

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1001 of 2025

(Arising out of Order dated 10.07.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Principal Bench in TA (IBC) – 37(PB)/2025 in Company Petition (IB) No.526/ND/2024)

IN THE MATTER OF:

Sayam Shares & Securities (P) Ltd. ...Appellant

Versus

KSS Petron (P) Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Deepak Khosla, Advocate

For Respondents : Mr. Abhijeet Sinha Sr. Advocate with Mr. Soayib Qureshi, Mr. Sandeep Bajaj, Ms. Anchal Kushwaha, Advocates.

Mr. Gopal Jain Sr. Advocate with Mr. Deep Roy and Mr. Dhaval Saula, Advocates for RP.

WITH

Company Appeal (AT) (Insolvency) No. 1014 of 2025

(Arising out of Order dated 11.07.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Principal Bench in CP (IB) No.526/ND/2024)

IN THE MATTER OF:

Sayam Shares & Securities (P) Ltd. ...Appellant

Versus

KSS Petron (P) Ltd. & Anr. ...Respondents

Present:

For Appellant : Mr. Deepak Khosla, Advocate

For Respondents : Mr. Abhijeet Sinha Sr. Advocate with Mr. Soayib Qureshi, Mr. Sandeep Bajaj, Ms. Anchal Kushwaha, Advocates.

Mr. Gopal Jain Sr. Advocate with Mr. Deep Roy and Mr. Dhaval Saula, Advocates for RP.

J U D G M E N T

ASHOK BHUSHAN, J.

These two Appeal(s) have been filed by the same Appellant challenging orders dated 10th July, 2025 passed by National Company Law Tribunal (“**NCLT**”), New Delhi, Principal Bench in TA (IBC) – 37(PB)/2025, TA (IBC) – 38(PB)/2025 and TA (IBC) – 39(PB)/2025, which are under challenge in Company Appeal (AT) (Ins.) No. 1001 of 2025. Company Appeal (AT) (Ins.) No. 1014 of 2025 has been filed challenging order dated 11.07.2025 passed in different IAs in which order has been passed by NCLT, New Delhi Bench (Court – II).

2. Brief facts of the case necessary to be noticed for deciding these Appeal(s) are:

Company Appeal (AT) (Ins.) No. 1001 of 2025

- (i) The Respondent – KSS Petron (P) Ltd. filed a TA (IBC) – 37(PB)/2025 on line on 09.07.2025, on the same day, the Appellant filed TA (IBC) – 38(PB)/2025 and another IA, i.e. TA (IBC) – 39(PB)/2025 was filed by Kohinoor Crane Services.
- (ii) On mention made by the Applicants the above Transfer Application i.e TA No.37, 38 and 39 of 2025 were directed to be listed on 10.07.2025, which were shown in the Supplementary Cause List-2 issued for Principal Bench, which coram shows Justice Ramalingam Sudhakar, Hon’ble President. TA Nos.37, 38 and 38 of 2025 were listed at Item

Nos.301, 302 and 303. In TA No.37 of 2025, a request has been made to transfer Company Petition No.526 of 2024 titled as KSS Petron Pvt. Ltd. vs. Bhubaneshwar Expressways Pvt. Ltd. from NCLT, New Delhi Bench (Court – II) to Mumbai Bench; Whereas in TA No.38 of 2025 filed by Sayam Shares and Securities (P) Ltd. (Appellant herein), transfer was sought of CP(IB) No.1202/MUM/2017 from NCLT Mumbai Bench to the NCLT, New Delhi Bench (Court – II); and TA No.39 of 2025 filed by Kohinoor Crane Services seeking transfer of CP(IB) No.1374/MUM/2017 from the NCLT Mumbai Bench to NCLT, New Delhi Bench (Court – II). In the Transfer Applications, apart from seeking transfer of the Company Petitions, as referred above, certain other interim prayers were prayed for.

- (iii) All the Transfer Applications were taken up by the President of the NCLT on 10.07.2025 and by the common order passed in above three Transfer Applications, the President directed the parties in TA No.37 of 2025 to file hard copy of the TA along with all relevant documents. In TA Nos.38 and 39 of 2025, direction was issued to cure the defects before the next date of hearing. The President, NCLT after hearing the parties directed the matter to be listed on 18.07.2025. In paragraph 13 of the order, the Court-II, NCLT Delhi and NCLT, Mumbai were requested to defer the hearing in

Company Petition (IB)-526/ND/2024; Company Petition (IB)-1202/MUM/2017; and Company Petition (IB)-1374/MUM/2017 pending before the respective Benches.

