . . . . . , 20 . . . . . , made between the company of the one part and C.D., the respondent of the other part, in consideration of the payment therein made and the covenants and conditions therein named, the company demised (part* of) the said premises to the said C.D. [or By a mortgage or charge dated the . . . . . , 20 . . . . . , and duly registered with the Registrar of Companies, the company charged the said premises to secure the repayment of a sum of Rs. . . . . together with interest at . . . . . per cent. per annum in favour of the said C.D.].

2. And whereas on the . . . . . , 20 . . . . . , an order was made for the winding up of the company by the Tribunal and Shri . . . . . was appointed liquidator for purposes of winding up ;

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3. And whereas the company liquidator of the said company was by order dated the . . . . . , 20 . . . , given leave to disclaim the said lease ;

4. And whereas the said company liquidator of the above-named company on the . . . . . , 20 . . . , gave notice of his intention to disclaim the said lease, and by writing under his hand dated the . . . . . , 20 . . . , disclaimed the said lease, and filed such disclaimer in these proceedings on the . . . . . , 20 . . . , and served notice thereof on or about the . . . . . , 20 . . . . , on the said A.B., the applicant ;

Now upon the application by summons dated the . . . . . , 20 . . . , of the said A.B., of . . . . . for an order that the respondent C.D., do elect whether he will or will not take a vesting order of the disclaimed property comprised in the said lease, being . . . . . (give particulars of the property) ;

This Tribunal doth order that unless the said respondent C.D., within fourteen days after the service of this order on him applies for a vesting order of the said lease subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property on the . . . . . , 20 . . . , the date of the commencement of the winding up (or subject to the same liabilities and obligations as if the said lease had been assigned to him on the . . . . . , 20 . . . . , the date of the commencement of the winding up of the said company), the said C.D., be excluded from all interest in and security upon the said premises.

That this summons do stand adjourned for further orders to the . . . . . , 20 . . . , for service of this order on the said C.D.

Dated this . . . . . day of . . . . . 20 . . . . . .

(By the Tribunal)

Registrar

*If different parts have been sub-leased to different persons, repeat the provision to cover all such sub-leases.

FORM WIN 88

[*See* rule 162]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

A.B.—*Applicant*

C.D.—*Respondent*

Order vesting lease and excluding persons who have not elected

Paragraphs 1 to 4 as in Form WIN 87

5. And whereas upon the hearing of this application by summons of the said A.B., for an order that the respondent C.D., do elect whether or not he will take a vesting order of the disclaimed property comprised in the said lease, the Tribunal on the . . . . . ,

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20 . . . . , ordered that unless the said respondent C.D., within fourteen days after the service of the said order on him applied for a vesting order of the said lease subject to the conditions mentioned in the said order, the said C.D., be excluded from all interest in and security upon the said premises.

6. And whereas the said order was duly served on the said C.D., as appears from the affidavit of . . . . . filed . . . . . 20 . . . .

7. And whereas the said C.D., has not applied or intimated his intention to apply for a vesting order within the time limited by the said order [*or the said C.D., has applied for a vesting order of the said lease.]

Upon hearing, etc., and upon reading, etc., this Tribunal doth order :

That the said C.D., be and is hereby excluded from all interest in and security upon the premises aforesaid [and that the property do vest in . . . .].

[or That the company's interest in the premises . . . . . more particularly described in the lease deed dated the . . . . . , 20 . . . , do vest in C.D., the respondent herein, for the residue of the term of . . . . . years demised by the said lease, subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up (or subject only to the same liabilities and obligations as if the lease had been assigned to that person on the . . . . . , 20 . . . . . , the date of the commencement of the winding up]

Dated this . . . . . day of . . . . . 20 . . . . . .

(By the Tribunal)

Registrar

*Where such an application for a vesting order is made, the application should be included in the cause-title.

FORM WIN 89

[*See* rule 169]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Advertisement as to declaration of dividend

Notice is hereby given that a* . . . . . dividend of . . . . . (in the rupee) has been declared and that the same will be payable on the . . . . . day of . . . . . 20 . . . ., and on the subsequent working days up to the . . . . . day of . . . . . 20 . . . . . at the office of the company liquidator.

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Every person entitled to participate in this dividend will receive a notice to that effect and no payment will be made except upon production of such notice.

Company Liquidator.

*Insert here "first" or "second" or "final" as the case may be.

FORM WIN 90

[*See* rule 169]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Notice of dividend

(Please bring this dividend notice with you)

Dividend of . . . . . (in the rupee)

To

. . . . . (Name)

. . . . . (Address)

Take notice that a* . . . . . dividend of . . . . . (in the rupee) has been declared. The amount payable to you is Rs. . . . ., and the same will be payable at my office on the . . . . . day of . . . . . , 20 . . . , and on the subsequent working days up to the . . . . . day of . . . . . , 20 . . . . , between the hours of . . . . . .

