IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Sarkar

C.O. No.3894 of 2019

With

CAN 12340 of 2019

Atin Arora

Versus

Oriental Bank of Commerce

For the petitioner : Mr. Mainak Bose,
Mr. Rishabh Karnani,
Mr. Neeraj Pandey,

For Oriental Bank of Commerce : Mr. S.M.Akhter.

: Mr. Arik Banerjee,
Mr. Tanwer Ahmed Khan,
Mr. Sumi Khatun,

Hearing concluded on : 13/03/2020
Judgment on: 13/08/2020

Shampa Sarkar, J. :

The revisional application has been filed by one of the directors of the suspended board of directors of the corporate debtor, namely, M/s. George Distributors Private Limited. The petitioner is aggrieved by an order dated November 5, 2019 passed by the learned National Company Law Tribunal, Kolkata Bench, Kolkata in C.A.(IB) No.1285/KB/2019 filed in connection with C.P.(IB) No.107/KB/2019. By the order impugned, the learned Tribunal refused to recall the order dated September 5, 2019, passed in company petition No.107/KB/2019 (hereinafter referred to or the said application).

2. The learned Tribunal admitted an application filed by the Bank being the financial creditor, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the said Code). By an order dated September 5, 2019, the said application was disposed of and the learned Tribunal directed initiation of Corporate Insolvency Resolution Process (CIRP) against the corporate debtor.

3. The petitioner filed an application bearing No.1285/KB/2019, under Rule 11 of the National Company Law Tribunal Rules, 2016 (hereinafter referred to as the said Rules), read with Section 60 (5) of the said Code praying for recalling of the order dated September 5, 2019 and also for setting aside the application filed by the financial creditor, Oriental Bank of Commerce. It was urged that the learned Tribunal did not have jurisdiction to entertain such an application. It was further urged that the order dated September 5, 2019 was passed ex-parte, without providing an opportunity of hearing to the corporate debtor, and the corporate debtor was not served with a copy of the said application despite a request being made to the counsel for the financial creditor for supply of a copy. The corporate debtor further alleged that the financial creditor had suppressed before the learned Tribunal that the registered office of the corporate debtor had shifted from Kolkata to Odisha on January 16, 2018, which was brought to the knowledge of the financial creditor, by the petitioner by a letter dated September 18, 2019. When an e-mail dated September 9, 2019 from one Hiralal Prasad was received, the corporate debtor came to know that the said person had been appointed an interim resolution professional by the learned

Tribunal by an order dated September 5, 2019. The petitioner alleged that neither was a copy of the application served upon the corporate debtor either by registered post or speed post, nor was a copy handed over despite the letter dated February 11, 2019, by which the corporate debtor informed the learned Advocate of the financial creditor to hand over a copy of the application. By suppressing the change of address of the registered office of the corporate debtor from Kolkata to Odisha and mentioning the registered office as 5, Fancy Lane, 8th Floor, Kolkata, the said application was filed. The petitioner alleged that the order dated September 5, 2019 was obtained by fraud and mis-representation and the jurisdiction of the learned Tribunal was invoked illegally. The contention of the petitioner was that the learned Tribunal did not have the jurisdiction under Section 60 of the said Code to entertain the application on the date of the order, inasmuch as, the bench of the NCLT at Cuttack had started functioning on and from March 18, 2019, on the basis of the order dated March 11, 2019 issued by the Registrar, National Company Law Tribunal. It was urged before the learned Tribunal, that by a notification dated July 12, 2018, the Ministry of Corporate Affairs had established the National Company Law Tribunal, Cuttack Bench at Cuttack. The said Bench had territorial jurisdiction to entertain all matters relating to Insolvency Resolution and Liquidation of Corporate Persons, whose registered offices were within the state of Odisha. Although, the NCLT, Cuttack Bench was established with effect from July 15, 2018, the bench started functioning from March 18, 2019 and as such, according to the petitioner, the learned Tribunal did not have the jurisdiction to pass the order dated September

5, 2019. The petitioner filed C.A.(IB) No.1285/KB/2019 for recalling of the said order.

