NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) (Ins) No.192/2022
(IA Nos. 439 / 2022)

In the matter of:
Kalyan Muppaneni
Suspended Director, Founder Shareholder of
M/s. Pi Data Centers Private Limited
Address : #905, B Block, The Platina, Gachibowli
Hyderabad – 500 032 … Appellant

V

M/s. K. Computers
Address: #1-2-234/13/45, Plot No. 45
Aravind Nagar Colony, Domalguda
Hyderabad – 500 029. ...Respondent No.1

Mr. P. Madhusdhan Reddy, IRP
Address: Unit 3B, 6-3-569/2, Above Vibrant Ford,
Rockdale Compound, Somajiguda,
Hyderabad, Telangana 500 082 ...Respondent No.2

With

IA No. 441 / 2022
in
Company Appeal (AT) (CH) (Ins) No.193/2022
(IA No. 442/2022)

In the matter of:
Kalyan Muppaneni
Suspended Director, Founder Shareholder of
M/s. Pi Data Centers Private Limited
Address : #905, B Block, The Platina, Gachibowli
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Address: Unit 3B, 6-3-569/2, Above Vibrant Ford,
Rockdale Compound, Somajiguda,
Hyderabad, Telangana 500 082 **...Respondent No.2**

Present :

For Appellant : Mr. PH. Arvindh Pandian, Senior Advocate
For Mr. Pawan Jhabakh, Advocate

For Respondent : E. Omprakash, Senior Advocate for
Mr. Y. Suryanarayana &
Mr. Yasaswi Kondapalli, Advocates for R1

ORDER
(Hybrid Mode)

18.12.2024:

[Oral Judgment: Justice Sharad Kumar Sharma, Member (Judicial)]

These two connected company appeals, had been quite elaborately argued by the Ld. Counsel of both parties yesterday, as well as today in the pre-lunch session. Upon the conclusion of the argument, and owing to the credible assistance extended by the Ld. Counsels for both parties, we dwell upon to render the Judgment in these appeals independently.

In fact, both the appeals are structured on the same foundation, and each of the appeals if decided in either fashion, will have a direct bearing on one another. Hence, for the purposes of brevity, we feel it apt to, answer the arguments extended by the Ld. Senior Counsel for the Appellant in Company Appeal (AT) (CH) (Ins) No.193/2022, first before we factually dwell upon the argument factually extended by the Ld. Senior Counsel for the Appellant in the connected appeal.

Company Appeal (AT) (CH) (Ins) No.193/2022:

As far as the Company Appeal (AT) (CH) (Ins) No.193/2022 is concerned, the challenge as given by the Appellant is to the Impugned Order of 04.03.2022, as it was rendered in *CP (IB) No. 71/9/AMR/2020*. The consequential effect of the Impugned Order of 04.03.2022, was that the Corporate Debtor (i.e, M/s. PI Data Centers Private Limited) was admitted to face the CIRP proceedings. The propriety of the Impugned Order of 04.03.2022, of admission of the Corporate Debtor into CIRP proceedings may not be required to be gone into, by us at this stage, for the reason being that this appeal is accompanied with a Condone Delay Application, being IA No. 441/2022. According to the Report of the Registry, they have determined that, the appeal is preferred belatedly after a lapse of 45 days, than what has been contemplated under the Appellate provisions of Section 61 (2) of the I & B Code. While pressing upon the application for Condone Delay, what has been argued by the Ld. Senior Counsel for the Appellant is that, owing to the fact that, during the pendency of the company petition, he has preferred an IA No. 30/2022, which remained to be the subject matter, to be considered in the other connected appeal. When we ventured upon, which has been taken as to be a foundation for the purposes of grant of, a Condone Delay Application it had been owing to the fact of the pendency of IA No. 30/2022. Accordingly, under that pretext, the Appellant in the Condone Delay Application IA No. 441/2022, had submitted that since the IA No. 30/2022, was instituted on 15.03.2022 before

the Ld. Adjudicating Authority and it had consumed sufficient time and remainded pending till it was adjudicated upon by the order of 28.04.2022 (impugned order is other company appeal). The aforesaid period that is from 15.03.2022 till 28.04.2022 deserves to be excluded and condoned, by drawing its implication from Section 14 of the Limitation Act.

The question which emerges and requires consideration by this Appellate Tribunal is, as to whether under the given factual set of circumstances, the provisions of Section 14 of the Limitation Act, could at all be made applicable to grant the benefit of limitation to the Appellant, during the pendency of the proceedings by way of IA No. 30/2022, as preferred in the CP (IB) No. 71/9/AMR/2020.

Preference of IA No. 30/2022 was the exclusive prerogative and choice of the Appellant and not a statutory mandate. And it was not imposed upon under law, but rather by way of choice, when it was not statutorily mandated to file an application with regards to the nature of relief, which was modulated therein. We yet again observe that, with regards to the modulation of relief pertaining to IA No. 30/2022 would be a subject matter, which would be answered, when we deal with the Company Appeal (AT) (CH) (Ins) No.192/2022. The Ld. Senior Counsel for the Appellant has, harped upon the fact that, he would be entitled for being granted, the benefit of the exemption of limitation, in the light of the provisions contained under Section 14 of the Limitation Act. Owing to the aforesaid

arguments, it becomes inevitable for us that before assigning any reasons as to whether at all Section 14 of the Limitation Act, would be attracted, under the given set of circumstances, to extract as to what Section 14 of the Limitation Act intends at. Section 14 of Limitation Act is extracted hereunder: -

> *"**14. Exclusion of time of proceeding bona fide in court without jurisdiction**.—(1) In computing the period of **limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding**, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is **prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it**.*
>
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
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> *(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.*
>
> *Explanation. —For the purposes of this section, —*

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c)misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

The legislature, while incorporating Section 14 under the Limitation Act of 1963, it made it quite clear in its term, that it provides an exclusion of time period, only where a person prosecutes a case against a cause of action in good faith before a wrong court, which has no jurisdiction. Cause of action herein would refer to, the principal proceedings at the stage of inception of proceeding, where a person approaches to a court which is not competent or having jurisdiction to decide the matter, and then, when after its decision, he is relegated back to an appropriate forum i.e to a court to decide the matter as prescribed for him under law. Section 14 of the Limitation Act, cannot be expanded to be read, that as if it could be applied for intra-court applications, which are preferred, by the parties to the principal proceedings, that is the Appellant herein by filing of an IA No. 30/2022 admits that court, where the proceedings or application was filed, did have jurisdiction over the subject, and the matter was not relegated to be instituted before the court of competent jurisdiction.