Upon applying for payment this notice must be produced entire with any bills of exchange, promissory notes or any other negotiable securities held by you. If you desire the dividend to be paid to some other person, you may sign and lodge with the company liquidator an authority in FORM WIN 91. If you do not attend personally you must fill up and sign the enclosed forms of Receipt and Authority.

Dated this . . . . . day of . . . . . 20 . . . . . .

Company Liquidator

Notes.—1. The receipt and authority should, in the case of a firm, be signed in the firm's name, and in the case of a limited company, by an officer of the company so described.

2. If you do not claim the dividend, declared and payable as above, within six months after the date when it became payable, the company liquidator shall pay the said amount into the Company Liquidation Dividend and Undistributed Assets Account in the Scheduled Bank, under section 352(2) of the Companies Act, 2013.

*Insert here "first" or "second" or "final" as the case may be.

Enclosures :

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Receipt

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Address :

Date :

Received from the company liquidator of the above company the sum of Rs. . . . . being the amount payable to me/us in respect of the . . . . . dividend of . . . . . in the rupee. Rs. . . . . /

Payee's signature

**Authority for delivery*

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Address :

Date :

Sir,

Please deliver to the bearer . . . . . (name of bearer) [or send to me by cheque by post or by postal money order, at my expense and risk] the . . . . . dividend of Rs. . . . . payable to me. Rs. . . . . /

Payee's signature

To

The company liquidator of . . . . . (company),

. . . . . .

**Note*.—This is an authority only to deliver the dividend (the cheque or the amount as the case may be), and not to make it payable to another person, for which FORM WIN 91 should be used.

Insert here "first" or "second" or "final" as the case may be.

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FORM WIN 91

[*See* rule 170]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Authority to company liquidator to pay dividend to another person

Address :

Date :

Sir,

I hereby authorise and request you to pay the dividend referred to in the enclosed notice to . . . . . of . . . . . (a specimen of whose signature is given below) whose receipt shall be a sufficient discharge.

Signature

Witnesses to the signature of . . . . . .

1. . . . . (signature)

. . . . . (occupation)

. . . . . (address)

2. . . . . (signature)

. . . . . (occupation)

. . . . . (address)

Specimen signature of person appointed as above

. . . . . .

(Specimen)

Witness to specimen signature :

. . . . . (signature)

. . . . . (occupation)

. . . . . (address)

Dated this . . . . . day of . . . . . 20 . . . . . .

FORM WIN 92

[*See* rule 172]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

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Petition No. . . . . of 20 . . .

. . . . . Petitioner

Schedule of contributories to whom return is to be paid

Number as in settled list	*Name of contributory as in settled list*	*Address*	*Number of shares held as per settled list*	*Total amount called up*	*Total amount paid up*	*Arrears of calls at date of return*	*Previous return of capital by appropriated by liquidator for arrears of calls*	*Amount of return payable at . . . . . per share*	*Net return payable*	*Date and particulars of transfer of interest or other variation in list*	*Remarks*
				Rs.	*Rs.*	*Rs.*	*Rs.*	*Rs.*	*Rs.*		
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*	*10*	*11*	*12*

Note.—Where the articles of the association of the company provide that the amount divisible among the members or any class of members shall be divisible in proportion to the amount paid up or which ought to have been paid up at the date of winding up, or contain any other provision which will necessitate further information before a return can be made, columns should be added showing the amount called up and the amount paid up at such date in respect of shares then held by such members or class or members or such other facts as may be requisite.

FORM WIN 93

[*See* rule 172]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Notice of return to contributories

(Please bring this dividend notice with you)

Dividend of . . . . . (in the rupee)

To

. . . . . .

. . . . . .

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Notice is hereby given that a first/second/final return of . . . . . per share has been declared. The amount payable to you is Rs. . . . . and the same will be payable at my office on the . . . . . day of . . . . . , 20 . . . . , and the subsequent working days up to the . . . . . day of . . . . . , 20 . . . , between the hours of . . . . . .

Upon applying for payment, this notice must be produced entire together with the share certificate. If you do not attend personally you must forward the share certificate and fill up and sign the enclosed forms of receipt and authority for delivery.

Dated . . . . . *Company Liquidator*

Note.—The receipt should be signed by the contributory personally, or in the case of joint contributories, by each of them, and in the case of a limited company, by an officer of the company so described.

Enclosures :

(1)

Receipt

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Received from the company liquidator of the above company the sum of Rs. . . . . being the amount payable to me/us in respect of the first/second/final return of . . . . . per share held by me/us in the above company.

Rs. . . . . . .

Dated . . . . . .

(Signature/Signatures)

. . . . . .

Address

Authority for delivery

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Address :

Date :

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Sir,

Please deliver to the bearer . . . . . (name of bearer) [or send to me/us by cheque by post or by postal money order, at my/our expense and risk] the first/second/final return of Rs. . . . . payable to me/us.

