

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI
(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (INS) No.133 of 2021
(Under Section 61 of the Insolvency and Bankruptcy Code, 2016)
Arising out of the Impugned Order dated 07.12.2020 in
C.P.(IB) No. 116/BB/2020 passed by the Adjudicating Authority,
(National Company Law Tribunal, Bengaluru Bench)

In the matter of:

M/s. Ergomaxx (India) Private Limited

Address: No. 70/1, B-2, Azhinjivakam Jannappan,
ChaitramKoot Road, Karanodai, Sholavaram,
Chennai – 600067,
Tamil Nadu, India.

...Appellant

V

1. The Registrar,

National Company Law Tribunal,
Bengaluru Bench,
Address: Raheja Towers,
12th Floor, M G Road,
Bengaluru – 560001,
Karnataka, India

...Respondent No.1

2. National Company Law Tribunal,

Bengaluru Bench,
Address: Raheja Towers,
12th Floor, M G Road,
Bengaluru – 560001,
Karnataka, India.

...Respondent No.2

3. Krueger International Furniture Systems Private Limited

Address: Plot No: 55,
Bommasandra Jigani Link Road,
Jigani Industrial Area, Anekal Tq,
Bangalore – 562106,
Karnataka, India.

...Respondent No.3

Present:

For Appellant	:	Mr. K. Gaurav Kumar, (PCS)
For 3 rd Respondent	:	No appearance

JUDGMENT
(VIRTUAL MODE)

M. Venugopal (J)

INTRODUCTION:

The ‘Appellant’ has filed the present ‘Appeal’ being dissatisfied with the order dated 07.12.2020 passed by the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) in CP/IB/116/BB/2020 (Filed by the ‘Appellant’/‘Petitioner’/‘Operational Creditor’ under Section 9 of the I & B Code, 2016).

Notice was ordered by this ‘Tribunal’ to the 3rd Respondent on 25.06.2021 and according to the ‘Appellant’ the e-mail sent to the 3rd Respondent bounced back due to ‘Recipient email address is possibly incorrect’. Further, on behalf of the ‘Appellant’ it is stated before this ‘Tribunal’ that the address of the 3rd Respondent Company from the Master Data shows its registered address at Bengaluru which is the same one i.e. mentioned in the ‘Memo of Parties’ of the ‘instant Appeal’.

1. Earlier, the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench, Bengaluru) while passing the ‘Impugned Order’ in CP(IB) No.116/BB/2020 on 07.12.2020 at paragraph 12 to 16 had observed the following:

12“‘The Appellant’s contention that the Respondent could have procured the goods from other sources and that the Applicant’s responsibility ends once the supply is done cannot be adjudicated upon by this Tribunal as proceedings under Section 9 of the Code, 2016 are summary proceedings and do not envisage detailed investigation, enquiry or forensic audit. The contentions raised pointing out to a dispute regarding the quality of the goods being good at the time of delivery, the Respondents own shoddy work on the additional work, or supplies received from other suppliers, etc. only makes it clear that these issues have to be dealt with by any other court or tribunal where evidence can be adduced in support of such contentions, but not under these summary proceedings under the I&B Code, 2016.

13. Further, proceedings under the Code are independent proceedings and proceedings in another forum cannot solely be made a basis for a decision by this Tribunal unless a prima facie case is made out by the Applicant under the provisions of Section 9 of the Code, 2016. On a plain reading of the order dated 18.02.2019 of the MSMEC, it is clear that the Respondent has disputed the quality of goods supplied even before the Council and the same is a matter of record. The nature and purpose of proceedings before the MSME Council are completely different and cannot alone be a basis of this Tribunal's decision under IBC proceedings. This Tribunal is not a dispute resolution mechanism, and cannot be used as a recovery forum for decrees of MSMEC. Under the I&B Code, 2016, this Tribunal offers a mechanism to reorganise and resolve the insolvency the Corporate entities etc. in a time bound manner while maximising the value of assets to the benefit of all stakeholders. Unless the Petitioner makes out a case for Insolvency, merely because an order has been passed by the MSMEC cannot have a bearing on these proceedings. As regards the case law cited by the Petitioner to state that decree of civil court can be taken cognisance of while deciding a matter under IBC is concerned, the same is inapplicable in as much as in that case a case was also independently made out under the I&B Code, 2016 and did not merely hinge upon the decision of another court.