- (iv) The Appellant who was Applicant in TA No.38 of 2025 and has filed an TA in Company Petition in Company Petition (IB)-526/ND/2024 pending in New Delhi Bench (Court – II) of NCLT, has come up in the Appeal challenging order dated 10.07.2025 in Company Appeal (AT) (Ins.) No. 1001 of 2025. In the Appeal, the Appellant has prayed for following reliefs:

- “A. Quash, strike down and set aside the order dated 10-07-2025 passed by Hon'ble President in Transfer Petition (IB) No. 37 in 2025.
- B. Interim relief (1): stay the operation of the order dated 10- 07-2025 in so far as it purports to request NCLT (Court II) to consider deferring further proceedings.
- C. Interim relief (2) : exempt from filing a copy of the impugned order, and permit placement of reliance temporarily on the approximately text of the same, as only reliefs sought before placing a copy of the actual order is a stay on the direction to NCLT Court II to consider deferring further adjudication pending outcome of the transfer petition.
- D. Interim relief (3): exempt the appellant from filing separate applications for separate reliefs, given that Court fees for separate applications has been paid.

E. And pass such other order or orders the directions as Hon'ble Appellate Tribunal may deem fit in the facts and circumstances of the case.”

Company Appeal (AT) (Ins.) No. 1014 of 2025

- (i) A Company Petition under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**”) has been filed by Respondent – KSS Petron Pvt. Ltd. (“**KSS Petron**”), which Company Petition was filed by the Liquidator of KSS Petron claiming to be the Financial Creditor of Bhubaneswar Expressways (P) Ltd. – the Corporate Debtor (“**CD**”). The Company Petition under Section 7 was admitted vide order dated 09.12.2024 by NCLT, New Delhi Bench (Court – II), appointing an IRP. In the above Company Petition an application has been filed by the Appellant for recall of the admission order.
- (ii) TA No.37 of 2025 was filed before the President, seeking transfer of Company Petition (IB)-526/ND/2024 from NCLT, New Delhi Bench (Court – II) to NCLT Mumbai, on which application an order was passed by the President on 10.07.2025. Various applications in Company Petition (IB)-526/ND/2024 were listed before the NCLT, New Delhi Bench (Court – II) on 11.07.2025. The copy of the order dated 10.07.2025 passed by the President was placed before the NCLT, New Delhi Bench (Court – II), which Bench acceding to

the request made in the order, deferred the proceedings till 23.07.2025. Company Appeal (AT) (Ins.) No. 1014 of 2025 has been filed challenging order dated 11.07.2025 passed by NCLT, New Delhi Bench (Court – II).

3. We have heard Shri Deepak Khosla, learned Counsel appearing for the Appellant(s); Shri Abhijeet Sinha, learned Senior Counsel appearing for Respondent in both the Appeal(s); Shri Navin Pahwa, learned Senior Counsel appearing for Respondent; Advocate Shri Gopal Jain, learned Senior Counsel appearing for RP.

4. Learned Counsel for the Appellant in support of Company Appeal (AT) (Ins.) No. 1001 of 2025 submits that order dated 10.07.2025 virtually directed the NCLT, New Delhi Bench (Court – II), where CP(IB)526/ND/2024 was pending, to defer the hearing, which is nothing but passing an interim stay order in TA No.37 of 2025. It is submitted that the President of the NCLT only have administrative powers while transferring a case from one Bench to another Bench and had no jurisdiction to grant any interim order. The President does not exercise any judicial function while hearing a Transfer Application, hence, could not have passed any kind of interim order. It is further submitted that Transfer Applications were taken by the President, NCLT during lunch hours, to which the Counsel appearing for the Appellant has objected to, but Applications were heard and order was passed on 10.07.2025. It is submitted that the Appellant before the President, NCLT has raised various grounds for rejection of the Transfer Application. It is submitted

that an objection has been filed by the Appellant for rejection of TA No.37 of 2025 *in limine*, seeking transfer of CP(IB)-526/ND/2024 as well as 14 grounds have been raised by the Appellant. The learned Counsel for the Appellant has placed a note containing 14 grounds before the President, NCLT, on which the Appellant sought rejection of TA No.37 of 2025. Shri Khosla submits that in fact, proceedings in Company Petition pending in the NCLT Mumbai, need to be transferred to NCLT, New Delhi Bench (Court – II), which has been prayed in TA Nos.38 and 39 of 2025. TA No.38 of 2025 has been filed by the Appellant for transferring the pending Company Petition (IB) No.1202/MUM/2017 from Mumbai Bench to NCLT, New Delhi Bench (Court – II). It is submitted that no Applicant is entitled for any interim order in the Transfer Application without showing any prejudice to the Applicant and in the present case, no prejudice has been shown by the Applicant of TA No.37 of 2025.