If the language of Section 14, is taken into consideration, it provides that when a person pursues a remedy, before a wrong forum or a forum that does not

have jurisdiction to principally deal with the matter which is placed before it, and then upon its conclusion it is ultimately arrived at, then the proceedings are not maintainable, and the party to the proceedings is relegated back to the approach to an appropriate forum, statutorily available to him under law, it is only in that eventuality, Section 14 of Limitation Act comes into play, provided the litigation is done in good faith and not otherwise, when proceedings are intra-court miscellaneous proceedings.

In the instant case, the decision to file the application, being IA No. 30/2022 for the relief claimed, was admittedly not an application, that was filed before the wrong forum, and it cannot be a case of the Appellant too, because it was rather his application, which he has chosen to file, before the Ld. Adjudicating Authority by way of interlocutory application, for the relief sought therein. Even otherwise also, the said application IA No. 30/2022, which has been decided by the Ld. Adjudicating Authority, by the order of 28.04.2022, is not a proceeding, which is independent in itself, rather it was an ancillary miscellaneous proceeding, which has been solicited by the Appellant himself at his choice, by filing of an application. And that too when upon the conclusion drawn by the Tribunal while deciding the application IA No. 30/2022, vide its order dated of 28.04.2022, it is not that the lis is decided and the Appellant has been relegated back to approach to an appropriate forum, where the implications of Section 14 could have been attracted. Rather to the contrary, the relief sought in an interlocutory application in the pending principal proceedings has been

answered by the Tribunal by the order of 28.04.2022. Hence, the provisions contained under Section 14 of the Limitation Act, will be of no avail as far as this Appellant is concerned.

There is yet another logic, as to why the argument extended by the Ld. Senior Counsel for the Appellant in the context of the provisions of Section 14 of Limitation Act, will not be applicable, the reason being that, under the I & B Code 2016, the Limitation Act has been made applicable by virtue of an insertion made by Act No. 26/2018. If the provisions contained under Section 238A, itself are taken into consideration, it is a provision which is general in its applicability and would be in an exception to a provision of law which is a self-contained provision that, includes within itself the embargos of limitation.

The application of the provisions contained under Section 238A of the I & B Code 2016, cannot be borrowed to be applied for the purposes to dilute or nullify the impact of the restrictions of limitation which is mandated under Section 61, which has to be strictly adhered to, by a party who is aggrieved by an order of the Ld. Adjudicating Authority and who intends to prefer an appeal under Section 61. In other words, it could be said that the provisions of the Limitation Act as contemplated to be applied by Section 238A of I & B Code 2016, is general in its applicability and will not cover those provisions where the aspect of Limitation itself, has been self-contained and, hence it cannot be utilized where the limitation is independently prescribed under Section 61, particularly when the

legislation intends that the proceedings held under the I & B Code, have to be decided within a specified time frame. Therefore the Section 14 of the Limitation Act cannot be applied to dilute the implication of limitation contained under Section 61, which is strict in its applicability and has been made not extendable beyond the time period prescribed in it, which is a self-contained provision. Section 61 (2) deals with an aspect of limitation which is extracted hereunder: -

> *"61(2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:*
>
> *Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal* ***but such period shall not exceed fifteen days****."*

The language of the statute in itself is quite explicit in itself, where it contemplates and it is mandatory too, that the aspect of limitation under Section 61 (2), would be applicable for the appeals contemplated under Section 61 (1) meaning thereby, yet again an answer to the applicability of general law of limitation, has been self-contained in the appellate provision of Section 61 itself, where Sub-Section 2 which exclusively carves out an aspect of limitation is exclusive in nature in its applicability to the appeals prescribed under Section 61 (1). In these eventualities, the argument extended by the Ld. Senior Counsel for the Appellant, that Section 14 would apply for the purposes of determining the

aspect of limitation, so far as the appeal number Company Appeal (AT) (CH) (Ins) No.193/2022 is concerned is not acceptable by this Tribunal.

The Ld. Senior Counsel for the Appellant for the purposes of attracting Section 14 of Limitation Act, in its applicability to the appeals contemplated under Section 61 has made reference to a Judgment as ***reported in 2021 Volume 10, SCC Page 401, Kalpraj Dharamshi and Another vs Kotak Investment Advisors Limited and Another,*** particularly he has made reference to Para 49, 50, 56, 57, 97 and 100, which though are not relevant, but they are still extracted for his satisfaction because he has placed reliance on the same. Para 49, 50, 56, 57, 97, and 100 are extracted hereunder: -

> *"49. In view of the rival submissions, following questions arise for our consideration.*
>
> *49.1. (i) Whether the appeals filed by KIAL before Nclat were within limitation?*
>
> *49.2. (ii) Whether there was waiver and acquiescence by KIAL, so as to stop it from challenging the participation of Kalpraj?*
>
> *49.3. (iii) Whether Nclat was right in law in interfering with the decision of CoC of accepting the resolution plan of Kalpraj?"*

> *"(i) Whether the appeals filed by KIAL before Nclat were within limitation?*
>
> *50. For appreciating the rival contentions in this regard, it would be appropriate to refer to Section 29(2) of the Limitation Act, so also the provisions of Section 61 and Section 238-A of the I&B Code."*

"56. On the contrary, it is urged on behalf of KIAL, that since the order passed by NCLT was passed in utter breach of the principles of natural justice, it had bona fide filed a writ petition before the Division Bench of the Bombay High Court. It is urged, that by an elaborate order the writ petition came to be dismissed, on the ground of availability of alternate remedy. It is therefore urged, that the provisions of Section 14 or at least the principles laid down therein, would be available to KIAL and as such, the appeals, as filed will have to be held to be within limitation."

"57. Therefore, the crucial question, that arises for consideration, is as to whether the provisions of Section 14 of the Limitation Act or the principles laid down therein would be available to KIAL for exclusion of the period during which it was prosecuting the writ petition before the Division Bench of the Bombay High Court."