Rs. *Payee's signature*

To

The Company Liquidator of . . . . . (company),

**Note*.—This is an authority only to deliver, and not to make the return payable to another person.

FORM WIN 94

[*See* rule 179]

State the number of the petition and the date of the order.

Statement of unclaimed dividends or undistributed assets, paid under sections 352(1) and (2), into the company liquidation dividend and undistributed assets account

Name of the company

Nature of the proceeding*

Date of commencement of winding up

Date of payment into the company liquidation dividend and undistributed assets account

I. Particulars of the unclaimed dividends paid into the companies liquidation dividend and undistributed assets account in the scheduled bank.

Number on list of creditors	*Name of the creditor to whom the dividend is due*	*Last known address of creditor*	*Date of declaration and rate of dividend*		*Total amount of dividend payable*	*Last date when payable*	*Amount paid into Companies Liquidation Dividend and Undistributed Assets Account*	*Remarks*
			Date	*Rate*				
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*
							Total	

II. Particulars of undistributed assets paid into the company liquidation dividend and undistributed assets account.

Number on list of contributories	*Name of contributory*	*Last known address of contributory*	*Date of declaration and rate of return*		*Total amount of return payable*	*Last date when payable*	*Amount paid into companies liquidation dividend and undistributed assets account*	*Remarks*
			Date	*Rate*				
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*	*9*

Total Rs. P.

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Total amount of unclaimed dividends paid into the Companies Liquidation Dividend and Undistributed Assets Account Rs.

Total amount of undistributed assets paid into the Companies Liquidation Dividend and Undistributed Assets Account

Total amount paid under both heads

Dated this . . . . . day of . . . . . 20 . . . . . .

(Sd.)

Company Liquidator(s).

FORM WIN 95

[*See* rule 184]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, ...)

Petition No. . . . . of 20 . . .

. . . . . Petitioner

Request to deliver bill

I hereby request that you will, within four weeks of the receipt hereof or such further time as the Tribunal may allow, deliver to me your bill of cost (or charges) as . . . . . failing which, I shall, in pursuance of Companies Act, 2013 and the rules made thereunder, proceed to declare and distribute a dividend without regard to any claim which you may have against the assets of the company, and your claim against the assets of the company will be liable to be forfeited.

Dated this . . . . . day of . . . . . 20 . . . . . .

Company Liquidator

I here state the nature of the employment e.g. advocate, auctioneer, etc.

[F. No. 01/30/2013-CL-V Pt-III]

Companies (Incorporation) Amendment Rules, 2020

Notification No. G. S. R. 128(E), dated 18th February, 2020[1].

In exercise of the powers conferred by sub-sections (1) and (2) of section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules further to amend the Companies (Incorporation) Rules, 2014[2], namely :—

1. Gaz. of India, Extry. No. 110, dt. 18-2-2020, Pt. II, sec. 3(i), p. 28.
2. See [2014] 185 Comp Cas (St.) 216.

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1. Short title and commencement.—(1) These rules may be called the **Companies (Incorporation) Amendment Rules, 2020.**

(2) They shall come into force with effect from 23rd February, 2020.

2. In the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the said rules), for rule 9, the following rule shall be substituted, namely :—

"9. *Reservation of name or change of name.*—An application for reservation of name shall be made through the web service available at *www.mca.gov.in* by using web service SPICe+ (Simplified Pro forma for Incorporating Company Electronically Plus : INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from 23rd February, 2020."

3. In the said rules, in rules 10, 12, sub-rule (1) of rule 19, sub-rules (1), (2), (3), (4), (7) and (9) of rule 38, for the words, letters, figures and brackets, "Form No. INC-32 (SPICe), wherever they occur, the letters, brackets, words and figures "SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus : INC-32)" shall be substituted with effect from 23rd February, 2020.

4. In the said rules, in rule 38, in the marginal heading, for the word, brackets and letters "Electronically (SPICE)", the words, brackets and letters "Electronically Plus (SPICE+)" shall be substituted with effect from 23rd February, 2020.

5. In the said rules, in rule 38A,—

(i) in the marginal heading, for the words, brackets and letters "and Employees' Provident Fund Organisation (EPFO) Registration", the words, brackets and letters ", Employees' Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account" shall be substituted ;

(ii) for the letters "AGILE", the letters "AGILE-PRO", shall be substituted ;

(iii) after clause (c), the following clauses shall be inserted, namely :—

"(c) Profession tax registration with effect from 23rd February, 2020

(d) Opening of bank account with effect from 23rd February, 2020.".

6. In the said rules, in the annexure,—

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(i) for forms "RUN, e-Form No. INC-32 (SPICe), and e-Form No. INC-35 (AGILE), the following forms shall be substituted, namely :—

"Form No. INC-32

[Pursuant to sections 4, 7, 8(1), 12, 152 and 153 of the Companies Act, 2013 read with rules made thereunder]

SPICe+

(Simplified Pro forma for Incorporating Company Electronically Plus)

PART-A

1. (a) *Type of company

LLPIN

(b) Class of company

(c) Category of company

(d) Sub-category of company

2. Main division of industrial activity of the company

Description of the main division

3. Particulars of the proposed or approved name

i.	
ii.	