14. With reference to the dispute discussed above and the decision of the MSMEC, we may add that it is not essential that there should be 'bonafide' dispute in the sense that the same is likely to succeed in point of law. Mere pre-existence of a real dispute is sufficient for rejecting a petition preferred under Section 9 of the Code. The dispute should be real and not a mere ruse to avoid the triggering of a CIRP against the Corporate Debtor. In the instant case, it is admittedly a real dispute that has been taken to the MSMEC for resolution. Hence, as far as the IBC is concerned, existence of such a dispute takes the Petition out of the ambit and scope of this Tribunal.

15. Further it is seen that the Petitioner has not made out any case that the Respondent is Insolvent and incapable of paying the debt. As mentioned and well settled, this Tribunal cannot be used as recovery forum or to push a viable company into Insolvency. It is seen that the Corporate Debtor is an International level furniture supplier of repute with a Paid Up Capital of Rs.1,49,34,640/- operating in this field since 2010. It has filed a Solvency

Certificate issued by Anil D'Souza Associates, Chartered Accountants dated 07.09.2020 wherein it is certified that M/s Krueger Furniture Systems Private Limited, is solvent to the extent of Rs.8,60,28,915/- as on 31.03.2020, as disclosed and the information and records produced before them. The Petitioner's argument that this solvency certificate is not sufficient is not acceptable. It is also submitted that the Respondent has several live clients to whom it is supplying furniture items, especially to educational institutions and offices, and employs a huge workforce. Thus, it cannot be said that the Respondent has lost its substratum and is unable to run its business or pay its debts. Such a company cannot be unjustifiably pushed into an Insolvency resolution process as that would be against the objects of the Code.

16. However, during the course of these proceedings, Ld. Counsel for the Respondent while referring to the disputes, once again stated that the Respondent would be ready to settle the same with the Petitioner, provided it adheres to the conditions agreed upon in their MoM. The matter has also been decided by the MSMEC which provides a platform for reaching a settlement. In view of the pre-existing dispute between the two sides, the readiness of the Corporate Debtor to settle the debt, as also for the reason that the Corporate Debtor is a solvent company; we are not satisfied that this is a fit case for ordering CIRP against the Respondent Corporate Debtor. Hence, we consider it fair and just to dispose of the Petition by allowing both parties to settle the matter mutually within a reasonable time, as suggested by the Ld. Counsel for the Respondent. This order will also not come in the way of the Applicant seeking remedy in any other forum for resolution of the dispute or recovery, or for specific performance of any order, in its favour.”

and resultantly, disposed of the Company Petition without costs, in above manner and also granted liberty to the ‘Appellant’/Petitioner’ to file a fresh petition if no settlement was reached within a reasonable time, if it so considers, subject to the facts of the case being in terms of the Provisions and Objectives of the Code.

APPELLANT’S CONTENTIONS:

2. It is submitted on behalf of the ‘Appellant’ that the ‘Appellant’/‘Petitioner’ projected an application before the ‘Adjudicating Authority’ (under Section 9 of

the I&B Code) against the ‘Respondent’ for an outstanding debt of Rs.50,67,926/- praying for an ‘Admission’ of the Respondent/Company under the ‘Corporate Insolvency Resolution Process’.

3. It is contended on behalf of the ‘Appellant’ that the main matter before the ‘Adjudicating Authority’ was listed on 07.12.2020 under the caption ‘for clarification’ and an ‘interim order’ was passed, by which the matter was adjourned to 11.12.2020. Further, on 11.12.2020, when the matter was listed under the Head for ‘Hearing’/‘Clarification’ the ‘Adjudicating Authority’ Heard the matter and orders were reserved, but the ‘interim order’ of 11.12.2020 was not uploaded on line in the NCLT online website portal.

4. It is projected on the side of the ‘Appellant’ that there was no further intimation or communication received in regard to the pronouncement of order which was reserved by the ‘Adjudicating Authority’ on 11.12.2020.

5. The grievance of the ‘Appellant’ is that till date the matter was never listed for pronouncement of an order and that the ‘Appellant’ while looking at the ‘Tribunal’s website could not find the ‘Impugned Order’ as the party names linked on the NCLT’s website was with a typo ‘Kruegar” instead of ‘Krueger’ and after trying various permutation/combinations to the surprise of the ‘Appellant’ on 06.02.2021, it found an order dated 07.12.2020 which was uploaded on the ‘Tribunal’s website of which the ‘Appellant’ had no knowledge.

6. The other plea taken on behalf of the ‘Appellant’ is that there was no communication of the order copy even by way of an e-mail from the ‘Registry’ of the National Company Law Tribunal, Bengaluru. Moreover, the ‘Appellant’ was never admitted into any of the WhatsApp group of the ‘Tribunal’ for the matter after 11.12.2020 for the purpose of pronouncement of order (erroneous addition of appellants representative on 03.02.2021).

7. Mr.K. Gaurav Kumar, (Practising Company Secretary) appearing for the ‘Appellant’ submits that the ‘Impugned Order’ dated 07.12.2020 in the main C.P.(IB)No.116/BB/2020 Petition was neither pronounced nor listed for

pronouncement nor finally heard on the said date by the ‘Tribunal’ but the same was only adjourned to 11.12.2020 and that the matter was reserved for orders only on 11.12.2020.

8. Added further, on the ‘Appellant’ side it is pointed out that the ‘Appellant’s representative was never admitted into any WhatsApp Group concerned with posting the hearing links, for the respective related parties, after 11.12.2020, for the said purpose of pronouncement of orders. However, before 11.12.2020, the ‘Appellant’s representative was admitted to groups.

9. It is brought to the notice of this ‘Tribunal’ on the side of the ‘Appellant’s that ‘Appellant’s representative was pointlessly admitted to one of such groups on 03.02.2021 but on that day, also, the case was never listed for any pronouncement.

10. On behalf of the ‘Appellant’, a legal plea is projected that the ‘Pronouncement of Order’ by the ‘Tribunal’ is a mandatory one as per Rule 150 and 151 of the National Company Law Tribunal Rules, 2016. In this connection, on behalf of the ‘Appellant’ a reliance is placed on the order of the Hon’ble High Court of Bombay dated 29.11.2019 in WP (L) No.3250 of 2019 in the matter of Kamal K. Singh, Mumbai 400 005 v Union of India through the Ministry of Corporate Affairs, Mumbai and 5 others wherein at paragraph 80 and 83 it is observed as under:

80. “A perusal of the sub rules of Rule 150 and 151 so also 152 would enable us to hold that the Tribunal, after hearing the applicant and respondent, shall make and pronounce the order either at once or, as soon as thereafter; as may be practicable, but not late than thirty days from the final hearing. Apart from the fact that there is a limit set out for everything, that by itself does not mean that rule makers intended total dispensation of the requirement of pronouncement of the order. The pronouncement is necessary. It could be either at once or as soon as thereafter, as may be practicable, but not later than 30 days from the final hearing. We are not concerned in this case with a situation where this time limit is not adhered to. However, by sub-rule (2), what is indicated is that every order of the

tribunal shall be in writing and shall be signed and dated by the President or Member or Members constituting the Bench which heard the case and pronounced the order. Sub-rule (3) of Rule 150 says that a certified copy of every order passed by the tribunal shall be given to the parties and then sub-rule (4) says that the tribunal may transmit order made by it to any court for enforcement, on application made by either of the parties to the order or suo motu. The rule also states that the order or judgment or notice shall bear the seal of the tribunal. If there was absolutely no necessity of pronouncement of the order, Rule 151 would not have been inserted at all. Rule 151 has been inserted with a purpose. It is stated in Rule 151 that any Member of the Bench may pronounce the order for and on behalf of the Bench. By Rule 152 it is permissible for the President to authorise any other Member to pronounce the order if the Member of the bench, who heard the case are not readily available or have ceased to be Members of the tribunal. This can be done after the President is satisfied that the order has been duly prepared and signed by all the Members who heard the case. Thus, as per rules a duly prepared and signed order can be pronounced by another Member who was not part of the Bench which heard the case. We are aware of the fact that there is great inconvenience to litigants and parties before a court of law if judgments are not duly prepared, signed and pronounced before the Presiding Officers or Members demit office or handover charge on the eve of either transfer or superannuation. The litigants, therefore, should not suffer after rendering full assistance to the Bench to pronounce its final order. The parties have duly discharged their duty of assisting the court either by arguing in person or through advocates. Thus, after the oral arguments are concluded or written submissions are placed on record, all that remains is to pronounce the judgment/ order. If at that stage, those who heard the case are not available, but have duly prepared and signed the judgment, then, pronouncement of the judgment and order in their absence is permissible so as to avoid inconvenience or prejudice to the litigants. These are, therefore, enabling rules and one must note the language of sub-rule (2) of Rule 152, which says that the Member authorised to pronounce the order by the president, if making that pronouncement, that would be deemed to be a due pronouncement. The Member so authorised shall affix his signature in the order sheet of the case stating that he has pronounced the order as provided in this rule. If the order cannot be signed by reason of death, retirement or resignation or for any

other reason by any one of the Members of the Bench who heard the case, it shall be deemed to have been released from part-heard case list and listed afresh for hearing. The above rule carve out exceptions for the benefit and convenience of parties and litigants. The exceptions do not enable the Members to bypass or circumvent the rules.

83. In fact, the judicial proceedings, the orders and judgments therein, have a certain sanctity. Inviolability of judicial proceeding is at the root of everything. The heart of the matter is that the conduct of judicial proceedings or discharge of judicial function by a court of law inspires confidence and maintains the trust and faith of the litigants in the justice delivery system. If that is shaken and destroyed, then, justice itself is a casualty. We must avoid such a situation at all costs. That is why the requirement to pronounce orders is emphasised repeatedly by the Hon'ble Supreme Court. We do not think that the decisions of the Hon'ble Supreme Court in the case of Surendra Singh and others v State of Uttar Pradesh (supra) (AIR 1954, P.194) and in the case of State of Uttar Pradesh and Ors. v Lakshmi Ice Factory (supra) (AIR 1963, P.399) can be brushed aside. These judgments are binding on us. They continue to hold the field. In fact, the decision rendered has been followed later in a decision in the case of Iqbal Ismail Sodawala v The State of Maharashtra (AIR 1974 SC 1880).”

11. On behalf of the ‘Appellant’ a reference is made to the order of the Hon'ble High Court of Bombay dated 29.11.2019 in W.P. (L) No.3250 of 2019 between Kamal K. Singh, Mumbai 400 005 v Union of India through the Ministry of Corporate Affairs, Mumbai and 5 others wherein at paragraphs 81 and 90 it is observed as under:

81 “.....The requirement of making entries by Court Master would play a very vital role in the conduct of judicial proceedings is contemplated by Rule 156 and by Rule 157, there is a transmission of order by the Court Master. There is a transmission of the order with the case file to the Deputy Registrar by Rule 157(1) and thereafter, the duty of the Deputy Registrar is to make scrutiny and record the satisfaction that the provisions of these rules have been duly complied with and in token thereof affix his initials with date on the outer cover of the order. Then, the further steps have to be

taken by the Deputy Registrar. The copies have to be made. A communication of the order to the parties is contemplated by sub-rule (3) of Rule 157 but after that is pronounced by the Bench. The steps prior to the communication are as crucial as the pronouncement.

90 If the Judgment is not pronounced at all, then, such an order is nullity.”

12. While summing up, it is submitted on behalf of the ‘Appellant’ that the ‘Impugned Final Order’ dated 07.12.2020 passed by the ‘Adjudicating Authority’ in CP(IB) No.116/BB/2020 is a nullity, bad in law, without jurisdiction and in negation of the ‘Principles of Natural Justice’ and ‘procedure’ established by Law.

ASSESSMENT:

13. At the outset, this ‘Tribunal’ points out that on 07.12.2020 the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench) in CP(IB) No.116/BB/2020, in the ‘Cause List’ had mentioned under the caption purpose ‘for Clarification’ and mentioned the name of Advocates appearing for the parties. In fact, on 07.12.2020, the ‘Adjudicating Authority’ had passed the following order:

“Heard Shri Gaurav Kumar, learned PCS for the Petitioner and Shri Vishwanath Venkatesh, learned Counsel for the Respondent, through Video Conference.

Post the case again for clarification/hearing on 11.12.2020.”

14. Be it noted, that in the cause list dated 11.12.2020 of the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru Bench) in Serial Number 1 the case number is shown as CP(IB) No.116/BB/2020 and the ‘purpose’ is ascribed as ‘For hearing/clarification’ and name of the Appellant/Petitioner Company is mentioned, apart from mentioning the name of respective Counsels appearing for the parties.

15. The primordial grievance of the ‘Appellant’/‘Petitioner’ is that on 11.12.2020, the matter was listed under the Head ‘for Hearing’/‘Clarification’ and that the ‘Adjudicating Authority’ Heard the matter and reserved the matter for orders. However, the said ‘Interim Order’ of 11.12.2020 was not uploaded in the ‘NCLT Online Website Portal’.

16. At this juncture, this ‘Tribunal’ pertinently points out that when the main C.P.(IB) No.116/BB/2020 was listed before the ‘Adjudicating Authority’ under the caption ‘For Hearing/Clarification’ on 11.12.2020 and when the matter was reserved ‘For Orders’ on that date, however, the same being not uploaded in the NCLT Online Website Portal, certainly, the order in the main CP(IB)/116/BB/2020 could not have been pronounced on 07.12.2020 (vide Annexure ‘E’ of the ‘Appeal Paper Book’ Diary No.137 dated 08.03.2011). Apart from that, there was no communication that was received by the ‘Appellant’ in regard to the pronouncement of the order which was received by the ‘Adjudicating Authority’ in the aforesaid Company Petition.

17. It is significantly pointed out that Rule 150 of the NCLT Rules, 2016 provides for ‘Pronouncement of Order’. Rule 151 of the NCLT Rules, 2016 pertains to ‘Pronouncement of Order’ by any one Member of the Bench. As per Section 150(5) of the National Company Law Tribunal Rules, 2016 ‘Every order or judgment or notice shall bear the seal of the ‘Tribunal’.

18. According to the ‘Appellant’ to its surprise,, it found an ‘Impugned order’ dated 07.12.2020 on 06.02.2021, which was uploaded in the NCLT Website and hence it is the fervent plea of the ‘Appellant’ that the ‘Impugned Order’ was neither pronounced on 07.12.2020 nor listed for pronouncement nor finally Heard on the said date, especially, in the teeth of the main Company Petition (IB/116/BB/2020) was only stood over/adjourned to 11.12.2020.

19. It is the stand of the ‘Appellant’ that there was no communication of the ‘Impugned Order’ to the ‘Appellant’ through any of the mode prescribed under the NCLT Rules, 2016 and besides this, the 1st Respondent/Registrar, National

Company Law Tribunal, Bengaluru Bench had failed to list the matter for Pronouncement of Orders.

20. On behalf of the ‘Appellant’ heavy reliance is placed on the order of the Hon’ble High Court of Bombay dated 29.11.2019 in WP(L) No.3250 of 2019 between Kamal K Singh, Mumbai 400 005 v Union of India through the Ministry of Corporate Affairs Mumbai and 5 others wherein at Paragraph 72 and 73, it is observed as under:

72 “Therefore, by sub-rule (1) of Rule 89, the Registry is required to prepare and publish on the notice board of the Registry before the closing working hours on each working day the cause list for the next working day and subject to the directions of the President, listing of cases in the daily cause list shall be in the order of priority, unless otherwise ordered by the concerned Bench. Ultimately, the requirement of this nature and to be followed by a court, particularly a substitute for a Civil and Company Court means that people and litigants should know when orders are to be pronounced in cases which have been already heard. Therefore, the broad heads which have to be enumerated in the daily cause list ensure that litigants, parties and equally the public at large know that the cases have been listed for that purpose and with that object. In cases in which arguments are concluded and judgments are ready for pronouncement, then the pronouncement has to be done after notifying to the parties in advance the date of such pronouncement. The rule makers did not desire or contemplate dispensation of the requirement of pronouncement at all. If dispensation of that was contemplated then, possibly, there would not have been guidance provided by rules such as Rules 89 and 90. By Rule 90, there is a further assurance that if by reason of declaration of holiday or for any other unforeseen reason, the Bench does not function for the day, the daily cause list for that day shall, unless otherwise directed, be treated as the daily cause list for the next working day in addition to the cases already posed for that day. Now that information technology is introduced, particularly for listing of cases, then, all the more with the advances therein, the rule makers desired that there should be complete transparency, fair and just treatment to litigants and parties. Nobody should carry an impression that the case has been heard behind their back or that they have been taken up without any intimation or knowledge to the party or litigant and

disposed of. Therefore, when cases are preponed or postponed, litigants have to be informed. They may have engaged advances, but such transparency, faith, consistency, credibility and sanctity of judicial acts and proceedings is maintained. Everything in relation to judicial proceedings, therefore, is covered in the broad and wider concept of dispensation of justice. Ultimately, courts are endowed with the duty to render justice. If courts and tribunals exercising judicial functions are chosen by the legislature to render justice to litigants, then, all the more they cannot be expected to work in a closed door fashion. Judicial Proceedings have to be opened to public.

73. Part X of the NCLT Rules, 2016 will make this aspect further clear. Rule 91 requires diaries to be maintained by the clerk-in-charge in such form as may be specified in each appeal or petition or application and they shall be written legibly. The diary in the main file shall contain a concise history of the appeal or petition or application, the substances of the order passed thereon and in execution proceedings, it shall contain a complete record of all the proceedings in execution of order or direction or rule and shall be checked by the Deputy Registrar and initiated once in a fortnight. It is not that signatures have to be appended or that they rule demands a strict compliance. We can understand an omission or irregularity not vitiating the proceedings in their entirety. However, we cannot condone something which results in failure or miscarriage of justice. That is how Rule 92 of the NCLT Rules, 2016 requires the Court Master of the Bench to maintain order sheet in every proceedings and shall contain all orders passed by the tribunal from time to time. Rule 93 provides for maintenance of court diary. The parties or legal practitioners are also required to furnish to the Court Master a list of law journals, reports, statutes and other citations, which may be needed for reference or photocopy of full text thereof. Everything has to be specified and stated clearly, as is apparent from the language of these rules, so that the tribunal does not devise a procedure totally unknown to law or acts in an arbitrary manner. To avoid arbitrariness and discrimination in conduct of judicial proceedings that such rules of procedures have been framed. If one totally ignores them, then, there may be failure of justice or if the conduct of judicial proceedings is in total contravention of the procedural rules, there may be miscarriage of justice. In such an event, orders of the tribunal cannot be upheld and sustained. They may have to be declared as nullity by a writ of this Court.”

21. It cannot be gainsaid that if an order/judgment of a 'Tribunal' is not pronounced at all, the same is a nullity in the 'eye of law', considering the fact that the 'pronouncement' is primarily a judicial act, which is the 'Sanctum Sanctorum of any judicial proceedings' in our 'justice delivery system', as opined by this 'Tribunal'.

22. It is to be relevantly mentioned that 'Pronouncement of Order' is quite distinct from communicating/informing/intimating a deliverance of an order. At any cost, 'Tribunal' cannot dispense with justice. In reality, it must discharge its duties/function with a sole aim and purpose of 'Dispensing Justice'.

