IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IA/497/2020 in MA/289/2018 in TCP/10/IB/2017
(Filed under Rule 11 r/w Rule 13 of NCLT Rules, 2016)

And

IA/115/2020 in MA/289/2018 in TCP/10/IB/2017
(Filed under Sec.42 of Insolvency and Bankruptcy Code, 2016)

In the matter of ***M/s. Nagarjuna Oil Corporation Limited***

Bank of India
Having its Head Office at
Star House, C-5, G- Block,
Bandra Kurla Complex,
Mumbai – 400 051

Having its Chennai Large Corporate Branch at
4th Floor, Tarapore Towers,
826, Anna Salai
Chennai – 600 002

.. .. .. *Appellant*

-Vs-

1. V. Mahesh, Liquidator
   Nagarjuna Oil Corporation Limited
   R.A. Puram, 6th Main Road,
   Chennai – 600 028

2. Coastal Oil & Gas Infrastructure Pvt. Ltd.
   Municipal No. 9 – 13 – 45 / 3/5/4
   CBM Compound Ease Extension VIP Road,
   Siripuram, Vishakapatnam,
   Andhra Pradesh – 530 003

.. .. .. *Respondent*

Present:

For Appellant : *V. Ramakrishnan, Senior Advocate*
For T. Ravichandran, Advocate

For Respondent : *S. Satish, Advocate*
V. Mahesh, Liquidator

CORAM :

R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

Order Pronounced on 3rd September, 2020

ORDER

***Per:* R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. IA/497/2020 is an Application filed by Bank of India and 3 others under Rule 11 r/w Rule 13 of NCLT Rules 2016 seeking to list IA/115/2020; IA/419/2020; IA/487/2020 and CA/216/2020 together since common issues are involved. However, it is seen from the records that all the aforesaid IAs have been heard and taken together, but are disposed of by way of separate orders. In view of the same, IA/497/2020 filed by the Applicant stands **allowed**.

2. IA/115/2020 is an Application filed by Bank of India, seeking to set aside the order passed by the 1st Respondent / Liquidator, rejecting the claim of the Appellant and consequently allow the claim.

3. The brief facts of the case, shorn of unnecessary details are as follows;

a. The 2nd Respondent viz. M/s. Coastal Oil & Gas Infrastructure Pvt. Ltd. *(hereinafter referred to as "2nd Respondent" or "COGIL")* is a Company, which is set up as a Special Purpose Vehicle (SPV) and is engaged in the business of developing Bulk Storage Terminal Facility for M/s. Nagarjuna Oil Corporation Limited *(hereinafter referred to as "NOCL" or "Company in Liquidation" or "1st Respondent Company")* and the COGIL has entered into a Terminalling Service Agreement with NOCL on 26.05.2010 in terms of which, the NOCL had agreed to utilize the terminal services of the COGIL for the crude oil terminal and allied facilities and product & intermediate tank – farm and allied facilities.

b. The 2nd Respondent has approached the Appellant and other Financial Creditors for financial assistance for their projects and the Appellant along with State Bank of India, Central Bank of India and Canara Bank granted term loan for an aggregate principal amount not exceeding Rs.641.85 Crores. The details of the same are as follows;

S. No.	Name of the Bank	Sanctioned Amount (Term Loan in ₹)
1	Bank of India	198,00,00,000
2	Central Bank of India	98,85,00,000
3	State Bank of India	197,00,00,000
4	Canara Bank	148,00,00,000

c. It is further averred that a consortium of fourteen lenders which include the Appellant herein, had extended various facilities to NOCL, after execution of necessary loan documents and creation of security interest. It is stated that IDBI Trusteeship Services Limited was acting for and on behalf of the lenders of the consortium of NOCL.

d. Subsequently, a lease agreement dated 18.10.2012 was entered into between NOCL and COGIL in terms of which certain immovable properties of NOCL were sub – leased in favour of COGIL.

e. The 2nd Respondent as a security for the due repayment of loan, deposited the title deeds relating to the lease hold rights and interest in respect of the immovable properties together with all buildings and structures with IDBI Trusteeship services Limited for the benefit of the Appellant and other lenders with an intention to create an equitable mortgage in respect of the same.