5. Learned Counsel for the Respondent appearing for KSS Petron opposing the submissions of the Appellant submits that order passed by the President, NCLT is an order in exercise of jurisdiction under Rule 16(d) of the NCLT Rules, 2016 (“**Rules**”) and no appeal is maintainable under Section 61 of the IBC. It is submitted that the order dated 10.07.2025 was passed by the President after hearing both the parties, including the learned Counsel for the Appellant, who appeared through VC, when the case was called and also appeared physically subsequently. It is submitted that the TAs were listed before the President and after rising of the Division Bench, the Hon’ble President assembled and took up

the TAs filed under Rule 16(d), in which order was passed by the President, directing the TAs to be listed on 18.07.2025. The parties were asked to file hard copies and to cure the defects. The Hon'ble President in paragraph 13 has only requested Bench-II, NCLT New Delhi and Mumbai Bench of NCLT to defer the proceedings in the Company Petitions. The above was only the request to the Court hearing the Company Petitions at NCLT, New Delhi Bench (Court – II) and NCLT Mumbai and is not passing of any interim order. It is further submitted that there is no error in passing of the said direction in paragraph 13 of the said order by the President. The TAs have to be listed on 18.07.2025 and all objections regarding maintainability or merits of TA No.37 of 2025, could have been pleaded by the Appellant before the Hon'ble President. No issues regarding maintainability of the TAs need to be examined in these Appeal(s). It is further submitted that the Appellant himself has prayed for transfer of Company Petition from NCLT Mumbai to NCLT, New Delhi Bench (Court – II), which was also taken and heard along with TA No.37 of 2025.

6. In support of the Company Appeal (AT) (Ins.) No. 1014 of 2025, Shri Khosla submits that NCLT, New Delhi Bench (Court – II) was not required to defer the hearing on 11.07.2025 of the various applications pending in CP(IB)-526/ND/2024 and that it erred in deferring the hearing till the present TAs are finalized. On the mere filing of the TAs, there shall not be stay of the proceedings, which are sought to be transferred and for granting any kind of interim order, the prejudice has to be shown by the

Applicant. It is submitted that NCLT, New Delhi Bench (Court – II) was required to proceed with the hearing of various applications and ought not to have deferred the hearing. It is submitted that order passed by NCLT, New Delhi Bench (Court – II) admitting CP(IB)-526/ND/2024 were nullity and the Appellant – Sayam Shares & Securities (P) Ltd. has filed the application for recall of the order, which was required to be heard and decided and all attempts are being taken to scuttle the hearing of the said application.

7. We have considered the submissions of learned Counsel for the parties and have perused the records.

8. The order under challenge in Company Appeal (AT) (Ins.) No. 1001 of 2025, is an order passed by the President of NCLT, while hearing Transfer Applications in exercise of Rule 16(d). The first objection, which has been raised by the Respondent is regarding maintainability of the Appeal under Section 61 of the IBC. The next question, which needs to be considered is regarding nature of the order passed on 10.07.2025, as to whether the order dated 10.07.2025 is purely an administrative order, while passing which order, there is no jurisdiction in the President to pass any kind of interim directions, as is said to have been done in the order dated 10.07.2025.

9. We need to first notice the Rule 16(d) of NCLT Rules, 2016, which deals with functions of the President. Rule 16 of the NCLT Rules, 2016 is as follows:

“16. Functions of the President.- In addition to the general powers provided in the Act and in these rules the President shall exercise the following powers, namely:-

- (a) preside over the consideration of cases by the Tribunal;
- (b) direct the Registry in the performance of its functions;
- (c) prepare an annual report on the activities of the Tribunal;
- (d) transfer any case from one Bench to other Bench when the circumstances so warrant;
- (e) to withdraw the work or case from the court of a member.
- (f) perform the functions entrusted to the President under these rules and such other powers as may be relevant to carry out his duties as head of the Tribunal while exercising the general superintendence and control over the administrative functions of the Members, Registrar, Secretary and other staff of the Tribunal.”

10. Rule 16(d) provides that the President shall have power to transfer any case from one Bench to other Bench when the circumstances so warrant. The present is a case where an order has been passed on TAs filed by the parties before the Principal Bench, praying for transfer of Company Petitions from Mumbai to Delhi and vice-versa. The first question is regarding the maintainability of the Appeal against the order under Rule 16(d). Under Section 61 of the IBC, the Appeals are provided to Appellate Tribunal against an order passed by Adjudicating Authority under Part-II of the IBC. The order passed by the President, NCLT under Rule 16(d), is not an order passed by Adjudicating Authority in Part-II of the IBC. Hence, it is clear that the Appeal under Section 61 of the IBC is not maintainable. In a recent judgment delivered on 17.07.2025 by this Tribunal in ***Company Appeal (AT) (Ins.) No.934 of 2025 – Imbulle***

Realtors Pvt. Ltd. vs. Sanjeev Kumar, Director (Power Suspended) of Realanchor Developers Pvt. Ltd. & Ors., the issue of maintainability of an Appeal under Section 61 of the IBC against an order passed by the President, NCLT under Rule 16(d) was considered and this Tribunal held that no Appeal under Section 61 is maintainable against order passed by the President, NCLT under Rule 16(d). This Tribunal, however, has also noticed the provisions of the Companies Act, 2013 and has come to the conclusion that order passed by the President is an order under Rule 16(d), exercising the powers of NCLT and hence, the Appeal shall lie under Section 421 against the stay order. In the said judgment, the provision of Section 419 of the Companies Act was also noticed. It is useful to notice paragraphs 11 and 12 of the judgment, where following was laid down:

“**11.** By virtue of Section 419(3) read with Rule 16(d), President in passing an order under Rule 16(d) exercises the power of the NCLT. Section 421 provides for appeal from orders of Tribunal. Section 421 of the Act is as follows:

“421. Appeal from orders of Tribunal –

(1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed: Provided that the Appellate Tribunal may

entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.”

12. Section 61 of the IBC as noticed above provides for an appeal against order passed by adjudicating authority under Part II of the IBC. Order passed by President under Rule 16(d) cannot be said to be an order passed under Part II of the IBC, however, in view of the provisions of Section 421 as noticed above the appeal against an order passed by President under 16(d) is fully maintainable under Section 421 of the Companies Act, 2013. We, thus accept the submission of the Respondent No. 1 that appeal against an order of the Tribunal is not maintainable under Section 61. However, appeal being maintainable under Section 421 of the Act and the present appeal has also been filed within the time as allowed under Section 421 of the Act, we proceed to consider the submission of the parties on merits.”

11. In view of the above, we are of the view that although the Appeal under Section 61 of the IBC is not maintainable, however, the Appeal being maintainable under Section 421 of the Companies Act, 2013, we need to consider the submissions of the parties.

12. One of the issues raised by the Appellant is with respect to the nature of jurisdiction, which is exercised by the President in passing an order under Rule 16(d). Rule 16(d) is couched in wide terms, empowering the President for transferring a case from one Bench to other when the circumstances so warrant. Under Rule 16(d), the President exercises administrative powers to transfer cases from one Bench to other Bench. Rule 89 provides for '*Preparation and publication of daily cause list*', which is prepared subject to directions of the President. Rule 89, sub-rule (1) is as follows:

“89. Preparation and publication of daily cause list.— (1)

The Registry shall prepare and publish on the notice board of the Registry before the closing of working hours on each working day the cause list for the next working day and subject to the directions of the President, listing of cases in the daily cause list shall be in the following order of priority, unless otherwise ordered by the concerned Bench; namely;-

- (a) cases for pronouncement of orders;
- (b) cases for clarification;
- (c) cases for admission;
- (d) cases for orders or directions;
- (e) part-heard cases, latest part-heard having precedence; and
- (f) cases posted as per numerical order or as directed by the Bench;”

13. The President of the NCLT, is the Master of the Roster and hence, listing of cases and distribution of work is under general and special order of the President. Conducting the business of NCLT, Principal Bench and its different Benches is vested in the President and the work distribution and listing of cases under general and special order. Thus, the power of

the President to direct for distribution of work and listing of cases before the Principal Bench and different Benches of the NCLT is administrative powers vested in the President. The question raised in these Appeal(s) is nature of jurisdiction of the President, which is exercised on a Transfer Application, which is filed for transfer of one case from one Bench to another Bench. In the present case, TA Nos.37, 38 and 39 of 2025 were the TAs, which were listed before the President of the NCLT. In the Cause List, which was issued on 10.07.2025 before the NCLT Principal Bench, Division Bench-I, a Supplementary List-2 was published with coram Justice Ramalingam Sudhakar, Hon'ble President, where TA Nos.37, 38 and 39 of 2025 were listed. It is useful to extract the coram and Supplementary List-2, which is to the following effect:

CORAM: JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT					
SUPPLEMENTARY LIST-2:					
301	TA (IBC) 37(PB)/2025	New Transfer application filed by applicant for seeking direction	Rule 16(d) NCLT, 2016	KSS Petron Private Limited vs. Bhubaneshwar Expressway Pvt. Ltd.	Soayib Qureshi
302	TA (IBC) 38(PB)/2025	New Transfer application filed by applicant for seeking direction	Rule 16(d) NCLT, 2016	Sayam Shares and Securities (P) Ltd. vs. KSS Petron (P) Ltd.	Deepak Khosla
303	TA (IBC) 39(PB)/2025	New Transfer application filed by applicant for seeking direction	Rule 16(d) NCLT, 2016	Kohinoor Crane Services vs. Petron Engineering Construction Ltd.	Deepak Khosla

14. Transfer Application Nos.37, 38 and 39 of 2025 were filed by the different Applicants as noted above, which Applications were listed in the Court of President as per coram, as noted above. Under Section 419 of

the Companies Act, which deals with the Benches of the Tribunal. Section 419, sub-section (3) provides that the powers of the Tribunal shall be exercisable by Benches consisting of two Members, out of whom one shall be a Judicial member and other shall be a Technical Member. The proviso of sub-section (3) of Section 419 is as follows:

“419(3) The powers of the Tribunal shall be exercisable by Benches consisting of two Members out of whom one shall be a Judicial Member and the other shall be a Technical Member:

Provided that it shall be competent for the Members of the Tribunal authorised in this behalf to function as a Bench consisting of a single Judicial Member and exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify:

Provided further that if at any stage of the hearing of any such case or matter, it appears to the Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the President, or, as the case may be, referred to him for transfer, to such Bench as the President may deem fit.”

15. Thus, Bench can also be of a Single Judicial Member, which can exercise the powers of the Tribunal in respect of such class of cases or such matters pertaining to such class of cases, as the President may, by general or special order, specify. Thus, the President while sitting in a Court as a single Judicial Member, exercises the jurisdiction of a Bench as per Section 419 sub-section (3) proviso. Further, when the TAs are listed in the Court, which is shown in the Cause List, which are matters

to be considered by Bench of Hon'ble President, who is a Judicial Member sitting singly and the TAs, which are filed by the Applicants for transfer of a case from one Bench to another Bench, is thus business of a Court. Thus, when the President decides the applications, which are listed in the Court before the President as coram of a Bench, passing an order by the President are judicial order and thus, orders passed by the President sitting in the Court are not administrative order. Although, as noted above, the President has administrative jurisdiction conferred under the Rules to direct the distribution of business, listing of cases and transfer of cases, but when the said power is exercised on an Application filed for transfer by an Applicant and the matter is listed in the Court for consideration of business of the Court, on which any order passed by the President is a judicial order. In this context, we need to notice a judgment of the Hon'ble Supreme Court in **(2009) 1 SCC 130 – Jitendra Singh vs. Bhanu Kumari and Ors.**, where Hon'ble Supreme Court was considering the jurisdiction under Section 24 of the Civil Procedure Code. Section 24 of the Civil Procedure Code provides as follows:

“24. General power of transfer and withdrawal.

1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage

(a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or

(b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and

(i) try or dispose of the same; or

(ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

(3) For the purposes of this section,

(a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;

(b) proceeding includes a proceeding for the execution of a decree or order].

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.”

16. In the above case under Section 24, it was held that in certain cases, cases can be transferred for administrative reasons, but when an application for transfer is made by a party, the Court is required to issue notice to other party and hear the party and while passing the said order,

the Court has to act judicially. In paragraph 9 of the judgment, following was held:

“9. The purpose of Section 24 CPC is merely to confer on the court a discretionary power. A court acting under Section 24 CPC may or may not in its judicial discretion transfer a particular case. Section 24 does not prescribe any ground for ordering the transfer of a case. In certain cases it may be ordered suo motu and it may be done for administrative reasons. But when an application for transfer is made by a party, the court is required to issue notice to the other side and hear the party before directing transfer. To put it differently, the court must act judicially in ordering a transfer on the application of a party. In the instant case the reason which has weighed with the High Court for directing transfer does not really make out a case for transfer.”

17. The above judgment of the Hon'ble Supreme Court carves out clear distinction of two powers, i.e., executive power as well as judicial power.

18. The Division Bench of the Bombay High Court in ***Lawyers' Forum for General Utility & Litigating Public, Aurangabad, Through its President vs. State of Maharashtra and Ors. – (2014) SCC OnLine Bom 1849*** has elaborately dealt on the subject. In the above case, the power of the Chief Justice of the High Court with respect to transfer of cases to the Bombay High Court was upheld in the said case. The power exercised by the Chief Justice, which is administrative in nature to transfer, however, it was noticed that when a transfer is sought to be made by filing an application by the party to a proceeding, the Chief Justice has to hear the contesting parties, before passing an order of transfer. In paragraph 42, following was observed:

“**42.** A distinction has to be made between a transfer sought to be made on the prayer made by the parties to the proceedings on the grounds which are not administrative in nature and a transfer sought to be made by the Hon'ble the Chief Justice on the administrative grounds. The second category will also include the cases where concerned Benches opine that the matters pending at different Benches need to be clubbed together and to be heard by one and the same Bench. As far as the first category is concerned, the transfers are normally sought on the ground of convenience of the parties to the litigations or on the ground that a party to the litigation is of the view that the matter should not be heard by a particular Judge or by a particular Division Bench. In the first category of cases, it is obvious that the Hon'ble the Chief Justice will have to hear the contesting parties before passing an order of transfer. As far as the second category is concerned, when the Hon'ble the Chief Justice transfers the cases on administrative grounds, he exercises his plenary power being the master of roster.”

19. Further, the Bombay High Court referring to an earlier judgment of the Hon'ble Supreme Court in ***Manju Verma (Dr.) vs. State of U.P. - (2005) 1 SCC 73*** has noticed exercise of jurisdiction under the Chief Justice as adjudicatory in nature as well as administrative. In paragraphs 47 and 48, the Bombay High Court laid down following:

47. It will be necessary to make a reference to the Paragraph 15 of the said decision, In Paragraph 15 of the decision in the case of *Manju Varma (Dr.)*, the Apex Court observed thus:—

“**15.** There was nothing executive in the procedure followed in this case. The respondent had applied to the Chief Justice under para 14 for a transfer of the appellant's writ petition from Lucknow to Allahabad.

The Chief Justice heard the parties and by a detailed and reasoned order directed such transfer. There can in the circumstances be no doubt that the order of the Chief Justice was, if not judicial, at least quasi-judicial.”

In Paragraph 19, the Apex Court held thus:—

“19. He was, therefore, acting as an adjudicating body empowered by the Constitution to discharge judicial functions. We would accordingly hold that the Chief Justice while exercising jurisdiction under para 14 of the 1948 Order, acts as a judicial authority with all the attributes of a Court and his order is, therefore, amenable to correction under Article 136.”

48. Thus, it is clear that the Apex Court was dealing with a case where a regular Application for transfer of a case from Lucknow Bench to Allahabad was made to which an objection was raised by the Petitioner before the Apex Court. The Apex Court in the context of the fact that the Hon'ble the Chief Justice had passed an order after hearing the parties observed that there was nothing executive in the procedure followed in the case. Considering the procedure followed in the case by the Hon'ble the Chief Justice that the Apex Court held that the Hon'ble the Chief Justice was acting as a judicial authority with all the attributes of a Court.”

20. Referring to another judgment of the Hon'ble Supreme Court in **(1997) 3 SCC 11 – Jitendra Singh vs. Bhanu Kumar** in paragraph 49, the Bombay High Court has again observed:

“**49.** Independently of the proviso to the said Rule, as we have held earlier, there is a plenary power vesting in the Hon'ble the Chief Justice to withdraw a matter pending before a Bench and transfer it to an another Bench. The

case before the Apex Court was of a regular transfer application moved before the Hon'ble the Chief Justice by a party to the proceedings by invoking Clause 14 of the 1948 Order which was objected by the Respondent. At this stage, it will be necessary to make a reference to another decision of the Apex Court in the case of *Vivekanand Nidhi v. Asheema Goswami (Smt.)*⁴. In the said case, the Apex Court accepted the submission made before it that if an order was passed suo motu by the learned District Judge in exercise of powers under Section 24 of the said Code, there was no occasion to issue a notice to the Respondent. The learned senior counsel appearing for the High Court Administration relied upon another decision in the case of *Jitendra Singh v. Bhanu Kumari*⁵. In Paragraph 9 of the said decision, the Apex Court held thus:—

“9. The purpose of Section 24 CPC is merely to confer on the Court a discretionary power. A Court acting under Section 24 CPC may or may not in its judicial discretion transfer a particular case. Section 24 does not prescribe any ground for ordering the transfer of a case. **In certain cases it may be ordered suo motu and it may be done for administrative reasons. But when an application for transfer is made by a party, the Court is required to issue notice to the other side and hear the party before directing transfer. To put it differently, the Court must act judicially in ordering a transfer on the application of a party.** In the instant case the reason which has weighed with the High Court for directing transfer does not really make out a case for transfer.”

(emphasis added)”

21. It was held that when order is passed *suo motu*, it does not require hearing of the parties. But when an application of transfer is made, the

Court is required to issue notice and hear the parties and in that capacity the Court must act judicially in ordering transfer. It is, thus, clear that when order is passed by the President on an application filed by an Applicant for transfer of case from one Bench to another Bench and the said application is listed in the Court for hearing, the Hon'ble President has to act judicially in considering the application and any order passed in the said application is an order of judicial nature and is an order passed by NCLT amenable to an appeal.

22. In view of the foregoing discussions, we hold that the order passed by the President dated 10.07.2025 in TA Nos.37, 38 and 39 of 2025 is order passed by NCLT, which is an order of a judicial nature and is amenable to an appeal under Section 421 of the Companies Act.

23. Learned Counsel for the Appellant has taken exception to the observation made by the President in paragraph 13, where the President has requested the NCLT, New Delhi Bench (Court – II) and Mumbai Bench to defer the proceedings. It is useful to extract paragraph 13 of the impugned order dated 10.07.2025, which is as follows:

“13. As to the merit of the plea as stated by both sides, it is apparent that they want transfer from NCLT, New Delhi to NCLT, Mumbai and vice versa on various issues as can be discerned from the oral plea. The correct factual position has to be ascertained in the course of proper hearing in order to ensure that the rival contentions are considered. In this backdrop, pending the filing of hard copies of the pleadings, CourtII, NCLT, New Delhi and Court-II, NCLT, Mumbai are requested to defer the proceedings in Company Petition (IB)-526/ND/2024 pending before Court-II, NCLT, New Delhi,

Company Petition (IB)-1202/MUM/2017, Company Petition (IB)-1374/MUM/2017 pending before Court-II NCLT, Mumbai.”

24. From the above paragraph, it is clear that Hon’ble President observed the correct factual position has to be ascertained in the course of proper hearing, in order to ensure that the rival contentions are considered. In that backdrop the NCLT, New Delhi Bench (Court – II) and NCLT Mumbai Bench were requested to defer the proceedings in CP(IB)-526/ND/2024; CP(IB)-1202/MUM/2017 and CP(IB)-1374/MUM/2017. We do not find any lack of jurisdiction in the President to request the concerned NCLT Benches to defer the proceedings till the TAs are heard and decided.

25. Learned Counsel for the Appellant has contended that TA No.37 of 2025 deserved to be rejected. He submits that he has raised 14 grounds of challenge to the TA No.37 of 2025, which according to him are contained in paragraph 2 of the Note at Page-12, which he has submitted before NCLT, which grounds merit rejection of TA No.37 of 2025. Insofar as the various grounds raised by learned Counsel for the Appellant with regard to TA No.37 of 2025, we are of the view that it is premature to enter into any such grounds in these Appeal(s). TAs are pending consideration before the Adjudicating Authority and vide order dated 10.07.2025, next date fixed was 18.07.2025 and parties were asked to file hard copies and cure the defects. It is open for the Appellant to raise all grounds with respect to TA No.37 of 2025 before the President, which is

under consideration, at this stage we need not enter into the above grounds.

26. Shri Deepak Khosla, learned Counsel for the Appellant has also raised one more submission, i.e. TAs were taken by the Hon'ble President during lunch hours. Shri Khosla referring to Rule 9 of the NCLT Rules, 2016 submits that sitting hours of the Court of NCLT are 10:30 AM to 01:00 PM and 02:00 PM to 04:30 PM. Rule 9 of the Rules, which is relied by the Appellant is as follows:

“9. Sitting hours.- The sitting hours of the Tribunal shall ordinarily be from 10:30 AM to 1:00 PM and 2:00 P.M. to 4:30 PM, subject to any order made by the President.”

27. The President, NCLT in its order dated 10.07.2025 has noticed that on mentioning by the parties on 09.07.2025, the matters were listed on 10.07.2025, when the parties sought urgent hearing and mentioned the Court to hear the matter and Court has fixed the matter on next date, i.e. 10.07.2025, which were shown in the Cause List and cases were listed in Supplementary List-2, which was after the business of Division Bench as well as matters listed in Supplementary List-1. Even if, the Court proceeds to consider the business listed in the Court during lunch hours, which obviously was under the order of the President and information to the parties, the order passed on 10.07.2025 cannot be faulted on the above ground. Sitting hours as mentioned in Rule 9 uses the word ‘ordinarily’. When the party mentions for taking up the matter on very next date and the Court after notice to both the parties, hear the matter, during lunch hours, the order cannot be faulted on this ground as

submitted by the Appellant. Furthermore, the present is a case, where Counsel for the Appellant also appeared through VC and made his submissions. Learned Counsel for the Appellant submits that he on the VC requested for adjournment and requested the matter to be taken after lunch, which request was not acceded to and Court proceeded with the applications. The order dated 10.07.2025, itself indicates that learned Counsel for the Appellant, Shri Deepak Khosla had appeared in TA Nos.38 and 39 of 2025, which is noticed in paragraph 8 of the order, which paragraph is as follows:

“8. Mr. Deepak Khosla, Ld. Counsel appeared for the Applicant in TA (IBC)- 38(PB)/2025 and TA (IBC)- 39(PB)/2025 and for Respondent in TA (IBC)- 37(PB)/2025 after the arguments were made by the Ld. Sr. Counsel appearing for the Applicant in TA (IBC)-37(PB)/2025. This Court waited for some time on his VC request and heard the Counsel.”

28. Thus, when the matter is heard, no exception can be taken, if the Court proceeds to hear during lunch hour, specially, when the matter was mentioned on the ground of urgency, one day before, and listed in the Cause List. It is further to be noticed that one of the applications, i.e. TA No.38 of 2025 is filed by the Appellant herein, i.e. Sayam Shares and Securities (P) Ltd., which was also listed. When Applicant who has filed TA, which is listed and Applicant is heard before passing the order, no exception can be taken to the continued hearing during lunch time. We, thus, cannot accept the submissions of the Appellant that order deserves to be interfered with on the grounds of Rule 9 of the NCLT Rules, 2016.

29. Vide order dated 10.07.2025, the Court has issued Notices to the parties and fixed 18.07.2025 next date of hearing and directed the parties to file hard copies and cure the defects, we are of the view that no grounds are made out to interfere with the order dated 10.07.2025 in TA Nos.37, 38 and 39 of 2025.

30. Now, coming to the order passed on 11.07.2025 by NCLT, New Delhi Bench (Court – II), where NCLT after noticing the order dated 10.07.2025 of the President passed in TA Nos.37, 38 and 39 of 2025 has deferred the hearing. It is useful to notice the entire order passed by NCLT, New Delhi Bench (Court – II), which is as follows:

“IA-2355/ND/2025, IA-2549/ND/2025, Cont.Pett.-20/ND/2025, IA1430/ND/2025, IA-2693/ND/2025, IA-2779/ND/2025, IA2887/ND/2025, 3104/ND/2025, IA-2879/ND/2025: Mr. Deepak Khosla, Ld. Counsel could fairly produce a copy of order dated 10.07.2025 passed by Hon’ble President.

As can be seen from the order, indubitably TA(IBC)/37/PB/2025 has been filed by KSS Petron Pvt. Ltd. seeking transfer of the present proceeding from this Bench to Mumbai Bench.

Similarly, TA(IBC)/38/PB/2025 has been preferred by Sayam Shares and Securities (P) Ltd. seeking again for transfer of present proceedings to Mumbai Bench.

TA(IBC)/39/PB/2025 has been preferred by Kohinoor Crane Service, seeking transfer of CP/IB/1374/MUM/2017 from NCLT Mumbai Bench to this Bench.

Once any of the parties has initiated the process for transfer of pending proceedings from a particular Bench, to upkeep the credibility of the judicial system, fairness and

impartiality, it is incumbent upon the Court not to take up the matter for hearing till the process initiated for transfer of pending proceedings is culminated.

We are of the considered view, that any attempt to take up a matter for which any of the parties have moved process for transfer from that Bench would give rise to doubt in the mind of the parties. In the wake, once separate applications have been moved by the parties for transfer of pending proceedings from this Bench, we are inclined to defer the proceedings till 23.07.2025. At this stage, Mr. Deepak Khosla, Ld. Counsel submitted that the extensive arguments put forth by him should be recorded in the matter. We are of the considered view that once some of the parties have sought transfer of present proceedings from this Bench, it would not be proper for us to take the matter up for hearing, far less record the arguments of any of the parties.”

31. NCLT, New Delhi Bench (Court – II) having noticed the fact that parties have initiated the process of transfer of pending proceedings from one Bench to another, it is incumbent upon the Court, not to take up the matter for hearing till the process of transfer of hearing is culminated. It is relevant to notice that TA No.37 of 2025 has been filed for transfer of case from NCLT, New Delhi Bench-II to NCLT, Mumbai Bench; whereas TA No.38 of 2025 was filed by the Appellant for transferring of Company Petition pending in NCLT Mumbai Bench to NCLT, New Delhi Bench (Court – II). Thus, present is a case where both the parties are praying for transfer of petition vice-versa.

32. In the above case, we do not find any error in the order of NCLT, New Delhi Bench (Court – II), to not take up the matter till the process initiated for transfer of both the parties is culminated. Sufficient reasons

have been given by the NCLT, New Delhi Bench (Court – II) for awaiting the order passed in the transfer applications, which are pending consideration. It is further to be noticed that the President by an order dated 10.07.2025 has fixed the matter on 18.07.2025 and applications were taken up before NCLT, New Delhi Bench-II on 11.07.2025, on which date, the order dated 11.07.2025, as noted above, was passed. We do not find any error in the order passed by the NCLT, New Delhi Bench (Court – II) on 11.07.2025 to await the outcome of the TAs, initiated by the parties.

33. In result, both the Appeal(s) are dismissed. We make it clear that we have not considered the merits of either of the TAs or submissions advanced with respect to merits of TAs and we are not expressing any opinion on any submission on the merits of TAs, which are submissions, which need to be considered by the President, NCLT while deciding the above TAs. There shall be no order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

NEW DELHI

6th August, 2025

Ashwani