4. The Chief Manager and branch head of Resolution, Recovery and Law Cluster (South) of the opposite party/financial creditor, filed an affidavit-in-reply to the application for recalling filed by the petitioner. It was contended that the copy of the application in terms of Rule 4 (3) of the said Rules was sent to the corporate debtor's address at 5 Fancy Lane, 8th Floor, Kolkata, which was the address of the registered office of the corporate debtor as available from the records of the financial creditor. That the postal articles came back to the office of the financial creditor with the postal remark (Not delivered, addressee moved) on February 6, 2019. Thereafter, an e-mail was sent to the corporate debtor on February 7, 2019. In spite of having knowledge of the aforesaid proceedings, the corporate debtor did not contest the proceeding. In response to the letter dated February 11, 2019, sent by the corporate debtor, to the learned advocate for the financial creditor, a copy of the application along with all annexures was sent to the address of the financial creditor by speed post. A notice was also published in two daily newspapers namely, Indian Express and Aajkal on April 30, 2019. The aforementioned facts were sufficient to show that the corporate debtor was aware of the proceeding before the learned Tribunal and had intentionally not contested the proceeding. The order dated September 5, 2019 was passed ex-parte, due to such intentional lapse on the part of the corporate debtor.

5. The learned Tribunal, by the order impugned rejected the application filed by the petitioner for recalling and setting aside the order dated September 5,

2019, by quashing the proceedings initiated at Kolkata by the financial creditor, *inter alia*, holding as follows:-

> *"**29**. It is worthwhile to mention that when the application was filed by the Financial Creditor, this Tribunal had the necessary territorial jurisdiction to hear and entertain the present application and the Financial Creditor as well as the registry of this Tribunal had repeatedly tried to send notices by various modes to serve the Corporate Debtor and the notices were sent by registered speed post and by e-mail and could be deemed to have been served, even when the proof of actual delivery is not there. Notice was however admittedly received by e-mail by the Corporate Debtor. All the judgments referred to and relied upon by the applicant in support of this application for setting aside the order of admission relate to issues of lack of jurisdiction as regards the subject matter but in the present case the issue relates to the territorial jurisdiction even though this Tribunal had the territorial jurisdiction on the date of filing of the application as well as the jurisdiction to entertain the subject matter i.e. application under Section 7 of the Code.*
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> ***30**. In the aforesaid facts and circumstances, we find no substance in the application and the arguments advanced by Ld. Sr. Counsel for the applicant. The applicant/Corporate Debtor may avail other remedies available to him as advised. The application is thus dismissed with no order as to costs."*

6. This revisional application has been filed by the petitioner challenging the aforementioned order. The petitioner has invoked the jurisdiction of this court under Article 227 of the Constitution of India. It has been urged that although an alternative remedy by way of an appeal has been prescribed in the Code, the revisional application would be maintainable as the order of the learned Tribunal was completely without jurisdiction. The order dated September 5, 2019 suffered from inherent lack of jurisdiction. It was urged that while rejecting the application filed by the petitioner, the learned Tribunal came to an erroneous conclusion that failure to contest the proceedings by the corporate debtor amounted to waiver of the objection on territorial jurisdiction of the learned Tribunal.

7. According to Mr. Mainak Bose, learned advocate appearing on behalf of the petitioner, Section 60(1) of the Code mandates that the ad-judicating

authority for corporate persons shall be the National Company Law Tribunal, having territorial jurisdiction over the place where the registered office of the corporate persons were located. It is the contention of the petitioner that even assuming that at the time filing of the said application by the financial creditor on January 9, 2019, the NCLT, Kolkata had the jurisdiction, but thereafter, once the NCLT Bench at Cuttack started functioning from March 18, 2019, the NCLT Kolkata could not have carried on with the proceedings. Mr. Bose further submitted that, when an issue of wrongful assumption of jurisdiction of a Tribunal was raised, the High Court having superintending as also correctional jurisdiction over all subordinate courts and Tribunals could entertain the revisional application, despite there being an alternative remedy by way of an appeal under Section 61 of the Act. Mr. Bose further contended that the learned Tribunal, in its order dated October 14, 2019, *prima facie* held that it was satisfied that the registered office of the corporate debtor as per the certificate of incorporation having shifted to the state of Odisha on January 16, 2018 and as the said fact had been intimated by the petitioner to the financial creditor, the Tribunal had no jurisdiction on September 5, 2019 to entertain the said proceedings. Yet, after arriving at such a *prima facie* finding, the learned Tribunal by the order impugned took a completely contrary view and rejected the application for recalling, on the ground that, by not attending the proceedings before the learned Tribunal, the corporate debtor had waived its right to object to the lack of jurisdiction of the Tribunal and the order of admission should not be recalled.

8. Mr. Bose points out to the application filed by the bank/financial creditor in order to emphasize that the jurisdiction of the NCLT, Kolkata was invoked by suppression and mis-information. Mr. Bose pointed out to the application filed by the bank to show that the registered office of the corporate debtor was mentioned in the application as 5 Fancy Lane, 8th Floor, Kolkata-700001. The identification No. of the corporate debtor, however indicated that the corporate debtor had its registered office at Odisha. Mr. Bose further drew the attention of the court to the certificate of registration issued by the Registrar of Companies, Cuttack, Ministry of Corporate Affairs, Government of India, under Section 13 of the Companies Act, 2013 dated February 7, 2018. The said order specified that the corporate debtor had by a special resolution altered the provisions of its memorandum of association, with respect to the place of the registered office by changing it from the state of West Bengal to Odisha and such alteration had been confirmed by an order of the Regional Director on January 16, 2018. It is specifically stated in the said order that the Regional Director did not receive any objection with regard to the shifting of the registered office of the company.