"97. In the present case, the facts are totally contrary. KIAL had approached the High Court of Bombay making a specific grievance, that NCLT had adopted a procedure which was in breach of the principles of natural justice. It is specifically mentioned in the writ petition, that though an alternate remedy was available to it, it was approaching the High Court since the issue with regard to functioning of NCLT also fell for consideration. The proceedings before the High Court were hotly contested and by an elaborate judgment, the High Court dismissed [Kotak Investment Advisors Ltd. v. Krishna Chamadia, 2020 SCC OnLine Bom 197] the writ petition relegating the petitioner therein i.e. KIAL to an alternate remedy available in law. It is thus apparently clear, that KIAL was bona fide prosecuting a remedy before the High Court in good faith and with due diligence. In a given case, the High Court could have exercised jurisdiction under Article 226 of the Constitution

inasmuch as, the grievance was regarding procedure followed by NCLT to be in breach of principles of natural justice. That would come within the limited area earmarked by this Court for exercise of extraordinary jurisdiction under Article 226 despite availability of an alternate remedy."

"100. We, therefore, have no hesitation to hold, that KIAL was entitled to extension of the period during which it was bona fide prosecuting a remedy before the High Court with due diligence."

The reference made to Para 100 of the aforesaid judgment for the purposes of exclusion of the period which was engaged in by the Appellant, it was while pursuing the remedy by way of filing IA No. 30/2022, this could be utilized, as a menace to law and for law too by a person in case, if such an interpretation is given to the law of limitation where, any party to the proceedings who is facing a hurdle of limitation could invariable file an interlocutory application and keep it pending for years together and thereafter take a plea, that he was not instrumental in the pendency of the interlocutory application, as such Section 14 of the Limitation Act, will come into play. To the argument extended by the Ld. Senior Counsel for the Applicant, the appellant cannot be permitted to take advantage of his own non sustainable proceedings, which have been drawn and pursued for a certain time period for the purposes of exclusion, which is not to be considered as to be a reason to extend limitation, prescribed under Section 61 (2).

Apart from that if the aforesaid paragraph, which has been extracted and relied by, the Ld. Senior Counsel for the Appellant thus will have no applicability,

because the implication of Section 14 given therein in the matters of the Kalpraj Dharamshi (Supra), which is based under altogether a different circumstances and facts, and particularly the logic, which has been assigned for the purposes of attracting Section 14 of the Limitation Act, even to the proceedings under Section 61, has also to be dealt with, based upon the circumstances of each case. The issue which was involved therein, as it has been dealt with in Para 3 and 4 of the said Judgment cannot be excluded to be read together for the purposes of applying the ratio, as relied upon in the context of observations made in Para 49, 50, and 56. In the case of Kalpraj Dharamshi (Supra), in fact there were two orders, which were subject matter of challenge, which were decided on 28.11.2019 by the Ld. NCLT, Mumbai, in **MA No. 1039 & 691 of 2019, and Ld. NCLT has set aside the said orders which were passed in the said MAs, which was the subject matter of consideration under Section 62 before the Hon'ble Apex Court**.

The civil appeal which was preferred, was against the order of the Ld. NCLT which has rejected the interlocutory application pending before the Tribunal. If we have reference to the contents of para 49, it only formulates the question, which emanates for consideration in the said case of Kalpraj Dharamshi (Supra), which does not have its universal applicability. The question which has been formulated therein, was to the effect as to whether the appeals filed by the Kotak Investment Advisors Limited before the Ld. NCLAT was within the period of limitation. It is to be noted that, this question formulated, that was dealing with an aspect of a limitation in respect to the said case only. The second question

which, was the subject matter of consideration was the question of waiver in the context of determination of limitation. While referring to para 50, which has been argued by the Ld. Senior Counsel for the Appellant, in the said case the Hon'ble Apex Court, while drawing its conclusion has referred to Section 29 (2) of the limitation act which deals with the savings clause and the savings clause would be only attracted when the law itself is silent on a particular aspect of limitation or where there is any vacume in law, hence yet again by way of reiteration, we will not hesitate to observe that the instant company appeal would not be an appeal, which will be falling under any of the savings clause under Section 29 (2), particularly, when the law on this aspect in itself is quite clear enough, regarding the limitation, which has to be strictly construed as per Section 61 (2) and Section 238A will not have its applicability since limitation cannot be extended beyond period provided under Section 61(2) of I & B Code.

We would not hesitate to appreciate the intelligentsia of the Ld. Senior Counsel for the Appellant who has pursued the appeal, while pressing upon the Condone Delay Application. There was a conscious intent that the Ld. Senior Counsel for the Appellant has chosen to address upon Company Appeal (AT) (CH) (Ins) No.192/2022, which is against the Impugned order that was decided on 28.04.2022, which was arising from the interlocutory application proceedings of the same company petition and the principle proceedings of admission into the CIRP, under Section 9, which was made as the subject matter of the Company Appeal (AT) (CH) (Ins) No.193/2022. For the reasons best known, the appeal CA

(AT) (CH) (Ins) No.193/2022, was chosen to be addressed upon at a later stage for the reason being that, the consequential effect would be that since the appeal itself was preferred with 45 days of delay, may be that the exclusion which has been sought by the Appellant for a period from 15.03.2022 to 28.04.2022 of 44 days will not be a period, which will be falling within the exemption clause to the proviso, which is strict in its applicability and upon failure to succeed in pressing upon the Condone Delay Application, it would have a direct bearing on the Company Appeal (AT) (CH) (Ins) No.192/2022. Hence, the aspect of exclusion, which has been sought to be argued by the Ld. Counsel for the Applicant, since would be a variable factor in each of the cases depending upon the fact involved therein, cannot be universally made applicable as a concept for the purposes of dealing with an aspect of limitation, when the law itself very strictly creates a restriction on the Appellate Tribunal that while determining the aspect of limitation, we cannot barge upon, and extend the period beyond which is prescribed under the proviso to Section 61 (2).

