NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
IA No.1812/2025
in
Company Appeal (AT) (CH) No. 162/2025
(IA Nos. 1753 & 1754/2025)

In the matter of:

Mr. Rajeev Vidhyadharan @ Rajeev Anchal,
Guruchandrika, Snehapuram, Santhigiri P.O.,
Koliyakode Village, Keezthonnakkal,
Thiruvananthapuram – 695 589.

M/s. Guruchandrika Builders & Property (P) Ltd.
Represented by its Managing Director
Mr. Rajeev Vidyadharan alias Rajeev Anchal,
Registered office at Jatayu Earth's Center, Chadayamangalam,
Kollam – 691 534. … Appellants
V
P J Mathews,
Nedumchira Thottathil,
Adichanalloor P.O.,
Kollam – 691 574.

Davidson Vattupparamplil George,
Vattupparampil House, Mammoodu P.O.,
Changanassery, Kottayam – 686 553
Rep. by Mr. P J Mathews, the Power of Attorney Holder

Panicker Praveen Raj Gopi
7A, Royal Heights, Opposite NSS College,
NF Gate Road, Thripunithra,
Ernakulam – 682 301,
Rep. by Mr. P J Mathews, the Power of Attorney Holder

Jayalal Balarajan,
Kurathathusseril House, Pathiyoor P.O.,
Bhagavathipadi, Alappuzha – 690 552.
Rep. by Mr. P J Mathews, the Power of Attorney Holder

Dennis Lavin Noronha
B-5, Marve Queen -1, 1st Floor,
Kharodi, Near Jurassic Park Restaurant,
Marve Road, Malad West, Mumbai – 400 095.
Rep. by Mr. P J Mathews, the Power of Attorney Holder

Jones Mathews,
Nedumchira Thottathil,
Adichanalloor P.O., Kollam – 691 573,
Rep. by Mr. P J Mathews, the Power of Attorney Holder

Juanita Joseph Thoduparambil,
7/11, Assisi Nagar, P L Lokhande,
Marg. Chembur, Mumbai – 400 043.
Rep. by Mr. P J Mathews, the Power of Attorney Holder

Lalkumar Somarajan,
APD No. 5A, Cordial Casilda, Kochulloor,
Medical College P.O., Ulloor – 695 011,
Rep. by Mr. P J Mathews, the Power of Attorney Holder

Jatayupara Tourism (P) Ltd.,
at Jatayu Earth's Center, Jatayu Junciton,
Chadayamangalam, Kollam – 691 534.

Jatayu Sculpture & Museum Private Limited,
Having its registered office at Jatayu Earth's Center,
Jatayu Junciton, Chadayamangalam,
Kollam – 691 534.

P R Narayanan Nair,
Gokulam A -18,
Tennis Club Enclave, Kowdiar,
Thiruvananthapuram – 695 003.

The State of Kerala,
Rep. by the Chief Secretary, Government Secretariat,
Thiruvananthapuram – 695 001.

Director, Eco-Tourism,
Department of Tourism,
Government of Kerala, Park View,
Thiruvananthapuram – 695 033.

Prince Ravi,
Chartered Accountant,
GSPU & Associates, T C 12/1443(2), First Floor,
Syam Scion, PMG Law College Road,
Vikas Bhavan P.O., Thiruvananthapuram – 695 033.

Sajee P Nair,
Sreesankaram, 1st Floor, KRA 74,
Opp. Kathamukku P.O., Athani Lane,
Thiruvananthapuram – 695 024.

Rajeev Bhaskaran,
Thulasi Bhavan,
Chadayamangalam, Kollam – 691 534.

Krishnan Koodacheri
Sreekrishna House, Cherusseri Nagar,
Pallikulam, Chirakkal P.O.,
Kannur – 670 001.

Vasu Jayaprakash,
Ariyannoor House, Kaitha South,
Kannamangalam, Chettikulangara,
Mavelikkara, Alappuzha – 690 106.

Ajit Kumar Balaraman,
4B, 29 Unity Apartment, BAF Hira Nagar,
Kharodi Marve Road, Near Fire Station,
Malad (West), Mumbai – 400 095.

Ajay Balaraman,
4B, 29 Unity Apartment, BAF Hira Nagar,
Kharodi Marve Road, Near Fire Station,
Malad (West), Mumbai – 400 095.

Haridas Krishnankutty,
Rarath House, Peruvemba P.O.,
Palakkad – 678 531.

Mathew Pandakasalail Thomas,
Pandakasala, Kampamkodu,
Vayakkal P.O., Valakam, Kollam – 691 532.

C Mohanan Pillai,
Krishna Priya, Podiyattuvila P.O.,
Valakom, Kollam – 691 532.

M R Bhat,
Administrator appointed by the Hon'ble Tribunal
in CP (CA) No. 21 / KOB / 2020,
Having office at No. 1-4-65/3, Street No. 8,
Habsiguda, Hyderabad – 500 007.

Shawn Jeff Christopher,
Having office at J VR & Associates, Charted Accountants,
Willmont Park Business Centre,
Pallimukku, Kochi, Enrakulam.

Jatayupara Adventure Tourism (P.) Ltd.,
Having its registered office at
Jatayu Earth's Center, Chadayamangalam,
Kollam – 691 534.

Guruchandrika Studios Private Limited
Anugraham, T C 15/601, Plot No. 51,
Udarasiromani Road, Vellayambalam,
Thiruvananthapuram – 695 010.

Unique Caves (P) Ltd.,
Jatayu Earth's Center, Chadayamangalam,
Kollam – 691 534.

Padmam Rajeev
12/600 (18/799), Guruchandrika,

Santhigiri P.O., Pothencode,
Thiruvananthapura – 695 589.

Gargi Rajeev
12/600 (18/799), Guruchandrika,
Santhigiri P.O., Pothencode,
Thiruvananthapura – 695 589.

Padmam Mavilaveedu Sahadevan @ Shaji Rajeev
12/600 (18/799), Guruchandrika,
Santhigiri P.O., Pothencode,
Thiruvananthapura – 695 589. **… Respondents**

Present :

For Appellants : Mr. NP Vijaykumar, Advocate
For Respondents : Mr. Bijoy P Pulipra, Advocate for R2-R8
Mr. Sankar P Panicker, Advocate for R9

Judgment
(Hybrid Mode)

Per: Justice Sharad Kumar Sharma, Member (Judicial)

For deciding the issue of limitation as it involved consideration in the instant Company Appeal, that has been preferred by invoking Section 421 of the Companies Act, 2013, an initial reference to certain dates become relevant: -

(i) On 22.10.2024, CP(C/Act)/21/KOB/2020 was decided by the Learned NCLT, Kochi Bench, resulting into passing of an order (which is impugned in the instant company appeal) to the effect that, the dues of the civil contractor, Mr. PT Mathew, amounting to Rs.3.21 crores, shall be settled expeditiously i.e., by 31.10.2024. Besides, that it also contained a direction that ICA (i.e., an Independent Chartered Accountant) was also

to verify and approve the payment and report the disbursement of the amount on or before 01.11.2024.

(ii) The Appellant, during the pendency of the CP, had preferred a **Writ Petition (C) No.36441/2024**. In the Writ Petition, the Petitioner had put a challenge to Exhibits P 17 & 18, as contained therein, which were the order of NCLT dated 25.06.2024, as it was passed in IA (C/ACT)111/KOB/2024, preferred in IA (C/ACT)03/KOB/2023 in CP/21/KOB/2020.

(iii) Another order, which was also challenged, was that of NCLT order dated 24.07.2024, as passed in IA No.131/KOB/2024. The Writ Petition as against these orders were preferred by the Appellant by filing the same before the Hon'ble High Court of Kerala on 15.10.2024.

(iv) The Writ Petition itself, was filed by the Appellant **after a lapse of 111 days**, that itself was beyond the limitation prescribed under Companies Act, i.e., upper limit of 90 days, after including the condonable period of 45 days, if calculated from the order of 25.06.2024, and 83 days if calculated from order 24.07.2024.

(v) It is during the pendency of the Writ Petition, that the impugned order of 22.10.2024 was passed by the Learned Adjudicating Authority.

(vi) In accordance with the records that, has been placed before us, a certified copy of the order was made available on 19.09.2025.

(vii) The Appellant, on 06.11.2024, filed an amendment application, being IA No.2/2024, in the Writ Petition seeking modulation of the relief clause for challenging the order of 22.10.2024, i.e., impugned order in the instant Company Appeal.

(viii) The said amendment application was allowed by the Hon'ble High Court by the order of 12.11.2024.

(ix) However, on 24.03.2025, the Writ Petition(C) No.36441/2024 was dismissed.

(x) The Hon'ble High Court of Kerala, while passing the Judgment of 24.03.2025, while referring to ***Swiss Ribbons Private Limited and Another Vs Union of India and Others, reported (2019) 4 SCC 17,*** observed that there is an alternative statutory remedy available to the petitioner therein under Section 421 of the Companies Act, 2013. The relevant observations made by the Hon'ble High Court in its judgment of **24.03.2025**, contained in its para 8, is extracted hereunder: -

> *"8. As held by the Apex Court in Swiss Ribbons Private Limited and Another v. Union of India and Others [(2019) 4 SCC 17], and series of other decisions, the Insolvency and Bankruptcy Code is enacted with the objective of consolidating the laws relating to the reorganisation and insolvency resolution of corporate persons.* ***The very purpose of the enactment will be defeated if the constitutional courts start interfering with the proceedings and orders passed by the NCLT at every stage, more so, when Section 421 of the Companies Act provides an appeal to NCLAT against the order of the NCLT.*** *In the case at hand,*

the petitioners have preferred appeal against Ext.P11 order. ***The challenge on the ground that opportunity of hearing was not provided also cannot be countenanced, since sufficient opportunity is seen granted****. In fact, even in the judgment passed in Contempt Case No.2967 of 2024, this Court has recorded that the Company Petition along with the Applications was posted for hearing on 30.05.2024, 13.06.2024, 25.06.2024, 30.07.2024 and 29.08.2024. The challenge against Ext.P20 is liable to be rejected also for the reason* ***that, in the Contempt Case, this Court had directed the petitioner to move the Tribunal itself****, if they have any grievance about the joint report of the Administrator and Chartered Accountant. As contended by the Counsel for the 10th respondent, the non-production of a copy of the order passed in COC No.2967 of 2024 can only be perceived as an attempt to suppress material facts. The contention that the impugned orders amount to review of Exts.P10 and P11 cannot also be countenanced, since the discretion is vested with the Tribunal to pass necessary orders to ensure proper functioning of the Project till the company petition is decided. The contention based on Section 420 is rejected as baseless, since none of the impugned orders amounts to amendment of Ext. P11.*

For the aforementioned reasons, the writ petition is dismissed."

