

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 261 of 2024

(Arising out of Order dated 22.07.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in C.A. No.60 of 2024 in C.P. No. 3638/MB/2018)

IN THE MATTER OF:

Deloitte Haskins & Sells LLP

...Appellant

Versus

Union of India & Ors.

...Respondents

Present:

For Appellant : Mr. Krishnendu Datta, Sr. Advocate with Ms. Prachi Dhanani, Ms. Rohini Jaiswal, Mr. Raushan Kumar, Ms. Anu Shrivastava, Advocates.

For Respondents : Mr. Aditya Sikka, Mr. Meghav Gupta, Mr. Digvijay Singh, Ms. Onshi Jhakar, Ms. Yaganshi Singh, Mr. Himanshu Gupta, Mr. Rohan S. Nandy, Advocates.

With

Company Appeal (AT) No. 274 of 2024

(Arising out of Order dated 22.07.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in C.A. No.93 of 2024 in C.P. No. 3638/MB/2018)

IN THE MATTER OF:

Manu Kochhar

...Appellant

Versus

Union of India

...Respondent

Present:

For Appellant : Mr. Anand Varma, Ms. Apoorva Pandey, Mr. Ayush Gupta, Advocates.

For Respondent : Mr. Aditya Sikka, Mr. Meghav Gupta, Mr. Digvijay Singh, Ms. Onshi Jhakar, Ms. Yaganshi Singh, Mr. Himanshu Gupta, Mr. Rohan S. Nandy, Advocates.

Cont'd.../

With

Company Appeal (AT) No. 283 of 2024

(Arising out of Order dated 22.07.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in C.A. No.119 of 2024 in C.P. No. 3638/MB/2018)

IN THE MATTER OF:

Udayan Sen

...Appellant

Versus

Union of India & Ors.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Ms. Aayushi S. Khazanchi, Mr. Vinayak Chawla, Ms. Diksha Gupta, Ms. Pooja Deepak, Advocates.

For Respondents : Mr. Aditya Sikka, Mr. Meghav Gupta, Mr. Digvijay Singh, Ms. Onshi Jhakhhar, Ms. Yaganshi Singh, Mr. Himanshu Gupta, Mr. Rohan S. Nandy, Advocates.

With

Company Appeal (AT) No. 286 of 2024

(Arising out of Order dated 22.07.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in C.A. No.144 of 2024 in C.P. No. 3638/MB/2018)

IN THE MATTER OF:

Rajesh Kotian

...Appellant

Versus

Union of India

Ministry of Corporate Affairs & Anr.

...Respondents

Present:

For Appellant : Ms. Radhika Gautam, Ms. Shreya Garg, Advocates.

For Respondents : Mr. Aditya Sikka, Mr. Meghav Gupta, Mr. Digvijay Singh, Ms. Onshi Jhakhhar, Ms. Yaganshi Singh, Mr. Himanshu Gupta, Mr. Rohan S. Nandy, Advocates.

With

Company Appeal (AT) No. 287 & 288 of 2024

(Arising out of Order dated 29.07.2024 and 22.07.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in C.A. No.247 of 2024 in C.P. No. 3638/MB/2018)

IN THE MATTER OF:

Kalpesh Mehta

...Appellant

Versus

Union of India & Ors.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Ms. Aayushi S. Khazanchi, Mr. Vinayak Chawla, Ms. Diksha Gupta, Ms. Pooja Deepak, Advocates.

For Respondents : Mr. Aditya Sikka, Mr. Meghav Gupta, Mr. Digvijay Singh, Ms. Onshi Jhakhhar, Ms. Yaganshi Singh, Mr. Himanshu Gupta, Mr. Rohan S. Nandy, Advocates.

With

Company Appeal (AT) No. 302 of 2024

(Arising out of Order dated 22.07.2024 passed by the National Company Law Tribunal, Mumbai Bench-I in C.A. No.101 of 2024 in C.P. No. 3638/MB/2018)

IN THE MATTER OF:

Milind Patel

...Appellant

Versus

Union of India & Ors.

...Respondents

Present:

For Appellant : Ms. Preeti Singh, Advocate.

For Respondents : Mr. Aditya Sikka, Mr. Meghav Gupta, Mr. Digvijay Singh, Ms. Onshi Jhakhhar, Ms. Yaganshi Singh, Mr. Himanshu Gupta, Mr. Rohan S. Nandy, Advocates.

J U D G M E N T

ASHOK BHUSHAN, J.

These Company Appeals have been filed against the same order dated 22.07.2024 passed by National Company Law Tribunal (NCLT), Mumbai Bench-1 in different CA Nos. 60/2024, 101/2024, 119/2024, 144/2024, 93/2024 filed by the Appellants and order dated 29.07.2024 in CA No.247/2024. The NCLT by the impugned order rejected the applications. Aggrieved by which order these appeals have been filed.