The implications of the aforesaid Judgment of Kalpraj Dharamshi (Supra) in the context of the observation, which has been made in Para 97, which has been pressed upon by the Ld. Senior Counsel for the Appellant is that, it was the situation where the parties to the proceeding had approached to the Hon'ble High Court, which was a forum other than the appropriate forum available under the provisions of the I & B Code. There in that situation, the Hon'ble Apex Court, has taken a view by way of an exception, that Section 14 could be made

applicable, but here it is reiterated that since the forum of pendency of proceedings is not a question of dispute, the only dispute which is being sought to be carved out is because of the filing of an interlocutory application which was filed before the Competent Court. The circumstances under which the reasons have been assigned in Para 97 of the said Judgment, would not be applicable because the petitioner therein has chosen to invoke Article 226 of the Constitution of India, being conscious of the fact that he has a statutory remedy available by way of preferring of an appeal under Section 61. It was under those circumstances where the Appellant approached to invoke a constitutional remedy under Article 226 of the Constitution of India. The Hon'ble Apex Court has attracted the implications of Section 14 of the Limitation Act because writ remedy was not statutorily contemplated under law. These are not the circumstances which would apply for this instant case, for the purposes of extending the limbs of the interpretation of limitation as prescribed under Section 61 (2), owing to the reason that I & B Code itself has been given an overriding effect to the other law and once it contains a self-contained provision, governing the field of the limitation it has to be determined, on the basis of the strict mandate of the statute provided under Section 61 (2) and at the most it could be extendable upto the upper limit under the proviso to Section 61 (2) of I & B Code. Hence, the Condone Delay Application which has been sought for, is 45 days, which is outside the ambit of the provisions contained under Section 61(2), cannot be allowed.

The Condone Delay Application **IA No. 441/2022**, would stand 'rejected' and as a consequence thereto the **Company Appeal (AT) (CH) (Ins) No.193/2022,** would too stand 'dismissed'.

Company Appeal (AT) (CH) (Ins) No.192/2022:

We now proceed to deal with, the accompanying Company Appeal (AT) (CH) (Ins) No.192/2022, as preferred by the Appellant, by putting a challenge to the Impugned order of 28.04.2022, as it has been rendered in IA No. 30/2022 filed by the appellant in CP (IB) No. 71/9/AMR/2020.

Though, much answer would not be required owing for the reasons as already recorded above, but still in order to meet out with judicial propriety, with regards to the arguments extended by the Ld. Senior Counsel for the Appellant, we feel that, we are duty-bound to deal with the arguments which had been extended by the Ld. Senior Counsel for the Appellant. For the said purpose, we will have to revert back and deal to the text of the application preferred by the Appellant by invoking the provisions contained under Section 60 (5) of I & B Code, to be read with Rule 11 of the NCLT Rules as it was preferred by the Appellant before the Ld. Adjudicating Authority on 15.03.2022. The relief sought, in the said application would be of much more relevant in the context of dealing with the authorities, which he intended to rely upon in support of his case while pressing upon the Company Appeal (AT) (CH) (Ins) No.192/2022. The

Applicant in the said application IA No. 30/2022, has prayed for, the following relief: -

> *"In view of the abovementioned facts and submissions, the Hon'ble Adjudicating Authority may be pleased to grant the following reliefs:*
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> *(a)* ***To direct the respondents to file application for withdrawal of the CIRP*** *proceedings under Section 12A of the IBC read with Regulation 30A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 on account of the discharge of the whole of the claimed outstanding debt to the Operational Creditor by the Applicant and/or,*
>
> *(b)* ***To permit the withdrawal of the application admitted under Section 9 of the IBC*** *and set aside the CIRP process and restore the Board of Directors with full powers to operate the company as existing with the Board prior to the initiation of CIRP.*
>
> *(c) To pass such other orders as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of the case."*

Even by virtue of the simple reading of the application and the relief prayed for, in fact, what has been solicited by way of relief by the Applicant by virtue of the prayer sought for, in fact, it was a negative *mandamus* sought by the appellant, against the Respondent (Applicant) to Section 9 proceedings, calling upon the Tribunal to pass an order directing the Applicant to Section 9 proceedings, to get withdrawn, the CIRP proceeding under Section 12A of I & B Code 2016. A negative *mandamus* is not a percept which is provided under law, the reason being that, the master of the proceedings is the Applicant himself, and the choice to proceed and pursue the proceedings exclusively vests upon him, as to whether he

wants to continue to pursue the relief sought for, in the principle proceeding under Section 9 filed by him or to withdraw it under the changed circumstances, which we will be dealing with, herein after, at least the Appellant cannot take the liberty to file an application for seeking a direction against the Applicant to Section 9 proceedings forcing him to withdraw the application or proceedings drawn by him under Section 12A of the I & B Code to be read with Regulation 30A of Insolvency and Bankruptcy Board of India (IBBI).

On the ground that the Appellant claims that he has discharged his liability and the claim, which was the outstanding debt payable to the Operational Creditor and the consequential leave to withdraw Section 9 application. While elaborating on the argument extended by the Ld. Senior Counsel for the Appellant in support of his contention has submitted that, the nature of relief, which was sought by the Appellant in the aforesaid IA No. 30/2022, deserves to be granted for the reason being that, after passing of the order of CIRP proceedings he claims that there had been a settlement, which has been entered into between the parties and under the garb of which he contends that the amount which was due to be paid to the Applicant/ Respondent of Section 9 Application has already been remitted and as such no cause survived after the satisfaction of the entire amount, which he claims was remitted by the Appellant to the respndents satisfaction, in the light of the various communications which has been referred to by the Ld. Senior Counsel for the Appellant contending thereof that, since owing to the various e-mail communications, which itself amounts to be an admission made by the Applicant

to Section 9 application, that the amount has been remitted which is a fact denied hence disputed, and as such no purpose would be served to pursue the application under Section 9 of I & B Code. He has drawn the attention of this Tribunal to a number of e-mail communications and particularly while dealing with the chain of these email communications, we refer to one of the communications, which has been relied upon by the Ld. Senior Counsel for the Appellant i.e., an e-mail communication dated 11.03.2022. In accordance with the e-mail communication, it has been projected by the Ld. Senior Counsel for the Appellant that as if, the entire amount which was due to be paid by the appellant to respondent, applicant to Section 9 application, stands settled upon the receipt of, the dues by the operational creditor and an observation which has been made therein, that it will ensured that IA under Section 12A would be filed immediately and would make all efforts to place the same before the Tribunal for its consideration.

The e-mail communication relied upon by the Appellant given therein was in fact, a communication which was made ***Inter se*** **amongst the Counsels and not *Inter se* amongst the parties**, to make them bound by the communication, which has been made therein, undertaking to file an application under Section 12A for the purposes of withdrawing the proceedings under Section 9 of I & B filed by the respondents, which they had still persisted upon.