9. Mr. Bose pointed out to the letter dated June 22, 2017, by which the petitioner had sought for a 'no objection' from the financial creditor to the change of place of the registered office of the corporate debtor. According to Mr. Bose, by suppressing the above-mentioned information and facts, the financial creditor by making a mis-statement about the address of the registered office of the corporate debtor as 5 Fancy Lane, 8th Floor, Kolkata, had invoked the jurisdiction

of the Tribunal and had obtained the order. The said order was null and void in view of the lack of jurisdiction of the learned Tribunal.

10. Mr. Bose referred to the following decisions in support of his contention, namely, **M/s. Embassy Property Developments PVT LTD vs. State of Karnataka & Ors.** reported in **2019 LawSuit (SC) 1942**, **L. Chandra Kumar vs. Union of India and Others** reported in **(1997) 3 SCC 261**, **A. V. Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhwani and Another** reported in **AIR 1961 SC 1506**, **Sohan Lal Baid vs. State of West Bengal and Others** reported in **AIR 1990 Cal 168**, **Shree Maheshwari Vidyalaya (HS) and Another vs. State of West Bengal and Others** reported in **2018 SCC OnLine Cal 13971**, **Gainwell Enterprises Pvt. Ltd, & Anr. vs. Ashoke Kumar Agarwal & Ors.** reported in **2014 SCC OnLine Cal 4259**, **Bahrein Petroleum Co. Ltd vs. P.J. Pappu and Another** reported **AIR 1966 SC 634**, **Hari Vishnu Kamath vs. Syed Ahmad Ishaque and Another** reported in **AIR 1955 SC 233**, **Innoventive Industries Limited vs. ICICI Bank and Another** reported in **(2018) 1 SCC 407**, **Dalip Singh vs. State of Uttar Pradesh and Others** reported in **(2010) 2 SCC 114**, **Sardar Hasan Siddiqui and ors. vs. State Transport Appellate Tribunal, U.P., Luckhow and Ors.** reported in **AIR 1986 ALL 132**, **Industrial Credit and Investment Corporation of India Ltd. Vs. Grapco Industries Ltd. And Ors.** reported in **(1999) 4 SCC 710**.

11. Mr. Arik Banerjee, learned Advocate appearing on behalf of the opposite party financial creditor, submitted that the revisional application was not maintainable as there was a provisions of appeal under Section 61 of the said

Code. He submitted that the appellate authority under the said Code, had the jurisdiction to decide any appeal from an order of the Tribunal and not necessarily only an appeal against a final order under Section 31 of said Act. He further contended that this court sitting in judicial review could not usurp the powers of the appellate authority and adjudicate the legality of the order impugned to this application. He submitted that the appellate Tribunal had the jurisdiction to decide appeals challenging an order which suffered from material irregularity, and also obtained by fraud. His next contention was that the learned Tribunal had come to a factual finding that the directors of the company were aware of the proceedings in view of the e-mail produced by the financial creditor in support of such contention. He further submitted that despite being aware of the proceeding, the corporate debtor allowed the learned Tribunal to proceed with the matter and pass the order on September 5, 2019. Thus, according to Mr. Banerjee, this amounted to waiver by conduct and the objection to territorial jurisdiction not having been raised at the first instance, the petitioner was not permitted to raise the point of lack of territorial jurisdiction at a later stage after proceedings before the learned Tribunal had been disposed of. He refers to the provisions of Section 21 of the Code of Civil Procedure. According to him, the application for recalling was not maintainable as the objection as to territorial jurisdiction of the learned Tribunal had been waived. He relied on the decision in **Laxmikant Revchand Bhojwani and Ors. vs. Pratapsing Mohansinggh Pardeshi** reported in **(1995) 6 SCC 576**, **Miss Maneck Custodji Surjarji, vs. Sarafazali Nawabali Mirza** reported in **AIR 1976**

SC 2446, **M/s. India Pipe Fitting Co. vs. Fakruddin M.A. Baker and Anr.** reported in **(1977) 4 SCC 587**, **Kiran Singh and Ors. Chaman Paswan and Ors.** reported in **AIR 1954 SC 340**, **Bahrein Petroleum Co. Ltd. vs. P.J. Pappu and Anr.** reported in **AIR 1966 SC 634**, **Hira Lal Patni vs. Sri Kali Nath** reported in **AIR 1962 SC 199**.