2. All the Appeals arise from same set of facts and raises common question of law, hence, they were heard together and are being decided by this common judgment. It shall be sufficient to refer to the pleadings and submissions in Company Appeal (AT) No.261 of 2024 for deciding all these appeals. Brief facts of the case necessary to be noticed for deciding these appeals are:

2.1. On 30.09.2018, Ministry of Corporate Affairs (MCA) directed Serious Fraud Investigation Office (SFIO) to carry investigation of IL&FS and its subsidiaries. MCA, Union of India – Respondent No.1 filed Company Petition No.3638 of 2018 against the IL&FS and their existing Board of Directors before the NCLT under Section 241 and 242 of the Companies Act, 2013.

2.2. On 01.10.2018, NCLT passed an order superseding the existing Board of Directors of IL&FS and new Board was directed by NCLT

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to take charge. The Government nominated directors were appointed in the Board of IL&FS. NCLT by order dated 30.10.2018 directed the Union of India to implead the group companies of IL&FS in the Company Petition No.3638 of 2018.

2.3. SFIO submitted the investigation reports. On the basis of IL&FS Financial Services Ltd. (IFIN) investigation report, the Union of India filed two applications i.e. MA Nos. 2070 of 2019 and 2071 of 2019; seeking impleadment of the individual/entities and extension of order dated 03.12.2018 to the said individuals/entities.

2.4. NCLT by order dated 18.07.2019 allowed MA No.2071 of 2019 and impleaded Ex-Directors, Key managerial personnel and Ex-Auditors of IFIN to Company Petition No.3638 of 2018.

2.5. The Union of India filed MA No.2696 of 2019 seeking leave to amend Company Petition No.3638 of 2018. By order dated 25.11.2019, NCLT allowed the application for amendment to the Company Petition, as prayed in the application.

2.6. There has been series of litigation initiated by different parties in Bombay High Court, Hon'ble Supreme Court and this Appellate Tribunal, which are not relevant to be noticed for deciding these appeals.

2.7. On 20.02.2024, MA No.2070 of 2019 and MA No.2071 of 2019 filed by Union of India came for consideration before the NCLT. NCLT

adjourned the matter to 21.02.2024 and granted liberty to the Union of India to carry out amendment in CP N.3638 of 2018, as was permitted earlier vide order dated 25.11.2019.

2.8. On 21.02.2024, the Appellant and various other Appellants raised challenge to the amended CP No.3638 of 2018 stating that the amendments included in CP No.3638 of 2018 are beyond the scope of order dated 25.11.2019.

2.9. Appellants thereafter filed different applications objecting to the amendment carried out by Union of India in CP No.3638 of 2018. For example; CA No.60 of 2024 was filed by Deloitte Haskins & Sells LLP, which was erstwhile statutory Auditor of IL&FS Financial Services Ltd. (IFIN). In CA No.60 of 2024, the Appellant prayed NCLT to declare that amendment to CP No.3638 of 2018 to the extent of inclusion of prayer clause (e) had been carried out without the leave of the Tribunal. It was prayed that Union of India be directed to delete the prayer clause (e), which has been wrongfully incorporated in the amended company petition. To the similar effect other Appellants in this appeal, filed applications seeking deletion of prayer clause (e) from the amended CP No.3638 of 2018.

2.10. Aforesaid applications filed by Appellants were objected by Union of India. An Affidavit in Reply was filed on behalf of the Respondent

pleading that prayer (e) added to CP No.3638 of 2018 was contemplated under prayer (C) of MA No.2696 of 2019.

2.11. The NCLT heard counsel for the parties and by impugned order held that the Prayer clause (e) which was added in the CP No.3638 of 2018 falls within the scope of prayer (C) or (D) of the amendment application which was allowed by order dated 25.11.2019. After returning the aforesaid finding, the NCLT rejected CA No.60 of 2024 and other applications filed by other Appellants. Aggrieved by order of the NCLT these appeals have been filed.

3. We have heard Shri Arun Kathpalia, learned senior counsel for the Appellant and Shri Aditya Sikka, learned counsel appearing for Union of India.

4. Shri Arun Kathpalia, learned senior counsel for the Appellant in support of the appeal submits that the order of the NCLT dated 25.11.2019 allowing MA No.2696 of 2019 although permitted the Union of India to further supplement/enlarge/amend/modify the scope of the reliefs sought and prayers made in the petition by filing any other documents or applications, however, that prayer allowed on 25.11.2019 did not entitle the Union of India to amend any additional prayer in CP No.3638 of 2018 without filing any application and without leave of the Court. The amendment allowed by order dated 25.11.2019 only empowered the Union of India to file further application to amend/ modify the scope of relief which is only enabling power