f. It is averred that necessary charge has been registered with the Registrar of Companies as contemplated under the Companies Act and the charge has also been registered with Central Registry of Securitization Asset Reconstruction and Security Interest (CERSAI),

g. Consequent upon the failure of NOCL to service the loan, the Corporate Insolvency Resolution Process *(hereinafter referred to as "CIRP")* in relation to NOCL was initiated by this Tribunal on 25.07.2017 and thereafter Liquidation was ordered on 11.12.2018 and the 1st Respondent was appointed as Liquidator.

h. Notably, the Appellant Bank has not preferred to lodge its claim in relation to the dues of the COGIL during the CIRP and only during the Liquidation process the Appellant Bank has lodged the claim before the Liquidator on 10.01.2019 for a sum of Rs.259.65 Crores. Thereafter, the Liquidator by his email dated 30.12.2019 has rejected the claim of the Appellant in totality.

i. Aggrieved by the said decision, the Appellant have preferred the present Appeal under Section 42 of Insolvency and Bankruptcy Code, (IBC) 2016.

4. The Learned Senior Counsel for the Appellant, without going into the merits of the case, has emphatically contended that, the Liquidator who is exercising a *quasi* judicial powers unlike a Resolution Professional, who is exercising administrative power, before rejecting the claim of the Appellant, ought to have given an opportunity of being heard to the Appellant and by failing to afford

such an opportunity, the Liquidator has violated the cardinal principle of natural justice viz. *audi alteram partem*.

5. The Learned Senior Counsel for the Appellant submitted that the claim was submitted to the Liquidator on 10.01.2019 and the liquidator has not responded nearly for a period of 12 months and when the Appellant has sent a reminder mail on 27.12.2019, the Liquidator has sent a reply mail dated 30.12.2019, in and by which, the Liquidator has rejected the claim of the Appellant. It was further submitted that the Liquidator has simply rejected the claim of the Appellant without any sufficient cause or reason and without giving any opportunity to the Appellant to put forward its claim.

6. The Learned Senior Counsel for the Appellant submitted that the Liquidator has got power under Regulation 23 of IBBI (Liquidation Process) Regulation, 2016 to call for such other evidences or clarification as he deems fit from a claimant for substantiating the whole or part of its claim and had the Liquidator called for substantiation of the claim as a financial creditor, the Appellant would have placed the materials available with it before him. It was also contended that the Liquidator has failed to appreciate that unlike the role of Resolution Professional, the

Liquidator is vested with powers and adjudicatory functions to adjudicate a claim and the Liquidator ought to have given an opportunity to the Appellant in this regard before summarily rejecting the claim of the Appellant. It was further submitted that the Liquidator has acted arbitrarily and did not even communicate the rejection within the timeline prescribed under the Code and Regulations.

7. In order to bolster his argument, the Learned Senior Counsel relied on the Judgment of **Swiss Ribbons Private Limited and Anr. –Vs– Union of India and Ors.** *(2019) 4 SCC 17* at para 89, wherein it has been held that the Resolution Professional is given administrative power as opposed to quasi judicial powers in the case of the Liquidator. Further, reliance was also placed on the judgment of the **Automotive Tyre Manufacturers Association –Vs- Designated Authority**, *(2011) 2 SCC 258* wherein it has been held that the principles of natural justice would apply when quasi judicial powers are exercised.

8. The Learned Senior Counsel has filed written submission, wherein it has been stated that the Appellant Bank also adopts the submission made on merits by Central Bank of India in IA/419/2020.

9. The Learned Counsel for the Liquidator submitted that the Appellant has not come before this Tribunal with clean hands and has suppressed material facts and information and this Appeal is neither maintainable in facts nor in law. It was further submitted that the Appellant has filed two separate claims, one in relation to the credit extended to NOCL for a sum of Rs.773.08 Crores on 09.01.2019 and another in relation to credit extended to COGIL for a sum of Rs.259.65 Crores on 10.01.2019, which goes on to show that the Appellant had apprehension that the claim in relation to COGIL is frivolous and not tenable under the law and liable to get rejected. Further, it was submitted that as to how two separate claims by a Financial Creditor in relation to the same Corporate Debtor is maintainable.

10. The Learned Counsel for the Liquidator submitted that NOCL was not a party to the contracts through which the alleged credit facility had been extended to COGIL by the Appellant and there is no privity of contract between the Appellant and NOCL in respect of the claims for which this Appeal is made. Further, it was submitted that the Appellant is a constituent of the Committee of Creditors (CoC) of NOCL and has participated in various CoC meetings and is fully

aware of the amount admitted and amount rejected in relation to NOCL and hence the Appellant cannot feign ignorance.