12. Heard the parties. The point of maintainability of this revisional application is taken up first. In the decision of **M/s. Embassy Property Developments PVT LTD** (**supra**), the High Court entertained an application under Article 226 of the Constitution of India and held that in the facts of the said case, NCLT chose to exercise a jurisdiction not vested in it law. According to the Hon'ble Apex Court, the High Court at Karnataka was justified in entertaining the writ petition as the NCLT was coram non-judice. The Hon'ble Apex Court held that the NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplementary Lease Deeds for the extension of the mining lease even if proceedings in relation to the lease hold property were pending before it and the High Court rightly interfered with the said order. Relevant paragraphs of the said judgment are quoted below:-

> *"**15**. One of the well recognized exceptions to the selfimposed restraint of the High Courts, in cases where a statutory alternative remedy of appeal is available, is the lack of jurisdiction on the part of the statutory/quasijudicial authority, against whose order a judicial review is sought. Traditionally, English courts maintained a distinction between cases where a statutory/quasijudicial authority exercised a jurisdiction not vested in it in law and cases where there was a wrongful exercise of the available jurisdiction. An "error of jurisdiction" was always distinguished from "in excess of jurisdiction", until the advent of the decision rendered by the House of Lords, by a majority of*

3:2 in Anisminic Ltd. vs. Foreign Compensation Commission.5 After acknowledging that a confusion had been created by the observations made in 4 (1993) 2 SCC 746 5 (1969) 2 WLR 163 Reg. vs. Governor of Brixton Prison, Ex parte Armah 6 to the effect that if a Tribunal has jurisdiction to go right, it has jurisdiction to go wrong, it was held in Anisminic that the real question was not whether an authority made a wrong decision but whether they enquired into and decided a matter which they had no right to consider.

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***17**. .....*

***18**. .....*

***19**. .....*

***20**.....*

***21**. Again in Hari Prasad Mulshanker Trivedi vs. V.B Raju,15 K. K. Mathew, J., speaking for the Constitution Bench, pointed out that though the dividing line between lack of jurisdiction or power and the erroneous exercise of it has become thin with Anisminic, the distinction had not been wiped out completely.*

***22**.....*

***23**.....*

***24**. Therefore in so far as the question of exercise of the power conferred by Article 226, despite the availability of a statutory alternative remedy, is concerned, Anisminic cannot be relied upon. The distinction between the lack of jurisdiction and the wrongful exercise of the available jurisdiction, should certainly be taken into account by High Courts, when Article 226 is sought to be invoked bypassing a statutory alternative remedy provided by a special statute.*

***25**. On the basis of this principle, let us now see whether the case of the State of Karnataka fell under the category of (1) lack of jurisdiction on the part of the NCLT to issue a direction in relation to a matter covered by MMDR Act, 1957 and the Statutory Rules issued thereunder or (2) mere wrongful exercise of a recognised jurisdiction, say for instance, asking 21 (2011) 14 SCC 337 22 (2012) 8 SCC 524 a wrong question or applying a wrong test or granting a wrong relief."*

13. The Hon'ble Apex Court in the said judgment held that even if the code was a special code, yet, the jurisdiction of the High Court under Article 226 and Supreme Court under Article 32 of the Constitution of India could be invoked if

the Tribunal had passed an order in excess of jurisdiction or had exercised jurisdiction not vested in it by law. The relevant paragraph is quoted below:-

> *"**45**. Therefore, in fine, our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice."*

14. In the decision of **L. Chandra Kumar** (**supra**) the power of judicial review was held to be the basic and essential feature of the Constitution. Hence the jurisdiction conferred on the High Court under Articles 226 and 227 of the Constitution and on the Supreme Court under Article 32 was held to be a part of the basic structure of the Constitution. In the said judgment, it was also held that the power of judicial review vested in the High Court to exercise judicial superintendence over the decisions of all courts and Tribunals within their respective jurisdiction was also a part of the basic structure and the object of such judicial review was to ensure that the Tribunals and courts sub-ordinate to the High Court's performed their functions within their statutory limitations.

