

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**CHENNAI BENCH****CHENNAI****COMPANY APPEAL (AT)(CH)(INS) NO.53/2021****In the matter of:**

Yogesh Kundra

Appellant

Vs

SEW & Prasad Joint Venture & Anr

Respondent

Present:

For Appellant	:	Ms. Varsha Banerjee, Advocate
		Mr. Amir Bavani, Advocate
For 1 st Respondent		Mr. Nithin Pavuluri, Advocate
		For Ms. Harshini Jothiram, Advocate
		Mr. V. Lakshmi Narayanan, Advocate

ORDER
VIRTUAL MODE

28.10.2021: By virtue of Judgement dated 18.06.2021 in Company Appeal (AT)(CH)(Ins) No.53/2021 on the file of National Company Law Appellant Tribunal, Chennai Bench Chennai, Hon'ble Justice Mr. M. Venugopal, Member (Judicial) had dismissed the Appeal. However, Mr. V.P. Singh, Member (Technical) in Company Appeal (AT)(CH)(Ins) No.53/2021 came to the conclusion that the 'Petition under Section 9' of I&B Code is not maintainable and opined that the 'Appeal' deserves to be allowed and further that the impugned order of the admission of petition filed under Section 9 of the I&B Code deserves to be set aside.

Consequent to the divergent opinion arrived at between the aforesaid two Hon'ble Members of the Bench of National Company Law Appellate Tribunal, Chennai Bench, Chennai, to resolve the issue, the 'Office of the



Registry' of National Company Law Appellate Tribunal, Chennai Bench Chennai on 18.6.2021 was directed to transmit the copies of the Judgement in Company Appeal (AT)(CH)(Ins) No.53/2021 on the file of National Company Law Appellate Tribunal, Chennai Bench, Chennai to the Registrar of Principal Bench of National Company Law Appellate Tribunal, New Delhi, requiring him to place the same before the Hon'ble Officiating Chairperson, New Delhi for nominating Hon'ble Member to render his opinion/decision in the subject matter in issue.

The Hon'ble Third Member, Justice Mr. Jarat Kumar Jain, Member (Judicial) was nominated on 22.06.2021 by the Hon'ble Officiating Chairperson, NCLAT, Principal Bench, New Delhi, who on 27.9.2021 had rendered his opinion wherein he had concurred with the view taken by Hon'ble Mr. V.P. Singh, Member (Technical).

At this juncture, the Learned Counsel for the 1st Respondent/ SEW & Prasad Joint Venture/Operational Creditor vide his email dated 27.10.2021 brings to the notice of this Tribunal that the 1st Respondent/Operational Creditor, being aggrieved against the Judgement dated 27.9.2021 passed by the Third Member, Hon'ble Justice Mr. Jarat Kumar Jain, Member (Judicial), NCLAT, New Delhi had filed Civil Appeal bearing No.006488-2021 before the Hon'ble Supreme Court of India (which was registered on 27.10.2021) in the subject matter in issue and prays for an adjournment, so as to enable the Applicant/1st Respondent/Operational Creditor to obtain necessary Stay Orders from the Hon'ble Supreme Court.

Be that as it may, in view of the majority opinion in Company Appeal (AT)(CH)(Ins) No.53/2021 on the file of National Company Law Appellate



Tribunal, Chennai Bench, Chennai, the Company Appeal (AT)(CH)(Ins) No.53/2021 is allowed. Resultantly, the 'Office of the Registry' is directed to keep this order as forming part and parcel of the records of the instant Appeal.

(Justice M. Venugopal)
Acting Chairperson

(Mr. V.P Singh)
Member (Technical)

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DATE OF APPLICATION.....1.12.2021.....
DATE OF REMITTED.....1.12.2021.....
DATE OF ISSUE.....6.12.2021.....

K. Natarajan 6/12/2021
Deputy Registrar
National Company Law Appellate Tribunal
(Chennai Bench)
Chennai