(xi) A Contempt Case, being **Contempt Case No.2967/2024** referred above was too dismissed on **15.11.2024**, observing that the Appellant had a remedy before NCLAT. Relevant para 4 of the order dated 15.11.2024 is extracted hereunder: -

"4. The grievance put forward is that the respondents did not place before the NCLT the fact that the directions of this Court with regard to reconsideration of the order Ext.P12 is still not complied with and orders regarding remuneration

cannot be passed without completing the hearing of the said petition (CP/21/KOB/2020). The counsel submits that this amount to contempt since the report stating about the remuneration has been filed without any notice to the petitioners and the order has been passed without hearing the petitioners. ***Any grievance against Annexure-4 order needs to be challenged before the appropriate Forum and cannot be the subject matter of a challenge in a contempt application****. In the contempt application the Court is only concerned with the conduct of the respondents which is alleged to be contemptuous."*

(xii) It is aggrieved against this Judgment of Learned Single Judge of Hon'ble High Court of Kerala dated 24.03.2025, rendered in the Writ Petition, the Appellant preferred the Writ Appeal on 18.05.2025 before the Division Bench of Hon'ble High Court of Kerala, being **Writ Appeal No.1224/2025**. This Writ Appeal was also dismissed by an order passed on **09.06.2025**, wherein the Division Bench observed that, the Appellant has got a remedy before NCLAT and had given liberty that the Appellate Tribunal shall not dismiss the Company Appeal on delay, and hence the Writ Appeal was dismissed on 09.06.2025 with the following observations: -

"10. In the circumstances, without entering into the merits of the case, ***the appellants are granted liberty to approach the NCLAT in appeal within a period of 15 days from today****. If the appellants approach the Appellate Tribunal within the aforesaid period, the period of limitation prescribed to prefer an appeal to*

the Appellate Tribunal shall not come in the way of filing the appeal. The learned Appellate Tribunal shall not dismiss the appeal on the ground of delay and proceed to hear the appeal on merits. It is made clear that if the appeal is not filed within the aforesaid period, then the NCLAT may entertain the appeal subject to law of limitation and proceed to decide the appeal as expeditiously as possible.

With the aforesaid direction, the writ appeal stands finally disposed of."

(xiii) The Appellants' endeavour to further delay the proceedings did not cease at that juncture, when the Division Bench too, had dismissed the writ appeal on 09.06.2025. But rather on 23.06.2025, he filed a Review Petition, being **Review Petition No.769/2025**. This Review Petition too was dismissed with certain clarifications on **17.07.2025**. The relevant observation made by the Division Bench, while dismissing the Review Petition, is extracted hereunder: -

"8. In our considered opinion, in paragraph 10 of the impugned judgment, we have in specific terms mentioned that "without entering into the merits of the case, the appellants are granted liberty to approach the NCLAT in appeal within a period of 15 days from today." ***Therefore, certain observations made in paragraph 8 with regard to attempt to suppress material facts deserves to be deleted as that observation may come in the way of deciding the appeal before the NCLAT****. Accordingly, the direction contained in paragraph 8 that "the learned Single Judge was right in holding the appellants have made an attempt to suppress material facts" is hereby deleted. In case, the appeal is preferred as directed by this Court, then the NCLAT shall not be prejudiced by the observations made in the said judgment. Accordingly the petition*

stands allowed. This order be read in conjunction with judgment dated 09.02.2025 passed in WA No.1224/2025."

(xiv) The Judgment of Review dated 17.07.2025 was rendered, and it was thereafter only, the Appellant had preferred the instant Company Appeal by filing the same before the Registry of this Appellate Tribunal on 24.06.2025. It was reported by the Registry of this Appellate Tribunal, the Appeal was delayed by 163 days.

(xv) Despite repeated information being given by the Registry of this Appellate Tribunal, the defect was not rectified. Hence, the Registry has reported a defect that, the Company Appeal suffers from a delay of 89 days in refiling of the Company Appeal.

2. Under the aforesaid factual backdrop, three major issues that crop up for consideration before us, and which are required to be answered, because, often we are facing such a type of awkward situation where our judicial proceedings are being directed to be monitored and regulated by the directions given by the Hon'ble High Courts, it creates a very awkward situation, raising a question as to whether at all under those given set of situation under the directives, whether we are bound by the directions of the Hon'ble High Court or we have to exercise our independent adjudicatory rights vested with us as per the provisions contained under the Companies Act which is also to be read with I & B Code. In view of the aforesaid, the following major points, which are required to be considered by us, are:-

(i) As to what would be the extent and expanse of the powers vested with the Hon'ble High Courts, under Articles 226 and 227 of the Constitution of India, to regulate the proceedings before the NCLAT, which has an effect touching the merits of the Company Appeal.

(ii) As to under what given set of circumstances the benefit of Section 14 of the Limitation Act, 1963, could be invariably extended to the litigants or the party to the proceedings who route their approach before the Appellate Jurisdiction of NCLAT, after exhaustion or resorting to the recourse by approaching the Writ Jurisdictions? We would be dealing with this question exclusively confined to our findings on Section 14 of the Limitation Act, 1963, and as to under what exceptional circumstances the benefit of the same could be extended to the litigants?

(iii) What is the intention of the law in respect to the aspect of limitation, in relation to the proceedings before this Appellate Tribunal?

3. Our past exposure and experiences, which we had, while gathering from the proceedings those have been carried before us, in an Appellate Jurisdiction either in exercise of our appellate powers under Section 421 of the Companies Act, 2013, or under Section 61 of the I & B Code, 2016, is that at times we face a very awkward situation where part of the merit decision of the Company Appeal, has already been taken by the Hon'ble High Court, while dealing with

the very vital aspect of limitation and then issuing a direction for us to decide the appeal on its merit by already condoning the delay by itself. This was one of the questions, which cropped up for consideration before us, being directly involved in the instant Company Appeal too. In order to answer the aforesaid question as to, what would be the scope and expanse of power of the Hon'ble High Court to issue a direction to us, which may have an inherent feature of affecting or regulating our adjudicatory jurisdiction, which we are otherwise under law are exclusively supposed to be exercised by the Appellate Tribunal within the ambit and exercise of our powers under the Companies Act, I & B Code and the Rules and Regulations framed thereunder. For that purpose, we have to scrutinise the two provisions of the Constitution of India, which provide a stepping stone for any of the litigants or an aggrieved person to have an access to judicial remedies by approaching the constitutional courts for redressal of the grievances, being aggrieved against any of the orders, which are passed by the Courts/Tribunals or the adjudicatory bodies created under the law. For the said purpose, we have to scrutinise the provisions contained under Article 226 of the Constitution of India. Article 226 of the Constitution of India reads as under: -

> ***"226. Power of High Courts to issue certain writs.---*** *(1) Notwithstanding anything in article 32 every High Court shall have powers, throughout the territories in relation to which it exercises jurisdiction, to issue to any person, or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature*

of habeas corpus, mandamus, prohibition, quo warranto certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority of the residence of such person is not within those territories.]

[(3) Where any party against whom an interim order whether by way of injunction of stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period or, as the case may be, the expiry of the said next day, stand vacated.]

[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32]"

4. Though, being conscious that the provisions contained under Article 226 of the Constitution of India, it has got a blend of having an overriding effect to any other law for timely enforce; but if the language of the said provision is taken into consideration, the Hon'ble High Court, which exercises its power under Article 226 of the Constitution of India, has had to exercise its powers restricted to its territorial jurisdiction or even it is extended to the proceedings which are amenable before it. So far as the statutes relating to the Company Laws are concerned, pertaining to provisions contained under Sections 421, 408 & 410 of the Companies Act, 2013, the Tribunals or the Appellate Tribunals, for that purpose, we exercise our territorial jurisdiction over the NCLT's created in different states whose jurisdiction is vested with this Appellate Tribunal, to scrutinise the propriety of the Judgments and Orders rendered by it, in exercise of our Appellate Jurisdiction. That means the jurisdiction of the NCLAT is wide enough, and it expands over more than one state, where the NCLT's are functional and are being put under its jurisdiction, which are brought under its domain of exercising the Appellate Jurisdiction, and it will be absolutely too preposterous to think of that, since for example, the Appellate Jurisdiction of the NCLAT, Chennai Bench, we exercise our Appellate Jurisdiction over as many as NCLT's which are functioning in five states. In those situations, all Judgments

or Orders, which are passed by the NCLT's of these five states and the connected union territories, they are amenable to the Appellate Jurisdiction of the Chennai Bench. It can be taken that, since these NCLT's are functioning in the respective jurisdiction in relation to the particular state where they are located, it can be thought of that in those eventualities, all the respective Hon'ble High Courts, of each of the states could compositely exercise their powers over the NCLAT, although which is not falling under its territorial jurisdiction, but it still could be brought within its domain by the respective Hon'ble High Courts by passing directions to deal with the matters in the particular manner.