PART-B

II. Structure of the company

4. Whether articles of association is entrenched ☐ Yes ☐ No

Number of articles to which provisions of entrenchment shall be applicable

Details of such articles

Sl. No.	*Article number*	*Short description on entrenchment of the clause*

5. *Company is ☐ Having share capital ☐ Not having share capital

6. *Capital structure of the company

Total authorised share capital (in rupees)

Authorised share capital	*Equity*	*Preference*	*Unclassified*
Number of shares			
Nominal amount per share (in rupees)			
Total amount (in rupees)			

Total subscribed share capital (in rupees)

Subscribed share capital	*Equity*	*Preference*
Number of shares		
Nominal amount per share (in rupees)		

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Total amount (in rupees)		

(ii) *Details of number of members

(a) Enter the maximum number of members	
(b) Maximum number of members excluding proposed employees	
(c) Number of members	
(d) Number of members excluding proposed employee(s)	

III. Address of the company

7. (a) *Correspondence address

*Line I

Line II

*City

*State/Union Territory *Pin code

*District

*Phone (with STD code) –

Fax

*e-mail ID of the company

(b) *Whether the address for correspondence is the address of registered office of the company

☐ Yes ☐ No

(c) *Name of the office of the Registrar of Companies in which the proposed company is to be registered

IV. Subscriber and director details

8. (a) *Number of first subscriber(s) to MoA and directors of the company

	Having valid DIN	*Not having valid DIN*
Total number of first subscribers (non-individual + individual)		
Number of non-individual first subscriber(s)		
Number of individual first subscriber(s)-cum-directors		
Total number of directors (director(s) who is/are not subscriber(s) + subscriber(s)-cum-director(s) as mentioned in above Row No. 3)		

(b) *Particulars of non-individual first subscriber(s)

*Category

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*Corporate identity number (CIN) or foreign company registration number (FCRN) or any other registration number

Pre-fill

*Name of the body corporate

Registered office address or principal place of business in India or principal place of business outside India

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code

Country

*Phone (with STD/ISD code) –

Fax

*e-mail ID

Particulars of the authorised person

*First Name

Middle Name

*Surname

*Father's first name

Father's middle name

*Father's surname

*Gender *Date of birth *Nationality

PAN Passport number Verify details

Aadhaar number

*Place of birth (District & State)

*Occupation type

*Area of occupation

*Educational qualification

Present address

*Line I

Line II

*City

*State/Union Territory *Pin code

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ISO Country code

Country

*Phone (with STD/ISD code) –

Mobile

Fax

*e-mail ID

Kind of shares subscribed	*Number of subscribed shares*	*Amount of shares subscribed*
Equity shares		
Preference shares		

(c) *Particulars of individual first subscriber(s) (other than subscriber-cum-director)

I. *Director Identification number (DIN) Pre-fill

*Name

Kind of shares subscribed	*Number of subscribed shares*	*Amount of shares subscribed*
Equity shares		
Preference shares		

I. *First name

Middle name

*Surname

*Father's first name

Father's middle name

*Father's surname

*Gender *Date of birth *Nationality

*Place of birth

*Occupation type ☐ Self employed ☐ Professional ☐ Homemaker ☐ Student ☐ Serviceman

*Area of occupation

If "others" selected, please specify

*Educational qualification

* ☐ PAN ☐ Passport number Verify details

Aadhaar number

*e-mail ID

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Permanent address

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code Country

*Phone (with STD/ISD code)

*Whether present residential address same as permanent residential address ☐ Yes ☐ No

Present address

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code Country

*Phone (with STD/ISD code) –

*Duration of stay at present address years months

If duration of stay at present address is less than one year then address of previous residence

*Proof of identity *Residential proof

Submit the proof of identity and proof of address under attachments.

Kind of shares subscribed	*Number of subscribed shares*	*Amount of shares subscribed*
Equity shares		
Preference shares		

(d) *Particulars of individual first subscriber(s)-cum-directors

I. *Director Identification number (DIN) Pre-fill

*Name

*Gender *Date of birth *Nationality

*Designation *Category

Whether ☐ Chairman ☐ Executive director ☐ Non-executive director

*Name of the company or institution whose nominee the appointee is

*e-mail ID

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Kind of shares subscribed	*Number of subscribed shares*	*Amount of shares subscribed*
Equity shares		
Preference shares		

Number of entities in which director have interest (need not to mention if such entity is having CIN/FCRN/LLPIN)

*Registration number

*Name

*Address

Nature of interest *Designation

Percentage of shareholding Amount

Others (specify)

