

ITEM NO.6

COURT NO.1

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

CONTEMPT PETITION (C) No.1195/2023 In C.A. No.6108/2023

ORBIT ELECTRICALS PRIVATE LIMITED

Petitioner(s)

VERSUS

DEEPAK KISHAN CHHABRIA AND ANR

Respondent(s)

Date : 18-10-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANOJ MISRA

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.
Mr. Ranjeet Kumar, Sr. Adv.
Mr. Kunal Mehta, Adv.
Mr. Abhinav Agrawal, AOR

For Respondent(s) Mr. Shyam Divan, Sr. Adv.
Mr. Maninder Singh, Sr. Adv.
Mr. Ramji Srinivasan, Sr. Adv.
Mr. Amit Jajoo, Adv.
Mr. Malak Manish Bhatt, AOR
Ms. Vatsala Pant, Adv.
Ms. Eshna Kumar, Adv.
Mr. Mandeep Singh, Adv.

Mr. Darius J Khambata, Sr. Adv.
Mr. Somasekhar Sundaresan, Adv.
Mr. Nitin Saluja, AOR

Dr. Abhishek Manu Singhvi, Sr. Adv.
Mr. Mahesh Agarwal, Adv.
Mr. E.C. Agrawala, Adv.

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

1 On 26 September 2023, while entertaining Civil Appeal No 6108 of 2023 and 6176 of 2023, this Court passed the following order:

- “1 The National Company Law Tribunal¹ dismissed the application filed by the first respondent for the grant of interim relief by an order dated 31 December 2019. The first respondent is in appeal before the National Company Law Appellate Tribunal². Admittedly, no interim relief operated in favour of the first respondent during the pendency of the appeal.
- 2 The appeal has been heard and orders were reserved by the NCLAT on 21 September 2023. However, while reserving orders, the NCLAT has directed the parties “to maintain status quo as was available prior to EOGM dated 03.05.2019” till the judgement is delivered. No reasons have been indicated by the NCLAT even *prima facie* for issuing the interim order, particularly in the context of the fact that there was no interim relief operating since the dismissal of the application for interim relief on 31 December 2019. It is admitted that no relief was obtained by the first respondent in the proceedings before the Bombay High Court, as well.
- 3 In the circumstances, we vacate the interim direction as noted above. The Annual General Meeting (AGM) of the company, Finolex Cables Limited is to take place on 29 September 2023. Any action which is taken on proposed resolution No 4 pertaining to the appointment of the Executive Chairperson shall be subject to the outcome of the appeal which is pending before the NCLAT.

1 “NCLT”

2 “NCLAT”

4 Subject to the aforesaid modifications, the appeals are allowed and the impugned order is set aside to the aforesaid extent.

5 Pending applications, if any, stand disposed of.”

2 On 13 October 2023, a contempt petition³ was moved before this Court on the ground that despite the order of this Court, the declaration of the result of the Annual General Meeting⁴ (the company is Finolex Cables Limited) was being deferred till a judgment was rendered by National Company Law Appellate Tribunal⁵ so as to defeat the order of this Court. Accordingly on 13 October 2023, this Court issued a direction in the following terms:

“5 The scrutinizer shall, in compliance with the order of this Court proceed to declare the result of the Annual General Meeting which was held on 29 September 2023 forthwith.

6 **The NCLAT shall proceed to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the Annual General Meeting has been declared.”**

(emphasis supplied)

3 The above direction makes it abundantly clear that (i) the scrutinizer was under an obligation to declare the result of the AGM which was held on 29 September 2023 forthwith; and (ii) NCLAT was directed to proceed to the declaration of its judgment after it was duly apprised of the fact that the result of the AGM has been declared.

