NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI

(APPELLATE JURISDICTION)

IA No. 158 / 2024
in
Company Appeal (AT) (CH) (INS) No. 53 of 2024

(Filed under Rule 11 r/w. Rule 31 of the NCLAT Rules, 2016)

(Arising out of the `Impugned Order' dated 30.10.2023 in CP (IB) No. 205 / 7 / HDB / 2021, passed by the `Adjudicating Authority', (`National Company Law Tribunal', Special Bench – I, Hyderabad)

In the matter of:

State Bank of India
State Bank Bhavan, Madam Cama Road,
Mumbai – 400021, and acting through
its Branch at Stressed Assets Management
Branch, Hyderabad (Branch Code:
18359), D. No. 3-4-1013/A, 1st Floor,
CAC, TSRTC Bus Station,
Kachiguda, Hyderabad – 500027
Represented by its Authorised
Representative T. Veerabhadra Rao … Petitioner / Appellant

v.

India Power Corporation Ltd.
A company having its
Registered Office at
Centre For Excellence,
Plot No. X-1, 2 & 3, Block EP,
Sector V, Salt Lake,
Kolkata – 700091, West Bengal … Respondent/Respondent

Present:

For Petitioner / Appellant : Mr. PH. Arvindh Pandian, Senior Advocate
For M/s. Cyril Amarchand Mangaldas, Advocates

For Respondent / Respondent : Mr. Arun Kathpalia, Senior Advocate
For Ms. Deepika Murali & Ms. Nivea, Advocates

J U D G M E N T
(Hybrid Mode)

Justice Sharad Kumar Sharma, Member (Judicial):

Answer to the Reference:

1. This Company Appeal has been placed before me in response to a question referred to be answered, because of the dissenting opinion of the Bench of Two Members on an issue, as to how the aspect pertaining to the ``Certified Copy'', could be construed for the purposes of filing of an Appeal, under Section 61 of I & B Code, 2016.

2. The matter has been accordingly referred to be answered, by the Orders of the Hon'ble Chairperson. It is thus placed before me.

3. The matter was heard today in the presence of the Counsels for both the parties, in consonance to the provisions contained under Section 419 (j) to be read with Section 424 of the Companies Act of 2013.

4. The Company Appeal (AT) (CH) (INS) No. 53 / 2024, State Bank of India V. India Power Corporation Limited, it came up for consideration, before the Two Member Bench of this Tribunal, testing the judicial propriety of the Impugned Order dated 30.10.2023, as it was rendered in CP (IB) No.205/7/ HDB/2021 by the National Company Law Tribunal, Hyderabad Bench, whereby, the proceedings were held under Section 7 of the I & B Code, to be

read with Rule 4 of Insolvency and Bankruptcy (Application to the Adjudicating Authority Rules) 2016, which is to be read with Section 60 (2) of the I & B Code, 2016, was decided by the Learned Adjudicating Authority, consequently, the Application as preferred under Section 7 of the Code was rejected, thereby denying the initiation of CIRP proceedings, as against the Corporate Debtor.

5. The Company Appeal, accompanied with it a Condone Delay Application being IA No. 158 / 2024, whereby, the Appellant by invoking the provisions contained under Section 61 of the I & B Code, to be read with Rule 11 of the NCLAT Rules, 2016, sought a condonation of 3 days of delay which has chanced in filing the Appeal for the reason as ascribed in Para Nos. 4, 5 & 6 of the Application.

6. At this stage, when the Application itself was being considered, the question which came up for consideration before this Tribunal was, as to whether for the purposes of filing of an Appeal under Section 61 of the I & B Code, 2016, which provides for preference of an Appeal, as per Rule 22 of the NCLAT Rules which contemplates that the Appeal has to be preferred, along with the Certified Copy of the Judgment under challenge.

7. Rule 22 of the NCLAT Rules, 2016, are extracted hereunder:

> ``*22. Presentation of appeal.- (1) Every appeal shall be presented in Form NCLAT-1 in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.*
>
> *(2)* ***Every appeal shall be accompanied by a certified copy of the impugned order****.*
>
> *(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.*
>
> *(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.*
>
> *(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.*
>
> *(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.''*

8. The NCLAT Rules, under Rule 22, deals with the mandatory procedural aspect of presentation of Appeal. The `presentation' herein would be referred to as the mode and manner in which the Appeal could be filed before the Tribunal, in the format prescribed under the NCLAT Rules, particularly, having reference to sub rule 2 of Rule 22. It provides that every Appeal shall be accompanied with a ``Certified Copy'' of the Impugned Order.

9. The word ``Certified Copy'', has not been defined under the NCLAT Rules of 2016. Rather, the word ``Certified Copy'', has been defined under NCLT Rules, 2016'', which reads as under:

> *Section 2 (9) "certified" means in relation to a copy of a document as hereunder;-*
>
> > *(a) certified as provided in* ***section 76*** *of the Indian Evidence Act, 1872; or*
> >
> > *(b) certified as provided in section 6 of Information Technology Act, 2000;''*

10. The Statute quite in its express terms, when it was conferring the Rule making power under Section 469 of the Companies Act, it had prescribed, that the Certified Copy would be the one as certified and provided under Section 76 of the Indian Evidence Act.

11. If Section 76 of the Indian Evidence Act, which deals with the aspect and defines ``Certified Copy'' of the Public Document, it is to be read in consonance to the Certified Copy as provided under Rule 22 (2) of the NCLAT Rules, 2016, which obviously mean that it should be a copy provided on ``demand'' on a ``payment of legal fee'' thereof, meaning thereby the two elements which are necessarily required to be satisfied to make a Public Document a ``Certified Copy'' is, that there has to be a ``demand!'' and there has to be a ``Requisite Fee'' paid for getting the ``Certified Copy!''.

12. Once, the NCLAT Rules framed under Section 469 of Companies Act, prescribes that Appeals could be preferred before the Appellate Tribunal, only based upon a ``Certified Copy'', it goes without saying that it has to be read in harmony with Rule 22 (2) of NCLAT Rules, which has to read with Rule 2 (9) of the NCLT Rules, which has to be read in expansion to the provisions of Section 76 of the Indian Evidence Act. Rule 2(a) of NCLT Rules of 2016.

13. The question, is whether the ``Certified Copy'', so prescribed for the purposes of preference of an Appeal, could be taken up as a substitute to the ``Certified Free Copy'', provided under Rule 50 of the Rules to the parties concerned. Rule 50 of the NCLT Rules, 2016, is extracted hereunder:

> *``50. Registry to send certified copy.- The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the* ***certified copies may be made available with cost as per Schedule of fees, in all other cases.*** *''*

14. Rule 50 of the NCLT Rules, does not speak that its the provision which requires that there has to be a demand on payment of a fee. Rather, Rule 50 is an obligation which is casted on the Registry to send a `Final Order' to the parties, `Free of Cost' and rather, it further obligates that the `Certified Copy', may be made available with Cost, as per `Schedule of Fees', in all other cases. Thus here too, the concept of `Free Copy'', is different concept, then, the ``Certified Copy'' made available on cost.

15. The question, as to whether the Free Copy provided under Rule 50 of NCLT Rules, 2016, could be determined as the basis for preferring an Appeal and could be read as a substitute to the Certified Copy, the issue came up for consideration, before this Tribunal in ***Comp. Appeal (AT) (CH) (INS) No. 23 / 2024, in the matters of Munagala Roja Harsha Vardhini v. Vardhansmart Private Limited*** and this question was quite elaborately dealt with by this Tribunal by the Bench of Three Members, wherein, Para 12 onwards the Court has dealt with as to what would be the factors to determine the Certified Copy, in pith and substance mean for the purposes of preferring of an Appeal, under Section 61 of the I & B Code, 2016.

16. The issue was laid to rest, by the Three Member Bench while drawing its implication from the Judgment of V. Nagarajan V. SKS Ispat, as reported in 2022 Vol. II SCC Page 244 and particularly a reference was made to Para 31 & 32 of the said Judgment, which is extracted hereunder:

> ``*31. The import of Section 12 of the Limitation Act and its explanation is to assign the responsibility of applying for a certified copy of the order on a party. A person wishing to file an appeal is expected to file an application for a certified copy before the expiry of the limitation period, upon which the "time requisite" for obtaining a copy is to be excluded. However, the time taken by the court to prepare the decree or order before an application for a copy is made cannot be excluded. If no application for a certified copy has been made, no exclusion can ensue. In fact, the explanation to the provision is a clear indicator of the legal position that the time which is taken by the court to prepare the decree or order cannot be excluded before the application to obtain a copy is made.*