11. The Learned Counsel for the Liquidator submitted that in the 2nd CoC meeting held on 15.10.2019, it has been recorded as follows;

> **BOOT OPERATORS & SUB – LEASE**
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> The Liquidator briefed about the challenges to deal with the Boot operators issues. It is the Liquidator's view that the Sub – Lessee can't have more rights than the Lessee (NOCL). The Lenders were request to discuss internally to clear any ambiguity pertaining to the mortgage created on the land. The Mortgage or change created, if any, is not the knowledge of the Liquidator, in favour of BOOT Operators on the Assets owned by NOCL and Lease Hold Rights enjoyed by them.
>
> The Secured Lenders who are common to the NOCL and COGIL agreed to discuss matter internally and intimate the Liquidator accordingly. This was taken on record.

12. The Learned Counsel for the Liquidator submitted that the Appellant herein has not even filed the claim during the CIRP, which it now seeks to enforce as an afterthought, especially when a scheme is in offing. Further, the Learned Counsel for the Liquidator has submitted that no demand of any sort was made by the Appellant

ever against NOCL, at any point of time and hence the claim as filed by the Appellant Bank is hopelessly barred by Limitation, besides being not tenable under the law. It was also submitted that the Appellant has been attending the CoC meetings conducted during the CIRP and Liquidation process and the voting share has been fixed based on the claims admitted and the Appellant itself has remitted its share of liquidation expenses based on the voting share without any demur or protest.

13. The Learned Counsel for the Liquidator submitted that hundreds of emails were written by the Liquidator to the Appellant wherein the issue of BOOT Operators and sub – lease has been discussed in detail and no where it was mentioned that the claims of COGIL would be considered and the stance of the Liquidator was made very clear and recorded several times, which the Appellant is fully aware. It was further submitted by the Learned Counsel for the Liquidator that NOCL has some claims against COGIL and the Liquidator is in the process of initiating appropriate legal proceedings against COGIL and in an act of desperation and to pre-empt the same, the COGIL has filed a claim as Operational Creditor of NOCL and the same was rejected by the Liquidator.

14. The Learned Counsel for the Liquidator submitted that the Financial Creditors of COGIL had initiated proceedings under Section 7 of IBC, 2016 before NCLT Amaravathi Bench on 25.09.2018 much before the rejection of the claims and they have failed to succeed in Section 7 Application and the said fact was intentionally suppressed by the Appellant Bank.

15. The Learned Counsel for the Liquidator submitted that the claim of the Appellant or other lenders of COGIL against NOCL cannot be treated as a "Financial Debt" and the Appellant cannot be treated as a "Financial Creditor" under the provisions of IBC, 2016, as it does not satisfy the requirement of Section 5(8) of IBC, 2016. Further, in the absence of any direct contractual obligations between the Appellant and NOCL in this regard or any charge being registered by NOCL or the Appellant herein with the Registrar of Companies, Chennai, the claim of the Appellant cannot even be treated as a "Debt" by the Liquidator.

16. The Learned Counsel for the Liquidator submitted that Section 125 of the Companies Act, 1956 provides that charge which is not registered with the Registrar of Companies is void against the

liquidator and other creditors of the Company. Further, it was submitted that the claim of the Appellant is nothing but an abuse of process of law and a desperate attempt to create obstacles and pressuring tactics being adopted by the Appellant when a Scheme is in the offing.

17. Heard both sides and perused the documents, including the pleadings placed on record. From the submissions made by the Learned Senior Counsel for the Appellant, it is seen that the Learned Senior Counsel, has attacked the impugned order dated 30.12.2019 passed by the Liquidator, rejecting the claim of the Appellant, only on the ground of violation of natural justice i.e. the Appellant was not being afforded an opportunity of being heard before the order of rejection which was passed by the Liquidator. Despite opportunity being granted by this Tribunal to argue on merits of the case, the Learned Senior Counsel for the Appellant at the time of oral submissions confined his argument impugning the rejection of the claim by the Liquidator only to the principle of natural justice, however in the written submissions filed thereafter, it has been chosen to submit that the submission made on merits by Central Bank of India in IA/419/2020 is also being relied.