to file fresh amended application to add one or more relief in CP No.3638 of 2018 and without filing any application and without leave of the Court, Union of India could not have added any prayer. In the present case, when the Appellants have raised grievances on 20.02.2024 to the NCLT that they have not been supplied with the amended petition, the Union of India submitted amended petition by adding relief (e) which was never permitted to be added by the NCLT. The entitlement of filing any application to further amend the reliefs does not empower the Union of India to suo moto add any relief in CP No.3638 of 2018. The Union of India wholly misconstrued and misinterpreted the order of NCLT dated 25.11.2019 allowing MA No.2686 of 2019. CA No.60 of 2024 was filed by the Appellant - Deloitte Haskins & Sells LLP praying for deletion of prayer (e) which has been wrongly rejected by the NCLT by the impugned order. It is submitted that the provision of Rule 155 of NCLT Rules, 2016 empowers amendment in the petition to the effect that amendment is required to be carried out with leave of the Court. Without leave of the Court, no application can be amended. Moreso, Union of India has added reliefs in the petition without filing any application and without giving opportunity to the Appellants to object prayers which has been added now. It is submitted that Rule 155 of the NCLT Rules, 2016 is *pari materia* with Section 153 of the Code of Civil Procedure, 1908. Learned counsel for the Appellant referred to judgment of Hon'ble Supreme Court in **“Gurdial Singh & Ors. Vs. Raj Kumar Aneja, (2002) 2 SCC 445”** where in Hon'ble Supreme Court held that unless and until the court is told how and in what manner the pleading originally submitted to the Court is proposed to be altered or amended, the

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Court cannot effectively exercise its power to permit an amendment. It is necessary for an amendment applicant to set out specifically in his application, seeking leave of the court for amendment in the pleading. Present is a case where neither any application was filed nor any leave was sought from the Court. It is submitted that adding relief in the CP No.3638 of 2018 without leave of the Court and without giving opportunity to the Appellant is violative of both provisions of Rule 155 of NCLT Rules, 2016 and rules of natural justice and the NCLT committed error in rejecting CA No.60 of 2024. The NCLT also committed error in misconstruing the scope and ambit of earlier order dated 25.11.2019 allowing MA No.2696 of 2019.

5. Shri Aditya Sikka, learned counsel appearing for the Union of India opposing the submissions of learned counsel for the Appellant referred to various proceedings undertaken in the Company Petition No.3638 of 2018. It is submitted that order of the NCLT allowing the impleadment of various Ex-Directors, Key managerial personnel and Ex-Auditors including Appellant was unsuccessfully challenged upto the Hon'ble Supreme Court. It is submitted that by MA No.2696 of 2019 prayers were to be added in the Company Petition and the Union of India has sought and granted reliefs in accordance with Section 246 and 339 of the Companies Act, 2013 and prayer (C) and (D) allowed in MA No.2696 of 2019 fully covered prayer (e) which has been added on the basis of leave of Court by NCLT on 25.11.2019. It is submitted that what has been added by prayer (e) was already covered by prayer (C) and (D) allowed on 25.11.2019. The submission of the Appellant that the Union of

India was required to file a fresh application for further amending CP No.3638 of 2018 is wholly erroneous. By allowing reliefs (C) and (D), Union of India was permitted to add further prayers in the reliefs and in exercise of such enabling prayers (C) and (D), prayer (e) was added. Learned counsel for the Respondent has also referred to Additional Affidavit in reply to MA No.2070 of 2019 filed by Respondent No.326 where it was pleaded by the Respondent No.326 that they have not been served with copy of amended petition and no relief has been sought against the Respondent. Learned counsel for the Respondent has also referred to the Additional Affidavit of Respondent No.323 to the petition, specifically Para 4 of the Additional Affidavit. It is submitted that the NCLT has rightly rejected CA No.60 of 2024 and other applications praying for similar reliefs.

6. We have considered the submissions of learned counsel for the parties and perused the record.

7. Before we proceed to consider the respective submissions of the parties, it is necessary to notice the prayers in CP No.3638 of 2018 which was contained originally in the petition filed under Section 241-242 of the Companies Act, 2013. In Para 22 of the petition, interim orders were prayed for and leave was sought to add relief by filing further application on the basis of finding of the investigation report or any other material brought in the notice of petitioner. Para 22 of the petition is as follows:

“22. In light of the factual position detailed above, it is prayed that the Hon'ble Tribunal may be pleased to

pass the following interim orders and permit to seek detailed main reliefs by filing further application on the basis of findings of the investigation report or any other material brought to the notice of the petitioner:-

- (a) That the existing Board of Directors of Respondent No.1 company, comprising of Respondent Nos. 2 to 8, be suspended with immediate effect and, 10 (ten) persons be appointed as directors in terms of provisions of section 242 (2) (k) of the Act, to manage the affairs of the Respondent No.1 company and its group companies through their nominees, and such directors may report and function under the Hon'ble Tribunal on such matters as it may direct.*
- (b) That the Board of Directors appointed by the Hon'ble Tribunal in terms of 242 (2) (k) of the Act be authorized to replace such number of directors of subsidiaries, joint ventures and associate companies as may be required to make the respondent No.1 and its group companies as going concern.*
- (c) The Petitioner seeks the leave of this Hon'ble Tribunal to file supplement/enlarge/amend/modify the scope of the reliefs sought and prayers made in this petition by filing any other documents or applications in view of the extraordinary nature of the circumstances detailed in the petition above.*

(d) Pass any other order(s) as deemed fit and proper, under the circumstances, by the Hon'ble Tribunal, Principal Bench."