3 Contempt Petition (Civil) No 1195 of 2023 in Civil Appeal No 6108 of 2023

4 “AGM”

5 “NCLAT”

4 In the afternoon session on 13 October 2023, this Court was apprised, in the course of an urgent mentioning, that despite the fact that the order of this Court was uploaded at 1.55 pm and the counsel appearing on behalf of the appellant produced the order before the NCLAT at 2 pm with a request that the judgment should not be delivered until the report of the scrutinizer is made available, the Bench of the NCLAT proceeded to deliver the judgment. In this backdrop, this Court observed that:

“4 The Court has been apprised of the fact that the Bench of the NCLAT consisting of Mr Rakesh Kumar and Dr Alok Srivastava proceeded to deliver the order. If what is stated is correct, this will clearly constitute the defiance of the order of this Court by the NCLAT.”

5 The Court also noted that the report of the scrutinizer was uploaded at 2.40 pm on 13 October 2023. This was after the order of the NCLAT was pronounced.

6 In this backdrop, this Court directed that an enquiry shall be conducted by the Chairperson of the NCLAT after due verification of the facts from the Judges who constituted the Bench of the Appellate Tribunal on the following aspects:

“(i) That the order of this Court dated 13 October 2023 passed in the morning session was drawn to the attention of the two Judges;

(ii) If that is so, the circumstances in which the Judges proceeded to pronounce the judgment despite the clear mandate of the order of this Court which was passed in the morning session.”

7 Pursuant to the order of this Court, Justice Ashok Bhushan, the learned Chairperson of the NCLAT has upon due verification from the Judges submitted a report to this Court. The report alludes to two separate statements which have been made before the Chairperson. The statement by Mr Rakesh Kumar, Member (Judicial) is recorded in paragraph 3 of the report in the following terms:

“Justice Rakesh Kumar, Member (Judicial) has given a response vide his letter dated 16.10.2023 which was received by me during lunch hours of 16.10.2023. In the response, the Member (Judicial) has stated “I may inform that on Friday in the Supplementary Cause List dated 13.10.2023 at 2 PM Company Appeal (AT) No 64/2020 (Deepak Chhabaria and Another) was listed under the caption “For Judgment” for its pronouncement. The said supplementary cause list was uploaded and published on one day earlier i.e. Thursday, 12.10.2023. My Lord is aware that normal procedure which is being followed in Bench of this Tribunal is that mentioning is entertained after the pronouncement of Judgment(s)/Order(s). I am not holding a constitutional post and as such I am required to follow the procedure. Accordingly as per procedure established here Judgment was pronounced on Friday i.e.13.10.2023.”

8 The statement by Dr Alok Srivastava, Member (Technical) to the Chairperson is in the following terms:

“On 13.10.2023, when the Presiding Judge and I entered the Court Room No II in the post-lunch session, it was jam-packed with lawyers and there was unusually high noise in the court room.

A total 26 cases in the Supplementary Cause List and 18 cases in the Daily Cause List were listed under the categories “For Judgment/For Admission (Fresh Cases)/For Admission (After Notice)/For Orders/for Hearing” which had to be taken up in the post-lunch session.

The practice adopted in NCLAT is to have “mentionings” after pronouncement of judgment(s) listed in the cause list.

As the proceedings for the post-lunch session commenced, and the “For Judgment” case CA(AT) No.64 of 2020 was called out (as is the practice to take up “For Judgment” cases in the beginning), some lawyers started to intervene on which the Presiding Judge commented that whatever you want to file, please bring it on record.

Thereafter, the pronouncement of the said judgment was completed.

It may be pointed out that no lawyer conveyed the judgment orally to me during the lunch hour when I was available in my office chamber, nor copy of the said order was provided to the Court Master. If this would have been done, the unfortunate situation may not have arisen.

I respectfully submit that I hold the Hon’ble Supreme Court in highest regard and esteem and there has been no intention to disobey the order of the Hon’ble Supreme Court.

I deeply regret that such a situation arose in the matter and offer sincere apology for the same.”

- 9 The Member (Technical) has adverted to the events which transpired before the NCLAT in the appeal on 13 October 2023. Paragraph 5 of the report reads as follows:

“I have taken the response given by the Judicial Member as well as the Technical Member. Company Appeal (AT) No.64 of 2020 was listed for pronouncement in Court No.II before the Bench constituted of Judicial Member and Technical Member.