5. The language of Article 226 of the Constitution of India it specifically confines the exercise of jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India, restricted to its territorial jurisdiction, in relation to which it exercises its jurisdiction. In exceptional circumstances of the case at hand, the question, which would require consideration and is required to be probed is as to whether, when we are exercising the Appellate Jurisdiction over the NCLT of five states, whether the language used of exercise of territorial jurisdiction as vested with the Hon'ble High Courts under Article 226 of the Constitution of India, could be extended to govern the jurisdiction of NCLAT also which is otherwise territorially located in the state of Tamil Nadu. It is because of the reason that the jurisdiction of the Hon'ble High Court under the special statutes of the Companies Act or for that matter under the I & B Code has been exclusively ousted to be applied, since the statute has specifically carved out

a forum for the redressal of the grievances by any person or party aggrieved by an order passed by the NCLT irrespective of the territory of the particular state in which they are located and it has been left open for them to approach to the NCLAT within whose territorial domain, the NCLAT of the particular state falls, in these peculiar situation where the Appellate Jurisdiction is exclusively made and vested to be exercised by either of the two benches of the NCLAT. The jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India would be deemed to be ousted until or unless there is an apparent breach of any of the fundamental rights protected by Constitution of India, which are conferred and covered by Article 226 of the Constitution of India, as contained under Part 3 of the Constitution of India.

6. Upon a judicial scrunitisation of the orders passed by the NCLT, when it adjudicates upon a particular dispute, depending upon the facts and circumstances of a particular case, any of the adjudication made thereon even take for example, if it is remotely presumed that the judgment/order happens to be in derogation of the principles of Natural Justice then, to that limited aspect cannot in itself make the proceedings of the NCLT of different states, to be amenable by the respective Hon'ble High Courts of the state under Article 226 of the Constitution of India. Particularly, when they are ousted with the clear intention of the statute itself because, the decision taken by the NCLTs they will not fall for consideration under any of the exceptions carved out under Part 3 of the Constitution of India, which particularly governs and ensures an enforcement of

the fundamental rights as envisaged therein. None of the elements of the fundamental right or a breach of the fundamental right, that could be said to be attracted when there happens to be an adjudication of a dispute on merits by the Tribunals created under the statute, which exclusively exercises the territorial domain of its adjudicatory function, exercising its judicial powers to decide a right or a controversy, which is placed before the NCLT and in that eventuality, none of the parameters stands covered by the decisions which are rendered by the Tribunals, which are otherwise always amenable to the Appellate Jurisdiction of the NCLAT as created under the Companies Act, which fall for or could be brought for consideration of any of the parameters contained under Part 3 of the Constitution. Because the decision taken by a Tribunal would not fall to be under a supervisory jurisdiction, even if it is covered by any breach of fundamental right even then too this aspect could always be scrutinised by a superior appellate forum, which has been created under the statute and that aspect in itself will not let it open for the aggrieved party to the proceedings before the NCLT, to resort to jurisdiction under Article 226 of the Constitution of India for redressal of the grievances as against the impugned orders or Judgments passed by the Tribunal by invoking the inherent jurisdiction of the Hon'ble High Courts of the different states by alleging that there was a breach of any of the covenants contained under Part 3 of the Constitution of India.

7. We are of the view that, so far as the enforcement of right under Part 3 of the Constitution of India, should be avoided to be approached by invoking

Article 226 of the Constitution of India is concerned, first of all, it cannot be invariably attracted as against all the Judgments rendered by the NCLT, and also because, as per our opinion, all the Judgments or Orders of NCLT may not contain within itself an absolute breach of any of the rights contained and protected under Part 3 of the Constitution of India and even it is there it could still be scrutinised by the Appellate Jurisdiction of the NCLAT, which has got wider power to exercise its jurisdiction over the Judgments rendered by the NCLT. For example in the instant case, the Appellant has alleged that there was a breach of a Principles of Natural Justice. This element, too, in itself or even if there is a breach of any procedural law or a breach of any rights that has been protected under the rules framed governing the proceedings of the NCLT, all these legal breaches are still protected to be agitated by an aggrieved person by approaching before the NCLAT, for redressal of the grievances because that could still be a scope to be scrutinised by the NCLAT, when it is exercising its Appellate Jurisdiction over the orders passed by the Learned NCLT, and provisions of Article 226 of the Constitution of India, will not be made available to be invoked by the parties concerned nor it could be abused by them.

8. Even otherwise, if we look into the language used under Article 226 of the Constitution of India, the jurisdiction of Article 226 for the Hon'ble High Courts, is restricted to its territories, it is also restricted with regard to the nature of writs, which could be issued by the respective High Courts, which are placed before it. If we consider the exceptions carved out in relation to the writs as given

under Article 226 of the Constitution of India, it is exclusively to be applied for the **writ of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari** or any of them. In the given set of circumstances, at the most if at all, any jurisdiction could be extended to the Hon'ble High Courts under Article 226 of the Constitution of India; it would be an extension of the jurisdiction of writ of Certiorari, as the orders of the NCLT, which are subject to challenge before the Hon'ble High Court. That could not be falling under any of the writ of Habeas Corpus, Mandamus, Prohibition and Quo Warranto, which could be invoked before Hon'ble High Court by an aggrieved, as against the Judgment passed by the NCLT when that is subjected to scrutiny, by invocation of the jurisdiction contained under Article 226 of the Constitution of India.

9. We are of the view that since the Judgments passed by the NCLT do not fall under any of the exceptions contained under Part 3 of the Constitution of India, they will not be falling under the domain of Article 226 of the Constitution of India, which could enable the proceedings to be maintainable before the writ courts, so to be abused by the parties to create as a breach to not to approach the NCLAT or after resorting to the proceedings before the Hon'ble High Courts.

10. The said aspect could also be looked into from the provisions contained under Sub-Article (2) of Article 226 of the Constitution of India. It prescribes a power conferred under Clause (1), which was required to be conferred to issue directions, orders, or writs to any government authorities or any person, also the

Hon'ble High Court may also exercise jurisdiction in relation to the territories within, which the cause of action has arisen. The cause of action herein would be, the cause of action acquired on account of there being any blatant fault or breach of the provisions contained or in the proceedings contemplated under the Companies Act, and if the cause of action is being restricted to pave way to approach, for the purposes of invocation of Article 226 of the Constitution of India. The continuance of the cause of action, or the subjects which are subject matter in the proceedings before the NCLT, would always be in continuance thereof to the cause of action for the Appellate Jurisdiction created under the statute which would be NCLAT, and not by virtue of approaching the Hon'ble High Courts under Article 226 of the Constitution of India, which may not be scope open to be resorted to, giving a cause to the parties to the proceedings under any of the provisions of the Companies Act or the I & B Code, to enable to invoke a writ jurisdiction.

11. Owing to the aforesaid reason, we are of the view that, when the law has created a particular identified platform for an aggrieved person to redress its grievances against the orders passed by the NCLT by approaching the Appellate Tribunal i.e., NCLAT, as created under the statute. The recourse to Article 226 of the Constitution of India should not be abused by the parties under the artificial ground created and granted by them, attempting to bring the controversy within the ambit of Part 3 of the Constitution of India, which, though it may not be existing in a given case or even if it is existing whether at all it could still be made

a subject matter to challenge in appeal and be made as one of the ground when the party aggrieved against the order of NCLT approaches before the NCLAT, and the remedy invariably would not lie for a party aggrieved to approach the writ court as a matter of course, under Article 226 of the Constitution of India, which may not be the jurisdiction available to the party since the issues decided by NCLT, may not be falling within any of the exceptions carved out under Part 3 of the Constitution of India.

12. The aforesaid reasons, which we have drawn for the purpose to answer in negative attracting Article 226 of the Constitution of India, is for the reason that, the constitutional remedies under Article 226 of the Constitution of India are an extraordinary remedy, which is exceptionally made available where the other prescribed law is silent, and there is a vacuum under law for not providing any other remedial platform to a person or a party who is aggrieved by any action or order of the government agency or by the courts created under the statute. It's a prerogative writ or the prerogative forum that has been created for the person aggrieved, to invoke Article 226 of the Constitution of India under an exceptional and extraordinary circumstances, and it should not normally be resorted to misuse constitutional remedies when there are other legal remedies available, and particularly approach to writ court is in a manner when it maliciously intends to override and somehow intends to create a breach the forum, which has already been provided to the party under the specific law remedy by providing provisions

for an Appellate forum under Section 421 of the Companies Act, 2013, or under Section 61 of the I & B Code, 2016.

13. Similarly, under the Constitutional mandate, that is contained under Article 227 of the Constitution of India. Article 227 of the Constitution of India is, rather once again is in an exception to the provisions contained under Article 226 of the Constitution of India, and is independent in its intention and application. If we look into the language that has been used under Article 227 of the Constitution of India, the mandate that has been prescribed therein exclusively, it entails an exercise of jurisdiction by the Hon'ble High Court, in its supervisory jurisdiction over the Courts or the Tribunals which are located throughout the territory of the Hon'ble High Court over, which a particular Hon'ble High Court exercise its power of superintendence.

If we see Sub-Article (1) of Article 227 of the Constitution of India, which is extracted hereunder: -

> *"(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction."*

14. The exercise of the power of superintendence by the Hon'ble High Court over the Courts and the Tribunals, as contemplated under Sub-Article (1) of Article 227 of the Constitution of India, it has been restricted to be exercised in relation to the Courts or the Tribunals, which are **"situated within the territory"** of the Hon'ble High Court. As herein, if we refer to the language used

in Sub-Article (1) of Article 227 of the Constitution of India it would be restricting the exercise of **"supervisory jurisdiction"** of Hon'ble High Courts in relation to the Tribunals or the Courts which are situated within the territory and are falling under the jurisdiction, over which the Hon'ble High Court could exercise its jurisdiction. Here, the Appellate Tribunal (i.e., NCLAT), does not fall for under the supervisory jurisdiction of the Hon'ble High Court, first of all, for the reason that, the Appellate Tribunal, exercises jurisdiction over the several states, and if supervisory jurisdiction of the Hon'ble High Court, as referred to under Sub-Article (1) of Article 227 of the Constitution of India, could not be expanded to be read as if though the NCLAT having been a seat located in relation to NCLT of different states, Chennai, it does not mean all the Hon'ble High Courts irrespective of not having territorial jurisdiction or exercising jurisdiction over it can bring the functions of the Tribunal within its supervisory jurisdiction, which is not otherwise contemplated under the statute.

15. From the aforesaid perspective, it is quite clear, that if we look into the mandate contemplated under the Companies Act or the I & B Code, it is quite apparent that the orders which are passed by the NCLAT either arising out of the proceedings contemplated under the I & B Code or the Companies Act, it does not prescribe that, the Appellate Judgments that are rendered by the NCLAT are required to be judicially weeded or supervised by the Hon'ble High Courts. If that be the situation where the Judgments, which are rendered by the NCLAT in the exercise of its Appellate Jurisdiction, under the aforesaid two provisions of

the Act, are directly amenable by an aggrieved person by preferring of an Appeal before the Hon'ble Apex Court under Section 62 of the I & B Code, 2016, and Section 423 of the Companies Act, 2013, if that be the situation where the law does not prescribe that, the Judgment rendered by the NCLAT in the exercise of its Appellate Jurisdiction, is not reserved under law to be scrutinised judicially by the Hon'ble High Court of a particular territory. The Hon'ble High Court will cease to exercise its power of superintendence over the Tribunals, and particularly the Appellate Tribunal, in exercise of its authority as contemplated under Article 227 of the Constitution of India, and in the absence of there being any exclusive right vested with the Hon'ble High Court to exercise its supervisory jurisdiction to bring any of its functions, within the ambit of Article 227 of the Constitution of India, it will be ousting the jurisdiction of Hon'ble High Court to issue any directions where the orders passed by the NCLT are made subject to challenge before the Hon'ble High Court.

16. There could be yet another glaring factor, which is required to be considered that the approach before the Hon'ble High Court by a party aggrieved is or would be always as against an order passed by the NCLT, which is required to be judicially scrutinised by the superior court except for when any action of the Tribunal itself is subjected to challenge in the exercise of jurisdiction by the writ court under Article 226 of the Constitution of India falling for consideration in any of the writ jurisdictions except for writ of Certiorari. When an aggrieved party approaches before the Hon'ble High Courts aggrieved against an order of

NCLT, the nature of the writ which would be thus preferred would always be falling if at all permissible under law would be within the ambit of the writ of Certiorari, where the Hon'ble High Court's exercise there supervisory jurisdiction, when it is being sought to be invoked for quashing of the orders, directions that had been issued by the Courts or the Tribunals, which are sub-ordinate to it. As we have already observed that looking to the structure of law, the NCLT and NCLAT are not structured in a fashion where the Hon'ble High Court could exercise its power of superintendence over the actions, orders or the Judgments of the NCLT or the NCLAT, which are mandatorily required to be supervised and controlled by the Hon'ble High Courts and thus the writ of Certiorari will not be a remedy, which would be available to a party affected by an order so as to put the challenge to the orders before the Hon'ble High Court, which is not a platform available to the party aggrieved by invocation of the supervisory jurisdiction of the Hon'ble High Court under Article 227 of the Constitution of India.

17. Even this aspect could be answered in the manner that, be it for whatsoever reason, if any order is passed by the NCLT situated in any of the state territories, which are falling within the Appellate Jurisdiction of the NCLAT, even if they are suffering from any procedural or legal vices, that could still be scrutinised, not by invocation of Article 227 of the Constitution of India but rather by virtue of invocation of Appellate Jurisdiction under the Appellate Provisions contained under the Companies Act as contained under Section 421 of the

Companies Act, 2013, or the Appellate Jurisdiction as contained under Section 61 of the I & B Code, 2016, in relation to the Tribunals which are created under Sections 408 & 410 of the Companies Act, 2013.

18. We can look into the controversy from yet another perspective in the light of the Judgment of Hon'ble Apex Court, as rendered in the matters of ***M/s. Pure Investments Vs M/s. Young Friends and Co. & Ors.,*** as reported in ***2022 Livelaw SC 279***, wherein the Hon'ble Apex Court has observed that even though in those cases, for example, those arising from the rent control matters, which was subject matter of consideration therein. The Hon'ble Apex Court has observed that even if power conferred under Article 227 was being exercised by the Hon'ble High Court in the exercise of its supervisory jurisdiction over the subordinate court orders, which has rendered judgments in the proceedings under the rent control provisions. The Hon'ble Apex Court has observed that the jurisdiction under Article 227 of the Constitution of India of the Hon'ble High Court is not wide enough to empower the Hon'ble High Court to enter into the scope of scrutinising the evidence or facts, because the Hon'ble High Court should recognise its restrictions over the exercise of its jurisdiction, and not by overstepping the boundary of the supervisory jurisdiction. Para 11 is extracted hereunder: -

> *"11. We are in agreement with the High Court's enunciation of the principles of law on scope of interference by the supervisory Court on decisions of the fact-finding forum. But having gone*

through the decisions of the two stages of fact-finding by the statutory fora, we are of the view that there was overstepping of this boundary by the supervisory Court. In its exercise of scrutinizing the evidence to find out if any of the three aforesaid conditions were breached, there was re-appreciation of evidence itself by the supervisory Court."

19. Secondly, while referring to the other question on Section 14 of the Limitation Act, 3 major issues which arise for consideration before us are that:-

(1) Whether the Appellant would be entitled for the benefit of Section 14 of the Limitation Act?

(2) Whether the proceedings drawn by the Appellant before the Hon'ble High Court would be treated as to be the bonafide proceedings being carried in good faith, owing to filing of subsequent writ appeal and review, to attract Section 14 of the Limitation Act?

(3) Whether the filing of the Company Appeal on 24.06.2025, which in itself happens to be after the expiry of the period of limitation prescribed under Sub-Section (3) of Section 421 of the Companies Act, 2013. Even if it is determined from the date of the Judgment of Writ Petition i.e., 24.03.2025, which is beyond limitation, could it be condoned?

20. The consecutive proceedings that were carried thereafter at the hands of the Appellant before the Hon'ble High Court are not bonafide, because the

Hon'ble High Court on 24.03.2025, itself had observed that the Appellant had a remedy of Appeal, under Section 421 of the Companies Act, 2013, by way of filing of a Company Appeal before the Appellate Tribunal. If, at the most, the benefit of Section 14 of Limitation Act, has to run, it has to be commenced from 24.03.2025, when the Appellant was made conscious of the forum available to him, but that was willingly not availed by the Appellant; rather, he preferred a Writ Appeal. The Writ Appeal too was dismissed on 09.06.2025, yet he didn't file the Company Appeal before the Appellate Tribunal, rather against the Division Bench Judgment, a Review Petition was filed before Hon'ble High Court, which too was dismissed on 17.07.2025, affirming the dismissal of the Writ Appeal, holding thereof that, the Appellant has got a remedy of preferring a Company Appeal under Section 421 of the Companies Act, 2013.

21. The argument extended by the Learned Counsel for the Appellant is that he would still be entitled to get the benefit of Section 14 of the Limitation Act, which is extracted hereunder: -

> ***"14. Exclusion of time of proceeding bona fide in court without jurisdiction.—*** *(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
>
> *(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence*

another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction."

22. Section 14 of the Limitation Act, 1963, prescribes for an extension of the period of limitation only in those eventualities when the proceedings of the suit had been pursued by a party upon fulfilling the following elements: -

(i) Bonafide.

(ii) With due diligence, and

(iii) In Good faith.

23. On a simpliciter reading of Section 14 of the Limitation Act, 1963, it does not contemplate its application under all given circumstances; irrespective of without satisfying its exceptional circumstances to attract the provision

contained under Section 14 of the Limitation Act, 1963. The provision of Section 14 of Limitation Act, 1963, is an exclusive provision, which is intended to be dealing with the aspect of limitation only in a given set of exceptional circumstances of the proceedings. The provision in itself is only by way of carving out an exception intending that the benefit, which has been contemplated under Section 14 of the Limitation Act, 1963, for the purposes of extension of the statutory period of limitation, could be permitted to be extended beyond the statutory period of limitation, as prescribed under law, for initiation of proceedings, its only subject to the available condition, that the party to the proceedings who claims the benefit under Section 14 of the Limitation Act, 1963, is able to satisfy the existence of the conditions, those have been self contained under Section 14 of the Limitation Act, 1963, in itself. Any provision of law where the applicability which depends upon the satisfaction of a certain pre-existing contingency or conditions to be applied only upon satisfying the given prior conditions, it takes the shape of a provision to be directory in nature and not mandatory. Because any person or a party to the proceedings, until or unless he is able to satisfy the court, about the exceptions as it has been carved out and contained under Section 14 of the Limitation Act, 1963, and were available to the Applicant/Appellant, under Section 14 of the Limitation Act, 1963, he will not be amenable to get the benefit under Section 14 of the Limitation Act, 1963, which is a general law governing the aspect of limitation, so far it relates to extension of period, which is particularly in context of the

proceedings where time is the essence of proceedings and is originally governed by the aspect of limitation contained under that particular statute.

24. The provisions of Section 14 of the Limitation Act, 1963, contain three wider expressions which are self-contained under the provision itself.

(i) Bonafide: The Latin expression of the word 'bonafide' is alternatively read as to be "in good faith", i.e., without having any remotest intention to deceive any party to the proceedings, or is being availed to be exercised with a sense of responsibility, by taking it to be honestly applied, and it is in absolute contradistinction to the backdrop of a bad faith, which apparently and maliciously intend to deceit or commit a fraud upon a party to the proceedings or to the justice dispensation system itself by any malicious recuse to shelter of Section 14 of the Limitation Act, 1963. The bonafide in other terms, could be said to be its purest, honest and is not at all to be remotedly tainted with any oblique motive. The said aspect, was being considered by the Hon'ble Apex Court in the matters of ***Raghunath G. Panhale v. Chaganlal Sundarji and Co.,*** as reported in ***AIR 1999 SC 3864.*** The relevant para 6 of the said Judgment is extracted hereunder: -

> *"6. The word "reasonable", in our view, connotes that the requirement or need is not fanciful or unreasonable. It cannot be a mere desire. The word "requirement" coupled with the word reasonable means that it must be something more than a mere desire but need not certainly be a compelling or absolute or dire necessity (Aitken v. Shaw [1933 SLT 21] , Nevile v. Hardy [(1921) 90 LJ Ch 158 : 1 Ch 404]). A reasonable and bona fide requirement is*

something in between a mere desire or wish on one hand and a compelling or dire or absolute necessity at the other end. It may be a need in praesenti or within reasonable proximity in the future. The use of the word "bona fide" is an additional requirement under Section 13(1)(g) and ***it means that the requirement must also be honest and not be tainted with any oblique motive****."*

25. Though aforesaid ratio was in the context of rent control matter, but still for the purpose of bonafide and its literal meaning it could be extracted to be applied, which would mean as to, whether at all under the given set of circumstances of the instant Company Appeal, whether the Appellant would at all be entitled to avail for condonation of delay by expanding their plea on an articulated and irrational basis, not justified by normal human prudence, so as to be brought within the ambit of the bonafide act, since having proceeded to follow recurring non maintainable proceedings before the Hon'ble High Court. The philosophy of "bonafide", has been determined in the matters of ***Shiv Sarup Gupta Vs Dr Mahesh Chand Gupta*** as reported in ***(1999) 6 SCC 222.*** In the said Judgment para 13, which is relevant is extracted hereunder: -

"13. Chambers 20th Century Dictionary defines ***bona fide to mean "in good faith : genuine". The word "genuine" means "natural : not spurious : real : pure : sincere". In Law Dictionary, Mozley and Whitley define bona fide to mean "good faith, without fraud or deceit****". Thus the term bona fide or genuinely refers to a state of mind. Requirement is not a mere desire. The degree of intensity contemplated by "requires" is much more higher than in mere desire. The phrase "required bona fide" is suggestive of legislative intent that a mere desire which is the outcome of whim or*

fancy is not taken note of by the rent control legislation. A requirement in the sense of felt need which is an outcome of a sincere, honest desire, in contradistinction with a mere pretence or pretext to evict a tenant, on the part of the landlord claiming to occupy the premises for himself or for any member of the family would entitle him to seek ejectment of the tenant. Looked at from this angle, any setting of the facts and circumstances protruding the need of the landlord and its bona fides would be capable of successfully withstanding the test of objective determination by the court. The judge of facts should place himself in the armchair of the landlord and then ask the question to himself — whether in the given facts substantiated by the landlord the need to occupy the premises can be said to be natural, real, sincere, honest. If the answer be in the positive, the need is bona fide. The failure on the part of the landlord to substantiate the pleaded need, or, in a given case, positive material brought on record by the tenant enabling the court drawing an inference that the reality was to the contrary and the landlord was merely attempting at finding out a pretence or pretext for getting rid of the tenant, would be enough to persuade the court certainly to deny its judicial assistance to the landlord. Once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his such need. In short, the concept of bona fide need or genuine requirement needs a practical approach instructed by the

realities of life. An approach either too liberal or too conservative or pedantic must be guarded against."

26. As aptly answered by the Hon'ble Apex Court, in the matters of ***Shiv Sarup Gupta*** (supra) that the word 'bonafide', would mean an act knowingly has been performed in good faith, which is natural and not spurious having knowledge of its judicious ill consequences, as in backed by explicit and apparent sincerity that means the element of "bonafide", is act, which is not required to be explained and determined based upon the facts and evidence on record or by an act or conduct on record also. The action should in itself apparently dispel without a need of explanation that it was an honest action. The very fact in the instant case is that, when the Appellant was already under a judicial proceedings and was made conscious by the Learned Single Judge of the Hon'ble High Court, of the availability of the statutory remedy, to approach before NCLAT, by way of filing of a Company Appeal, at that juncture itself the Appellant ought to have invoked the Appellate forum, forthwith due to the legal bar and object of law, rather than filing of a Writ Appeal, as against the Judgment, which was not deciding a lis and was simpliciter closing the Writ Petition on the ground of the availability of an alternative statutory remedy, the very fact that even thereafter the Appellant continued to file a Writ Appeal and then a review thereafter too, despite knowing the fact that there is an availability of an alternative statutory remedy with him itself shows that, the Appellant was dubious in its intent and was not acting bonafide to accept procedure under law,

as it was indicated to Appellant by the Judgment of Single Judge of Hon'ble High Court, and also the observation made therein by disposing of the contempt case. Because, the Appellant was not honestly dealing and complying with the direction issued by the Hon'ble High Court of choosing to appear before the Appellate forum i.e., NCLAT, as against the impugned order, the act of the Appellant was not bonafide to bring him under the shelter of Section14 of Limitation Act.

27. In other words, it could be said that, there has had to be an established and a reasonable presence of prudence on the part of the Appellant, preferring of a Writ Appeal, i.e., by filing of a consecutive proceedings itself before Hon'ble High Court, itself shows that, there was no bonafide on the part of the Appellant, and hence he cannot be extended with the benefit of Section 14 of the Limitation Act, 1963, when the actions complaint of against the Appellant, itself is contrary to the very expression as contained to the provisions contained under Section 14 of the Limitation Act, 1963.

28. Acting bonafide contains within its realms of dealing with honesty and carrying oneself in the judicial proceedings with a judicial prudence too. Had the Appellant forthwith approached the NCLAT, after the orders passed by the Learned Single Judge, when he was first judicially made conscious of the availability of the statutory remedy, it could have been that the Appellant has acted honestly and the preference of the proceedings earlier before a wrong judicial platform were bonafide. But if the Appellant has not submitted to the

said directions of Learned Single Judge of the Hon'ble High Court, and has filed recurring proceedings, which too were dismissed on the same ground of the availability of statutory remedy, the filing of consistent proceedings itself means that, the Appellant was not acting in good faith, and it was with an apparent intent to deceive. Owing to the above, we are of the view that in the light of the ratio laid down by the Hon'ble Courts, as extracted above. The Appellant was not acting bonafide, which could at all enable him to embark upon and now at a belated stage to take a shelter under Section 14 of the Limitation Act, 1963, for disproportionately getting an extension of limitation, which happens to be contrary to the very spirit and purpose of the I & B Code, where the time plays an important role, and is the essence of the provisions of law.

29. Another element, which is contained to be satisfied for the purposes to be made entitled to avail the benefit of Section 14 of the Limitation Act, 1963, is **"good faith"**, which also almost happens to be a synonym to the expression **"bonafide"**. The expression of good faith, as contained under Sub-Section (2) of Section 14, it only calls for an exercise of due care and diligence and some element of precaution and attention should be depicted from a human conduct, and the meaning of the same could be derived with the corresponding reading of the provision contained under Section 2(h) of the Limitation Act, which prescribes that an action, which is done by due care and precaution could be taken as to be an act done in good faith. Similar was the expression which was given and dealt with by the Hon'ble Apex Court in the matter of ***Deena Vs***

Bharat Singh, as reported in (***2002) 6 SCC 336.*** The relevant para 14 of the said Judgment, which is extracted hereunder: -

> *"14. The main factor which would influence the court in extending the benefit of Section 14 to a litigant is whether* ***the prior proceeding had been prosecuted with due diligence and good faith. The party prosecuting the suit in good faith in the court having no jurisdiction is entitled to exclusion of that period****. The expression "good faith" as used in Section 14 means "exercise of due care and attention". In the context of Section 14 the expression "good faith" qualifies prosecuting the proceeding in the court which ultimately is found to have no jurisdiction. The finding as to good faith or the absence of it is a finding of fact. This Court in the case of Vijay Kumar Rampal v. Diwan Devi [AIR 1985 SC 1669] observed: (AIR p. 1670, para 3)*
>
> > *"The expression good faith qualifies prosecuting the proceeding in the court which ultimately is found to have no jurisdiction. Failure to pay the requisite court fee found deficient on a contention being raised or the error of judgment in valuing a suit filed before a court which was ultimately found to have no jurisdiction has absolutely nothing to do with the question of good faith in prosecuting the suit as provided in Section 14 of the Limitation Act.""*

30. More particularly, the expression of good faith as used in context of the provision contained under Section 14(1) of the Limitation Act, 1963, has been dealt by the Hon'ble Apex Court in the judgment reported in the matters of ***Deena*** (supra) which only qualifies that the past records of litigant based on which the benefit of Section 14 is being sought, should be considered. The person thus intending of driving the benefit of Section 14 of the Limitation Act,

1963, has to establish that he was functioning in a good faith and particularly that expression has also to be taken into consideration in the context of the definition of good faith as given under Sub-Section (h) of Section 2 of the Limitation Act, 1963, which reads as under: -

> *"(h) "good faith"—nothing shall be deemed to be done in good faith which is not done with due care and attention;"*

31. This aspect about the implication of the definition of good faith as given under Section 2(h) of the Limitation Act, 1963, was considered by the Hon'ble Apex Court in the para 10 of ***Ghasi Ram and Ors., Vs Chait Ram Saini and Ors.,*** in relation to the provisions of Section 14 of Limitation Act, 1963, as reported in ***(1998) 6 SCC 200,*** which is extracted hereunder: -

> "*10. Learned counsel appearing for the respondents urged that, assuming the High Court suffered from disability to decide the rights of party on facts, the plaintiff-appellant did not prosecute the revision petition before the High Court in good faith; therefore, the appellant cannot derive any benefit of Section 14 of the Act. Before the High Court, it was not disputed that the plaintiff-appellant has prosecuted the other civil proceeding with due diligence. What is disputed is that the plaintiff did not prosecute the civil proceeding in good faith. "Good faith" is defined in the Act as under:*
>
> ***"2. (h) 'good faith' — nothing shall be deemed to be done in good faith which is not done with due care and attention;"***
>
> ***The aforesaid definition shows that an act done with due care and attention satisfies the test of "good faith". "Due care" means that sufficient care was taken so far as circumstances demanded and there was absence of negligence. In other words, the plaintiff has taken sufficient care which a reasonable man is expected to***

take in order to avoid any injury. *It is not shown here that the plaintiff-appellant has not taken sufficient care in prosecuting the remedy. Where a plaintiff is illiterate and is not acquainted with the procedural law, the only thing that he can do is to consult some lawyer for advice. It is not disputed that the plaintiff-appellant filed the revision before the High Court on the advice of his counsel, although it may be that he was ill-advised. Learned counsel for the respondents contended that any act done in violation of law cannot be described as act done with due care. No doubt, when a party proceeds contrary to a clearly expressed provision of law, it cannot be regarded as prosecuting the other civil proceeding in good faith. It is based on sound principle of law. But the said rule cannot be enforced in rigidity in every case. Each case has to be judged on its own merits. In the present case, the plaintiff-appellant is not a legally-trained person and thus he sought advice of his counsel for future course of action. The counsel advised him to file revision in the High Court instead of bringing a fresh suit under Order 21 Rule 103 CPC. It is also true that at that time, there was no unanimity about remedy of revision amongst the various High Courts. The plaintiff-appellant's revision was entertained for hearing by the High Court and that gave expectation to the plaintiff-appellant that the order of the executing court may be set aside and further, there was no inordinate delay in filing the suit under Rule 103. If, on examining the facts, it is found that there was no lack of due care, there is no reason why the plaintiff-appellant should not be accorded the benefits of Section 14 of the Act. Does the interest of justice demand that the plaintiff should be refused the benefit of Section 14 of the Act on account of the negligence on the part of his counsel, ill-advising him to file a revision instead of filing a fresh suit? An illiterate litigant cannot be made to suffer when he is ill-advised by his counsel. On the facts and circumstances of this case, we are satisfied*

that the plaintiff-appellant prosecuted the earlier civil proceeding in good faith."

32. In other words, it was held in the matters of ***Ghasi Ram*** (supra), based on it, it could be said that good faith could be treated in judicial proceeding as to be an abstract thing, which is to be established to have been done honestly or which could be reflected by conduct to be done in good faith, whether it is done negligently or not, is to be tested upon the facts, as anything which is done with due care and attention, which is not categorised and influenced by malicious intent, or which could be apparently on the face of it be presumed to be done in good faith without requiring it to be established, by any external processes. The expression of the term "good faith", may vary from case to case and circumstances, depending upon the circumstances and object of statute and also the subject in relation to which is being considered. There could not be any magnitude or yardstick or a device which could be used to test, as to, what would be the elements that would be required to satisfy "good faith", as it will always depend upon the facts and circumstances of the case, which herein, too almost by way of reiteration of the facts already given above, would mean when the Appellant had been intentionally resorting to the judicial proceedings taking advantage of time consumed in it and knowingly, it would mean that the Appellant was not acting in a good faith by drawing the proceedings, rather than orienting to drive the proceedings to derive the benefit of limitation. Thus, the actions of the Appellant will not be falling under the definition of good faith as

contained under Section 2(h) of the Limitation Act, 1963. It could also be said that, under the given set of circumstances of the present case, the main test of determining the aspect of good faith apart from that, it requires for testing of the sense of due care and attention, which has also to be backed by reasonableness, which a prudent person, is expected to exercise in performing of an act in order to establish that, he was functioning upon with due care and attention, that means, it is founded on a genuine belief and commands a loyal performance that means the act done by an individual is preceded by a relatively reliable authority of prudence and good faith, and is readily accepted by the others to be in trust and truthfulness and not maliciously oriented.

33. In relation to the circumstances of the instant case, we can draw an inference about the conduct of the Appellant on the basis of the ratio as it has been laid down in the matters of ***Firm of Sivdutt Rai Gulab Rai Vs Union of India***, as reported in ***AIR 1960 AP 406***, in its para 39, which is extracted hereunder: -

> *"39. The next question is as to whether the plaintiff could be regarded as having carried on the previous proceedings in good faith. Section 2(7) of the Limitation Act says that nothing shall he deemed to be done in 'good faith' which is not done with due care and caution. Where the law does not enjoin the exhausting of a remedy before a particular authority, before filing a suit in a court of law, if a party carelessly continues to proceed, with his remedy allowing the period of limitation to expire he cannot be held to be prosecuting another civil proceeding in good faith within the meaning of Section 14 of the Limitation Act. We may herein refer to*

the case of S.R.M.M.A. Firm v. Maung Po Saung, ILR 7 Rang 466 : (AIR 1929 Rang 297), and the case of Sheo Dhari Ram v. Gupteswar Pathak, 78 Ind Cas 482 : (AIR 1924 Pat 716).”

The para 39 of the said Judgment in the matters of ***Firm of Sivdutt Rai Gulab Rai*** (supra), which was in context of the provision contained under Section 14 of the Limitation Act, 1963. In the aforesaid judgment, the ratio has been propounded that, where the law does not enjoin the extortion of the remedy before the particular authority or a court of law and if that has been settled by the decision taken by the court before whom the proceeding had been drawn, by holding it that is not maintainable and if still the party thereafter proceeds to continue with the proceedings, which is the remedy in continuation which is otherwise not reckoned to be available to him in accordance with law. Thus, the recourse to the those proceedings in continuation thereof may not amount to be a proceeding, which could be taken, that it has been taken by the party is bonafide or in good faith, enabling him to extend the benefit of allowing the period of limitation by extension of the equitable benefit available under Section 14 of the Limitation Act, 1963, as all the proceedings drawn subsequent thereto will not be the proceedings, which had been held thereafter in good faith. It needs no further elaborate reference, since there being a settled preposition and that too particularly, from the intention of the litigant that is the Appellant herein, they could be said to be enough understand a bare interpretation of law, and to the

remedies that were available to them under law, particularly when the Appellant was made conscious of it by a judicial determination.

34. The expression of due diligence, as given under Section 14 of the Limitation Act, 1963, is available to a party to the proceedings, who is worthful and cautious and has foresight to accept the law, under the facts and circumstances of the case, particularly when he or she is made aware of law by a decision. Due diligence in law means to be reasonable and not to proceed to abuse a process of law on the basis that everything is possible, which is otherwise not available to the Appellant under the law. Diligence herein would mean that, which a common person should be expected to have a control over it and will exercise all prudence in its acts thereafter in the conduct of his own affairs, and that is what has been laid down in para 16 of the Judgment of ***Chander Kanta Bansal Vs Rajinder Singh Anand***, as reported in ***(2008) 5 SCC 117***, which is extracted hereunder: -

> *"16. The words "due diligence" have not been defined in the Code. According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (18th Edn.), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent*

Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs."

35. The expression due diligence could be taken into consideration from yet another perspective, as to what could be reasonably expected act and which is to be ordinarily expected to be exercised by a prudent person who has sufficient awareness of the provisions of law, who bonafidely intends to satisfy the requirement of legal procedure available to him for redressal of grievances. In that perspective, the essential prerequisite for determining the due diligence, as an expression used under Section 14 of the Limitation Act, 1963, would mean that, it's a reasonable and prudent measure or an activity, which was expected and normally should have been exercised by reasonable person before it could be extended with the benefit of Section 14 of the Limitation Act, 1963, and from that perspective, the issue was considered by the Hon'ble Apex Court in para 31 in the matter of ***Consolidated Engineering Enterprises Vs Principal Secretary Irrigation Department & Ors.,*** as reported in ***(2008) 7 SCC 169.*** Para 31 of the said Judgment, which is extracted hereunder: -

"31. To attract the provisions of Section 14 of the Limitation Act, five conditions enumerated in the earlier part of this judgment have to co-exist [Ed.: See para 21, above.]. There is no manner of doubt that the section deserves to be construed liberally. ***Due diligence and caution are essential prerequisites for attracting Section 14. Due diligence cannot be measured by any absolute standards. Due diligence is a measure of prudence or activity***

expected from and ordinarily exercised by a reasonable and prudent person under the particular circumstances. *The time during which a court holds up a case while it is discovering that it ought to have been presented in another court, must be excluded, as the delay of the court cannot affect the due diligence of the party. Section 14 requires that the prior proceeding should have been prosecuted in good faith and with due diligence. The definition of good faith as found in Section 2(h) of the Limitation Act would indicate that nothing shall be deemed to be in good faith which is not done with due care and attention. It is true that Section 14 will not help a party who is guilty of negligence, lapse or inaction. However, there can be no hard-and-fast rule as to what amounts to good faith. It is a matter to be decided on the facts of each case. It will, in almost every case be more or less a question of degree. The mere filing of an application in wrong court would not prima facie show want of good faith. There must be no pretended mistake intentionally made with a view to delaying the proceedings or harassing the opposite party. In the light of these principles, the question will have to be considered whether the appellant had prosecuted the matter in other courts with due diligence and in good faith."*

36. Since, apparently, it reveals from the facts on the record, the Appellant has utterly failed to establish any of the ingredients, which are prerequisites of Section 14 of the Limitation Act, 1963, to be satisfied, the Appellant cannot under the present circumstances attract Section 14 of the Limitation Act, 1963, which is otherwise not be available to the Appellant under the provisions of the I & B Code to be extended to the Appellant for his own wrong, or in order to enable him perpetuate wrong or abuse the process of law in detriment to the interest of his adversary so as to provide him with a benefit, which is otherwise

under common law will not be able to avail as per the provisions of the law. Thus, the benefit of Section 14 of the Limitation Act, 1963, will not be available to the Appellant, and this contention is turned down.

37. From facts on records, it doesn't show, that there was an exercise of due diligence on the part of the Appellant for the reason being that, he was judicially made conscious by an adjudication of his remedy available under the special statute i.e., under the Companies Act of filing of a Company Appeal before NCLAT, by aggrieved against the orders that were passed by the Tribunal for the reason that, the appellate remedy under Section 421 of the Companies Act, 2013, is a statutory remedy, and not an alternative remedy, which could have at all enabled the Appellant to have opted or could have taken chance to be invoked or permissible to be invoked by the Appellant collaterally before either of the forums available under law. There is a vast distinction between an "alternative remedy" and a "statutory remedy". In the case of an alternative remedy, there is a choice or possibility for the party to the proceedings to approach before either of the forums available to the litigant, but in the case of the statutory remedy, like the case at hand, where the filing of Company Appeal is mandatorily prescribed under Section 421 of the Companies Act, 2013, the parallel forum of writ jurisdiction is not available, and would be barred under law. If the Appellant himself has chosen to file the Writ Petition, which was not maintainable under law and if later which was dismissed on 24.03.2025 with an observation: -

(i) That the Appellant has a remedy of appeal under Section 421 of the Companies Act, 2013.

(ii) With an observation that from records it shows that, there was no violation of the Principles of Natural Justice, because of which the Appellant could had put a challenge to the impugned order passed by the NCLT on 22.10.2024, before the Hon'ble High Court.

38. But despite the aforesaid specific observation made by the Hon'ble High Court, in its order of 24.03.2025, the Appellant still has not budged to the directions given by the Hon'ble High Court in its order of 24.03.2025, and if still he had conspired to elongate the proceedings by filing the Writ Appeal, it cannot be said that the Appellant was acting with due diligence so as to bring his act of drawing the multiple proceedings before the Hon'ble High Court to be with an ambit of due diligence and bonafide or in good faith, at all as contemplated under Section 14 of the Limitation Act, 1963, and under these circumstances Section 14 of Limitation Act, 1963, too would not be available to the Appellant.

39. The second reason for the purposes of non-attraction of Section 14 of Limitation Act, 1963, to be applied is that, there has to be proceedings, which has been carried with bonafide intent. But, the proceedings herein are not bonafide, because despite the observations that were made by Single Judge of Hon'ble High Court as well as in the Contempt Case and also in the Writ Appeal, it was already made to be known to the Appellant by the Single Judge of the

Hon'ble High Court, in its order of 24.03.2025, but still knowing the fact, that Single Judge has already made the Appellant conscious that, there is a right of the appeal before NCLAT, but still if the Appellant has proceeded to invoke an Appellate Jurisdiction by filing Writ Appeal before the Hon'ble High Court, which too was dismissed on an identical ground of availability of an alternative remedy by an order of 09.06.2025, that means the Appellant was persistently and knowingly pursuing the proceedings before the Hon'ble High Court of Kerala, which under law was made aware to him was not available to him. Despite the fact that, he was being repeatedly made conscious by the judicial orders about his remedy lying in the Company Appeal before NCLAT. Having not done so, these proceedings cannot be taken to be bonafide for the purposes to attract Section 14 of the Limitation Act, 1963.

40. The chapter of conduct of Appellants bonafide act, does not close over here, even with the dismissal of Writ Appeal on 09.06.2025 on the ground of the availability of an alternative appellate remedy. The Appellant has filed a Review, being **Review No.769/2025**. This Review Petition too was dismissed on 17.07.2025. It is settled law that the review is not a proceeding, which is in continuity to the proceedings to be reckoned under law for the purposes to be falling within the ambit of Section 14 of Limitation Act, 1963, and time consumed therein in perusing review could not at all be taken by the Appellant for the period of limitation to be reckoned from the date when the review is decided; rather, irrespective of the date of decision taken on the review, the

limitation has to be determined from the date of the order on the principal proceedings that is either by the Writ Petition by the Single Judge or at least by the decision taken in the Writ Appeal by Hon'ble High Court. Thus, the period mis utilized by the Appellant in between 09.06.2025 to 17.07.2025 when Appellant was perusing review will not be available to the Appellant for the purposes for seeking condonation of delay in the light of the provisions contained under Section 14 of the Limitation Act, 1963, because under either of the circumstances, the proceedings were not carried by the Appellant with due diligence nor the proceedings were bonafide.

41. In that eventuality, under any of the circumstances, if limitation is to be taken, even let us presume, if we stretch it from the date of an order of the Single Judge itself, when the order was rendered, leaving it open for the Appellant to file an appeal under Section 421 of the Companies Act. The limitation for the purposes of the Appellant, to prefer a Company Appeal under Section 421 of the Companies Act, 2013, has to be considered at least from the date of the Single Judge order on 24.03.2025 and since the Company Appeal was preferred on 24.06.2025 that in itself will take the Company Appeal to be outside the limitation as contemplated by prescription of law under Sub-Section (3) of Section 421 of the Companies Act, 2013. Even further, if we accept the arguments of the Appellant Counsel for seeking recuse to Section 14 of Limitation Act, 1963, that will not be available to him because if the period of 90 days is determined from 24.03.2025 in itself and since the Company Appeal

was preferred on 24.06.2025, it would be beyond limitation as provided under Section 421 of the Companies Act, 2013.

42. The provisions contained under Section 14 of the Limitation Act, first of all, under the given set of circumstances, when it relates to the proceedings, which are being exclusively governed under the provisions of special Act, i.e., the Companies Act. The Companies Act, being a special law will be having a precedence over general laws and particularly when it is a self-contained law. All procedural acts, including the aspect of limitation since it is self-contained in the provision of Section 421 of the Companies Act, 2013, in itself, which is inbuilt, in these circumstances, wherever the question crops up for consideration as to how the limitation has to be construed, we may not have to have the recourse to the shelter of general law of limitation, as contained and relied upon, that is, Section 14 of the Limitation Act, because even otherwise also it is a settled principle that, the special law will have precedence over the general law; those principles have been enunciated by the Hon'ble Apex Court in the matters of ***Gujarat State Civil Supplies Corporation Limited Vs Mahakali Foods Private Limited,*** and a batch of other Company Appeals, where the Hon'ble Apex Court in its Judgment of 31.10.2022, had specifically prescribed that the general law will not have a prevailing effect, in any manner to override the effect and provisions of the special statute. Para 17 & 18 of the said Judgment are extracted hereunder: -

"17. It is trite to say that the provisions of the special statute would override the provisions of the general statute. It is also well settled that while determining the effect of a statute overriding the other statute, the purpose and policy underlying the two statutes and the clear intendment conveyed by the language of the relevant provisions therein would be the relevant consideration. This Court in Commissioner of Income Tax, Patiala Vs. Shahzada Nand & Sons15, while stating the fundamental rule of construction, had observed that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient.

18. One of principles of statutory interpretation relevant for our purpose is contained in the Latin maxim "leges posteriores priores contrarias abrogant" (the later laws shall abrogate earlier contrary laws). Another relevant rule of construction is contained in the maxim "generalia specialibus non derogant" (General laws do not prevail over Special laws). When there is apparent conflict between two statutes, the provisions of a general statute must yield to those of a special one."

43. The aforesaid principal was also considered by the Hon'ble Apex Court in the matters of ***Kaushalya Rani Vs Gopal Singh,*** as reported in ***AIR 1964 SC 260***, which dealt with as to what would be the implications and legal necessity of enforceability of special law. In the said Judgment, it was considered and laid down that the special law would mean and would relate to those enactments which have been framed by the Government, which deals with special and specific classes of cases under the special law with a particular intention of law and object to be achieved, and under the special circumstances and when there is any contradiction special enactment would be having an overriding effect over the general rules laid down under the general law. In view of the aforesaid

principles, if we deal with the provisions contained under the Companies Act, since they have got a different object and purpose to be attained, and particularly under that law, where the provisions of the Limitation always play a pivotal role in deciding the controversy, when under the provisions itself time is the essence of the proceedings. The law as contained under the general law, which are dealing with the aspect of limitation would not be attracted particularly when the provisions in itself has got a self-contained provision dealing with the aspect and implication of limitation. Hence, the provisions contained under Sub-Section (3) of Section 421 of the Companies Act, 2013, itself prescribes for a period of limitation of 45 days for the purposes of preferring of an appeal against an order passed under any of the proceedings under the Companies Act, and if that is taken into consideration herein, 45 days have to be determined from the date of the order of 22.10.2024, and if that cut-off is taken into consideration, the period of 45 days would be expiring much earlier i.e., on 06.12.2024 in the instant case.