8. After filing of the Company Petition on 01.10.2018, the first investigation report of SFIO was received by the Government of India on 30.10.2018 and second investigation report was received on 28.05.2019. In pursuance of the aforesaid report the Government of India issued orders and conveyed sanction to initiate prosecution. Criminal complaints were filed on 30.05.2019 and 08.06.2019 by the SFIO. MA No.2071 of 2019 was filed for impleadment and MA No.2070 of 2019 was filed as extension application. MA No.2696 of 2019 was filed on 05.08.2019 by the Union of India seeking amendment in the Company Petition. The prayers made in the amendment application were contained in Para 23 of the amended application, which are as follows:

"23. That it is submitted that in light of the facts and circumstances, set out above, it is most respectfully submitted that the liberty to amend the petition at this interim stage in Company Petition No. 3638/2018 is imperative to render, a complete and effective adjudication on the subject matter at hand. Therefore, at this stage, in order to consolidate the proceedings in the matter till date, the Applicant-Petitioner is most humbly praying for the following reliefs:

(A) Allow the interim amendment of the petition in the original Company Petition No. 3638/2018, for reading the contents of the following applications

and SFIO Interim Reports, as part and parcel of the main petition in Company Petition No. 3638/2018:-

- 1. 1st Interim Report dated 30/11/2018 submitted by the SFIO.*
- 2. Application filed by the Applicant-Petitioner vide Diary No. 3711/2018 on 03/12/2018 for impleadment of additional Respondents namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R.C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the 1st Interim Report submitted by SFIO.*
- 3. Application filed by the Applicant-Petitioner vide Diary No. 30457/2018, seeking reliefs under Sections 242(4), 246 r.w. 339 of the Companies Act, 2013 against the additional Respondent namely Mr. Hari Sankaran, Mr. Arun K. Saha, Mr. Ravi Ramaswami Parthasarthy, Mr. Vibhav Kapoor, Mr. K. Ramachandra, Mr. R.C. Bawa, Mr. Pradeep Puri, Mr. S. Rengarajan and Mr. Mukund Sapre, on the basis of the 1st Interim Report submitted by SFIO.*
- 4. MA No. 1576/2019 filed by the Applicant-Petitioner for impleadment of Mrs. Asha Kiran Bawa and Ms. Akanksha Bawa, wife and daughter of Mr. Ramesh C Bawa (Respondent*

No. 315), respectively, as Respondent Nos. 319 and 320, in the main Company Petition No.3638/2018.

- 5. MA No. 1577/2019 filed by the Applicant-Petitioner seeking extension of orders dated 03/12/2018 (as modified by this Hon'ble Tribunal's order dated 16/01/2019) to Respondent Nos. 319 and 320 restraining them from alienating their moveable and immoveable properties.*
- 6. 2nd Interim Report of IL&FS & its subsidiaries dated 28/05/2019 titled "Investigation Report of IL&FS Financial Services Ltd." submitted to the Applicant-Petitioner by SFIO.*
- 7. MA No. 2071/2019 file Applicant-Petitioner for impleadment of Additional Respondents Nos. 321 to 343, on the basis of the 2nd Interim Report submitted by SFIO.*

(B) Allow the amendment of the cause title of the Company Petition No. 3638/2018, to include Sections 246 r.w. Section 339, besides the already invoked Section 241 and 242, of the Companies Act, 2013.

(C) Permit the Applicant-Petitioner to further supplement/enlarge/ amend/modify the scope of the reliefs sought and prayers made in the amended petition in Company Petition No. 3638/2018, by filing any other documents or

applications in view of the extraordinary nature of the circumstances.

(D) Permit the Applicant-Petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or any other material brought to the notice of the Applicant-Petitioner, by the SFIO.

(E) Pass any other order/directions that this Hon'ble Tribunal deems fit and proper, in the circumstances as detailed in the instant Application.”

9. The above amendment application was heard by the NCLT and allowed by order dated 25.11.2019. The order of the NCLT allowing MA No.2696 of 2019 is as follows:

“MA 2696/2019 filed by the Union of India, represented by MCA through the Regional Director (Western Region), seeking to amend certain prayers in CO 3638/2018 and further to allow amendment of the cause title of the said CP and further permit the applicant/petitioner to further supplement/enlarge/amend/modify the scope of the reliefs sought and prayers made in the amended petition and lastly permit the applicant/petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or on the basis of any other material brought to the notice of the

*applicant/petitioner by the SFIO and for any other reliefs, **is allowed.***

This applicant is not objected by any of the Respondents herein and the law of impleadment is very clear and it allows the petitioner to implead all those parties against whom the relief is sought and whose presence would help them to effectively pursue their petition and help the Adjudicating Authority/this Bench/this Tribunal to adjudicate the matter in a more effective manner.

In view of the same, the MA 2696/2019 is allowed.”

10. As noted above, on 20.02.2024 when the application MA No.2070 of 2019 and 2071 of 2019 came for consideration, Appellants raised objection that they have not served with the amended copy of the petition. The NCLT adjourned the matter to 21.02.2024 and passed following order:

“ORDER

The newly impleaded parties raises a question and informs this Bench that the amended copy of the petition whereby it has not been served to them. The Ld. Counsel for the Applicant seeks some time to look into the matter and have the amended copy of the petition serve to the Respondents also. The Counsel for the Respondent informed that they have filed an application objecting the admission of compilation of documents placed earlier on the last hearing. Few of them have been numbered. Registry is directed to

number all these Applications and list tomorrow. Rest of the applications are list on Board on 21.02.2024.”

11. After passing of above order dated 20.02.2024, amended petition was served on the Appellant on 21.02.2024. The copy of amended Company Petition, which was served on the Appellant has been brought on the record as Annexure A-11. In Para 22 of the original petition reliefs (e) and (f) were added, which are to the following effect:

“e) Declare that the Respondents named in the Investigation Report dated May 28, 2019 namely Respondent Nos.2, 3, 9, 313, 314, 315, 321 to 335, 340 and 341 were knowingly parties to the fraudulent conduct of business of IL&FS Financial Services Limited and/or parties to the conduct of business of IL&FS Financial Services Limited with a view to defraud the creditors of IL&FS Financial Services Limited or any other person and in terms of Section 339 of the Companies Act, 2013 direct the said Respondents to pay such amounts as may be determined by this Hon'ble Tribunal to the creditors and others of IL&S Financial Services Limited plus interest thereon at such rate as this Tribunal may direct.

f) Permit the Petitioner to further supplement/enlarge/amend/modify the scope of the reliefs sought and prayers made in the amended Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of the circumstances and/or

on the basis of findings of the final investigation report in respect of Respondent No. 1 and its subsidiary companies or any other material brought to the notice of the Petitioner, by the SFIO.”

12. Amended reliefs contained in the CP No.3638 of 2018 is the bone of contention between all the parties. We have noticed above the amendment application which was allowed on 25.11.2019 and the prayers which were allowed to be amended in the Company Petition. The prayers (C) and (D) of the amendment application which was MA No.2696 of 2019, which was allowed on 25.11.2019, for ready reference are extracted as below:

“(C) Permit the Applicant-Petitioner to further supplement/enlarge/ amend/modify the scope of the reliefs sought and prayers made in the amended petition in Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of the circumstances.

(D) Permit the Applicant-Petitioner to seek detailed main reliefs by filing further application, at the appropriate stage, on the basis of findings of the final investigation report or any other material brought to the notice of the Applicant-Petitioner, by the SFIO.”

13. The question to be answered is as to whether prayers (C) and (D) as allowed on 25.11.2019 by the NCLT, empowered the Union of India to

amend/modify the reliefs sought in CP No.3638 of 2018 without filing any application and without obtaining any leave of the Court for amendment. The submission of Union of India is that under prayers (C) and (D), which was allowed on 25.11.2019, the Union of India was entitled to amplify its reliefs and relief (e) which has been added in the CP No.3638 of 2018 on 21.02.2024 was on the strength of above amendment allowed on 25.11.2019. Whereas, the contention of the Appellant is that prayers (C) and (D) which was allowed did not empower the Union of India to add any further relief in CP No.3638 of 2018 without filing any application or without any leave of the court.

14. We may now notice Rule 155 of the NCLT Rules, 2016 which contains general power of amendment. Rule 155 is as follows:

“155. General power to amend.- The Tribunal may, within a period of thirty days from the date of completion of pleadings, and on such terms as to costs or otherwise, as it may think fit, amend any defect or error in any proceeding before it; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding.”

15. The above rule clearly empowers the Tribunal to permit to amend necessary amendment for the purpose of determining the real question or issue raised in the proceeding. Section 424 of the Companies Act, 2013 deals with procedure before Tribunal and Appellate Tribunal. Section 424 is as follows:

“Section 424: Procedure before Tribunal and Appellate Tribunal.

(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act ¹[or of the Insolvency and Bankruptcy Code, 2016] and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

(2) The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act ¹ [or under the Insolvency and Bankruptcy Code, 2016], the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely –

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
- (b) requiring the discovery and production of documents;*
- (c) receiving evidence on affidavits;*
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document from any office;*
- (e) issuing commissions for the examination of witnesses or documents;*

- (f) *dismissing a representation for default or deciding it ex parte;*
- (g) *setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and*
- (h) *any other matter which may be prescribed.*

(3) Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,--

- (a) in the case of an order against a company, the registered office of the company is situate; or*
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.*

(4) All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)."

16. The above provision makes it clear that the NCLT is not bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided

by the principles of natural justice. Even though provisions of the Code of Civil Procedure are not strictly applicable, however, the principles contained therein are always the guiding factor for the procedure for proceeding before the Tribunal. Statutory provision of Order VI, Rule 17 of the Civil Procedure Code, 1908 are not applicable to the proceedings before the NCLT. When the petition is filed under Companies Act, 2013 under Section 241-242, pleadings which are submitted are record of the Court and no amendment or tinkering in pleadings filed by the parties can be allowed without leave of the Court. The first principle which is to be noticed is the fact that any amendment in the pleadings which is filed by a party under Section 241 and 242 of the Companies Act requires leave of the Court.

17. The submission which has been advanced by the Respondent, which has been accepted by the NCLT in the impugned order, is that prayer (C) and (D) which was allowed on 25.11.2019 fully covers relief (e) which has been added on 21.02.2024, which is the view taken by the NCLT in Para 51 of the judgment, which is as follows:

“51. The amendment application of Respondent No. 1 was allowed vide order dated July 25, 2019 giving Respondent No. 1 leave to amend, but the amendment, it appears, was not carried out. On February 20, 2024, we permitted Respondent No. 1 to amend the Petition as allowed by this Tribunal vide July 25, 2019 within one day. It is thus that all the amendments to the Petition, as allowed by this Tribunal was affected inter alia by incorporating prayer (e). We are thus of the view

that there is no infirmity in the action of Respondent No. 1 by introduction of prayer (e) to Company Petition No. 3638 of 2018. Prayer (e) amended into Company Petition No. 3638 of 2018 is within the purview of prayer (C) of the amendment application, as allowed.”

18. Now when we look into prayer (C) and (D), as extracted above, it is clear that under prayer (C) and (D), the Applicant/Petitioner was empowered/ permitted to further supplement/enlarge/ amend/modify the scope of the reliefs sought and prayers made in the amended petition in Company Petition No. 3638/2018, by filing any other documents or applications in view of the extraordinary nature of the circumstances. The prayer (C) clearly grants leave to the petitioner i.e. Union of India to further supplement/enlarge/ amend/modify the scope of the reliefs by filing any other documents or applications. Thus, filing of an application to further supplement/enlarge/ amend/modify the scope of the reliefs was clearly contemplated in prayer (C). Prayer (C) cannot be read to mean that Union of India was permitted to amend the reliefs without filing any application. The submission of Union of India that without filing application it was entitled to suo moto add prayers in the Company Petition has to be rejected. No party is entitled to add /amend its pleadings/ reliefs in a Company Petition filed under Section 241-242 without making an application. Present is a case where neither any application has been made nor any leave has been taken from the Court or the NCLT at any point of time permitted the Union of India to add further prayers in the original Company Petition as amended on 25.11.2019.

19. The order dated 20.02.2024, which we have already extracted, was an order passed where objection was raised by the Respondents (Appellants herein) that they have not been served with the amended copy of petition. On the next date i.e. 21.02.2024, amended petition was served on the Appellants where new prayer (e) was added. Order which came to be passed on 20.02.2024 cannot be said to be any grant of leave by NCLT to the Union of India to add further prayers in the CP No.3638 of 2018. The fact that Union of India itself has filed amendment application which was allowed on 25.11.2019, clearly indicate that the Union of India was aware that it has to file application for adding further relief. We have already noticed the prayers in the original Company Petition where initially Union of India itself has sought leave for filing further application for amendment, which prayer was contained in prayer (c). As was existing in the original petition, for ready reference, prayer (c) is as follows:

“(c) The Petitioner seeks the leave of this Hon'ble Tribunal to file supplement/enlarge/amend/modify the scope of the reliefs sought and prayers made in this petition by filing any other documents or applications in view of the extraordinary nature of the circumstances detailed in the petition above.”

20. The facts of the present case clearly indicate that neither there was any application filed for amendment nor any leave was granted by the NCLT for amendment.

21. Learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in **"Gurdial Singh & Ors. vs. Raj Kumar Aneja, (2002) 2 SCC 445"**. The above was a case where the Hon'ble Supreme Court was considering the provisions of Section 153 and Order VI Rule 17 of the Civil Procedure Code, 1908. It is useful to extract Para 13, 14 & 15 of the judgment:

"13. Before parting we feel inclined to make certain observations about the loose practice prevalent in the subordinate courts in entertaining and dealing with applications for amendment of pleadings. It is a disturbing feature and, if such practice continues, it is likely to thwart the course of justice. The application moved by the occupants for amendment in their written statements filed earlier did not specifically set out which portions of the original pleadings were sought to be deleted and what were the averments which were sought to be added or substituted in the original pleadings. What the amendment applicants did was to give in their applications a vague idea of the nature of the intended amendment and then annex a new written statement with the application to be substituted in place of the original written statement. Such a course is strange and unknown to the procedure of amendment of pleadings. A pleading, once filed, is a part of the record of the court and cannot be touched, modified, substituted, amended or withdrawn except by the leave of the court. Order 8 Rule 9 CPC prohibits any pleadings subsequent to the written statement of a defendant being filed other than

by way of defence to a set-off or counterclaim except by the leave of the court and upon such terms as the court thinks fit. Section 153 CPC entitled "General power to amend" provides that the court may at any time, and on such terms as to costs or otherwise as it may think fit, amend any defect or error in any proceeding in a suit; and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on such proceeding. Order 6 Rule 17 CPC confers a discretionary jurisdiction on the court exercisable at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The Rule goes on to provide that all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. Unless and until the court is told how and in what manner the pleading originally submitted to the court is proposed to be altered or amended, the court cannot effectively exercise its power to permit amendment. An amendment may involve withdrawal of an admission previously made, may attempt to introduce a plea or claim barred by limitation, or, may be so devised as to deprive the opposite party of a valuable right accrued to him by lapse of time and so on. It is, therefore, necessary for an amendment applicant to set out specifically in his application, seeking leave of the court for amendment in the pleading, as to what is proposed to be omitted from or altered or substituted in or added to the original pleading.

14. *In Pleadings: Principles and Practice by Jacob and Goldrein (1990 Edn.) it is stated that a party served with a pleading which is subsequently amended may not amend his own pleading and may rely on the rule of implied joinder of issue but*

"if he does amend his own pleading, he is not entitled to introduce any amendment that he chooses. He can only make such amendments as are consequential upon the amendments made by the opposite party" (at p. 193).

* * *

"In all cases except where amendment is allowed without leave, the party seeking or requiring the amendment of any pleading must apply to the court for leave or order to amend. The proposed amendments should be specified either by stating them, if short, in the body of the summons, notice or other application or by referring to them therein. In practice leave to amend is given only when and to the extent that the proposed amendments have been properly and exactly formulated, and in such case, the order giving leave to amend binds the party making the amendment and he cannot amend generally." (at pp. 206-07).

15. *The court may allow or refuse the prayer for amendment in sound exercise of its discretionary jurisdiction. It would, therefore, be better if the reasons persuading the applicant to seek an amendment in the pleadings as also the grounds explaining the delay, if there be any, in seeking the amendment, are stated in the application so that the opposite party has an opportunity of meeting such grounds and none is taken by surprise at the hearing on the application."*

22. The Hon'ble Supreme Court in the above case held that a pleading, once filed, is a part of the record of the court and cannot be touched, modified,

substituted, amended or withdrawn except by the leave of the court. Even though the said observation was made in reference to the Civil Procedure Code, however, the provisions of Section 153 of CPC and Rule 155 of NCLT Rules, 2016 reflect the same proposition. The judgment is attracted in the facts of the present case.

23. Judgement further relied by learned counsel for the Appellant is judgment of this Tribunal in **“Kochar Sung UP Acrylic Ltd. & Anr. vs. Sunny Kochar & Ors., 2024 SCC Online NCLAT 1134”**. In the above case, on basis of an order dated 07.06.2014, by which Court granted time for amending the petition, application was filed to directly place on record the amended petition on the basis of order dated 07.06.2024, which was objected and this Tribunal held that amendment cannot be incorporated without order of the Court. Para 2 and 4 of the judgment notices the facts and this Tribunal in Para 9 and 13 laid down following:

“9. The above chart would reveal that the amendments were substantial in nature though learned counsel for the respondent alleges it to be mere explanatory. Admittedly new reliefs have been added in the amended petition as also a new party being impleaded. Further the additional acts of oppression have also been added for which, of course, an opportunity ought to have been granted to the appellant to rebut such a move.”

“13. In the circumstances and on perusal of the comparative chart, we are of considered opinion that

for such substantial amendments, an application ought to have been moved with such proposed amendments and with a liberty to the appellants to rebut such proposed amendments and only thereafter, the amended petition ought to have been brought on record. The impugned order does not adhere to the principles of natural justice as it did not give an opportunity of being heard to the appellant. Thus we set aside orders dated August 21, 2024 and June 7, 2024 and hence we direct one more opportunity be given to the respondent herein to move an application for amendment, inclusive of the proposed amendments with a liberty to the appellant to respond to such application and thereafter the learned National Company Law Tribunal to decide it as per law.”

24. The above judgment fully supports the submission made by learned counsel for the Appellant. Learned counsel for the Appellant further pointed out that against order of this Tribunal dated 24.09.2024 in **Kochar Sung**, Civil Appeal Nos.12240-12241 of 2024 was filed in the Hon’ble Supreme Court, which was dismissed by order dated 18.11.2024, which is as follows:

“ORDER

These appeals are misconceived and completely unwarranted.

We do not find any good ground and reason to issue notice in the present appeals and, hence, the same are dismissed.

It will be open to the appellant, Sunny Kochar, to file an application for amendment and also an application seeking interim relief. Such applications, if filed, will be considered and decided on their own merits.

Pending application(s), if any, shall stand disposed of.”

25. The submission of learned counsel for the Union of India that relief (e) which has been added in CP No.3638 of 2018 is on the basis of amendment allowed on 25.11.2019 and the relief (e) added is fully covered by relief (C) which was already allowed, cannot be accepted. Relief (C) which was allowed on 25.11.2019 enabled the Union of India to further supplement/enlarge/amend/modify the scope of the reliefs sought and prayers made in the Company Petition but any further amendment or modification in the company petition by filing any other documents or applications was necessary, which is also reflected on bare reading of relief (C), which was allowed.

26. Learned counsel for the Union of India has also referred to the Additional Affidavit of Respondent No.323 and relied on Para 4, which Para 4 is as follows:

“4. At the further outset, I state that I do not recall being served with a copy of the amended Petition. Notably, the Petitioner has not amended the final reliefs sought in the captioned Petition and no final reliefs have been sought against me. Further no new facts, material or allegations have been introduced

against me and there is no allegation whatsoever that I have made any ill-gotten gains and/or have unlawfully been a beneficiary of any property/assets/funds belonging to IL&FS Financial Services Limited ("IFIN"). There is no property of IFIN in the form of unlawful gains in my hands and the issue of any non-existent property being required to be secured does not arise. As such, and in view of there being no such property of IFIN in my hands, there is no question of any final relief being sought or granted against me and as such there can be no interim relief in aid thereof."

27. The above affidavit, Para 4, on which reliance has been placed only mentions that Respondent No.323 by the said Additional Affidavit, which is sworn on 10.06.2023, has submitted that the Petitioner has not amended the final reliefs sought in the petition. Said affidavit in reply was filed in MA No.2070 of 2019 and we are of the view that said affidavit has no relevance in determining the issues, which has arisen in CA No.60 of 2024 and other applications filed by the Appellants. The objection that petitioner has not amended the petition cannot mean that on the basis of leave granted to serve amended petition Respondent - Union of India can add relief without filing any application and without obtaining order of the Court.

28. We, thus, are fully satisfied that NCLT committed error in rejecting CA No.60 of 2024 and other Company Applications filed by the Appellants. In CA No.60 of 2024, following prayers were made by the Appellant, which has been noticed by the NCLT in Para 2 of the impugned order, which is as follows:

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“2. CA 60 of 2024 is filed by Deloitte Haskins & Sells LLP, the Respondent in Company Petition 3638 of 2018 to seek following relief:

- a. That this Tribunal be pleased to declare that amendment to the Company Petition to the extent of inclusion of prayer clause '(e)' thereto has been carried out without the leave of this Hon'ble Tribunal and amounts to overreaching the Order dated 25th November 2019.*
- b. That Respondent No. 1/the Original Petitioner be directed to delete/strike off prayer clause '(e)' wrongfully incorporated in the amended Company Petition.*
- c. That pending the hearing and final disposal of the present Application the proceedings in M.A. 2070 of 2019 be stayed.*
- d. For ad-interim and interim reliefs in terms of prayer clauses (a) to (c) above.”*

29. We are satisfied that the Appellants have made out a case for allowing the prayers made in CA No.60 of 2024 and direct the Union of India to delete relief (e) incorporated in the amended Company Petition No.3638 of 2018. We, however, make it clear that allowing CA No.60 of 2024 and other applications filed by the Appellants praying similar relief shall not preclude the Union of India to file a fresh application for amendment of prayers in the company petition as per leave, which was granted on 25.11.2019 by the NCLT by allowing the amendment application MA No.2696 of 2019.

30. In result, all the appeals are allowed. The impugned order dated 22.07.2024 passed in CA No.60 of 2024 and other Company Applications is set aside. CA No.60 of 2024 and other applications filed by the Appellants are allowed. It is held that inclusion of clause (e) in the prayers in CP No.3638 of 2018 is unsustainable. We direct the Union of India to delete clause (e) from the prayers of the Company Petition as has been added by the Union of India by filing amended petition on 21.02.2024. We, however, make it clear that this order shall not preclude the Union of India from filing fresh application for amendment of prayers in CP No.3638 of 2019 as it may deem fit and proper and it is for the NCLT to consider any such application, if filed, in accordance with law.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

15th May, 2025

Archana

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