It cannot be said that the right to receive a free copy under Section 420(3) of the Companies Act obviated the obligation on the appellant to seek a certified copy through an application. *The appellant has urged that Rule 14 "14. Power to exempt.– The Appellate Tribunal may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice." of the NCLAT Rules empowers NCLAT to exempt parties from compliance with the requirement of any of the rules in the interests of substantial justice, which has been typically exercised in favour of allowing a downloaded copy in lieu of a certified copy. While it may well be true that waivers on filing an appeal with a certified copy are often granted for the purposes of judicial determination, they do not confer an automatic right on an applicant to dispense with compliance and render Rule 22(2) of the NCLAT Rules nugatory.* ***The act of filing an application for a certified copy is not just a technical requirement for computation of limitation but also an indication of the diligence of the aggrieved party in pursuing the litigation in a timely fashion.*** *In a similar factual scenario, the NCLAT had dismissed an appeal ``Prowess International (P) Ltd. V. Action Ispat & Power (P) Ltd., 2018 SCC OnLine NCLAT 644 Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801 (``suo motu order'') as time-barred under Section 61(2) IBC since the appellant therein was present in court, and yet chose to file for a certified copy after five months of the pronouncement of the order.*

32. The appellant had argued that the order of the NCLAT notes that the NCLT registry had objected to the appeal in regard to limitation, to which the appellant had filed a reply stating that the limitation period would begin from the date of the uploading of the order, which was 12-3-2020. The appellant submitted that the suo motu order of this Court dated 23-3-2020, ``Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801 (``suo motu order'') taking retrospective effect from 15-03-2020, made under Article 142 of the Constitution, extended the limitation until further orders, which renders the appeal filed on 8-6-2020 within limitation. However it is important to note that this Court had only extended the period of limitation applicable

in the proceedings, only in cases where such period had not ended before 15-3-2020. In this case, owing to the specific language of Sections 61(1) and 61(2), it is evident that limitation commenced once the order was pronounced and the time taken by the Court to provide the appellant with a certified copy would have been excluded, as clarified in Section 12(2) of the Limitation Act, if the appellant had applied for a certified copy within the prescribed period of limitation under Section 61(2) of the IBC. The construction of the law does not import the absurdity the appellant alleges of an impossible act of filing an appeal against an order which was uploaded on 12-3-2020. However, the mandate of the law is to impose an obligation on the appellant to apply for a certified copy once the order was pronounced by the NCLT on 31-12-2019 Cethar Ltd. (Resolution Professional) v. SKS Ispat & Power Ltd. MA No. 906/IB/2019 in CA No. 38 / IB / 2018, order dated 31-12-2019 (NCLT), by virtue of Section 61(2) IBC read with Rule 22(2) of the NCLAT Rules. In the event the appellant was correct in his assertion that a correct copy of the order was not available until 20-3-2020, the appellant would not have received a certified copy in spite of the application till such date and accordingly received the benefit of the suo motu order Cognizance for Extension of Limitation, In re. (2020) 19 SCC 10 : (2021) 3 SCC (Cri) 801 (``suo motu order'') of this Court which came into effect on 15-3-2020. However, in the absence of an application for a certified copy, the appeal was barred by limitation much prior to the suo motu direction of this Court, even after factoring in a permissible fifteen days of condonation under Section 61(2). The Court is not empowered to condone delays beyond statutory prescriptions in special statutes containing a provision for limitation Union of India v. Popular Construction Co., (2001) 8 SCC 470; Singh Enterprises v. CCE, (2008) 3 SCC 70; Chhattisgarh SEB v. CERC, (2010) 5 SCC 23; Bengal Chemists and Druggists Assn. v. Kalyan Chowdhury, (2018) 3 SCC 41 : (2018) 2 SCC (Civ) 30.''

17. Ultimately, the conclusion which has been arrived at by the Larger Bench in the said Judgment, it has been held that for the purposes of filing of a

Company Appeal, there has to be a Certified Copy, as per Section 76 of the Evidence Act and particularly the intention of the Legislature has already been dealt with in Para 32, 33 & 34 of the said Judgment (which is not been dealt with to avoid repetition).

18. Ultimately, what could be culled out from the Judgment of Three Judges Bench of the Hon'ble Apex Court is that, for filing of an Appeal and owing to the implication of Section 2 (j) of NCLT Rules, which prescribes that whichever expression is not given under the NCLAT Rules, the same would be read, as defined under the NCLT Rules meaning thereby, the definition of ``Certified Copy'' given therein under Section 2 (9) of the NCLT Rules, is to be read as to be a definition of ``Certified Copy'' for the purposes of Rule 22 (2) of NCLAT Rules.

19. The Three Member Bench of this Tribunal, had answered the aforesaid question after dealing with the various Authorities that, in those cases where the Appellant before the NCLAT, has not applied for a Certified Copy, as prescribed under Section 76 of the Evidence Act, to be read with Rule 2 (9) of the NCLT Rules, after raising a demand and payment of the Requisite Fee, the Free Copy of the Impugned Order will not be treated as to be as good as a Certified Copy, contemplated under Rule 22 (2) to make the Appeal maintainable.

20. The relevant observation made by the Three Member Bench in the matter of Munagala Roja Harsha Vardhini has been extracted in Para 32, 33 and 34 which is extracted hereunder:

> *``32. A mere running of the 'eye over the rule 50 of the National Company Law Tribunal Rules, 2016 clearly points out that the 'Application' of the 'Petitioner/Appellant' to comply with a certified copy by paying the 'schedule of fees' 'cannot be dispensed with' and at best, the sending of the 'certified copy' of 'final order' by the authorities concerned, 'Free of Cost', is an obligation caused upon the 'Office of the Registry' of the 'National Company Law Tribunal', as per National Company Law Tribunal Rules. Moreover, that the receipt of 'free of cost copy', the 'Petitioner/Appellant', by receiving the same, and after recovering from illness, cannot be a substitute for a 'Certified Copy' of the 'Impugned Order', to accompany the 'Appeal' as per Rule 22(2) of the National Company Law Appellate Tribunal Rules, 2016.*
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> *33.To put it precisely and succinctly, the "Rule 50 of the National Company Law Tribunal Rules, 2016", is to be read in conjunction with definition of Rule 2(9) of the National Company Law Tribunal Rules, 2016. To put it differently, Rule 50 of the National Company Law Tribunal Rules, 2016 cannot be interpreted, disjunctively, without falling back upon the 'words' employed under Rule 2(9) of the National Company Law Tribunal Rules, 2016, which provides for meaning for the word 'certified', in relation to a 'Copy of the Document' as mentioned therein.*
>
> *34. Moreover, obtaining of 'Free of Cost Copy', is only the 'Concern of the particular party to the effect that an 'order' was obtained against him and as a 'litigant'/'stakeholder' he/she is to pursue the 'further course of action', in the manner known to law and in accordance with law.''*

21. So far, there is nothing before me has been projected by any of the arguing Counsel, that the Judgment of the NCLAT, as rendered in the matter of

Munagala Roja Harsha Vardhini, had been disturbed or reversed, by the Hon'ble Apex Court upon a challenge given to it.

22. The issue herein cropped up when in the matter of Comp. App (AT) (CH) (INS) No. 53 / 2024, State Bank of India v. India Power Corporation Limited, there was a difference of opinion between the Two Members' of the Bench with regards to the aspect as to what would the ``Certified Copy'' mean for the purposes of Rule 22, to be read with Section 76 of the Indian Evidence Act.

23. One of the Hon'ble Members of the Bench, took the view that since Rule 50 is providing of a Free Copy it was held that its an obligation on the Registry, and it does not satisfy the mandate and requirement of a ``Certified Copy'', as defined under the NCLT Rules, as provided under Section 2 (9) to be read with Section 76 of the Evidence Act. Since, because it was held as to be only an intimation of a Judgment being rendered against the Party to the proceedings, the Free Copy under Rule 50 of NCLT is not to be taken as a substitute for the provisions contained under Rule 22 (2) of the NCLAT Rules and Section 76 of the Indian Evidence Act, for the purposes of preferring of the Company Appeal, under Section 61 of the I & B Code, 2016.

24. Thus, the Single Member of the Bench, had while rendering his Judgment has rightly observed that when under the Rules, `Entry 31 of the Schedule of

Fee' of the NCLT Rules, 2016, provides for payment of fee to obtain a Certified Copy of the Final Order to the Parties, other than the Parties concerned under Rule 50, it would mandate a condition which is mandatory that there has to be a ``demand'' and a ``remittance of fee'' simultaneously. Para 53 and 54 are extracted hereunder:-

> *``53. The Learned Counsel for the Petitioner / Appellant / Bank, adverts to Entry 31 of the Schedule of Fees, in NCLT Rules, 2016, which provides `Fees', for obtaining, `Certified True Copy of Final Order', passed to `Parties', other than the `concerned Parties' under Rule 50'.*
>
> *54. The stand of the Petitioner / Appellant / Bank, is that the NCLT Rules, 2016, do not provide for `any payment of fees, for obtaining, a `Certified Copy' of the `Impugned Order', by a Party, which is a Party, to the Legal Proceedings, out of which, the Order arises'. ''*

25. Ultimately, the Learned Member of the Bench opined that the `Free Copy' under Rule 50 of NCLT Rules, cannot be read as to be a ``Certified Copy'' to enable an Appeal sustainable in violation of the terms of Rule 22 (2) of NCLAT Rules, and thus observed that the Free Copy is not a substitute to a Certified Copy which has to be obtained on demand and on payment of Requisite Fee.

26. Consequently, owing to the aforesaid fact and also as apparent from records, in the said Appeal that since, admittedly the Appellant after pronouncement of the Judgment till supply of the Free Copy, had not applied for obtaining a Certified Copy, prior to the expiry of period of Limitation i.e. 30

days, they would not be able to derive the benefit of Limitation, as there was a dereliction and lack of diligence on part of the Appellant to procure a Certified Copy. Thus, in the light of Para 31 of the Judgment of V. Nagarajan Supra, when the Appellant had failed to satisfy the Tribunal, that there was an application for the Certified Copy, hence, no exclusion of Limitation could be granted and there cannot be an automatic exemption from filing of a Certified Copy, to sustain an Appeal and to derive the benefit of Limitation.

27. The Judgment of the Comp. App (AT) (CH) (INS) No. 53 / 2024, was deferred in opinion by the Hon'ble Member (Technical) of the Bench by expressing a difference of opinion on 01.05.2024, wherein, the Hon'ble Member (Technical) formulated the question in the following manner:

> *``(3) The Points of Determination in the case are the following:*
>
> *a. Will the copy provided by NCLT free of cost under Rule 50 of NCLT Rules for the parties qualify as a Certified Copy for the purpose of Rule 22(2) of NCLAT Rules, 2016?*
>
> *b. Will the period between 30.10.2023 (date of pronouncement of order) and 14.11.2023 (date of supply of free copy) be excluded as per section 12(2) of Limitation Act 1963?*
>
> *c. Is application for a Certified Copy mandatory without which an Appeal filed u/s 61(2) of IBC, 2016 can be turned down as not maintainable and barred by limitation?*
>
> *d. Do the reasons put forth by Appellant for the delay of 3 days beyond the 30-day limitation period constitute "Sufficient Cause" for condonation of delay?''*

28. Primarily, in this reference, I would confine to consider and answer the question, framed to be answered in Para 3(A) of the Judgment of the Hon'ble Member (Technical) dated 01.05.2024, wherein, he opined that a Free Copy as provided under Rule 50 of NCLT Rules, which though is an obligation of the Registry of the NCLT, whether it could be taken as a Certified Copy for the purposes of filing of an Appeal, under Section 61 of the I & B Code, 2016.

29. Other questions were already dealt in the Judgment of 01.05.2024.

30. The Learned Member (Technical) while taking a different view in Para 3(A) had observed that the Certified Copy given Free of Cost under Rule 50 of the NCLT Rules, 2016, has to be read at par with the Certified Copy to be obtained on demand under Section 76 of the Indian Evidence Act, for the purposes of Rule 22 (2) of the NCLAT Rules, 2016.

31. He had rightly taken a view that so far the downloaded Free of Cost Copy from the Website would not be treated as a Certified Copy on the basis of the observations made in Para 31 of V. Nagarajan's Judgment (supra).