18. Be that as it may, in order to better appreciate the contention of the Learned Senior Counsel for the Appellant, it is necessary to refer to the statutory provisions in relation to the powers being vested with the Liquidator;

> **35. Powers and duties of liquidator. –**
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> (1) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely: -
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> (a) to verify claims of all the creditors;
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> (b) to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor;
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> (c) to evaluate the assets and property of the corporate debtor in the manner as may be specified by the Board and prepare a report;
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> (d) to take such measures to protect and preserve the assets and properties of the corporate debtor as he considers necessary;
>
> (e) to carry on the business of the corporate debtor for its beneficial liquidation as he considers necessary;
>
> (f) subject to section 52, to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified:
>
> Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor

in liquidation to any person who is not eligible to be a resolution applicant.

(g) to draw, accept, make and endorse any negotiable instruments including bill of exchange, hundi or promissory note in the name and on behalf of the corporate debtor, with the same effect with respect to the liability as if such instruments were drawn, accepted, made or endorsed by or on behalf of the corporate debtor in the ordinary course of its business;

(h) to take out, in his official name, letter of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due and payable from a contributory or his estate which cannot be ordinarily done in the name of the corporate debtor, and in all such cases, the money due and payable shall, for the purpose of enabling the liquidator to take out the letter of administration or recover the money, be deemed to be due to the liquidator himself;

(i) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities;

(j) to invite and settle claims of creditors and claimants and distribute proceeds in accordance with the provisions of this Code;

(k) to institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name of on behalf of the corporate debtor;

(l) to investigate the financial affairs of the corporate debtor to determine undervalued or preferential transactions;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, receipt document, application, petition, affidavit, bond or instrument and for such purpose to use the common seal, if any, as may be necessary for

liquidation, distribution of assets and in discharge of his duties and obligations and functions as liquidator;

(n) to apply to the Adjudicating Authority for such orders or directions as may be necessary for the liquidation of the corporate debtor and to report the progress of the liquidation process in a manner as may be specified by the Board; and

(o) to perform such other functions as may be specified by the Board.

(2) The liquidator shall have the power to consult any of the stakeholders entitled to a distribution of proceeds under section 53:

Provided that any such consultation shall not be binding on the liquidator:

Provided further that the records of any such consultation shall be made available to all other stakeholders not so consulted, in a manner specified by the Board.

38. Consolidation of claims. –

(1) The liquidator shall receive or collect the claims of creditors within a period of thirty days from the date of the commencement of the liquidation process.

(2) A financial creditor may submit a claim to the liquidator by providing a record of such claim with an information utility: Provided that where the information relating to the claim is not recorded in the information utility, the financial creditor may submit the claim in the same manner provided for the submission of claims for the operational creditor under sub-section (3).

(3) An operational creditor may submit a claim to the liquidator in such form and in such manner and along with such supporting documents required to prove the claim as may be specified by the Board.

(4) A creditor who is partly a financial creditor and partly an operational creditor shall submit claims to the liquidator to the extent of his financial debt in the manner as provided in sub-section (2) and to the extent of his operational debt under sub-section (3).

(5) A creditor may withdraw or vary his claim under this section within fourteen days of its submission.

39. Verification of claims.-

(1) The liquidator shall verify the claims submitted under section 38 within such time as specified by the Board.

(2) The liquidator may require any creditor or the corporate debtor or any other person to produce any other document or evidence which he thinks necessary for the purpose of verifying the whole or any part of the claim.

40. Admission or rejection of claims. –

(1) The liquidator may, after verification of claims under section 39, either admit or reject the claim, in whole or in part, as the case may be:

Provided that where the liquidator rejects a claim, he shall record in writing the reasons for such rejection.

(2) The liquidator shall communicate his decision of admission or rejection of claims to the creditor and corporate debtor within seven days of such admission or rejection of claims.

42. Appeal against the decision of liquidator. –

A creditor may appeal to the Adjudicating Authority against the decision of the liquidator accepting or rejecting the claims within fourteen days of the receipt of such decision.

19. Thus, from the statutory provisions extracted *supra,* and also by referring to the decision of the Supreme Court in **Swiss Ribbons** (supra), it is not in doubt that the Liquidator is exercising quasi judicial powers, in relation to adjudication of a claim filed by a creditor. From the argument advanced by the Learned Senior Counsel for the Appellant, it becomes imperative for this Tribunal to decide as to whether the Liquidator who is acting in a quasi judicial manner is duty bound to follow the principles of Natural Justice given the exigencies contemplated under IBC, 2016 in affording a personal hearing before such rejection.