I. *First name

Middle name

*Surname

*Father's first name

Father's middle name

*Father's surname

*Gender *Date of birth *Nationality

*Place of birth

*Whether citizen of India Yes No

*Whether resident in India Yes No

*Occupation type Self employed Professional Homemaker Student Serviceman

*Area of occupation

If "others" selected, please specify

*Educational qualification

* PAN Passport number Verify details

*Designation *Category

Whether Chairman Executive director Non-executive director

*Name of the company or institution whose nominee the appointee is

*e-mail ID

Permanent address

*Line I

CN—220—11

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Line II

*City

*State/Union Territory *Pin code

*ISO Country code

Country

*Phone (with STD/ISD code) –

*Whether present residential address same as permanent residential address ☐ Yes ☐ No

Present address

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code

Country

*Phone (with STD/ISD code) –

*Duration of stay at present address years months

If duration of stay at present address is less than one year then address of previous residence

*Proof of identity

*Residential proof

Voter's identity card number

Driving license number

Aadhaar number

Submit the proof of identity and proof of address under attachments.

Kind of shares subscribed	*Number of subscribed shares*	*Amount of shares subscribed*
Equity shares		
Preference shares		

Number of entities in which director have interest

*Registration number

*Name

*Address

Nature of interest *Designation

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Percentage of shareholding [ ] Amount [ ]
Others (specify) [ ]

(e) *Particulars of directors (other than first subscriber(s)

I. *Director Identification number (DIN) [ ] Pre-fill
*Name [ ]
*Gender [ ] *Date of birth [ ] *Nationality [ ]
*Designation [ ] *Category [ ]
Whether [ ] Chairman [ ] Executive director [ ] Non-executive director
*Name of the company or institution whose nominee the appointee is
[ ]
*e-mail ID [ ]
Number of entities in which director have interest (need not to mention if such entity is having CIN/FCRN/LLPIN) [ ]
*Registration number [ ]
*Name [ ]
*Address [ ]
Nature of interest *Designation [ ]
Percentage of shareholding [ ] Amount [ ]
Others (specify) [ ]

I. *First name [ ]
Middle name [ ]
*Surname [ ]
*Father's first name [ ]
Father's middle name [ ]
*Father's surname [ ]
*Gender [ ] *Date of birth [ ] *Nationality [ ]
*Place of birth [ ]
*Whether citizen of India [ ] Yes [ ] No
*Whether resident in India [ ] Yes [ ] No
*Occupation type [ ] Self employed [ ] Professional [ ] Homemaker [ ] Student [ ] Serviceman
*Area of occupation [ ]
If "others" selected, please specify [ ]
*Educational qualification [ ]
* [ ] PAN [ ] Passport number [ ] Verify details

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*Designation *Category

Whether Chairman Executive director Non-executive director

*Name of the company or institution whose nominee the appointee is

*e-mail ID

Permanent address

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code

Country

*Phone (with STD/ISD code) –

*Whether present residential address same as permanent residential address Yes No

Present address

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code

Country

*Phone (with STD/ISD code) –

*Duration of stay at present address years months

If duration of stay at present address is less than one year then address of previous residence

*Proof of identity

*Residential proof

Voter's identity card number

Driving license number

Aadhaar number

Submit the proof of identity and proof of address under attachments.

Number of entities in which director have interest

*Registration number

*Name

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*Address

Nature of interest *Designation

Percentage of shareholding Amount

Others (specify)

V. OPC Nomination

9. (a) *Nomination

I *

the subscriber to the memorandum of association of

do hereby nominate*

who shall become the member of the company in the event of my death or incapacity to contract. I declare that the nominee is eligible for nomination within the meaning of rule 3 of the Companies (Incorporation) Rules, 2014.

(b) *Particulars of the nominee

Director identification number (DIN) Pre-Fill

*First name

Middle name

*Surname

*Father's first name

Father's middle name

*Father's surname

*Gender *Date of birth

Nationality

*Income-tax PAN Verify details

Aadhaar number

*Place of birth (District & State)

*Occupation type

*Area of occupation

*Educational qualification

Permanent address

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code

© Company Law Institute of India Pvt. Ltd.

Country

*Phone (with STD/ISD code) –

Mobile

Fax

*e-mail ID

*Whether present address is same as the permanent address ☐ Yes ☐ No

Present address

*Line I

Line II

*City

*State/Union Territory *Pin code

*ISO Country code

Country

Phone (with STD/ISD code) –

Mobile

Fax

*Duration of stay at present address years months

If duration of stay at present address is less than one year then address of previous residence

*Proof of identity *Residential proof

VI. Stamp duty

10. Particulars of payment of stamp duty

(a) State or Union Territory in respect of which stamp duty is paid or to be paid Pre-fill

(b) *Whether stamp duty is to be paid electronically through MCA 21 system ☐ Yes ☐ No ☐ Not applicable

(i) Details of stamp duty to be paid

Type of document/ particulars	*Form*	*Memorandum of association*	*Articles of association*
Amount of stamp duty to be paid (in Rs.)			