32. But, so far, while answering, the Question No. 3C, as to whether the Application for obtaining the Certified Copy is mandatory or not, the Learned Member (Technical) has opined, while carving out a dichotomy to the Section 76 of Evidence Act, by extracting the implications of the words extracted hereunder:

"Section 76… Certified copy of Public Documents.—

Every Public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefor, together with a certificate written, at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and ***such copies so certified shall be called certified copies.*** *''*

33. The Learned Member (Technical) has extracted the following part of Section 76, as under:

``*such copies so certified shall be called Certified Copies*''

34. The extraction of the words from Section 76 as it has been determined by the Learned Member (Technical) contending thereof that the Certified Copy as mentioned in the principal body of Section 76 of Evidence Act, would be inclusive of the Certified Copy, which is given Free of Cost and further opined that such copies so Certified will be called as a Certified Copy which will include within itself, the Free Copy, itself is a misnomer for the reason being that the said portion of Section 76 of the Evidence Act, which has been extracted by the Learned Member (Technical), in fact, it is misplaced, because, the said part cannot be extracted to be read independently and in isolation to the principal provisions of Section 76 of the Evidence Act and the use of word ``**so**'', would mean and relates to only the Certified Copy in correlation to the

principal provisions of Section 76 of Evidence Act and the use of word ``**so**'' herein, will not mean the Free Copy, as provided under Rule 50 of the NCLT Rules, 2016, because this part of Section 76 of Evidence Act uses the word `such copies', which would be the copies issued as per Section 76 of Evidence Act.

35. Even the framers of the Indian Evidence Act, at the time when they had incorporated Section 76, they could not even perceived of the philosophy of a Certified Free Copy, and as such, the portion as extracted above, which has been extracted to be read by the Learned Member (Technical) that the expression of words `**so**' used therein, in relation to a Certified Copy, has to be read also, in relation to a Free Certified Copy, would not be acceptable, once, the concept of Free Certified Copy itself was not at all persistent at the time when the Evidence Act itself was framed, providing for a Certified Copy on a demand being made and on payment of Fee.

36. This Judgment of Munagala Roja Harsha Vardhini where this question was laid to rest, in which, the referring Member (Technical) was also a Member of the Bench, was later on, followed by this Tribunal in the matters of the ***Comp. App (AT) (CH) INS. No. 29 / 2024 M/s. Whitehand Services v. M/s. RD Buildtech & Developers Karnataka Pvt. Ltd.*** and while referring to the Judgment of Munagala Roja Harsha Vardhini, this Tribunal, has reiterated its

opinion and the principles on the basis of the observation made in Para 32, 33 and 34 of the said Judgment of Munagala Roja Harsha Vardhini and decided the matter with regards to the same aspect pertaining to the necessity of filing of a Certified Copy of the Judgment, in order to sustain an Appeal, under Section 61 of the I & B Code, 2016.

37. It is relevant to mention that in this Judgment of ***M/s. Whitehand Services v. M/s. RD Buildtech & Developers Karnataka Pvt. Ltd.*** *too*, the referring Member (Technical) was a Member Signatory to the Judgment, thereby accepting the principles which had been laid down by the Three Members Bench Judgment of Munagala Roja Harsha Vardhini.

38. The question which was referred to be answered is extracted hereunder:

> *``In view of the divergent Order(s), delivered by the Hon'ble Member Justice M. Venugopal, Member (Judicial) and Hon'ble Mr. Jatindranath Swain, Member (Technical) of NCLAT, Chennai Bench, on 01.05.2024, the `Office of the Registry' of `NCLAT – Chennai Bench', is to place the entire record(s) in IA No. 158 / 2024 and in main Company Appeal (AT) (CH) (INS) No. 53 / 2024, together with the copies of the said Order(s), before the Hon'ble Chairperson of `NCLAT – Principal Bench', New Delhi, for constituting an appropriate Bench / nominating Hon'ble Third Member, for rendering his opinion / decision, in the subject matter, in issue.''*

39. While hearing the reference, the Learned Counsels for the Parties were heard at length.

40. The Learned Counsel for the Respondent in support of the Judgment pertaining to the necessity of filing of a Certified Copy, as it has been contemplated under Rule 22 (2) of the NCLAT Rules, 2016, submitted that the Constitution Bench Judgment, as rendered by the Hon'ble Apex Court in the matters of Chandra Prakash & Ors. v. State of U.P. & Ors., as reported in 2002 Vol. III SCC Page 533, wherein particularly, he has made a reference to Paras 19 to 24, which is extracted hereunder:

> *19. ``The **principles of the doctrine of binding precedent** are no more in doubt. This is reflected in a large number of cases decided by this Court. For the purpose of deciding the issue before us, we intend referring to the following two judgments of this Court.*
>
> *20. In the case of Union of India v. Raghubir Singh (supra), a 5-Judge Bench of this Court speaking through Pathak, CJ., **held that pronouncement of a law by a Division Bench of this Court is binding on another. Division Bench of the same or smaller number of Judges. The judgment further states that in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court.** To avoid a repetition of the discussion on this subject, we think it appropriate to reproduce the following paragraph of that judgment which reads as follows:*
>
> > *"What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case raising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the point is governed entirely by the practice in India of the courts sanctified by repeated affirmation*

over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other consideration which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In John Martin v. State of West Bengal, MANU/SC/0136/1975 : 1975 (3) SCC 836, a Division Bench of three Judges found it right to follow the law declared in Haradhan Shah v. Stare of West Bengal, [1975] 3 SCC 198, decided by a Division Bench of five Judges, in preference to Bhut Nath Mete v. State of West Bengal, [1974] 1 SCC 645 decided by a Division Bench of two Judges. Again in Indira Nehru Gandhi v. Raj Narain, [1975] Supp. SCC 1, Beg J held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in Kesavananda Bharati v. State of Kerala, [1973] 4 SCC 225]. In Ganapati Sitaram Balvalkar v. Woman Shripad Mage, [1981] 4 SCC 143, this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in Mattulal v. Radhe Lal, [1974] 2 SCC 365, this Court specifically observed that where the

view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in Acharya Maharajshri Narandraprasadji Anandprasadji Maharaj v. State of Gujrat, [1975] 1 SCC 11 that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in Union of India v. Godfrey Philips India Ltd., [1985] 4 SCC 369 which noted that a Division Bench of two Judges of this Court in Jit Ram Shiv Kumar v. State of Haryana, [1981] 1 SCC 11 had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills v. State of U.P., [1979] 2 SCC 409 on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference."

21. Almost similar is the view expressed by a recent judgment of 5-Judge Bench of this Court in Parija's case (supra). In that case, a Bench of 2 learned Judges doubted the correctness of the decision of a Bench of 3 learned Judges, hence, directly referred the matter to a Bench of 5 learned Judges for reconsideration. ***In such a situation, the 5 Judge Bench held that judicial discipline and propriety demanded that a Bench of 2 learned Judges should follow the decision of a Bench of 3 learned Judges. On this basis, the 5-Judge Bench found fault with the reference made by the 2-Judge Bench based on the doctrine of binding precedent.***

22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above

judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so, they embody a declaration of law operating as a binding principle in future cases. ***The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions.*** *Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.*

It is in the above context, this Court in the case of Raghubir Singh held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or similar number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of Parija (supra) held that-

> *"But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified."*
>
> *(Emphasis supplied)*

23. We are in respectful agreement with the enunciation of law made by this Court in the above noted judgments in Raghubir Singh and Parija (supra).

24. Applying the principles laid down in the abovesaid cases, we hold that the judgment of the 2-Judge Bench of this Court dated 23.3.1995 as modified by the subsequent order dated 26.7.1996 by the same Bench does not lay down the correct law, ***being in conflict with the larger Bench judgment. If that be so, the above writ petitions, from which this***

reference has arisen, will have to be decided de hors the law laid down by those two judgments of the Bench of two learned Judges. *Therefore, having decided the issue that has arisen for our consideration, we think it just that these writ petitions should now be placed before a Bench of three learned Judges for final disposal.''*

41. Primarily, the aforesaid Judgment of the Hon'ble Apex Court, while dealing with the principles, of harmonious principles of construction, has observed that when the issue once has already been settled by a larger Bench, the Judicial Propriety and Judicial Discipline, would prevail and the said Judgment, would still continue to operate and hold the field, , until and unless, it is set aside by a Larger Bench or Superior Court. It intended to lay down that there has to be a harmonious construction while interpreting a Judgment and it should not be read in a manner in which, it would defeat the obvious intention of the Judgment in itself by misinterpreting the decisis principles.

42. The wider principle which the Hon'ble Apex Court has observed that, when a ratio or a question of Law, has already been settled in a prior Judgment by a Larger Bench, that will prevail and it ought not to be disturbed or referred to by a Bench of a smaller strength, till the Judgment of the larger strength is prevailing. Similar is the situation prevailing in the instant reference.

43. In the aforesaid Judgment of Chandra Prakash Supra, the Constitution Bench of the Hon'ble Apex Court has observed that the `Doctrine of binding precedent', are no more in doubt and it provides for that a Judgment, rendered

by a larger Members of the Bench, either prior or subsequent to a reference for deciding an issue will have a binding effect on another Bench of the same strength or another Bench of a smaller strength.