The Ld. Senior Counsel for the Appellant further in continuation thereto, has referred to the attachment of a letter, made to the aforesaid communication

dated 11.03.2022 which is shown to have been addressed by the Applicant, which is an unsigned document addressed to Mr. P. Madhusudhan Reddy, with regards to the withdrawal of the CP (IB) No. 71/9/AMR/2020. And particularly, he has referred to the last paragraph of the said communication, wherein it was observed that the Applicant requested to consider the withdrawal of the petition under Section 12A of the I & B Code and proceed to file the same with the Ld. NCLT at the earliest to take over the necessary action for passing of an order in the nature of withdrawal of the petition under Section 9 of I & B Code, which has been sought for, by the Appellant/Applicant in IA No. 30/2022. The Ld. Senior Counsel for the Appellant, has further referred to Form-FA, that is a formatted application which is filed for withdrawal of the Corporate Insolvency Process, as contemplated under Regulation 30A of Insolvency and Bankruptcy Board of India, (Insolvency Resolution Process for Corporate Persons) Regulation 2016. This document too which has been relied upon, once again is not a document in original and not signed by the Applicant. What credence could be given to it by us is yet again a question to be answered. In the aforesaid form of withdrawal, it was prayed for that the application bearing diary number, as mentioned therein was for the purposes of withdrawal of the proceedings under Section 9 of I & B Code, and the reason, which has been mentioned in it is attributed thereto is based upon the debt settlement agreement of 11.03.2022, which happens to be akin to the date of the e-mail communication and the correspondence too which was made in continuation thereto on 11.03.2022, which he attempts to signify that,

the correspondence of 11.03.2022 and the settlement of 11.03.2022, since all these documents they happen to commensurate to be of the same date that would justify the e-mail communication of 11.03.2022, where it is contended that the Applicant/Respondent was expected to withdraw the proceedings under Section 9 of I & B Code, by filing an application Form-FA, under Regulation 30A of IBBI Regulation of 2016.

The Ld. Counsel for the Respondent, while responding to the said argument as it was extended by the Ld. Senior Counsel for the Appellant, in the context of the alleged Debt Settlement Agreement, has denied the factum of having placed the signatures on the said document and its executory too. The Ld. Senior Counsel for the Respondent, he has drawn the attention of this Appellate Tribunal to the Debt Settlement Agreement itself, while referring to Para 1 and 2, with regards to the alleged transaction and remittance of money along with the interest, which he contends to have been paid to the Operational Creditor which has been acknowledged by his receipt of the payment, which would necessitate the institution of the Form-FA, under Regulation 30A for the purposes of withdrawing the proceedings under Section 9 of I & B Code. In the Debt Settlement Agreement, he submitted that if Para 2 is taken into consideration, the Applicant (Operational Creditor) is shown to have accepted the entire amount in full consideration, final and complete satisfaction, and as such, the relief as sought for by the present Applicant in his application, IA No. 30/2022 ought to have been granted because if the covenants of Clause 1 and 2 of Debt Settlement

Agreement are read along with the covenants of Clause 5 and 6 of the Debt Settlement Agreement, in fact, when nothing is left due to be paid, according to his perception, there was no necessity to continue with the proceeding under Section 9 of I & B Code and which deserves to be withdrawn by the Applicant and thus the relief he contends, thus the relief as prayed for in the application, would be falling within the zone of consideration to be granted by the Ld. Adjudicating Authority under Section 60 of I & B Code.

In continuation, thereto, Ld. Senior Counsel for the Appellant has referred to the proof of payment, which is said to have been made on the basis of the Debt Settlement Agreement of 11.03.2022, and in relation thereto, he has drawn the attention of this Tribunal to the e-mail communication, which was said to have been made on 11.03.2022 at 17:56 itself, where the transfer of amount is a fact which is said to have been admitted. The said argument has been reiterated by the learned counsel for the Appellant by drawing the attention of this Appellate Tribunal, to the certification as made by the authorized signatory of the ICICI bank, about the transfer of the amount which was a certificate, which was issued on 17.03.2022 by the ICICI bank, which the Appellant reads the said document, as that the said document would be treated as to be a complete remittance of the amount under the Debt Settlement Agreement of 11.03.2022 and as thus in view of the aforesaid the Regulation 30A, ought to have been attracted and particularly when according to his argument, which he subsequently substantiated the same in the view of the observations made by the Hon'ble Apex Court in an authority,

which we will be dealing with later on, which provides for that the ambit of Section 60 which could be widened for the purposes of withdrawing of proceedings under Section 7 and 9 of I & B Code, subject to the satisfaction of certain pre conditions, which has been laid down by the Hon'ble Apex Court in the aforesaid judgments, which has been referred to by the Ld. Senior Counsel for the Appellant.

In a similar manner where the Ld. Senior Counsel for the Appellant has referred to the certificate of the receipt of the amount issued by the ICCI bank on 17.03.2022, he once again referred to yet another certification issued by the branch Code 03607 dated 17.03.2022, of State Bank of India, which too, he contends has fortified the fact about the transfer of the amount based upon the Debt Settlement Agreement, which has been referred to for the purpose of transaction, which has been read by the Ld. Senior Counsel for the Appellant to be in relation to the proceedings of the CP (IB) No. 71/9/AMR/2020.

The Ld. Senior Counsel for the Appellant, submits that despite of having paid the entire amount, to the full satisfaction of the amount as it was claimed to be payable in the demand notice under Section 8 of I & B Code, he was taken aback when he was in the receipt of the communication made on 12.03.2022, where it is alleged that respondents have contended that, the Respondents had made a communication to the effect, that **he was in receipt of, only a part payment**, and the entire dues as claimed by the Appellant was not remitted to

him. The Appellant submits that the said e-communication, as made on 12.03.2022, was contrary to the records, what we have already dealt with earlier, and submits that the said communication was rather coloured, so as to perpetuate upon the proceedings under Section 9 of the I & B Code. For the said purpose, he has referred to the schedule of payment too, with regards to the aspect of remittance of the amount and the balance amount, which was depicted in the same, containing thereof that the facts and figures, which has been given therein, cannot be relied with owing to the fact that the documentary evidence, which has been placed by Appellant on record including the alleged certificates issued by the bank with regards to the acceptance of the amount by the Applicant/Respondent to Section 9 proceedings, would belie the observation which has been made in the communication made by the Respondent, as it was depicted on 12.03.2022.

He further referred to, one of the e-mail communications of 14.03.2022, where the Appellant submits that he had made a consistent request to the Applicant/Respondent to file an appropriate application of withdrawal of the CIRP proceedings pending before the Ld. NCLT by invoking the provisions contained under Section 12A of I & B Code, owing to the alleged theory of receipt amount which has been claimed to have paid to the present Applicant/Respondent.

We are of the tentative view, that as to whether we were at all required to speculate upon the factual argument extended by the Ld. Senior Counsel for the Appellant, to satisfy the proclaimed aspect of remittance of the amount, which could have necessitated the Applicant to Section 12 A proceedings to withdraw the Section 9 application, particularly at all at this stage when the nature of relief modulated by the Applicant was seeking a direction for, against the Respondent, directing for withdrawing of the Section 9 proceedings under Section 12A of I & B Code to be read with Regulation 30A. In the context of the aforesaid argument as to what would be the scope of Section 60 and how far it could be stretched by the Appellant to provide it an elasticity, to enable an Applicant/Appellant to file an application under Section 60 seeking a direction for the respondent for withdrawing of a proceedings, the Ld. Senior Counsel for the Appellant had referred to catena of Judgments, where based under its strength he submits that the Hon'ble Apex Court has the held, while interpreting the implication of Section 60, that, the implication of Section 60 could always been expanded to an extent to enable an Applicant to withdraw a proceedings drawn under Section 7 or 9 of I & B Code, withdrawal of application was made open to the Applicant, under the light of a stretch of powers conferred under Section 60 of I & B Code.

The Ld. Senior Counsel for the Appellant for the aforesaid purpose by referring to the Judgment as ***reported in 2019, volume 4, SCC page 17, Swiss Ribbons Pvt. Ltd. and Another vs Union Of India and Others,*** has drawn the attention of this Tribunal to, the observations, which has been made therein in

Para 81, while dealing with the power of withdrawal of an application as contemplated under Regulation 30 by an applicant to it, by filing of an application for withdrawal under Section 12A. He submitted that the Hon'ble Apex Court in Para 81 of the Judgment of Swiss Ribbons Pvt. Ltd (Supra) has observed that the Regulation 30 (A)(1) is not mandatory, but rather it is directory in nature for the simple reason that the fact, which has been given in it provides for that an application for withdrawal "**may be allowed in exceptional cases"** even after the issuance or invitation of Expression of Interest under Regulation 36A. The observations made therein by the Hon'ble Apex Court in the aforesaid Judgment of Swiss Ribbons Pvt. Ltd(Supra) while dealing with the implication of Regulation 30A, its not an absolute dictum, that under all circumstances the application could be permitted to be withdrawn. The withdrawal under Regulation 30A, could be only be possible and permissible when there is an exception and exceptional situation is established to have been carved out for withdrawing of an application by applying the principles as enunciated under Section 60 of I & B Code.

There is a slight distinction regards the ratio laid down in Swiss Ribbon (Supra), then in the instant case, Regulation 30A, which has been dealt with by the Hon'ble Apex Court deals with a latitude which has been granted to the Applicant for withdraw proceedings. We are of the view that direction to withdraw a proceeding by the Applicant to it, is in quite contra distinction then to for seeking a judicial direction to a person by forcing the Applicant to withdraw

a proceeding. The Regulation 30A or the Judgment of the Hon'ble Apex Court, in itself does not contemplate anywhere that the Ld. Adjudicating Authority, under the garb of exercise of powers under Regulation 30A to be read with Section 60 of I & B Code, can issue a direction in the nature of made, by directing to an applicant to withdraw proceedings initiated by him, that too by way of a repetition when the Applicant himself happens to be the master of the proceedings drawn by him.

The exclusive prerogative of continuing with the proceedings, would lie with the Applicant and he would not be governed or forced by the dictates of the opposite party to the proceedings, to seek a judicial order, by way of direction for withdrawal to be forced upon an Applicant by filing of an application of a nature as preferred by the applicant being IA No. 30/2022. He has referred to the other paragraphs, Para 81, 82 and 83, which are being extracted hereunder: -

> *"81. Regulation 30-A of the CIRP Regulations states as under:*
>
> *"**30-A. Withdrawal of application**.—(1) An application for withdrawal under Section 12-A shall be submitted to the interim resolution professional or the resolution professional, as the case may be, in Form FA of the Schedule before issue of invitation for expression of interest under Regulation 36-A.*
>
> *(2) The application in sub-regulation (1) shall be accompanied by a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of Regulation 31 till the date of application.*

(3) The committee shall consider the application made under sub-regulation (1) within seven days of its constitution or seven days of receipt of the application, whichever is later.

(4) Where the application is approved by the committee with ninety per cent voting share, the resolution professional shall submit the application under sub-regulation (1) to the adjudicating authority on behalf of the applicant, within three days of such approval.

(5) The adjudicating authority may, by order, approve the application submitted under sub-regulation (4).”

This Court, by its order dated 14-12-2018 in Brilliant Alloys (P) Ltd. v. S. Rajagopal [Brilliant Alloys (P) Ltd. v. S. Rajagopal, 2018 SCC OnLine SC 3154] , has stated that Regulation 30-A(1) is not mandatory but is directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest under Regulation 36-A.”

“82. It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question arises as to what is to happen before a Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties

concerned and considering all relevant factors on the facts of each case."

"83. The main thrust against the provision of Section 12-A is the fact that ninety per cent of the Committee of Creditors has to allow withdrawal. This high threshold has been explained in the ILC Report as all financial creditors have to put their heads together to allow such withdrawal as, ordinarily, an omnibus settlement involving all creditors ought, ideally, to be entered into. This explains why ninety per cent, which is substantially all the financial creditors, have to grant their approval to an individual withdrawal or settlement. In any case, the figure of ninety per cent, in the absence of anything further to show that it is arbitrary, must pertain to the domain of legislative policy, which has been explained by the Report (supra). Also, it is clear, that under Section 60 of the Code, the Committee of Creditors do not have the last word on the subject. If the Committee of Creditors arbitrarily rejects a just settlement and/or withdrawal claim, NCLT, and thereafter, NCLAT can always set aside such decision under Section 60 of the Code. For all these reasons, we are of the view that Section 12-A also passes constitutional muster."