After the Court assembled, Learned Counsel for the parties who were present in the Court sought to intervene to make a request to the Bench, however, the Bench proceeded to pronounce the judgment not permitting the mentioning by the Learned Counsels. Copy of the order dated 13.10.2023 was not given either to the Court Officer or to the Bench. The Bench did not accept the request made on behalf of the Counsel and proceeded to pronounce the judgment. The judgment was pronounced in ignorance of the order of the Hon'ble Supreme Court dated 13.10.2023."

- 10 The report of the Chairperson has also adverted to an order dated 16 October 2023 passed by the Bench of the NCLAT subsequently, in the following terms:

"16.10.2023: In aforesaid appeal on 13.10.2023, Judgment was pronounced. In the evening, the Registry brought to the notice an e-mail dated 13.10.2023 issued at 05.35 PM addressed to Registrar NCLAT enclosing therewith an order dated 13.10.2023, passed by Hon'ble Supreme Court in Contempt Petition (C) No.1195/2023 in C.A. No.6108/2023. After the order was produced we perused the same and we noticed that Hon'ble Supreme Court in its order in paragraph 1 sub-paragraph 6 had directed that Judgment in pending appeal shall be delivered by the NCLAT after it is duly apprised of the fact that the result of Annual General Meeting has been declared.

In view of the order of Hon'ble Supreme Court it is imperative for us to pass an order for Suspending the Judgment of this court dated 13.10.2023 till this appellate Tribunal is duly apprised of the fact that the result of the Annual General Meeting has been declared or subject to order/direction passed by the Hon'ble Supreme Court."

- 11 There are two affidavits before the Court at the present stage:
- (i) A "limited affidavit" which has been filed on behalf of the first

respondent; and

(ii) An affidavit in rejoinder on behalf of the petitioner.

12 We have heard Mr Mukul Rohatgi, Dr Abhishek Manu Singhvi, Mr Ranjeet Kumar, senior counsel on behalf of the petitioner and Mr Shyam Divan and Mr Ramji Srinivasan, senior counsel on behalf of the contesting respondents. Mr Darius Khambata, senior counsel has appeared on behalf of the scrutinizer.

13 Mr Mukul Rohatgi, senior counsel appearing on behalf of the petitioner reiterates, as was submitted before this Court when it passed its order dated 13 October 2023 in the second session that Mr Ankur Saigal, counsel appearing on behalf of the petitioner had produced the order of this Court before the NCLAT at 2 pm with a request that the judgment should not be delivered until the report of the scrutinizer is made available. This was specifically recorded in paragraph 3 of the order dated 13 October 2023.

14 Mr Ramji Srinivasan, senior counsel appearing on behalf of the appellant before the NCLAT has fairly stated before this Court that the order of this Court which was passed on 13 October 2023 was duly communicated to the contesting parties. Moreover, Mr Ramji Srinivasan also stated that at about 2.15 pm when the Bench of the NCLAT assembled, he personally sought to tender a copy of the order passed by this Court on 13 October 2023 in the morning session to the Bench of the NCLAT and apprised the Bench of the

fact that this Court had specifically directed that the judgment of the NCLAT shall be delivered only after the Court was apprised of the results of the AGM. However, as things stand, the Bench of the NCLAT proceeded to declare the judgment. Mr Ramji Srinivasan further states that he apprised the Bench that the representative of the petitioner herein had already voted against the resolution at the AGM.

- 15 Apart from the statements which have been made by the senior counsel before this Court, the affidavit which has been filed by the first respondent contains the following averments:

“On 13.10.2023, the Contempt Petition was preliminary heard by this Hon’ble Court around 12.20 pm. On 13.10.2023, passed its first order on that date, which became available at around 1.55 pm (“First Order”). This Hon’ble Court directed Respondent No.2 to declare the result of the AGM which was held on 29.09.2023 forthwith. This Hon’ble Court directed that the Learned NCLAT shall proceed to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the AGM has been declared.