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(ii) Provide details of stamp duty already paid

Type of document/ particulars	*Form*	*Memorandum of association*	*Articles of association*	*Others*
Total amount of stamp duty paid (in Rs.)				
Mode of payment of stamp duty				
Name of vendor or treasury or authority or any other competent agency authorised to collect stamp duty or to sell stamp papers or to emboss the documents or to dispense stamp vouchers on behalf of the Government				
Serial number of embossing or stamps or stamp paper or treasury challan number				
Registration number of vendor				
Date of purchase of stamps or stamp paper or payment of stamp duty (DD/MM/YYYY)				
Place of purchase of stamps or stamp paper or payment of stamp duty				

VII. PAN/TAN information

11. *Additional information for applying permanent account number (PAN) and tax deduction account number (TAN)

Information specific to PAN

Area code			*AO type*		*Range code*			*AO No.*			

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Information specific to TAN

Area code			*AO type*		*Range code*			*AO No.*			

Source of income

☐ Income from business/profession ☐ Capital gains ☐ Income from house property

☐ Income from other source ☐ No income

Business/profession code

VIII. Attachments

Attachments		*List of attachments*
1. *Memorandum of association ;	Attach	
2. *Articles of association ;	Attach	
3. Declaration by first subscriber(s) and director(s) (affidavit is not required to be attached) ;	Attach	
4. Proof of office address (conveyance/lease deed/ rent agreement, along with rent receipts) ;	Attach	
5. Copy of the utility bills (not older than two months) ;	Attach	
6. Copy of certificate of incorporation of the foreign body corporate and resolution passed by foreign company or authority given through constitutional document ;	Attach	
7. Resolution passed by promoter company ;	Attach	
8. Interest of first director(s) in other entities ;	Attach	
9. Consent of nominee (INC-3) ;	Attach	
10. Proof of identity and residential address of subscribers ;	Attach	
11. Proof of identity and residential address of nominee ;	Attach	
12. Proof of identity and address of applicant I ;	Attach	
13. Proof of identity and address of applicant II ;	Attach	
14. Proof of identity and address of applicant III ;	Attach	
15. Resolution of unregistered companies in case of Chapter XXI (Part I) companies ;	Attach	
16. Declaration in Form No. INC-14 ;	Attach	
17. Declaration in Form No. INC-15 ;	Attach	

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18. Optional attachment(s), (if any) Attach

19. Attachment—Part A Attach

Remove attachment

IX. Declaration

Declaration

☐ *I have gone through the provisions of the Companies Act, 2013, the rules thereunder and prescribed guidelines framed thereunder in respect of reservation of name, understood the meaning thereof and the proposed name is in conformity thereof.

☐ *I have used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) for checking the resemblance of the proposed name with the companies and limited liability partnerships (LLPs) respectively already registered or the names already approved. I have also used the search facility for checking the resemblances of the proposed name with registered trademarks and trade mark subject of an application under the Trade Marks Act, 1999 and other relevant search for checking the resemblance of the proposed name to satisfy myself with the compliance of the provisions of the Act for resemblance of name and Rules thereof.

☐ *The proposed name is not in violation of the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time-to-time.

☐ *The proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered as slur against an ethnic group, religion, gender or heredity.

☐ *The proposed name is not such that its use by the company will constitute an offence under any law for the time being in force.

☐ *I undertake to be fully responsible for the consequences in case the name is subsequently found to be in contravention of the provisions of section 4(2) and section 4(4) of the Companies Act, 2013 and rules thereto and I have also gone through and understood the provisions of section 4(5)(ii)(a) and (b) of the Companies Act, 2013 and rules thereunder and fully declare myself responsible for the consequences thereof.

☐ *I [ ], a person named in the articles as a director of the company has been duly authorised by the promoters of the company to sign this form and declare that all the requirements of the Companies Act, 2013 and the rules made thereunder in respect of Director Identification Number (DIN), registration of the company and matters precedent or incidental thereto have been complied with.

☐ *I am authorised by the promoter subscribing to the memorandum of association and articles of association and the first director(s) to give this declaration and to sign and submit this Form.

☐ *I am authorised by each subscriber to declare that company shall not commence its business, unless each subscriber has paid the value of the shares agreed to be taken by him at the time of subscribing to the memorandum of association.

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☐ *I further declare that, company shall not commence its business, unless all the required approval from the sectoral regulators such as RBI, SEBI, etc., have been obtained.

☐ *I on behalf of the promoters and the first directors, hereby declare that the registered office is capable of receiving and acknowledging all communications and notices addressed to the proposed company on incorporation, shall be maintained at the given address as item 7 of this Form.