20. The Principle of Natural Justice is propounded by the theory of *jus naturale* (Natural Law) which means that some rules even though not explicitly stated, are binding on the entire mankind. The principle of natural justice requires fairness by the concerned authority and what is fair depends on the situation and context and there is no straight jacket formula in relation to the same. It acts as a procedural safeguard against abusive, wrong or undue use of power conferred particularly when such power is prejudicial to particular persons.

21. Indubitably, the rules of natural justice are essential elements of the procedure established by Law. However, it can be excluded on some exceptional circumstances. The principle of natural justice operates only in areas not covered by law, that is to say, it can only supplement law and not supplant it. Whether or not, the application of Principles of Natural Justice has been excluded, wholly or in part, in the exercise of statutory power, depends on the language of the statute, basic scheme of the provisions conferring such power, the nature and purpose for which the power is conferred and the effect of exercise of such power. However, general rule is that it is not permissible to interpret a statute so as to exclude the Principles of Natural Justice.

22. Further, it is germane to note here that the rules of Natural Justice cannot be elevated to the status of Fundamental Right. If the statute excludes it by necessary implications, the court cannot ignore the statutory mandate. Therefore, the right to be heard cannot be presumed where the delay in action would defeat the very purpose of the Act.

23. It is trite that rules of "natural justice" are not embodied rules. Also, the phrase "natural justice" is also not capable of a comprehensive definition. *Audi alteram partem* is only to check the arbitrary exercise of power. The principle implies a duty to act fairly. The Hon'ble Supreme Court in **A.K. Kraipak & Ors. –Vs– Union of India & Ors.,** *(1969) 2 SCC 262*, observed that the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made.

24. In **Competition Commission of India –Vs– Steel Authority of India Limited and Another** reported in *(2010) 10 SCC 744*, the Hon'ble Supreme Court at paragraphs 79, 80, 81, 85 and 86 held as under:

> 79. It is difficult to state as an absolute proposition of law that in all cases, at all stages and in all events the right to notice and hearing is a mandatory requirement of principles of natural justice. Furthermore, that noncompliance thereof, would always result in violation of fundamental requirements vitiating the entire proceedings. Different laws have provided for exclusion of principles of natural justice at different stages, particularly, at the initial stage of the proceedings and such laws have been upheld by this Court. Wherever, such exclusion is founded on larger public interest and is for compelling and valid reasons, the Courts have declined to entertain such a challenge. It will always depend upon the nature of the proceedings, the grounds for invocation of such law and the requirement of compliance to the

principles of natural justice in light of the above noticed principles.

80. In Tulsiram Patel (1985) 3 SCC 398, this Court took the view that audi alteram partem rule can be excluded where a right to a prior notice and an opportunity of being heard, before an order is passed, would obstruct the taking of prompt action or where the nature of the action to be taken, its object and purpose as well as the scheme of the relevant statutory provisions warrant its exclusion. This was followed with approval and also greatly expanded in the case of Delhi Transport Corporation vs. Delhi Transport Corporation Mazdoor Congress [(1991) Supp1 SCC 600], wherein the Court held that rule of audi alteram partem can be excluded, where having regard to the nature of the action to be taken, its object and purpose and the scheme of the relevant statutory provisions, fairness in action does not demand its application and even warrants its exclusion.

81. In Union of India v. W.N. Chadha [(1993) Supp 4 SCC 260], wherein the Court was primarily concerned with Section 166(9) of the Criminal Procedure Code and the application of principles of natural justice in the domain of administrative law and while deciding whether a person was entitled to the right of hearing, held as under:-

> "88. The principle of law that could be deduced from the above decisions is that it is no doubt true that the fact that a decision, whether a prima facie case has or has not been made out, is not by itself determinative of the exclusion of hearing, but the consideration that the decision was purely an administrative one and a full-fledged inquiry follows is a relevant -- and indeed a significant -- factor in deciding whether at that stage there ought to be hearing which the statute did not expressly grant.
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> 89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full inquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal

pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all."

85. Wherever, this Court has dealt with the matters relating to complaint of violation of principles of natural justice, it has always kept in mind the extent to which such principles should apply. The application, therefore, would depend upon the nature of the duty to be performed by the authority under the statute. Decision in this regard is, in fact, panacea to the rival contentions which may be raised by the parties in a given case. Reference can be made to the judgment of this Court in the case of Canara Bank vs. Debasis Das [(2003) 4 SCC 557].