15. In **Surya Dev Rai vs. Ram Chander Rai**, reported in **(2003) 6 SCC 675** the Hon'ble Apex Court held that supervisory jurisdiction under Article 227 of the Constitution was wider than those conferred under Article 226 of the Constitution and was exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court assumed a jurisdiction which it did not have or had failed to exercise a jurisdiction in a manner not permitted by law and failure of justice or grave injustice had occasioned thereby,

the High Court could step in and exercise its supervisory jurisdiction. The relevant paragraphs are quoted below:-

> ***"Supervisory jurisdiction under Article 227***
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> ***22.*** *Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by clauses (2) and (3) of Article 227 with which we are not concerned hereat. It is well settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.*
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> ***28.*** *Later, a two-Judge Bench of this Court in Baby v. Travancore Devaswom Board [(1998) 8 SCC 310] clarified that in spite of the revisional jurisdiction being not available to the High Court, it still had powers under Article 227 of the Constitution of India to quash the orders passed by the Tribunals if the findings of fact had been arrived at by non-consideration of the relevant and material documents, the consideration of which could have led to an opposite conclusion. This power of the High Court under the Constitution of India is always in addition to the revisional jurisdiction conferred on it.*
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> ***32.*** *The principles deducible, well-settled as they are, have been well summed up and stated by a two-Judge Bench of this Court recently*

in State v. Navjot Sandhu [JT (2003) 4 SC 605 : (2003) 6 SCC 641] , SCC pp. 656-57, para 28. This Court held:

(i) the jurisdiction under Article 227 cannot be limited or fettered by any Act of the State Legislature;

(ii) the supervisory jurisdiction is wide and can be used to meet the ends of justice, also to interfere even with an interlocutory order;

(iii) the power must be exercised sparingly, only to keep subordinate courts and tribunals within the bounds of their authority to see that they obey the law. The power is not available to be exercised to correct mere errors (whether on the facts or laws) and also cannot be exercised "as the cloak of an appeal in disguise.

...

***34.** We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away — and could not have taken away — the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 CPC, and is available to be exercised subject to rules of self-discipline and practice which are well settled."*

Summing up Hon'ble Apex Court stated as follows 38 (4)

***"38.** Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:*

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction."

16. In the matter of **Whirpool Corporation vs. Registrar of Trade Marks, Mumbai and Ors.** reported in **(1998) 8 SCC 1**, the Hon'ble Apex Court held that alternative remedy could not operate as a bar at least in three contingencies, namely, when an application was filed for enforcement of fundamental rights, in case of violation of the principles of natural justice and where the order or the

proceeding was wholly without jurisdiction or the vires of the act was challenged. Thus, the existence of an alternative remedy was not an absolute bar. In **Joi Singh vs. MCP** reported in **(2010) 9 SCC 385**, the Apex Court held that the High Court under Article 227 of the Constitution of India had the jurisdiction to ensure that all sub-ordinate courts, as well as statutory quasi judicial Tribunals, exercised the powers vested in them in law, within the bounds of their authorities.

17. In the matter of **A. V. Venkateswaran,** (**supra**) the Hon'ble Apex Court held that the principle that a party who applied for issue of a high prerogative writ, should before he approached the High Court, exhaust other remedies available to him under the law, was not one which barred the jurisdiction of the High Court to entertain the petition or to deal with it, but rather a rule which the courts had laid down for exercise of their discretion. The existence of other legal remedies or alternative remedies were not per se a bar to the issue of a writ of certiorari and the High Court was not bound to relegate the party to the other legal remedies available to him.

18. In the matter of **Shree Maheshwari Vidyalaya (HS)** (**supra**) the Division Bench of this court held that although much water had since flown under the bridge, but there had been no corrosive effect on these decision which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, was not affected, specially in a case

where the authority against whom the writ was filed was shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

19. In the matter of **Gainwell Enterprises Pvt. Ltd** (**supra**), a learned Judge of this court, held that the High Court under Article 227 of the Constitution of India could interfere in case of erroneous assumption of power or if the Tribunals and sub-ordinate courts acted beyond their jurisdiction or refused to exercise jurisdiction or the order suffered from error apparent on the face of record, as distinguished from mere mistake of law.

20. In **Kabita Das vs. Subrata Sarkar**, reported in **2017 SCC Online CAL 20243** it was held that mere existence of an alternative efficacious remedy should not deter the High Court from exercising the power of superintendence enshrined under Article 227 of the Constitution of India.

21. In the case of **Ramesh Chandra Sankla vs. Vikram Cement,** reported in **(2008) 14 SCC 58**, the Apex Court held that the powers conferred upon the High Court under Articles 226 and 227 of the Constitution of India was to be exercised *ex debito justitiae,* that is, to meet the ends of justice.

22. As per the larger bench decision rendered in **Vishwabharathi House Building Coop. Society** reported in **(2003) 2 SCC 412**, the power of the High Court under Articles 226 and 227 of the Constitution had not been taken away because of an alternative, efficacious remedy provided under the statute.