The directions as dictated in open court by this Hon’ble Court in the First Order were communicated to Respondent No.1 through his Advocates at around 12.30 pm. Respondent No.1 immediately called the Company Secretary of FCL, to convey the directions to Respondent No.2.”

- 16 The affidavit further states that on 13 October 2023, the report of the scrutinizer was prepared and was sought to be uploaded on the website of the Stock Exchanges in compliance of the order of this Court, but as the official servers of BSE Limited and National Stock Exchange of India Limited

took time to respond, the report was uploaded at 2.41 pm and 2.44 pm respectively. The first respondent has disclosed what transpired before the NCLAT after the order of this Court dated 13 October in the following terms:

“At around 02.15 pm, when the NCLAT Appeal was called out ‘for judgment’, the Ld. Senior Counsel representing me informed the Learned NCLAT about the First Order and the directions contained therein. It was also informed to NCLAT that petitioner had voted against resolution No.4. It was also informed that the Consolidated Scrutinizer’s Report was being uploaded. The Learned NCLAT proceeded to pronounce the operative part of the Judgment dated 13.10.2023 (“NCLAT Judgment”), which occurred at around 2:15 pm. The NCLAT Judgment was only made available on the official website of the Learned NCLAT, at 4.30 pm and it was only after that time that it was even made public.” (emphasis supplied)

- 17 We will first deal with the report which has been submitted before this Court by the Chairperson of the NCLAT. The Presiding Judge, Mr Rakesh Kumar, Member (Judicial) states that the appeal was listed for pronouncement of judgment in the supplementary cause list which was uploaded on 12 October 2023. He states that the normal procedure which is followed in the tribunal is that mentioning is entertained after the pronouncement of judgments/orders and since he is “not holding a constitutional post” as such he is “required to follow the procedure”. The Member (Judicial) has therefore stated that “as per the procedure established here” the judgment was pronounced on 13 October 2023.
- 18 The Member (Technical) on the other hand states that when the proceedings were called out in the post-lunch session in the case which was listed for

judgment, “some lawyers started to intervene on which the Presiding Judge commented that whatever you want to file, please bring it on record”, after which, the pronouncement of the judgment was made. The Member (Technical) has tendered an unconditional apology to this Court. These facts are conspicuously absent in the statement of the Member (Judicial).

- 19 Neither the statement of the Member (Judicial) nor the statement which has been tendered by the Member (Technical) refer to the fact that the order dated 13 October 2023 passed by this Court in the morning session was communicated to the Bench of the NCLAT together with the directions which were contained therein. In paragraph 3 of the order dated 13 October 2023 passed in the afternoon session, the statement of senior counsel appearing on behalf of the petitioner that the Bench of the NCLAT was apprised of the order of this Court in the afternoon session was recorded. This is also the clear case of the first respondent on affidavit since he has stated that around 2.15 pm when the NCLAT appeal was called out for judgment, the senior counsel representing him informed the Bench of the NCLAT of the order which was passed by this Court earlier and the directions which were contained therein. Neither the statement of the Member (Judicial) nor the statement of the Member (Technical) reveals this to the Chairperson of the NCLAT. In fact, the statement of the Member (Judicial) would seem to indicate that no mentioning is permitted at all before the declaration of judgment as a consequence of which the judgment was delivered without

hearing any counsel on the order passed by this Court. Likewise, the statement of the Member (Technical) indicates that while some lawyers had attempted to intervene, the Presiding Officer had not permitted such an intervention and had proceeded to pass the judgment. The matter does not rest there.

20 On 16 October 2023, the Bench of the NCLAT passed an order recording that the Registry of the Tribunal had brought to its notice an email dated 13 October 2023 issued at 5.35 pm enclosing a copy of the order dated 13 October 2023 passed by this Court. The NCLAT has stated that after the order was produced, it had perused it and noticed that this Court had issued directions to the effect that judgment in the pending appeal shall be delivered by NCLAT after it is duly apprised of the fact that the result of the AGM is being declared. The NCLAT has proceeded to pass an order for suspending the judgment which it pronounced on 13 October 2023.

21 We are constrained to observe that the order dated 16 October 2023 purports to create an impression that the Bench of the NCLAT was apprised of the order passed by this Court for the first time when the email was received at 5.35 pm on 13 October 2023. This *prima facie* is a falsehood since it has emerged before this Court, both on the statements of the counsel as well as on affidavit that the Bench of the NCLAT was duly apprised of the order passed by this Court on 13 October 2023 in the morning session when the appeal was taken up at around 2.15 pm for pronouncement of

judgment.

- 22 We are, therefore, *prima facie*, of the view that the Members of the NCLAT have (i) failed to disclose facts to the Chairperson of the NCLAT who was under a duty to carry out an enquiry in pursuance of the judicial order passed by this Court; and (ii) incorrectly sought to create a record in the order dated 16 October 2023 that the order of this Court was drawn to the notice of the Bench only at 5.35 pm on 13 October 2023.
- 23 We will deal with the consequential steps which should be taken by this Court and the action which has to be adopted in pursuance of what has transpired in these proceedings.
- 24 The manner in which the NCLAT has proceeded to deliver judgment in defiance of the directions of the Court is unbecoming of a judicial tribunal. NCLAT is subject to the jurisdiction of this Court. It was duty bound to comply with the order of this Court. It was apprised of the fact that this Court had passed an order in the morning session on 13 October 2023 to the effect that it shall proceed to declare judgment after being apprised of the results of the AGM. The statements made by the Member (Judicial) before the Chairperson of NCLAT seem to indicate that he did not permit mentioning in accordance with the practice of his Bench to the effect that mentioning is taken up after judgments are delivered. The Member (Technical) indicates that while some lawyers had sought to intervene, the Presiding Judge had not heard them. Both these statements are belied by the fact that it is common ground

between the parties, who are seriously contesting a dispute before NCLAT, that the Bench was duly apprised of the order of this Court when it assembled at around 2.15 pm before the judgment was pronounced. Moreover, the passing of the further order on 16 October 2023 compounds the situation. If indeed the judgment had been declared after the NCLAT was duly apprised of the result of the AGM, there was no occasion for it to suspend the operation of its judgment. The Members forming part of the Bench have not purported to say so.

25 In this view of the matter, insofar as the *lis* is concerned, we are of the view that it is necessary for this Court to ensure that the dignity of the Court is maintained. A party cannot be allowed by recourse to devious means to obviate compliance with a solemn order passed by this Court.

26 We accordingly, in exercise of the jurisdiction under Article 142 of the Constitution, direct that the judgment of the NCLAT dated 13 October 2023 shall stand set aside without this Court expressing any opinion on the merits. We consequently direct that the appeal shall be heard afresh by a Bench presided over by the Chairperson of NCLAT. We clarify that we have not entered any finding on the merits of the rival contentions of the parties in the pending appeal. This Court has been constrained to pass this order in extraordinary circumstances which we have referred to above.

27 We are *prima facie* of the view that Shri Rakesh Kumar, Member (Judicial)

and Dr Alok Srivastava, Member (Technical) of the NCLAT are liable to be proceeded against in the exercise of the contempt jurisdiction of this Court. We accordingly issue a notice to show cause to Mr Rakesh Kumar, Member (Judicial) and Dr Alok Srivastava, Member (Technical) of the NCLAT to show cause as to why they should not be committed under the Contempt of Courts Act 1971 for having willfully defied the directions of this Court. They shall remain personally present before this Court on 30 October 2023 at 10.30 am, by which date, they shall submit their replies to the notice.

- 28 The scrutinizer shall file their explanation in response to the notice which has been issued by this Court on or before the next date of listing and shall remain personally present before this Court on that day.
- 29 List the matter on 30 October 2023.

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

(SAROJ KUMARI GAUR)
Assistant Registrar