

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No 418 of 2021

Mr Surender Kumar Gupta and Others

Appellant(s)

Versus

J M Housing Limited and Others

Respondent(s)

ORDER

- 1 The appellants filed a petition under Sections 241 and 242 of the Companies' Act 2013, complaining of oppression and mismanagement. An ex-parte order was passed by the National Company Law Tribunal on 5 October 2020. Instead of moving the NCLT for vacating the ad-interim order, the respondents moved the National Company Law Appellate Tribunal in appeal. The NCLAT by its impugned order dated 18 December 2020 set aside the order of the NCLT on the ground that it was passed in violation of the principles of natural justice. Having made this observation, the NCLAT has also made certain observations on merits and remitted the matter to the NCLT for *de novo* consideration on merits after providing an opportunity of being heard to the parties.
- 2 We have heard Mr Rakesh Kumar, learned counsel appearing on behalf of the appellants and Mr Shyam Divan, learned senior counsel appearing for the first respondent with Mr P K Mittal.

- 3 The appropriate course of action for the respondents, faced with an ex-parte order of the NCLT would have been to apply to the NCLT for vacating or modifying the ad-interim order. The NCLAT was not correct in coming to the conclusion that the order of the NCLT has to be set aside on the ground that it was passed without furnishing to the respondent an opportunity of being heard. The essence of an ex-parte order is that it is passed without hearing the other side, in a situation where the adjudicating authority is satisfied that a case involving a grave urgency is made out. The adjudicating authority, before issuing an ex-parte ad-interim order, must be satisfied of the irretrievable injury which may be caused to the applicant if a protective order is not passed. A *prima facie* case and the balance of convenience must also be weighed in. The NCLAT has not dealt with the fundamental issue of whether the respondents had established an urgent case for the grant of ex-parte relief. The principle which has been propounded by the NCLAT is rather novel to civil jurisprudence and betrays a lack of comprehension of basic legal principles.
- 4 The NCLAT has remanded the proceedings back to the NCLT for fresh consideration on merits. The grievance of the appellants is that this would preclude them from applying for the grant of ad-interim relief during the pendency of the proceedings before the NCLT and the final hearing of the petition may take several years. The appellants should, in our view, be granted liberty to apply afresh before the NCLT for interim relief on the basis of the same application on which the NCLT passed its order. In order to enable the respondents to have an opportunity to controvert the application

for interim relief, we direct that they may file their reply, if any, within a period of two weeks from today. The NCLT shall reconsider the application for interim relief in terms of the above directions after hearing the parties. We clarify that we have not expressed any opinion on the merits of the rival contentions which shall be addressed before the NCLT. The order of the NCLAT shall accordingly stand set aside and be substituted by the directions which have been issued in the above terms. The NCLT shall take a final decision on the application of interim relief within a period of four weeks from the date on which a certified copy of this order is placed on its record.

- 5 The Civil Appeal is accordingly disposed of.
- 6 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[M R Shah]

New Delhi;
February 26, 2021
CKB

ITEM NO.16

Court 6 (Video Conferencing)

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.418/2021

SURENDER KUMAR GUPTA & ORS.

Appellant(s)

VERSUS

J.M. HOUSING LIMITED & ORS.

Respondent(s)

(With appln.(s) for IA No.20490/2021-EXEMPTION FROM FILING C/C OF
THE IMPUGNED JUDGMENT and IA No.20489/2021-EX-PARTE STAY)

Date : 26-02-2021 This appeal was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Mr. Rakesh Kumar, Adv.
Mr. Saurabh Mishra, AOR
Ms. Preeti Kashyap, Adv.

For Respondent(s) Mr. Shaym Divan, Sr. Adv.
Mr. P.K. Mittal, Adv.
Mr. Praveen Mittal, Adv.
Mr. Rajesh Goyal, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 The Civil Appeal is disposed of.
- 2 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Court Master

(Signed Reportable Order is placed on the file)