23. What can be deduced from the above judgments is that the power of judicial review and/or superintendence are the basic features of the constitution

which cannot be taken away absolutely but should be exercised in exceptional cases where there is manifest error apparent in the order itself or the order has been passed in disregard to law or there has been violation of principle of natural justice. Thus, the law is that Article 227 of the Constitution of India, gives the High Court the power of superintendence over all courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. This jurisdiction cannot be limited or fettered by any act of the state legislature. The supervisory jurisdiction extends to keeping the sub-ordinate Tribunals within the limits of their authority and to seeing that they obeyed the law. The power of the High Court under Article 227 is wide and can be used to meet the ends of justice. It can be invoked to interfere even with an interlocutory order. It is settled law that the power of judicial superintendence under Article 227 must be exercised to keep sub-ordinate courts and Tribunals within the bounds of their authority but the same should not be used as a "cloak of an appeal in disguise" (**State of New Delhi vs. Navjot Sadhu** reported in **(2003) 6 SCC 641)**.

24. There are no limits, fetters or restrictions placed on this power of superintendence and for all purposes, the High Court as the custodian of justice within the territorial limits of its jurisdiction was armed with a weapon that could be wielded for the purpose of seeing that justice is meted out fairly and properly by the subordinate Courts or Tribunals.

25. There is no quarrel with the proposition that the power of superintendence should not be exercised by the High Court as an Appellate Court but should be used to correct a wrong or erroneous decision which

resulted in dereliction of duties and abuse of the power by sub-ordinate courts and Tribunals.

26. Thus there is no absolute bar on the High Court to entertain an application under Article 227 of the Constitution of India, when a challenge is made to an order, which is otherwise amenable to be challenged by way of an appeal before the appellate forum if there is a patent error or miscarriage of justice apparent from the record. It can also be exercised for ends of justice, as a litigant should not suffer for the act of the Court. The power under Article 227 is no doubt discretionary and equitable yet wide and intended to advance the ends of justice and uproot injustice.

27. In the case, before me the learned Tribunal did not have jurisdiction to pass the order dated September 5, 2019 and the NCLT Cuttack Bench had exclusive jurisdiction. Be it a writ of certiorari or the exercise of supervisory jurisdiction, errors of fact or of law may be corrected if the following requirements are satisfied (a) the error is manifest and apparent on the face of the proceedings, (b) when it is based on clear ignorance or utter disregard to the provisions of law, and (c) a grave injustice or gross failure of justice has occasioned thereby. In this case the learned Tribunal committed error of jurisdiction and proceeded in utter disregard to the law and this revisional application is maintainable.

28. The decision in **Laxmikant Revchand Bhojwani** (**supra**) cited by the opposite party does not come to its aid. In the said decision, it was held that as the Rent control Acts were special legislations governing land lord tenant relationships such disputes could not be interfered with by the High Court under

Article 227 of the Constitution of India as the object of Article 227 of the Constitution of India was not to correct all species of hardships and wrong decisions but must be restricted to correction of abuse of fundamental principles and to uphold justice. In the facts in hand, the learned Tribunal wrongly assumed the jurisdiction by acting contrary to the provisions of Section 60(1) of the Code. Section 60(1) of the Code is quoted herein below:-

> ***"60. Adjudication Authority for corporate persons***
>
> *(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located."*

29. Thus, the adjudicating authority in a case covering matters with regard to Insolvency, Bankruptcy and Resolution Process as mandated by Section 60 of the Code would be the National Company Law Tribunal, within whose jurisdiction the registered office of the corporate debtor was situated.

30. In the matter of **Innoventive Industries Limited** (**supra**), it was held that the Code was a complete code. Thus, in my view when the territorial jurisdiction of adjudication authority has been provided under Section 60 of the Code, the provisions of Sections 15 to 20 of the Code of Civil Procedure with regard to place of suing will not be applicable. In this regard, reference to Section 238 of the Code is also relevant. The relevant portion is quoted below:-

> ***"238. Provisions of this Code to override other laws***
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> *The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time*

being in force of any instrument having effect by virtue of any such law."

31. Thus, the contention of the opposite party that the objection as to the territorial jurisdiction of the Tribunal should have been raised at the first instance and that such objection was waived by non-appearance of the opposite party does not impress the court. The place of suing in case of suits filed under Civil Procedure Code, is based on the provisions of Section 15 to 20 thereof and the plaintiff has to file the suit in accordance with the said sections and can also choose the place of suing. Under such circumstances, Section 21 of the Code provides that the question with regard to territorial jurisdiction or pecuniary jurisdiction being technical questions, should be raised at the first instance. In my opinion, when the jurisdiction of the NCLT has been prescribed under Section 60(1) of the Code and the NCLT within whose jurisdiction the registered office of the company is situated is to have exclusive jurisdiction over the proceedings under the Code, Section 21 of the Code of Civil Procedure will not have any application.