86. We may also notice that the scope of duty cast upon the authority or a body and the nature of the function to be performed cannot be rendered nugatory by imposition of unnecessary directions or impediments which are not postulated in the plain language of the section itself. `Natural justice' is a term, which may have different connotation and dimension depending upon the facts of the case, while keeping in view, the provisions of the law applicable. It is not a codified concept, but are well defined principles enunciated by the Courts. Every quasi judicial order would require the concerned authority to act in conformity with these principles as well as ensure that the indicated legislative object is achieved. Exercise of power should be fair and free of arbitrariness

25. In **Manohar s/o Manikrao Anchule –Vs– State of Maharashtra and Another** reported in *(2012) 13 SCC 14*, the Hon'ble Supreme Court at para 18 held as under:

18. In A.K. Kraipak & Ors. v. Union of India & Ors. [(1969) 2 SCC 262], the Court held as under:

"17. ... It is not necessary to examine those decisions as there is a great deal of fresh thinking on the subject. The horizon of natural justice is constantly expanding... The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it.... The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (Nemo debet esse judex propria causa) and (2) no decision shall be given against a party without affording him a reasonable hearing (audi alteram partem). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi- judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi- judicial enquiry. As observed by this Court in Suresh Koshy George v. University of

> Kerala the rules of natural justice are not embodied rules. 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 enquiry is held and the constitution of the Tribunal or 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

26. In **Dharampal Satyapal Limited –Vs– Deputy Commissioner of Central Excise, Gauhati and others** reported in *(2015) 8 SCC 519* the Hon'ble Supreme Court at paragraphs 44, 45, 47 and 48 held as under:

> 44. At the same time, it cannot be denied that as far as courts are concerned, they are empowered to consider as to whether any purpose would be served in remanding the case keeping in mind whether any prejudice is caused to the person against whom the action is taken. This was so clarified in ECIL [(1993) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704] itself in the following words: (SCC p. 758, para 31)
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> > "31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and given the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside

> the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment."

45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco [(2005) 7 SCC 725] .

47. In Escorts Farms Ltd. v. Commr. [(2004) 4 SCC 281] , this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms: (SCC pp. 309-10, para 64)

> "64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be

> followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."
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> 48. Therefore, on the facts of this case, we are of the opinion that non-issuance of notice before sending communication dated 23-6-2003 has not resulted in any prejudice to the appellant and it may not be feasible to direct the respondents to take fresh action after issuing notice as that would be a mere formality.

27. Keeping in mind the above decisions and the ratio laid down by the Supreme Court in relation to the principles of natural justice, let us consider the facts of the present case.

28. The Scheme of IBC, 2016 is for resolution of the Corporate Debtor in a time bound manner. Suffice to say that the CIRP in relation a Corporate Debtor has to be completed within a period of 180 days and in any case not exceeding 330 days. In relation to Liquidation proceedings, Regulation 44 of IBBI (Liquidation Process) Regulations, 2016 mandates that the Liquidation proceeding is to be completed within a period of two years, which Regulation as it stands amended on and from 25.07.2019 by virtue of the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2019 to be completed within a period of one year. In either of the case, the RP / Liquidator are duty bound to complete

the CIRP / Liquidation proceedings within the stipulated time period and any extension beyond the said period will be subject to the RP / Liquidator moving an application before this Authority, explaining the reasons for the same.

29. In the said backdrop, indulging in relation to each of the creditor of the Corporate Debtor / Company under Liquidation with a personal hearing, it is almost impracticable for the Liquidator to follow the principles of natural justice before admitting / rejecting the claim. In this connection, it is pertinent to note that by virtue of proviso to Section 40 of IBC, 2016, the Liquidator is mandated to give reasons by recording it in the order rejecting the claim itself. Further, it is also required to be noted that in the absence of any express provisions, if by imputations as contended by the Learned Senior Counsel for the Appellant Bank, personal hearing is to be afforded, the same is required to be applied universally to all the claims coming before the Liquidator and he cannot be selective in his approach, which if accepted will make the timeline fixed go completely haywire and defeat the provisions of IBC, 2016 itself. At this juncture, it is significant to refer to the decision of the Hon'ble Supreme Court in the matter of **Bihar School Examination Board –Vs- Subhas Chandra Sinha, & Ors.** *1970 SCC (1) 648* wherein,