☐ *I, on behalf of all the first director(s) named in the articles of association of the proposed company, solemnly declare, that the declaration given herein as stated above are true to the best of my knowledge and belief, the information given in this integrated application form for incorporation and attachments thereto are correct and complete, and noting relevant to this Form has been suppressed. All the required attachments have been completely, correctly and legibly attached to this Form and are as per the original records maintained by the promoters subscribing to the memorandum of association and articles of association.

☐ I, on behalf of the proposed directors whose particulars for allotment of DIN are filled as above, hereby confirm and declare that they are not restrained, disqualified, removed for being appointed as director of a company under the provisions of the Companies Act, 2013, including sections 164 and 169, and have not been declared as proclaimed offender by any Economic Offence Court or Judicial Magistrate Court or High Court or any other court, and not been already allotted a Director Identification Number (DIN) under section 154 of the Companies Act, 2013, and I further declare that I have read and understood the provisions of sections 154, 155, 447 and 448 read with sections 449, 450 and 451 of the Companies Act, 2013.

☐ * ☐

having membership number ☐ and/or certificate of practice number ☐ has been engaged to give declaration under section 7(1)(b) and such declaration is attached.

Note : Attention is drawn to the provisions of section 7(5) and (6) which, inter alia, provides that furnishing of any false or incorrect particulars of any information or suppression of any material information shall attract punishment for fraud under section 447. Attention is also drawn to provisions of sections 448 and 449 which provide for punishment for false statement and punishment for false evidence respectively.

*To be digitally signed by director DSC Box

*DIN/PAN ☐

X. Declaration and certification by professional

Declaration and certification by professional

I ☐

member of ☐

having office at*

☐

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who is engaged in the formation of the company declare that I have been duly engaged for the purpose of certification of this Form. It is hereby also certified that I have gone through the provisions of the Companies Act, 2013 and rules thereunder for the subject matter of this Form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the applicant which is subject matter of this Form and found them to be true, correct and complete and no information material to this Form has been suppressed. I further certify that :

(i) the draft memorandum and articles of association have been drawn up in conformity with the provisions of sections 4 and 5 and rules made thereunder ; and

(ii) all the requirements of the Companies Act, 2013 and the rules made thereunder relating to registration of the company under section 7 of the Act and matters precedent or incidental thereto have been complied with. The said records have been properly prepared, signed by the required officers of the company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order ;

(iii) I have opened all the attachments to this Form and have verified these to be as per requirements complete and legible ;

(iv) I further declare that I have personally visited premises of the proposed registered office given in the form at the address mentioned hereinabove and verified that the said proposed registered office of the company is functioning for the business purposes of the company (wherever applicable in respect of the proposed registered office has been given).

(v) It is understood that I shall be liable for action under section 448 of the Companies Act, 2013, for wrong certification, if any found at any stage.

* ☐ Chartered Accountant (in whole-time practice) or ☐ Cost Accountant (in whole-time practice) or

☐ Company Secretary (in whole-time practice) ☐ Advocate

*Whether associate or fellow ☐ Associate ☐ Fellow

*Membership number

*Certificate of practice number

*Income-tax PAN

Modify | Check Form | Pre-scrutiny | Submit

FOR OFFICE USE ONLY : Affix e-Stamp and filing details

e-Form service request number (SRN) e-Form filing date (DD/MM/YYYY)

This e-Form is hereby registered

Digital signature of the authorising officer Confirm submission

Date of signing (DD/MM/YYYY)

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Form No. INC-35

[Pursuant to rule 38A of the Companies (Incorporation) Rules, 2014]

AGILE-PRO

(Application for goods and services tax identification number, employees state insurance corporation registration plus employees provident fund organization registration, profession tax registration and opening of bank account)

(This AGILE-PRO form is part of SPICe+ form for GSTIN/EPFO/ESIC/Profession Tax/ Bank Account)

*Name of the company

1. *Do you want to apply for GSTIN ☐ Yes ☐ No
2. *State (same as entered in SPICe+)
3. *District (same as entered in SPICe+)
4. *State jurisdiction
   *Sector/Circle/Ward/Charge/Unit
5. *Centre jurisdiction
   Commissionerate
   Division
   Range
6. *Reason to obtain registration Voluntary
7. *Whether the establishment on lease ☐ Yes ☐ No
   *Leased from date To date
   (a) *Nature of possession of premises
   (b) *Proof of principal place of business
   (c) *Whether the building/premises of establishment is owned or hired
   *If hired or there is a change in the name of unit/ownership, please indicate
   *Leased from date To date
8. *Option for composition ☐ Yes ☐ No
   (a) Composition declaration

   ☐ I hereby declare that aforesaid business shall abide by the conditions and restrictions specified in the Act or Rules for opting to pay tax under the composition levy.