32. Mr. Banerjee distinguished the decisions cited by the petitioner with regard to entertainability or maintainability of this revisional application, urging that those are based on inherent lack of jurisdiction on the subject matter and not territorial jurisdiction. This contention is not accepted in view of the provision of Section 60 (1) of the Code as discussed earlier. The contention of Mr. Banerjee that the appellate authority under the code is competent to try and decide the question of lack of jurisdiction raised by the petitioner and this court sitting in

judicial review under Article 227 of the Constitution of India should not act as the appellate authority, is also not accepted in the fact situation of this case. First, the order impugned does not disclose, the satisfaction of the learned Tribunal that the corporate debtor had been served at its appropriate address (registered office) with the copy of application. The knowledge of the director of the suspended board cannot be taken as good service of the application under provisions of the said rules. The Tribunal was hesitant to record any satisfaction about good service upon the corporate debtor. Next, illegal assumption of jurisdiction is not a mere mistake sought to be corrected herein. Illegal assumption of jurisdiction in this case being violative of Section 60 of the Code, has rendered the proceedings to be a nullity. Records also reveal that the financial creditor, was aware of the shifting of the Corporate Office of the corporate debtor from Kolkata to Odisha and had granted permission the corporate debtor for the same had suppressed the fact before the Tribunal. The contention of Mr. Bose that the order dated September 5, 2019, was obtained by suppression and fraud is established. The learned Tribunal also acknowledged the factum of shifting and grant of 'no objection' by the bank in its order dated October 14, 2019.

33. The next contention of Mr. Banerjee that the corporate debtor by not entering appearance in the proceedings despite knowledge of the same, had waived its objection with regard of territorial jurisdiction of the Tribunal is not accepted. The decisions cited by Mr. Banerjee, in this regard are all cases where parties participated in the proceedings and not only submitted to the jurisdiction

of the Trial Court but contested up to the Appellate Court. On such facts, the parties were not allowed to raise the objection with regard to lack of territorial jurisdiction of the trial courts to entertain such suit. In this case, the corporate debtor did not submit to the jurisdiction of the learned Tribunal. When the Interim Resolution Personnel informed the corporate debtor about the order dated September 5, 2019, the application for recalling was filed. On the first date, that is, October 14, 2019, the learned Tribunal *prima facie* was of the view that it did not have the jurisdiction to entertain the application of the financial creditor. The learned Tribunal fixed another date for hearing of the application in order to give an opportunity to the financial creditor to make its submission. On that day, the learned Tribunal although held that on the date of September 5, 2019, it did not have territorial jurisdiction over the matter, yet, the Tribunal was of the view that as the corporate debtor did not contest the proceedings and had allowed the ex parte order to be passed, the point of territorial jurisdiction was waived. The learned Tribunal held that in terms of Section 21 of the Code of Civil Procedure, the order of the learned Tribunal had become final and the objection with regard to the territorial jurisdiction being a technical one, not having been taken as the first instance, could not be taken by filing a recalling application.

34. The decision of the Hon'ble Apex Court in the matter of **Industrial Credit and Investment Corporation of India Ltd.** (**supra**), is relevant in this case. The Hon'ble Apex Court held that the ex-parte order was rightly set aside by the High Court. It was further observed that the High Court in itself had the power in exercise of its jurisdiction under Article 227 of the Constitution India to

also examine the merits of a case and correct the error instead of remanding the matter. The relevant paragraph is quoted below:-

> *"**14**. The High Court also said that on merits as well the Tribunal was wrong in granting an ex-parte order. It is not that the High Court itself considered the merits of the case. The objection of the High Court was twofold: (I) the Tribunal did not give any reasons, and (2) it was an omnibus order and that there was no reference even to prayers in the application and that the prayers stood allowed ' in terms of entire hog'. Criticism of the High Court appears to be correct on that account. The judgment of the High Court, however, does not refer at all to the facts of the case and it proceeds more on abstract principles of law. There was no bar on the High Court to itself examine the merits of the case in the exercise of its jurisdiction under Article 227 of the Constitution if the circumstances so require. There is no doubt that the High Court can even interfere with interim orders of the courts and tribunals under Article 227 of the Constitution if the order is made without jurisdiction. But then a too technical approach is to be avoided. When the facts of the case brought before the High Court are such that the High Court can itself correct the error, then it should pass appropriate orders instead of merely setting aside the impugned order of the Tribunal and leaving everything in a vacuum."*