But in answer to it, we are of the view that in fact in all these paragraphs which has been relied by the Appellant, and has been referred to, by the Ld. Senior Counsel for the Appellant it only contemplates a choice of withdrawal by master of the proceedings drawn by him, but it doesn't anywhere contemplate forcing a withdrawal of proceedings upon an Applicant and that too by soliciting a judicial order. Hence Regulation 30, to be read with Section 60 of I & B Code cannot be read so preposterously to force upon an Applicant to the proceedings under Section 7 or 9 of I & B Code, who intends to continue with the proceedings, to force withdrawal of the same as the same would run contrary to the very mandate

of Article 21 of the Constitution of India. As there cannot be a judicial deprivation by orders of court of a right of a citizen of the country covered under Article 5 of the constitution of India to force to withdraw his recourse to judicial remedies, which is given and protected under the law of land.

The Ld. Senior Counsel for the Appellant had referred to yet another judgment. The Ld. Senior Counsel for the Appellant, in support of his continuation to the argument, while deriving his strength of argument from the ratio of Kalpraj Dharamshi (Supra) has referred to yet another Judgement being the recent one as decided by the ***Hon'ble Apex Court on 23.10.2024, in the matters of GLAS Trust Company LLC v. BYJU Raveendran and Ors.*** and particularly he has referred to Para 39 of the said Judgement which is extracted hereunder: -

> *"39. From the above, the following guiding principles emerge, which we must keep in mind while determining the issues raised in the present appeal:*
>
> *a. A significant change brought about by the IBC was the consolidation of the pre-existing fragmented insolvency framework, The aim was to eliminate parallel proceedings by various creditors before different fora, given that all creditors would be a part of a single insolvency process under the IBC;*
>
> *b. The above consolidation also sought to implement the principle of 'collective distribution', where the interests of all stakeholders were considered. The CIRP envisaged by the IBC is premised on the principle that each creditor of the same class should receive a share that is proportionate to the debt owed to him;*

c. IBC must not be used as a tool for coercion and debt recovery by individual creditors. Improper use of the IBC mechanism by a creditor includes using insolvency as a substitute for debt enforcement or attempting to obtain preferential payments by coercing the debtor using insolvency proceedings. That the mechanism under the IBC must not be used as a money recovery mechanism has been reiterated in a consistent line of precedent by this Court;25 and

d. The interests of the corporate debtor must be detached from those of its promoters/those who are in management. A "recalcitrant management"26 must be prevented from taking advantage of undue delays and preventing an inevitable insolvency. In other words, as noted by this Court in Arun Kumar Jagatramka (supra), the economic value of corporate structures is broader than the partisan interests of their management."

In fact, the summary, which has been drawn by the Hon'ble Apex Court in the said Judgement of GLAS Trust Company LLC (Supra), it lays down the wider guiding principles, which must be kept in mind and taken care of while determining the issue, with regards to the consolidation of a pre-existing fragmented insolvency framework and with regards to the errosion or the debt recovery by the individual or an entity, as dealt with in sub Para C and the interest of the Corporate Debtor must be detached from those of its promoters with all humility at a command. We are in absolute disagreement with the Ld. Senior Counsel for the Appellant, regards the ratio propounded by him, in the applicability of this Judgement in support of his continuation to sustain his IA No. 30/2022, as the judgement of GLAS Trust Company LLC, it was yet again

based upon a different facts and preposition, and the controversy which was subject matter of consideration therein before the Hon'ble Apex Court, was arising from the Judgment of the Ld. NCLAT which was under consideration it was, emanating from the application instituted under Section 9 of I & B Code, where the applicant to the proceedings himself sought to withdraw the proceedings, which is otherwise here in this appeal where the Appellant seeks a judicial direction against Respondent to withdraw his case.

While exercising powers under Rule 11, the Ld. NCLAT has approved the settlement of a dispute in relation to the dues payable to the Respondent No.03 therein the said case. This would have been a case, had the controversy ended at the stage when there was a Debt Settlement Agreement, the fact of which stands vehemently denied by the Respondent. We feel it apt to observe at this stage itself, that authority of a Hon'ble Apex Court laying down the law and that too which is procedural in nature will always depend upon the facts and circumstances of each and every case and the same cannot be made universally applicable irrespective of considering the facts and circumstances which are involved therein. If para-C and D of para 39 of the aforesaid Judgment, which has been argued by the Ld. Senior Counsel for the Appellant, it is read in the context of the controversy involved herein, as to whether at all there could have been a judicial direction for withdrawal of Section 9 of I & B Code proceedings by implication of Regulation 30A to be read with Section 60 of I & B Code. In fact, it was an issue which was partially touched upon, but only limited to the extent of

withdrawal of a proceeding by an Applicant himself and not otherwise. There is yet another argument, which was extended by the Ld. Senior Counsel for the Appellant, with regards to, what would be the implication of various e-mail communications which has been made *Inter se* between the parties for the purposes of deriving a knowledge about the remittance of the amount so claimed to have been remitted by the Appellant to the Respondent to substantiate that there was no necessity to continue with the proceedings under Section 9 of I & B Code as it was instituted by the Respondent.

The Ld. Senior Counsel for the Appellant, has referred to para 46 to 51 of a ***Judgment as reported in 2010 volume 3 SCC page 1 in the matter***, ***Trimex International Fze Limited, Dubai v. Vedanta Aluminium Limited, India***. Para 46 to 51 is extracted hereunder: -

> *"46. Apart from the above minute to minute correspondences exchanged between the parties regarding the offer and acceptance, as rightly pointed out by Mr Venugopal the offer of 15-10-2007 contains all essential ingredients for a valid acceptance by the respondents, namely, (1) offer validity period, (2) product description, (3) quantity, (4) price per tonne, (5) delivery terms (CIF), (6) payment terms (irrevocable letter of credit), (7) shipment lots, (8) discharge port, (9) discharge rate with international shipping acronyms, (10) demurrage rate, (11) period of shipment, (12) vessel details, (13) draft (port/berth capacity corresponding to height of cargo), (14) stipulations as to survey by independent surveyors, (15) quality benchmark, (16) bonus/penalty rates, and (17) applicable laws (Indian law) and arbitration."*

"47. The minute to minute correspondence exchanged between the parties, all the conditions prescribed which had been laid down, awareness of urgency of accepting the offer without any further delay to avoid variation in the freight or other factors, coupled with the e-mail sent on 16-10-2007 at 3.06 p.m. under the subject "re: offer for imported bauxite" stated in unequivocal terms i.e. "we confirm the deal for five shipments", would clearly go to show that after understanding all the details and the confirmation by the respondent, the petitioner sent a reply stating that "thanks for the confirmation, just in time to go to the shipowners". All the above details clearly establish that both the parties were aware of various conditions and understood the terms and finally the charter party was entered into a contract by the parties on 17-10-2007."