   (b) Category of registered person

   ? Manufacturer of non-notified goods

   ? Supplier of food and non-alcoholic drinks

   ? Any other eligible supplier

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9. *Nature of business activity being carried out at abovementioned premises (please tick applicable)

Factory/Manufacturing	☐	Wholesale business	☐	Retail business	☐
Warehouse/Depot	☐	Bonded warehouse	☐	Supplier of services	☐
Office/sale office	☐	Leasing business	☐	Recipient of goods or services	☐
EOU/STP/EHTP	☐	Works contract	☐	Export	☐
Import		Others (specify), if others, please specify			

(A) *Primary business activity

*If others selected, please specify

(B) *Exact nature of work/business

*Work sub-category

*Nature of work business

10. *Details of the goods supplied by the business

HSN Code (four digit) Pre-fill

Description of goods

11. *Details of services supplied by the business

Service Accounting Code Pre-fill

Description of services

12. Directors/Primary owners/Office bearer/Authorised signatory for banks and profession tax details

(Minimum number of directors to be entered for OPC shall be 1, 2 in case of private company, 3 in case of public limited company and 5 in case of producer company)

Number of director details to be entered 2

(A) *Enter director details who is also an authorised signatory/primary owner/office bearer

* ☐ Directors Identification Number (DIN) ☐ Permanent Account Number (PAN)

*DIN Pre-fill Photograph

*PAN

*First name

*Middle name Attach photograph Remove photograph

*Lase name

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Attach a latest passport size photograph by clicking the above box

*Personal mobile number +91 Send OTP

*Personal E-mail ID

*Enter OTP for mobile number Verify OTP

*Enter OTP for e-mail ID

(B) *Director details other than authorised signatory/primary owner/office bearer

* Directors Identification Number (DIN) Permanent Account Number/Passport number (in case of foreign national

*DIN Pre-fill Photograph

*PAN/Passport number

*First name

*Middle name Attach photograph Remove photograph

*Lase name

*Personal mobile number Attach a latest passport size photograph by clicking the above box

*Personal E-mail ID

13. *Police station

14. *Employer's particulars

*Select appropriate branch office

*Select inspection office

15. *Bank particulars

*Select bank name

Attachments *List of attachments*

1. *Proof of principal place of business Attach

2. *Proof of appointment of authorised signatory GSTN Attach

(Either of the following document can be attached. Letter of authorisation/copy of resolution passed by BoD/managing committee and acceptance letter)

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3. *Proof of identity of authorised signatory for opening bank account	Attach	
4. *Proof of address of authorised signatory for opening bank account	Attach	
5. *Specimen signature of authorised signatory for EPFO	Attach	Remove attachment

GST declaration (by authorised signatory)

? I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

**ESIC declaration (by office bearer)*

? I hereby declare that the statement given above is correct to the best of my knowledge and belief. I also undertake to intimate changes if any, promptly to the Regional Office/Sub-Regional Office, ESI Corporation as soon as such change takes place.

Profession tax declaration

? The above information is true to the best of my knowledge and belief.

**EPFO declaration (by primary owner)*

? I hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

**Bank declaration (by authorised signatory)*

? I hereby solemnly affirm and declare that the information given herein above is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

I authorize . . . . . bank and its officials to contact me/us on phone/e-mail/sms for the purpose of opening of bank account.

I understand that the bank account number generated through this process will be shared with MCA by the banks.

I/we undertake to complete all documentary requirements as per bank KYC norms before activation of the account.

Place

Date

Designation Director

**To be digitally signed by director (who has signed the SPICe+ form)*

*DIN/PAN DSC box

(Authorized signatory/primary owner/office bearer signing the AGILE-PRO form shall provide his Permanent Account Number)

Modify Check Form Pre-scrutiny Submit

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[Pursuant to section 4(4) of the Companies Act, 2013 and pursuant to rules 8 and 9 of the Companies (Incorporation) Rules, 2014]

RUN
Reserve Unique Name
(for change of name only)

Service Request Number : Dated :

Company details

☐ New request ☐ Resubmission

SRN

Enter SRN which is under RSUB status Pre-fill

CIN

Enter CIN for change of name for an existing company.

Proposed name 1

Enter your proposed name

Proposed name 2

Enter your proposed name

Auto check

Comments

Please mention any relevant comments. Please attach Sectoral Regulator approvals, NOCs or any other required documents below, if applicable.

Choose file No file chosen

Once you have submitted the name reservation request for change of name of company it will then be checked and, if found feasible, approved by the Central Registration Centre (CRC). You will receive an email from the CRC advising the outcome of the name reservation request.

Submit "

(ii) for Form No. INC-9, the following form shall be substituted, namely :—

"**Form No. INC-9**

"Pursuant to section 7(1)(c) to the Companies Act, 2013 and rule 15 of the Companies (Incorporation) Rules, 2014

Declaration by subscribers and first directors

1. Name of the company

This declaration is in respect of :

	Having valid DIN	*Not having valid DIN*
Total number of first subscribers (non-individual + individual)		
Number of non-individual first subscriber(s)		

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