35. In the decision of the Apex Court in the matter of **Sardar Hasan Siddiqui** (**supra**) it was held that the Tribunal of limited jurisdiction could not derive jurisdiction apart from the statute. No approval or consent could confer jurisdiction upon such a tribunal. No amount of acquiescence, waiver or the like could confer jurisdiction upon a Tribunal, and the doctrine of nullity would come into operation and any decision taken or given by such a Tribunal would be a nullity. In that case, the Hon'ble Apex Court decided that when some matters were pending before a particular regional transport authority constituted under a statute, upon creation of another regional transport authority for a region having jurisdiction over those pending matters, the pending application before the erstwhile transport authority stood automatically transferred to the subsequently

constituted authority having jurisdiction to deal with the matters. The relevant portions are quoted below:-

> *"**8.** Section 44(1) does not merely contemplate the creation of Regional Transport Authorities for different regions. It also confers powers upon them to be exercised and discharge the functions conferred upon the Regional Transport Authorities by Chapter IV. On the plain term of S.44 when a Regional Transport Authority is created in respect of particular region, only the said authority can exercise powers and functions in relation to that region See Ratan Lal Gupta v. Mohd Ramjani. 1973 ALL LJ 139. From this it follows that the matters which were pending before the Transport Authority as constituted by the notification dated 29the July, 1981, stood automatically and instantaneously transferred to the Transport Authority as constituted by the notification dated 14th October, 1981, immediately on the publication of the later notification. S. 44(1) does not contemplate a vacuum in relation to any particular Regional Transport Authority. Upon the constitution of a new Transport Authority with effect from a certain date two consequences happen simultaneously. The old Authority loses its jurisdiction and the new Authority acquires it at the same moment. Notionally and in the eye of law there is no time lag. There is no gap or interregnum in the exercise of the powers and functions conferred by Chapter IV.*
>
> ***9.** There is another aspect of the matter. A Tribunal of limited jurisdiction cannot derive jurisdiction apart from the statute. No approval or consent can confers jurisdiction upon such a tribunal. No amount of acquiescence waiver or the like can confer jurisdiction of a Tribunal is lacking, the doctrine of nullity will come into operation and any decision taken or given by such a Tribunal will be a nullity. The fact that the notification dated 14th October, 1981 reached the office of the Transport Authority on a date subsequent to 16th October, 1981, is immaterial and any decision taken by the Transport Authority as constituted by the notification dated 29th July, 1981 on or after 14th October, 1981. Or at any rate, on or after 15th October, will be void. The delay in the communication of the notification dated 14th Octobor, 1981 could not enable the Transport Authority constituted under the notification dated 29the July, 1981, to exercise the powers and functions under Chapter IV, as it became defunct upon the issuance of the notification dated 14th October, 1981."*

36. In the matter of **Bahrein Petroleum Co. Ltd** (**supra**), the Apex Court held that Section 21 was a statutory recognition of the principle that defects as to the place of suing under Section 15 to 20 may be waived. The submission of the

respondent before the Apex Court in the said case was that the defendant in the suit had waived the objection by conduct. The Hon'ble Apex Court did not accept such contention and held that long and continuance participation in a proceeding without protest may in an appropriate case amount to waiver by conduct but if such objection is taken at the earliest opportunity and before taking any steps in the suit even if the written statement had been filed by the defendants, the same would not amount to waiver. In the case before me, the petitioner did not submit to the jurisdiction of the learned Tribunal nor did it take any steps. In **Principle Commissioner in Income Tax Center 1** (**supra**), the Apex Court did not entertain the application for recalling of its judgment dated March 5, 2019, on the ground that the applicant had not been served at its Registered Office as the case records revealed that the notice was served upon the sole respondent and a last opportunity was given to the respondent to enter appearance before the Apex Court. It was also on record that the power of attorney holder of the respondent representing before the Apex Court had notice of the proceeding and his contention that although, he accepted the notice but thought it was some other documents was not accepted by the Hon'ble Apex Court. Most importantly this was not a case on waiver by conduct.

37. The facts of **Hira Lal Patni** (**supra**) are also distinguishable, inasmuch as, the appellant before the Hon'ble Apex Court having participated in the arbitration proceedings and having appeared before the Single Bench of the Bombay High Court in the proceedings for setting aside the award passed in arbitration and thereafter before the Division Bench of the High Court of

Bombay, was not allowed to raise the question of lack of jurisdiction at the stage of execution of the award, of the Bombay High Court to entertain the suit. The said decision is distinguishable on facts.

38. Under such circumstances, the revisional application is allowed. The order dated September 5, 2019 and November 5, 2019 are set aside and quashed. CAN 12340 of 2019 is accordingly disposed of. The learned Tribunal is directed to transfer the proceedings to the National Company Law Tribunal, Cuttack Bench, within two weeks from the date of communication of this order.

39. There will be, however be no order as to costs.

Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.

(Shampa Sarkar, J.)