the Petitioner Board conducted final tenth standard examination and at a particular centre, where there were more than thousand students, it was alleged that the students have indulged in mass copying. Even in evaluation, it was *prima-facie* found that there was mass copying as most of the answers were same and they received same marks. For the said reason, the Petitioner / Board cancelled the exam without giving any opportunity of hearing and ordered for fresh examination, whereby all students were directed to appear for the same. Aggrieved by the same, some students approached the Patna High Court, challenging it on the ground that before cancellation of exam, no opportunity of hearing was been given to the students. The High Court struck down the decision of the Board that the same was in violation of principles of *Audi Alteram Partem*. On appeal before the Supreme Court, the Supreme Court rejected the findings of the High Court and held that in such a situation, conducting hearing is impossible as thousand notices have to be issued and everyone must be given an opportunity of hearing, cross-examination, rebuttal, presenting evidences etc. which is not practicable at all. Hence, the Supreme Court held that on the ground of impracticability, hearing can be excluded.

30. Similarly, in the matter of **R V Radhakrishanan v. Osmania University** *1967 SCR (2) 214* wherein the entire MBA entrance examination was cancelled by the University because of mass copying, and the Supreme Court held that notice and hearing to all candidates is not possible in such a situation and thus the court sanctified the exclusion of the rules of natural justice on the ground of administrative impracticability.

31. Further, in the matter of **K.S. Rangasamy –Vs- State Bank of India & Anr.** in *Company Appeal (AT) (Insolvency) No. 83 of 2017,* wherein the order of NCLT Chennai was assailed before the Hon'ble NCLAT on the ground of natural justice that no notice was issued by the Adjudicating Authority prior to the admission of the Application under section 7 of IBC, 2016. The Hon'ble NCLAT at para 16 has held as follows;

> 16. Similar issue fell for consideration before this Appellate Tribunal in **"M/s. Innoventive Industries Limited v. ICICI Bank & Anr.– Company Appeal (AT) (Insolvency) No. 1 & 2 of 2017"** , wherein this Appellate Tribunal vide judgment dated 15th May, 2017 held as follows:
>
> > "40. In S.L Kapoor v. Jagmohan, (1980) 4 SCC 379 the Hon'ble Supreme Court was of the view:
> >
> > "Where on the admitted or undisputed facts only one conclusion is possible and under the law only one

penalty is permissible, the Court may not insist on the observance of the principles of natural justice."

41. The aforesaid observation has been highlighted by Hon'ble Supreme Court, in a different way, observing that "useless formality" is another exception to the ratio of natural justice. Where on the admitted or undisputed facts only one conclusion is possible and under the law only one penalty is permissible, the Court may not insist on the observance of the principles of natural justice because it would be futile to order its observance. Therefore, where the result would not be different, and it is demonstrable beyond doubt, order of compliance with the principles of natural justice will not be justified.

42. From the aforesaid decisions of Hon'ble Supreme Court, the exception on the Principle of Rules of natural justice can be summarised as follows:-

i. Exclusion in case of emergency,
ii. Express statutory exclusion
iii. Where discloser would be prejudicial to public interests
iv. Where prompt action is needed,
v. Where it is impracticable to hold hearing or appeal,
vi. Exclusion in case of purely administrative matters.
vii. Where no right of person is infringed,
viii. The procedural defect would have made no difference to the outcome.
ix. Exclusion on the ground of 'no fault' decision maker etc.
x. Where on the admitted or undisputed fact only one conclusion is possible - it will be useless formality."

17. In the present case, as we have discussed the details relating to the merit of the case, we find no reason to remit the

case to the Adjudicating Authority on the ground of violation of rules of natural justice, which will be a useless formality.

32. From the rejection order passed by the Liquidator, it can be seen that the Liquidator has passed a reasoned order and it cannot be said that the order passed by the Liquidator is a non – speaking order. Eventhough, the Learned Senior Counsel for the Appellant contended that the principles of *audi alteram partem* was not followed by the Liquidator in the case of the Appellant Bank, the Learned Senior Counsel for the Appellant has failed to establish that any prejudice has been caused to the Appellant Bank in this regard. As already observed by the Hon'ble Supreme Court in the matter of **Escorts Farms Ltd. v. Commr.** *(2004) 4 SCC 281*, the Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. Remand of matter of the Appellant Bank would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before this Tribunal. In the said circumstances, especially when no prejudice is caused to the Appellant Bank, we are of the considered view that it would be of no use to remit the matter to the Liquidator, if it amounts to completing

a mere ritual of hearing without possibility of any change in the decision of the case on merits.