"48. Mr C.A. Sundaram, learned Senior Counsel for the respondent taking me through the same e-mails/correspondence submitted that such clauses being unclear and ambiguous, cannot be permitted to stand on its own footing so as to deprive the respondent of its valid defence. He also reiterated that in the absence of a concluded and binding contract between the parties, the arbitration clause contained in the draft agreement cannot be relied on by the petitioner. He further pointed out that the arbitration clause as contained in the commercial offer suffers from the vice of being unclear and ambiguous and, therefore is not capable of being enforced."

"49. In the light of the details which have been extracted in the earlier paragraphs, I am unable to accept the stand of the respondent. It is clear that if the intention of the parties was to arbitrate any dispute which arose in relation to the offer of 15-10-2007 and the acceptance of 16-10-2007, the dispute is to be settled through arbitration. Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialled by the parties would not affect either the acceptance of the contract

so entered into or implementation thereof, even if the formal contract has never been initialled."

"50. The acceptance conveyed by the respondent, which has already been extracted supra, satisfies the requirements of Section 4 of the Contract Act, 1872. Section 4 reads as under:

*"4. Communication when complete.—****

The communication of an acceptance is complete,

as against the acceptor, when it comes to the knowledge of the proposer."

"51. As rightly pointed out by the learned Senior Counsel for the petitioner, when Mr Swaminathan of Trimex opened the e-mail of Mr Swayam Mishra of Vedanta at 3.06 p.m. on 16-10-2007, it came to his knowledge that an irrevocable contract was concluded. Apart from this, the mandate of Section 7 of the Contract Act which stipulated that an acceptance must be absolute and unconditional has also been fulfilled. It is true that the first acceptance conveyed by the respondent contained a rider, namely, cancellation after two shipments which made the acceptance conditional. However, taking note of the said condition, the petitioner requested the respondent to convey an unconditional acceptance which was readily done through his e-mail sent at 3.06 p.m. with the words "we confirm the deal for five shipments", which is unconditional and unqualified. As rightly pointed out by the learned Senior Counsel for the petitioner, the respondent was wholly aware of the fact that its agreement with the petitioner was interconnected with the shipowner. In other words, once the offer of the petitioner was accepted following a very strict time schedule, the respondent could not escape from the obligations that flowed from such an action."

First of all, we feel it apt to clarify at this stage itself, that those were the proceedings as engaged consideration in the said case was governed under the

Arbitration and Conciliation Act of 1996 and they were not the proceedings which were under the I & B Code which is distinct and independent altogether in its applicability. The Ld. Senior Counsel for the Appellant has referred to Para 13 of the Judgment which too is extracted hereunder: -

> *"13. It is the categorical claim of the petitioner that a commercial offer containing an arbitration clause conveyed through e-mail dated 15-10-2007 for the supply of bauxite to the respondent is a valid offer. This offer was to expire by noon the following day i.e. on 16-10-2007. It is the definite case of the petitioner that after several exchanges of e-mails and agreeing on the material terms of the contract, the respondent conveyed their acceptance of the offer through e-mail on 16-10-2007 confirming the supply of five shipments of bauxite to be supplied from Australia to Vizag/Kakinada."*

What he intends to argue is that, when a commercial order, which was emanating from a contractual obligation, is conveyed through an e-mail communication for supply of the product, as it was contemplated on the terms of the contract. The e-mail communication could be taken as to be an effective mode of communication for the purposes of imposition of a contractual liability or a right *Inter Se* between the parties. There cannot be any doubt with regards to that aforesaid ratio, but, as far as what effect the e-mail communications would have is a question to be adjudicated, once it is disputed and debated upon and established by the Courts, the same has to be yet addressed upon by the principal Tribunal, before whom the proceedings are to be decided on merits, as to whether at all the e-mail communications which the appellant relies upon for having remitted the amount which was admittedly due to be paid, as to be the basis for

substantiating his argument, in the light of Regulation 30A for seeking a direction against the Respondent for withdrawal of Section 9 proceedings, would yet be an issue which is yet to be decided by the Ld. Tribunal on merits. And at this stage, the e-mail communications, which are claimed by the Appellant are not disputed, as alleged by the Appellant, may not be an issue, which would be required, to be answered by us in an elaborate manner, particularly when the Respondent had denied with regards to the propriety of the e-mail communications and the consequential follow-up action, which is followed, amongst the parties qua the liabilities which was flowing from the proceeding under Section 9 of I & B Code, be that as it may. All these aspects would be considered by the Tribunal itself when the matter under Section 9 of the I & B Code, itself is taken to be considered on merits. We should deter to remark on it at this stage.

As we have already observed, while deciding Company Appeal (AT) (CH) (Ins) No.193/2022, that since the appeal stands dismissed, owing to the limitation. The instant appeal would stand answered against the Appellant and we are of the considered view, that a distorted interpretation to the Judgment relied by the Appellant, cannot be given in a manner to mould a Judgment, in a manner as if a right which are given to an Applicant to withdraw an application under Regulation 30A to be read with Section 60 could be chiselled in a manner to impose upon an Applicant by forcing upon him by soliciting a judicial direction to withdraw his own proceedings over which he has a right to pursue and continue in the light of the mandate of Article 14 to be read with Article 21 of the

Constitution of India, as there cannot be a deprivation of right to judicial remedies to the citizen of this country of ours, by a judicial adjudication, where a deprivation is being attempted to be forced upon him by calling upon a party by a judicial order for not to pursue a proceeding in which he otherwise intends to continue, being the master of the proceedings drawn by him.

Thus, the **Company Appeal (AT) (CH) (Ins) No.192/2022** lacks merit and the same is accordingly 'dismissed'.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

SN / TM / MS