44. The precaution taken therein by the Constitution Bench in the Judgment of Chandra Prakash Supra, was that, there should not be a repetition for a discussion of the subject which has already been discussed and settled by the larger Bench, which is binding, on the Bench of same strength or Bench of lesser strength.

45. A similar view was expressed by yet another Constitution Bench Judgment in the matters of *Parija's* case, where it has been observed that the Bench of Two Judges, cannot doubt the correctness of the Judgment of the Bench of Three Judges and the re-consideration of it could only be possible in a situation, where a Five Judges Bench intended to upheld the Judicial Propriety and Judicial Discipline. In other words, it could be said that the principles thus declared its paramount intention was that the Law declared by the Court should be certain, clear and consistent, and now it is in the common knowledge, that most of the decisions of the Court rendered by a larger Bench will have a binding principle and particularly when the same Member (Technical), had already followed the Judgment of ***Munagala Roja Harsha Vardhini and later in another Judgment of M/s. Whitehand Services v. M/s. RD Buildtech & Developers Karnataka Pvt. Ltd.***, under the guiding principles of the

Constitution Bench, the Learned Single Judge, under the principles of Doctrine of Binding Precedent, ought to have followed the said principle which happens to be the utmost precedent and holding importance in the administration of Judicial System.

46. The basic intention behind the principles laid down by the Constitution Bench was that, it should promote certainty and consistency in the decisions rendered by a larger Bench, which would have a binding precedent over the Bench of a lesser strength of Judges.

47. The said argument as extended by the Learned Counsel for the Respondent, that once the Judgment of the larger Bench is already prevailing, no reference should have been made by a Bench of smaller strength was answered by the Learned Counsel for the Respondent, based upon the ***Judgment of 2002 Vol. III SCC Page 533, Padma Sundara Rao (Dead) & Ors. v. State of T.N. & Ors.*** Particularly, while referring to Para 9, the Learned Counsel for the Appellant contended that reliance on a Judgment placed before a Court, should not be considered until and unless its factual situation are taken care of and considered while rendering a Judgment, because at times, non-consideration of facts, may often lead to a difficult situation where a Judgment though in the words of a legislative enactment, may have a different effect, owing to the different facts involved in the case.

48. This Judgment relied by the Learned Counsel for the Appellant in support of his contention, was an effort made in order to answer the Judgment of Chandra Prakash Supra, as argued by the Learned Counsel for the Respondent, the answer could be extended Qua the question raised by the Learned Counsel for the Appellant in the light of the Judgment of Padma Sundara Rao, because, in the matters of Munagala Roja Harsha Vardhini, in fact, after Para 12 onwards, it was basically confined to a legal principle, about the sustainability of an Appeal, under Section 61 of the I & B Code, 2016, in the light of the provisions contained, under Rule 22 (2) of the NCLAT Rules, 2016, and the issue of necessity of supplying the Certified Copy of the Judgment. In fact, the Judgment of Munagala Roja Harsha Vardhini, was exclusively dealing with the question of Law, in the light of the Hon'ble Apex Court Judgment of V. Nagarajan, hence, Para 9 of the Judgment of Padma Sundara Rao (Supra), will be of no avail for the Learned Counsel for the Appellant.

49. Since, the necessity of filing of an Appeal, along with the Certified Copy and the distinction between the ``Free Copy'' and the ``Certified Copy'', as to the basis for filing of an Appeal has already been decided, by the larger Bench of this Tribunal, in that eventuality and in the light of the Chandra Prakash Judgment, the reference is answered accordingly, since, the principle of Limitation has already been settled that the Appeal would lie on the basis of the

Certified Copy of the Judgment, and not on the basis of Free Copy. Hence, the reference is answered accordingly.

50. ``Holding thereof the Free Copy provided under Rule 50 of NCLT Rules, 2016, cannot be treated as to be a Certified Copy referred to under Rule 22(2) of NCLAT Rules, 2016, and the Free Copy will not satisfy to be a Certified Copy, as defined under Section 2(j) of the NCLT Rules, to be read with Section 76 of the Evidence Act.''.

51. Answered accordingly, and I agree with the opinion expressed by the Learned Member (Judicial).

[Justice Sharad Kumar Sharma]
Member (Judicial)

09/07/2024

SR / TM