33. On the facts as averred in the instant Appeal, it is seen that the COGIL had filed its claim before the Liquidator, which stood rejected and against the said order of rejection, no appeal seems to have been preferred by COGIL before this Tribunal. However, it should be noted that, it does not in any way entitle the Appellant to make a claim in relation to the COGIL vis-à-vis the company under liquidation with the Liquidator of the NOCL. The recourse if at all can be only against COGIL in relation to the debts owed to the Appellant and not against NOCL, unless the said company, namely NOCL has stood as a guarantor / surety to the loan and financial facilities granted by the Appellant to COGIL. From a careful perusal of the pleadings as contained in the Appeal nothing comes to the fore to the said effect.

34. Further, it is also required to be seen, eventhough a valiant effort was made by the Learned Senior Counsel for the Appellant to bring in the aspect of privity and proximity of NOCL to the debts of COGIL owed to the Appellant in relation to the aspect of security by way of mortgage of lands sub-let by NOCL to COGIL with the

concurrence of SIPCOT of the leased portion, however even from the said angle, the 1st Respondent Company under liquidation through its Liquidator and its creditors cannot be bound in terms of Section 125 of the Companies Act, 1956 or under Section 77 of the Companies Act, 2013 in view of the absence of Registration of charge with the concerned Registrar of Companies in relation to the assets charged, even assuming if there is any, in the absence of any privity to the contract as between COGIL and the Appellant.

35. Further, shorn of the assets not charged and for which charges, in any case, have not been registered with the RoC by the Company under Liquidation in favor of the Appellant Bank, in relation to the debts of COGIL, from the claim as made by the Appellant Bank before the Liquidator, even without going into the question of fact, this Tribunal is duty bound to examine the aspect of limitation in relation to the claim as filed by the Appellant Bank before the Liquidator. In this regard it is relevant to refer to the decision of the Hon'ble NCLAT in the matter of **C R Badrinath –Vs- Eight Capital India (M) Limited & Anr.** in *Company Appeal (AT) (Insolvency) No. 132 of 2020,* wherein the Hon'ble NCLAT has held that the issue of Limitation can be raised at any stage and Section 3 of the Limitation Act provides that every application filed after the prescribed period of

limitation shall be dismissed even when limitation has not been set up as a defence. The said proposition is equally applicable even in relation to an Appeal as in the instant case in view of the applicability of the provisions of the Limitation Act, 1963 (Act 36 of 1963) by virtue of Section 238A of IBC, 2016.

36. From the documents placed on record, it is seen that a charge of Equitable Mortgage by deposit of title deeds was created by COGIL in favour of the Appellant Bank in respect of the properties which were leased out by NOCL to COGIL. However, from the claim form filed in Form D by the Appellant with the Liquidator annexed as Annexure – 8, in relation to the details of debt incurred, it is stated that COGIL had availed term loan disbursed on 30.08.2011. In relation to dates giving rise to cause of action, if assuming if there is any, as against NOCL, nothing more has been specified as to when the debt of the Appellant Bank has become due and payable. Further, no documents have been placed on record to show that the Appellant Bank has demanded repayment of the said loan from NOCL or for that matter from COGIL. The charge was registered with the RoC, Chennai on 25.10.2012 by COGIL, and from the documents filed along with the typed set, the Appellant Bank has failed to place on record even a single document to show that they have demanded

the repayment of the loan granted to COGIL and in the said circumstances, this Tribunal has come to an irresistible conclusion that the claim as filed by the Appellant Bank before the Liquidator is hopelessly barred by limitation taking into consideration the recent decision of the Supreme Court in **Babulal Vardharji Gurjar –Vs- Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.** in Civil Appeal No. 6347 of 2019 dated 14.08.2020, wherein it has been held that the parties have to specifically plead in the Application itself as to how the claim is within limitation.

37. Thus, in view of the reasons discussed *supra*, we are of the view that the Appeal as filed by the Appellant Bank under Section 42 of IBC, 2016 is liable to be dismissed and accordingly IA/115/2020 stands **dismissed**, however without costs.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond