NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.607 of 2024

(Arising out of Order dated 22.03.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, Court-III in I.A. 2889/2022 in C.P. (IB)-769(MB)/2022)

IN THE MATTER OF:

Pradeep P. Agarwal
Suspended Director of
Phulchand Exports Private Ltd.
S/o Phulchand Agarwal
Aged 60 years
2nd Floor, West Wing, Electric Mansion,
Appasaheb Marathe Marg,
Worli, Mumbai – 400025 … Appellant

Versus

1. Indiabulls Asset Reconstruction Company Ltd.
Through its Directors
Having its registered office at:
One International Center, Tower – 1,
4th Floor, S. B. Marg, Elphin, stone
(W), Mumbai City, Mumbai,
Maharashtra, India, 400013

2. Phulchand Exports Private Limited
Having registered office at:
2nd Floor, West Wing, Electric Mansion
Appasaheb Marathe Marg,
Worli, Mumbai – 400025
Through the Interim Resolution
Professional, Ms. Savita Agarwal,
R/o 16A, Shakespeare Sarani, New B.K. Market, 5th Floor,
Kolkata – 700001
Savita_22@hotmail.com … Respondents

Present:

For Appellant: **Mr. Abhijeet Sinha, Sr. Advocate with Ms. Aakashi Lodha and Mr. Utkarsh Kumar, Advocates.**

For Respondents: **Mr. Gaurav Mitra, Mr. Karan Luthra, Ms. Lavanya Pathak, Mr. Naman Gowda, Advocate for R-1.**

Ms. Sarita Agarwal, Advocate/ Ms. Savita Agarwal, IRP for Corporate Debtor.

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by a Suspended Director of the Corporate Debtor has been filed against the order dated 22.03.2024 passed by National Company Law Tribunal, Mumbai Bench, Mumbai, Court-III by which Section 7 Application C.P.(IB)-769(MB)/2022 filed by India Bulls Asset Reconstruction Company Limited has been admitted and IA No.2889 of 2022 filed by the Corporate Debtor was disposed of as infructuous. The Suspended Director aggrieved by the order dated 22.03.2024 has come up in this Appeal.

2. This Appeal came up for consideration on 02.04.2024, on which date, noticing the submission of learned Counsel for the parties, following order was passed:

> "**2.4.2024** - Learned Counsel for the Appellant submits that one of the issues in this Appeal is that in the Company Petition under Section 7, Orders were reserved by Court No.3 as it existed at that time i.e. 26th June, 2023 and thereafter one of the Members of the Bench was transferred to Guwahati and thereafter, an Application was filed by the Corporate Debtor on 22nd December, 2023 being IA No.5177 of 2023 which was also heard and orders were reserved on 4.3.2024. It is submitted that the main Company Petition was listed for pronouncement of Order on 22nd March, 2024 by the Bench which heard the matter on 26th June, 2023 and the Court was apprised that the IA 5177 of 2023 has been filed in which Order is also reserved but the Order was pronounced admitting Section 7 Application by Order dated 22nd March, 2024 which has now been challenged in the Appeal. It is submitted by Mr. Gaurav Mitra, Counsel for the Respondent that the Order dated 22nd March, 2024

has dealt with Section 7 Application as well as earlier IA 2889/2023 filed by the Corporate Debtor.

The issues with regard to procedural aspect of the matter and the hearing in the Appeal, especially, after one of the Members has been transferred has arisen in this Appeal. The learned Counsel seeks time to bring on record the Order issued by the President regulating such situation, if any.

Let both the parties bring relevant material with regard to issues which have been arisen as noted above. List these Appeals on **9th April, 2024**.

In the meantime, interim protection granted by this Tribunal on 28th March, 2024 shall continue.

The additional Affidavit may be filed by 8.4.2024."

3. Interim order passed on 28.03.2024 that no publication in pursuance of the impugned order shall be made was continued by order dated 02.04.2024. In pursuance to the order dated 02.04.2024, the Appellant has filed the compilation of orders/ judgment on 08.04.2024. Both the parties were heard on 10.04.2024 with regard to procedural aspect of the matter.

4. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) Indiabulls Housing Finance Limited ("**IHFL**"), has sanctioned five loans to the Corporate Debtor from the year 2014 to 2018. The Corporate Debtor secured the loans by way of deposit of title deeds for an immovable property. The Corporate Debtor made certain payments on various dates.

(ii) Proceedings under Section 13, sub-section (2) of the SARFEASI Act, 2002 was initiated by IHFL in April – May 2019. Notice dated 27.08.2019 was issued by IHFL for e-auction of the secured assets. On 30.09.2019, by registered Assignment Agreement, IHFL assigned all the loan facilities to the Indiabulls Asset Reconstruction Company Limited, a Group Company of IHFL.

(iii) A Securitization Application No.116 of 2019 was filed before the Debt Recovery Tribunal by Shri Prateek Agarwal, owner of the Secured Asset. In the Securitization Application, Interim Application was also filed by Shri Prateek Agarwal, challenging notices issued for sale of assets where direction was passed that sale should be subject to outcome of the Application. Writ Petition No. 20 of 2020 was filed before the Bombay High Court by Shri Prateek Agarwal. A SLP (C) was also filed by Shri Prateek Agarwal challenging order dated 14.05.2020 passed in the Writ Petition.

(iv) Indiabulls Asset Reconstruction Company Limited filed Section 7 Application. Reply to Section 7 Application was filed by the Corporate Debtor. An IA No.2889 of 2022 was filed by the Corporate Debtor before the Adjudicating Authority praying for deferment of proceedings under Section 7 till the final hearing of Securitization Application.

(v) The Court-III of Mumbai Bench of the Adjudicating Authority consisting of Shri H.V. Subba Rao and Ms. Madhu Sinha heard the parties in Section 7 Application as well as IA No.2889 of 2022 and reserved the orders on 26.06.2023. One of the Member of the Bench-III was transferred to Guwahati Bench by order dated 18.08.2023 and Court-III of the Mumbai Bench was reconstituted.

(vi) On 05.10.2023, the Securitization Application No.116 of 2019 filed by Shri Prateek Agarwal was decided by Debt Recovery Tribunal, quashing the Demand Notice issued under Section 13, sub-section (2). Sale of secured asset was also set aside. The order dated 05.10.2023 was challenged before DRAT by filing an Appeal Nos.75-76 of 2023, in which notices were issued on 22.12.2023.

(vii) IA No.5177 of 2023 was filed by the Corporate Debtor in CP(IB) No.790 of 2022 for de-reserving the matter and rehearing on account of certain new developments, specially order dated 05.10.2023 passed by DRT. The regular reconstituted Court-III of Mumbai Bench, consisting of Lakshmi Gurung and Charanjeet Singh Gulati issued notice in IA No.5177 of 2023 on 25.01.2024 and heard the Application on 04.03.2024 and reserved the order.

(viii) CP(IB)-769 (MB)/2022 and IA No.2889 of 2022 was listed for pronouncement before Special Bench consisting of Shri H.V.

Subba Rao and Ms. Madhu Sinha on 22.03.2024. The Corporate Debtor on 22.03.2024, informed the Bench of the order dated 05.10.2023 and filing of IA No.5177 of 2023 seeking direction for de-reserving the Company petition and the fact that order in IA No.5177 of 2023 has already been reserved. The Adjudicating Authority, however, proceeded to pronounce the order on 22.03.2024 in Company Petition, admitting Section 7 Application.

(ix) This Appeal has been filed by the Suspended Director of the Corporate Debtor challenging order dated 22.03.2024.

5. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant; Shri Gaurav Mitra, learned Counsel appearing for Respondent No.1 and Ms. Savita Agarwal, IRP.

6. Shri Abhijeet Sinha, learned Senior Counsel challenging the order contends that order was reserved by earlier Bench on 26.06.2023 and subsequent to reserving of the order, IA No.5177 of 2023 was filed, bringing on record the order dated 05.10.2023 passed by DRT, deciding the Securitization Application, challenging the proceedings in SARFAESI Act initiated by Financial Creditor and request was made for rehearing of the Company Petition in view of the subsequent development, in which Application, notices were issued and the existing Court-III heard the matter and reserved its order on 04.03.2024. Despite the fact that reserving of order in IA No.5177 of 2023 was brought into the notice of Adjudicating

Authority, the order was pronounced by the special Bench, which heard the matter on 26.06.2023, which was more than after eight months. It is submitted that Adjudicating Authority ought not to have pronounced the matter and should have awaited the orders on the Application – IA No.5177 of 2023 filed by the Appellant in which orders were reserved. Without taking into consideration the subsequent events, which have bearing on Section 7 Application, Section 7 Application could not have been admitted and Adjudicating Authority committed error in admitting Section 7 Application without awaiting the orders in IA No.5177 of 2023. It is submitted that judgment by Adjudicating Authority, after reserving the same, ought to have been pronounced within 30 days from the final hearing as per Rule 150 (1) of NCLT Rules, 2016. Pronouncement of order after eight months is not in accord with the law laid down by Hon'ble Supreme Court in its judgment ***Anil Rai v. State of Bihar – (2001) 7 SCC 318***.

7. Shri Gaurav Mitra, learned Counsel appearing for Respondent No.1 opposing the submissions of the learned Counsel for the Appellant submits that the order dated 05.10.2023 of the DRT which has been brought on record by IA No.5177 of 2023 in DRT proceedings with regard to which prayer has already been made by the Corporate Debtor in IA No.2889 of 2022, which IA has also been decided by the impugned order. There was no reason to await the orders or rehear the matter. The learned Counsel for Respondent No.1 submits that in view of the orders issued by the President, NCLT, the Bench, which had earlier heard the matter and reserved the order, by constituting a Special Bench, pronounced the

judgment on 22.03.2024, in which there is no infirmity. It is submitted that after reserving the judgment in Section 7 Application, any subsequent Application filed by the Corporate Debtor, cannot be a reason for not pronouncing the judgment in Section 7 Application, which was heard on merits by the Adjudicating Authority. It is submitted that permitting deferment of the pronouncement of the judgment on the basis of subsequent Application will encourage wrong practice and will delay the disposal of the proceedings, which have already been heard and reserved.

8. We have heard learned Counsel for the parties and have perused the records.

9. From the facts as noted above, there is no dispute between the parties with regard to following facts:

(I) Section 7 Application as well as IA No.2889 of 2022 filed by the Corporate Debtor were heard on 26.06.2023 by a Bench consisting of Shri H.V. Subba Rao, Member (Judicial) and Ms. Madhu Sinha, Member (Technical). On reconstitution of the Bench, Judicial Member, who was in Court-III of the Mumbai Bench, was transferred to Guwahati Bench and Court-III of the Mumbai Bench was reconstituted.

(II) The Corporate Debtor filed IA No.5177 of 2023 in November 2023, which was heard on 25.01.2024 by reconstituted Bench-III with Lakshmi Gurung, Member (Judicial) and Charanjeet Singh Gulati, Member (Technical) and notices were issued on

25.01.2024 and hearing in IA No.5177 of 2023 was concluded and orders reserved on 04.03.2024.

(III) On 22.03.2024, Company Petition (IB) – 769(MB)/2022 and IA No.2889 of 2022 was listed for pronouncement by the Special Bench consisting of Shri H.V. Subba Rao and Ms. Madhu Sinha, who had earlier heard the matter.

(IV) The Corporate Debtor pointed out to the Special bench that IA No.5177 of 2023 filed by the Corporate Debtor subsequent to reserving of judgment has been heard and orders reserved on 04.03.2024.

10. The listing of the matters before the different Benches and the constitution of the Benches of NCLT is regulated by orders issued by the President of NCLT in exercise of powers in Rule 16 of NCLT Rules, 2016. The learned Counsel for the Appellant has brought on record the order dated 28.11.2023 issued by NCLT containing directions/ clarifications about the issue regarding *de novo* listing of matters where orders are reserved. It is useful to extract entire order dated 28.11.2023, which is as follows:

"Dated: 28/11/2023

ORDER

Subject: Further Directions/Clarifications About The Issue Relating To *De Novo* Listing Of Matters That Were Reserved For Orders Post Transfer Of Members And Reconstitution Of Benches Reg.

1. NCLT Benches were reconstituted on 18.08.2023 vide Order Ref 10/3 / 2023 -NCLT. Further specific directions were issued, with

approval of Hon'ble President, by Registrar on 25.09.2023 to all Ld. HODs of NCLT Benches, about Matters Renotified for De Novo Hearing-Cancellation of Notification/Cause Lists.

2. Now the undersigned is directed by Hon'ble president to circulate to all Hon'ble members Judicial as well as technical of all Hon'ble benches through the Ld. HOD, ***for circulation among Hon'ble members only***, following further clarification/addition directions:

i) If a particular Hon'ble Bench has reserved the order/judgment in particular case(s) and thereafter has renotified the same for de novo hearing, the such Hon'ble Bench need to recall the order for de novo hearing and thereafter proceed to pass the orders/Judgment in the reserved case.

The Hon'ble Bench which reserved the order/judgment should notify the actual date fixed for pronouncement of the order/judgment well in advance as far as practical.

ii) The new or present Bench shall not list matters which were reserved for final judgment/order, without approval of the Hon'ble President.

In the meanwhile, if matters which were reserved for final judgment/order by the earlier bench is listed for hearing by new /present Hon'ble Bench by oversight or any other reason, such order needs to be recalled by new/present Hon'ble Bench immediately.

iii) The Registry of each Bench should verify matters which were reserved for final judgment/order and place the same before Hon'ble Benche(s) for passing orders, to avoid the situation pointed out in the Writ Petition No.31011/2023; *Gopalan Ramakrishnan Vs. Union of India* which was filed recently before Hon'ble High Court of Bombay.

iv) in case the Hon'ble member(s) of the Bench which reserved the order/ judgment is not available due to retirement or otherwise, then appropriate direction be sought from the Hon'ble President.

v) a report be sent to registrar of such compliance within 7 days by the concerned Bench.

3. This is issued with approval of Hon'ble President

Sd/-

(Naveen Kumar Kashyap)
Registrar"

11. The above directions and clarifications clearly indicate that when the matter has been reserved for judgment, which has been re-notified for *de novo* hearing, such Bench need to recall the order for *de novo* hearing and thereafter proceed to pass the orders/ judgments in reserved case. In this context, we may also refer to the relevant part of the order dated 25.09.2023, which was issued by President through internal notification by Letter File No.10/02/2023-NCLT, which is as follows:

> "*Where ever orders are reserved, by a bench the same should be pronounced in terms of Rule 150. If there is a change in the composition of Bench, in the meanwhile then approval for constituting a Special Bench should be obtained from Hon'ble President to pronounce the orders. There is no necessity to renotify for de novo hearing by another Bench."*

12. The order dated 25.09.2023 issued by the President, NCLT clearly indicates that if orders were reserved and thereafter there is a change in the composition of Bench, approval for constituting a Special Bench should be obtained from Hon'ble President. In the present case, Special Bench was constituted on 22.03.2024 for pronouncement of the judgment as per the direction of the President dated 25.09.2023. The present is a case where after reserving the judgment on 26.06.2023, an IA No.5177 of 2023 was filed by the Corporate Debtor. In IA No.5177 of 2023, the Corporate Debtor prayed that Company Petition be de-reserved and Company Petition

as well as IA No.2889 of 2022 be listed for re-hearing and the order dated 05.10.2023 passed by Debt Recovery Tribunal be taken on record. The Application was filed in November 2023, in which following prayers were made:

> "a) That this Hon'ble Tribunal be pleased to de-reserve the captioned Company Petition and the Interlocutory Application 2889 of 2022 for rehearing;
> b) That this Hon'ble Tribunal be pleased to list the captioned Company Petition and the Interlocutory Application of 2889 of 2022 for rehearing;
> c) To take on record the Judgment dated 5th October, 2023 passed by the Hon'ble Debt Recovery Tribunal, Mumbai Bench – 1;
> d) For such further and other reliefs and the nature and circumstances of the case may require;
> e) To mention the matter to seek urgent listing for the said Interlocutory Application, for urgent reliefs;
> f) Costs;
> g) Pass any other order in the interest of justice"

13. IA No.5177 of 2023 was heard by reconstituted Mumbai Bench of Court-III of the Adjudicating Authority consisting of Lakshmi Gurung and Charanjeet Singh Gulati, where following order was passed:

> "**ORDER HEARING**
> **THROUGH: VC AND PHYSICAL (HYBRID) MODE**
>
> 1. Adv. Somya I/b TN Tripathi for the Financial Creditor and Adv. Viraj Parikh for the Corporate Debtor are present.
>
> **IA 5177/2023**
>
> 2. This application has been filed by the Corporate Debtor to de-reserve the Company Petition No. 769 of 2022 of the order dated 26.06.2023. Ld. Counsel for the Applicant submits that

subsequent to the reservation of the order 26.06.2023, a new development has happened that DRT-1, Mumbai passed an order in SA No. 116/2019 setting aside the date of declaration of default. In view of the that, he pressed for rehearing of the matter.

3. Ld. Counsel for the FC is present through VC. However, he has some difficulty with some audio and she can neither hear us nor we can hear her. It is made clear that the matter would be heard on the next date of hearing and counsel for the FC should either present physically or ensure that the audio is clear. It is also made clear that this matter is old, therefore, no further adjournment will be granted.

4. List this application along with the other pending application listed on **04.03.2024**."

14. Subsequently, IA No.5177 of 2023 was heard on 04.03.2024 and following order was passed by the existing Bench-III:

"ORDER

Hearing Through: Virtually and Physical (Hybrid) Mode

Adv. Nausher Kohli a/w. Adv. Somy for Financial Creditor in CP and for Respondent in IA 5177/2023 and Adv. Viraj Parikh a/w. Adv. Mohammed Varawala i/b. Adv. Rubina Khan, Fortis India Law for applicant and for corporate debtor in CP.

I.A. 2889/2022 & IA 5177/2023

I.A. 2889/2022 was reserved for order along with the CP 769/2022 vide order dated 26.06.2023 by the bench consisting of Shri. H. V. Subba Rao Member (J) and Ms. Madhu Sinha Member (T). Therefore, order would be pronounced by the same members which heard the matter.

As far as IA 5177/2023 is concerned, this application has been filed for dereserving the I.A. 2889/2022 & C.P. 769/2022 in view of the judgment passed by the Hon'ble DRT on 05.10.2023. I.A. 5177/2023 is **reserved for order**.

> Liberty is granted to file written submissions not exceeding 4 pages and compilation of judgments to be relied within one week."

15. IA No.5177 of 2023 was filed by the Corporate Debtor before the existing Bench, where Company Petition was proceeding and hearing was concluded. Filing of any Application before the Adjudicating Authority is clearly permissible as per Rule 32 of NCLT Rules, 2016. Rule 32 provides:

> "**32. Interlocutory applications.-** Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application."

16. The IA No.5177 of 2023 was filed by the Corporate Debtor, which was entertained, heard and reserved for orders. No doubt, as per the General and Special Orders issued by the President, the Bench, which reserved the order can pronounce the judgment, even if, one Member is transferred, by constituting a Special Bench. The directions dated 25.09.2023 as quoted above as well as direction dated 28.11.2023 are directions of the President issued under Rule 16 of NCLT Rules, 2016 to regulate the hearing of matters and constitution of Benches. The fact that the Bench, which heard the matter, can pronounce the judgment, even after reconstitution of the Bench, by constituting a Special Bench, is an enabling provision, which cannot be construed as a fetter on the judicial discretion of the Bench, which had to pronounce the order. There was no fetter in the jurisdiction of the Special Bench in taking a decision to await the orders on IA No.5177 of 2023, which was reserved on 04.03.2024, i.e., prior to pronouncement

of order in the main Company Petition. The circulars and directions of the President only regulate the procedure for pronouncement of judgment; constitution of Benches; constitution of Special Benches and allocation of business, but does not fetter the jurisdiction of the Adjudicating Authority to exercise its judicial discretion in a particular manner.

17. In any view of the matter, the orders passed by Adjudicating Authority on 22.03.2024 is in Appeal. The Appeal is continuation of the original proceedings. The learned Counsel for the Appellant has relied on the judgment of the Hon'ble Supreme Court in ***(2022) 7 SCC 678 – Ramnath Exports Pvt. Ltd. vs. Vinita Mehta and Anr.*** where the Hon'ble Supreme Court in paragraph 9 laid down following:

> "**9.** After having heard the learned counsel for the parties and on perusal of the material available, we have read the provision of Section 96CPC, which provides for filing of an appeal from the decree by any court exercising original jurisdiction to the court authorised to hear appeals from the decisions of such courts. It is also settled that an appeal is a continuation of the proceedings of the original court. Ordinarily, in the first appeal, the appellate jurisdiction involves a re-hearing on law as well as on fact as invoked by an aggrieved person. The first appeal is a valuable right of the appellant and therein all questions of fact and law are open for consideration by reappreciating the material and evidence. Therefore, the first appellate court is required to address on all the issues and decide the appeal assigning valid reasons either in support or against by reappraisal. The court of first appeal must record its findings dealing with all the issues, considering oral as well as documentary evidence led by the parties."

18. There is a celebrated judgment of the Federal Court reported in ***AIR 1941 FC 5 – Lachmeshwar Prasad Shukul and Ors. vs. Keshwar Lal Chaudhuri and Ors.***, where Chief Justice Gwyer laid down the contours of jurisdiction of the Appellate Court in paragraph-1, which is as follows:

> "**Gwyer, C.J**— In this case I find myself entirely in agreement with the judgment to be delivered by my brother Varadachariar, which I have had an opportunity of reading. I do not think it necessary therefore to deliver a judgment of my own; but, with regard to the question whether the Court is entitled to take into account legislative changes since the decision under appeal was given, I desire to point out that the rule adopted by the Supreme Court of the United States is the same as that which I think commends itself to all three members of this Court. In Patterson v. State of Alabama [(1934) 294 U.S. 600 at 607.] , Hughes, C.J., said:
>
> > "We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.""

19. Justice Sulaiman in its concurring opinion has also noted the judgment that appeals are by way of rehearing. In paragraph 14 following observations has been made:

> "….It was also pointed out that in England where appeals are by way of "rehearing", an appellate Court grants relief according to the new law which has come into force in the meantime, even though the judgment of the inferior Court had been correct according to the law as it then stood:Quilter v. Mapleson (1882) 9 QBD 672 ; see also Attorney-General v. Birmingham, Tame, and Rea District Drainage Board (1912) 1912 A C 788 where it was reaffirmed that

an appeal to the Court of appeal is by way of rehearing, and the Court may make such order as the Judge of the first instance could have made if: the case had been heard by him at the date on which the appeal was heard."

20. Justice Yaradachariar explaining in its concurring judgment has laid down that when an Appeal has been filed, the matter becomes sub-judice again and Court has seisin of the whole case. In paragraph 30 of the Judgment following was observed:

> "**30.** Once the decree of the High Court had been appealed against, the matter became sub judice again and thereafter this Court had seisin of the whole case, though for certain purposes, e.g., execution, the decree was regarded as final and the Courts below retained jurisdiction. In Subhanand v. Apurba Krishna ('40) 27 AIR 1940 FC 7 this Court has held that the mere fact that the particular statute in respect of which the constitutional question was originally raised had been since repealed will not put an end to the appeal; and, except on the hypothesis that this Court is only a Court of error, its power to do justice between the parties cannot be restricted to cases in which it is able to hold that the lower Court has gone wrong in its law. The contention that the power of a Court of appeal is so limited was distinctly negatived in Attorney-General v. Birmingham, Tame, and Rea District Drainage Board (1912) 1912 A C 788 and Quilter v. Mapleson (1882) 9 QBD 672 which are referred to in the judgment in Shyamakant Lal v. Rambhajan Singh ('39) 26 AIR 1939 PC 74 As stated in Shyamakant Lal v. Rambhajan Singh ('39) 26 AIR 1939 PC 74 there is no reason to suppose that the powers of this Court when acting as a Court of appeal are less extensive than those of the High Courts when hearing an appeal; and it has been a principle of legislation in British India at least from 1861 that a Court of appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Code on Courts of original jurisdiction"

21. We, thus, are of the view that in exercise of appellate jurisdiction, the Appellate Court can take all decision, which could have been passed by Adjudicating Authority while deciding Section 7 Application. In the present case, sequence of events and facts as noticed above shows that subsequent Application filed in November 2023, i.e., IA No.5177 of 2023, the Applicant prayed for rehearing of the matter on account of subsequent events, that is an order passed by Debt Recovery Tribunal dated 05.10.2023 and on which Application notices were issued by the existing Court-III and orders were reserved. For the purpose of this case, we need not enter into issue as to whether the plea raised in IA No.5177 of 2023, ought to be allowed or not. But when these facts were brought before the Special Bench on 22.03.2024, on which date the case was listed for pronouncement, the Adjudicating Authority ought to have awaited the orders in IA No.5177 of 2023. It is well settled that although *lis* between the parties have to be decided on the date when proceedings were initiated, but subsequent events can very well be taken into consideration by Adjudicating Authority. In a recent judgment delivered by this Tribunal in ***Company Appeal (Insolvency) Nos.129 & 130 of 2023 – State Bank of India and Ors. vs. The Consortium of Mr. Murari Lal jalan and Mr. Florian Fritsch***, this Tribunal in paragraph 83, 84, 85, 86 and 87, laid down following:

> "**85.** The Hon'ble Supreme Court in the said case in paragraph-5 of the judgment has quoted with approval opinion of Varadachariar. J., which is to the following effect:
>
> *"It is also on the theory of an appeal being in the nature of a re-hearing that the courts in this country*

have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

86. As noted above, the lis between the parties, i.e. Lenders and the SRA being the implementation of the Resolution Plan, different steps and compliances of various clauses of Resolution Plan, time elapsed during litigation between the parties and time lapsed during the proceeding are relevant to be considered to find out the way forward.

87. The proposition laid down by the Hon'ble Supreme Court in Pasupuleti Venkateswarlu case was again reiterated by the Hon'ble Supreme Court in Om Prakash Gupta vs. Ranbir B. Goyal – (2002) 2 SCC 256. In paragraph 11 of the judgment, following has been laid down by Hon'ble Supreme Court:

11. The ordinary rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and, therefore, the decree in a suit should accord with the rights of the parties as they stood at the commencement of the lis. However, the Court has power to take note of subsequent events and mould the relief accordingly subject to the following conditions being satisfied: (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise. In Pasupuleti Venkateswarlu v. Motor & General Traders [(1975) 1 SCC 770 : AIR 1975 SC 1409] this

Court held that a fact arising after the lis, coming to the notice of the court and having a fundamental impact on the right to relief or the manner of moulding it and brought diligently to the notice of the court cannot be blinked at. The court may in such cases bend the rules of procedure if no specific provision of law or rule of fair play is violated for it would promote substantial justice provided that there is absence of other disentitling factors or just circumstances. The Court speaking through Krishna Iyer, J. affirmed the proposition that the court can, so long as the litigation pends, take note of updated facts to promote substantial justice. However, the Court cautioned: (i) the event should be one as would stultify or render inept the decretal remedy, (ii) rules of procedure may be bent if no specific provision or fair play is violated and there is no other special circumstance repelling resort to that course in law or justice, (iii) such cognizance of subsequent events and developments should be cautious, and (iv) the rules of fairness to both sides should be scrupulously obeyed."

22. We, thus, are of the view that there was no fetter on the jurisdiction of the Adjudicating Authority in deferring the pronouncement and awaiting the orders passed in IA No.5177 of 2023. We, thus, are of the view that on this ground alone the order dated 22.03.2024 deserved to be set aside. The Bench, which has delivered the order on 22.03.2024, i.e., Special Bench, which is no more available at Mumbai Bench, ends of justice will be served in directing for hearing of Company Petition (IB)-769(MB)/2022 as well as IA No.5177 of 2023 afresh before the regular Court-III of the Mumbai Bench. We make it clear that we have not entered into the various issues

on merits raised in the Appeal and it is for the Adjudicating Authority to consider and decide the issues after hearing both the parties.

23. In result, we allow the Appeal, set aside the order dated 22.03.2024 and revive the Company Petition (IB)-769(MB)/2022 and IA No.2889 of 2022 as well as IA No.5177 of 2023 before the regular Court-III of Mumbai Bench, who may consider the Company Petition and Applications afresh, after hearing both the parties. Section-7 Application having been filed more than a year ago, we request the Adjudicating Authority to proceed to decide the Company Petition and the IAs at an early date. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

NEW DELHI

19th April, 2024

Ashwani