23. If an order/judgment is delivered by a 'Tribunal' ignoramus of rules, then, it will result in untold hardship, misery and unerringly leading to a miscarriage of justice. Moreover, 'expediency in pronouncement' of an 'Order'/'Judgment' by a 'Tribunal' is not desirable/palatable, in the earnest opinion of this 'Tribunal'.

24. No wonder, a Judgment/Order of a Court of Law/'Tribunal'/'Appellate Tribunal' is to be written only after deep travail and positive vein. The term 'communication' means making known or sharing or imparting. In legal parlance, it means to officially or solemnly, to declare or affirm as affirm the pronouncement of an 'Order'/'Judgment'. It is to be remembered that pronouncement of an 'Order'/'Judgment' of a Court of Law/a Tribunal is not an empty ritualistic formality. Undoubtedly, the 'Tribunal'/'Appellate Tribunal' is performing/discharging a solemn judicial function. The 'Adjudicating Authority' as per Section 5(1) of the I & B Code is the National Company Law Tribunal.

25. It cannot be forgotten that if a particular act is to be performed in a particular manner, then, it has to be performed only in that way and not otherwise. Indeed, a procedural wrangle cannot be allowed to be shaken or shackled with. Also that the judicial function of a 'Tribunal' is to be transparent and per contra, it is not to be conducted/performed in an 'opaque' manner.

26. In the light of the foregoing, on a careful consideration of the contentions advanced on behalf of the ‘Appellant’ and this ‘Tribunal’ taking note of the totality of the attendant facts and circumstances of the instant case, comes to a resultant conclusion that when the main CP(IB) No.116/NCLT/BB/2020 was heard on 11.12.2020 by the ‘Adjudicating Authority’ and considering the prime fact that when the matter was listed on 07.12.2020 an ‘interim order’ was passed adjourning the main case to 11.12.2020, by no stretch of imagination the ‘Impugned Order’ of the ‘Adjudicating Authority’ in main CP(IB)No.116/NCLT/BB/2020 would have been pronounced on earlier date on 07.12.2020. Further, when the said final ‘Impugned Order’ dated 07.12.2020 was not to be found nowhere in the NCLT Website, as averred by the ‘Appellant’, (being a predated one) and only later it came to know on 06.02.2021, then in law, it is held as that the ‘Impugned Order’ dated 07.12.2020 was never pronounced by the ‘Adjudicating Authority’ (there being a significant omission in regard to the pronouncement of an order by a ‘Tribunal’ and the pronouncement being an essential ‘judicial act’) and hence it is declared nullity in the eye of law, apart from the crystalline fact is that the same was not listed for pronouncement and accordingly, this ‘Tribunal’ without delving deep into the matter and not expressing any opinion on the merits of the matter, any further, at this stage, simpliciter sets aside the said ‘Impugned Order’ of the ‘Adjudicating Authority’ dated 07.12.2020 in main CP(IB)No. 116/NCLT/BB/2020 to prevent an aberration of justice and to promote substantial cause of justice. Consequently, the ‘Appeal’ succeeds.

Disposition:

27. In fine, the Company Appeal (AT)(CH)(INS) No.133 of 2021 is allowed. No costs. The matter is remitted back to the ‘Adjudicating Authority’ (National Company Law Tribunal, Bengaluru), who is required to restore the main CP(IB)No.116/NCLT/BB/2020 to its file and to hear the matter afresh after providing adequate opportunities to both sides to present their arguments (both

on factual and legal pleas) and to pass orders on merits in a fair, just and in a dispassionate manner, of course, keeping in mind the National Company Law Tribunal Rules, 2016 and in accordance with Law uninfluenced and untrammelled with any of the observations made by this ‘Tribunal’ in this ‘Appeal’.

28. IA/235/2021 (seeking exemption from filing original ‘Impugned Order’) is closed.

[Justice M. Venugopal]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

07.09.2021
SE