44. The principles of limitation act, particularly in context, as it has been argued by the Learned Counsel for the Appellant, and as we have already observed that, Section 14 of the Limitation Act, would not be made applicable, except only subject to satisfying its conditions as contained and intended to be achieved by the provisions of Section 14 of the Limitation Act itself, which was in the shape of a beneficial legislation for the wider interest of the litigant for the purposes of extension of the period of limitation, where any proceedings were governed by the general law and not by the special statute. But where a

proceedings are governed by a special Act, the conditions to attract Section 14 of Limitation Act, 1963, as contained in it, are to be mandatorily satisfied. Even if that aspect is taken into consideration, the question that falls for consideration in the instant Appeal is as to whether at all Section 14 of the Limitation Act, in the given set of circumstances would be applicable. We are of the view that, for the reasons to satisfy the provision contained under Section 14 of the Limitation Act to be attracted. The language of the provision in itself prescribes that anybody who seeks the shelter of Section 14 of the Limitation Act, will have to establish its **bonafide**. Secondly, that he has acted in **due diligence** and thirdly, the procedural acts were in **good faith**. The act complaint hereof, in this case, we are of the view that it would not be a bonafide act, on the part of the Appellant for the reason, being that, according to our consideration, when the Writ Petition was considered and decided by an order of 24.03.2025. As we have already observed its at that stage of passing of an order by the Hon'ble High Court on 24.03.2025, that is the first stage where and when the Appellant was made conscious of its statutory remedy of filing of a Company Appeal, under Section 421 of the Companies Act, the Appellant did not accept the directions contained in the said order which was invited by himself by filing a Writ Petition, and had still proceeded to file a Writ Appeal even thereafter. But for the purposes of Section 421 of the Companies Act, of preferring of an Appeal, if we are required to determine the implication of Section 14 of the Limitation Act, the bonafides on part of the Appellant is not available to him for the reason, being that he ought to

have filed the Company Appeal, before NCLAT, immediately within 90 days at the most; after condonation of delay prescribed under the condonable period provided under the provisions of Sub-Section (3) of Section 421 of the Companies Act, 2013, i.e., within 90 days from the date of the impugned order that, is maximum up to 22.06.2025. But having not done so, the Appellant by preferring of Company Appeal much thereafter, would render the Company Appeal to be barred by limitation as being beyond the prescribed period, having preferred so after lapse of 92 days. Thus, the conduct of the Appellant will not fall to be remotedly falling within the ambit of operation for expression 'bonafide', for the reason that, he should have immediately preferred the Company Appeal, rather preferring of a Writ Appeal, as against the order of Single Judge of Hon'ble High Court 24.03.2025. And that too, as soon as the Appellant had preferred the Writ Appeal as against the order of 24.03.2025, instead of filing of Company Appeal, when the Appellant was judiciously made conscious of his right to file Company Appeal, he was not acting in good faith, nor his conduct was bonafide, because when despite being made conscious of the forum available to him under law, still if he was persisting upon adopting the proceedings before the Hon'ble High Court, which too otherwise has observed to be not maintainable and the period as consumed in those proceedings since they were not bonafide or in good faith, Section 14 of Limitation Act, 1963, will not be attracted to be made applicable for the Appellant.

45. The Learned Counsel for the Appellant had persistently and strongly canvassed that since the Division Bench of the Hon'ble High Court of Kerala, in its Judgment of 09.06.2025, had condoned the delay, giving liberty to the Appellant to approach the Appellate Tribunal, observing thereof that this Appellate Tribunal shall not dismiss the Company Appeal on the ground of delay and would proceed to hear the Company Appeal on merits. We are of the view that, such a type of direction could not have been given by the Division Bench of Hon'ble High Court of Kerala nor would be finding too on the Appellate Tribunal (for the reasons to follow), once the Single Judge, in the Contempt Proceedings and even in the Writ Petition, where the Hon'ble High Court has accepted the fact of **"non-maintainability"** of Writ Petition, as against the order of the NCLT. Non-maintainability of the proceedings before the Hon'ble High Court, as not being a forum under law, in itself will restrict the jurisdiction of the Hon'ble High Court to pass any order of condoning the delay itself and granting an exemption of limitation, as any such direction would be falling outside the domain and jurisdiction of the Adjudicatory powers vested with the Hon'ble High Court particularly in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, particularly when it is not available to it, once it has held that the proceeding before it was not maintainable, as soon as proceedings are held not maintainable it ceased its power to pass any order on merits, and since the order of condoning delay would be treated to be an order touching of the

merits being the major part of the principal proceedings of Company Appeal, it could not have been passed by the Hon'ble High Court.

46. We are of the view and also as settled by various precedents, that as soon as the Hon'ble High Court, comes to a positive conclusion by determination, that the proceedings before it are not maintainable, and if it still proceeds to pass any orders either in the shape of the Interlocutory Order or even in the shape of Condonation of Delay, as the case at hand would be. The Hon'ble High Court did not have the power vested with it, to condone the delay, because the aspect of condonation of delay would always be an aspect which would be falling as a consideration on the merits of the dispute particularly when it is to be tested to hold the maintainability of Company Appeal, which is being exclusively vested with the Appellate Tribunals constituted under the provisions of the Companies Act. The Hon'ble Apex Court in the matter of ***Asma Lateef & Anr. Vs Shabbir Ahmad & Ors.,*** in a Judgment reported in ***[2024] 1 S.C.R. 517,*** had dealt with that aspect as to, what would be the extent of powers of Hon'ble High Court, after holding the proceedings to be not maintainable in para 39, which is extracted hereunder: -

> *"39. Although not directly arising in the present case, we also wish to observe that the question of jurisdiction would assume importance even at the stage a court considers the question of grant of interim relief. Where interim relief is claimed in a suit before a civil court and the party to be affected by grant of such relief, or any other party to the suit, raises a point of maintainability thereof or that it is barred by law and also contends on that basis that interim relief should not to be granted, grant of relief in*

whatever form, if at all, ought to be preceded by formation and recording of at least a prima facie satisfaction that the suit is maintainable or that it is not barred by law. Such a satisfaction resting on appreciation of the averments in the plaint, the application for interim relief and the written objection thereto, as well as the relevant law that is cited in support of the objection, would be a part of the court's reasoning of a prima facie case having been set up for interim relief, that the balance of convenience is in favour of the grant and non-grant would cause irreparable harm and prejudice. ***It would be inappropriate for a court to abstain from recording its prima facie satisfaction on the question of maintainability, yet, proceed to grant protection pro tem on the assumption that the question of maintainability has to be decided as a preliminary issue under Rule 2 of Order XIV, CPC. That could amount to an improper exercise of power. If the court is of the opinion at the stage of hearing the application for interim relief that the suit is barred by law or is otherwise not maintainable, it cannot dismiss it without framing a preliminary issue after the written statement is filed but can most certainly assign such opinion for refusing interim relief.*** *However, if an extraordinary situation arises where it could take time to decide the point of maintainability of the suit and nongrant of protection pro tem pending such decision could lead to irreversible consequences, the court may proceed to make an appropriate order in the manner indicated above justifying the course of action it adopts. In other words, such an order may be passed, if at all required, to avoid irreparable harm or injury or undue hardship to the party claiming the relief and/or to ensure that the proceedings are not rendered infructuous by reason of non-interference by the court."*

47. It had laid down the principle that, wherever in the proceedings, which are under a question of maintainability, for consideration. It has been laid down that, if the proceedings itself is not maintainable, before a forum where the proceeding is instituted, if the court will not have jurisdiction to decide the main

dispute, the question of limitation, because deciding the question of limitation itself would be a question, which is to be decided only with or along with after touching upon merits, which the Hon'ble High Court will cease its power as soon as it decides that the proceedings before it are not maintainable before it. Hence, the Hon'ble High Court becomes functus officio, to condone the delay as soon as it is determined that Writ Petition was not maintainable, and then dismiss the proceedings holding it to be not maintainable.

48. Similar view was taken by the Hon'ble High Court of Judicature at Bombay in ***Shri Nivruti G.Ahire Vs State Bank of Maharashtra & Ors., Civil Application No.106/2007***, wherein in para 15, the Division Bench of Bombay High Court took a similar view that, in order to entertain and consider a Condone Delay Application, there has to be a reckoned jurisdiction vested with the court to deal with the main case on its merits, if the principal proceedings itself is not maintainable, the court cannot condone the delay. The same was observed in para 15 of the Judgment, which is extracted hereunder: -

> *"15. In order to entertain an application for condonation of delay, the appeal or the application in respect of which there has been delay on the part of the applicant, and the condonation of which is sought for, the same must be maintainable in law. If the main application for review is itself not maintainable in law, question of condonation of delay in filing such an application would not arise at all. In the case in hand, admittedly, the applicant had preferred the S.L.P. and the same was rejected by the Apex Court and only thereafter the applicant though of filing the present review application."*

49. The issue, as to which would be the platform that would be available to consider the extension of benefit under Section 14 of the Limitation Act; whether it could be granted by the Court, which decides the proceedings to be not maintainable before it! or it was required to be considered by the court, which has been determined to be the forum, where the proceedings ought to have been drawn! There had been a consistent view that, if the particular court, for example, herein, the Hon'ble High Court, in the Writ Petition decides the proceedings were not maintainable before it, the time that is spent in pursuing the proceedings before the Writ Courts or a wrong forum, if at all it was required to be considered to be condoned in the light of the provisions contained under Section 14 of the Limitation Act, that could have been condoned or excluded from limitation only by the principal court, where actually the proceedings are maintainable, under law and ought to be drawn, and not by the court which was holding the proceedings to be not maintainable. This was the principle considered by the Divisional Bench of the Hon'ble High Court of Madras in ***O.S.A. No.257/2016, M/s. Pridhivi Asset Reconstruction and Securitisation Company Limited Vs M/s. Naihaa Retail Private Limited & Ors.*** The Division Bench in para 8 of the Judgment, has observed that in terms of Section 14 of the Limitation Act, the extension of period could be only granted by the forum before whom the application is presented. The relevant para 8 is extracted hereunder: -

> *"8. According to us, counsel for the appellant is right in submitting that any relief, in terms of Section 14 of the Limitation Act, can only be granted by the Forum, before whom, the application is presented."*

50. The aforesaid view was taken by the Division Bench of the Hon'ble High Court of Madras on the basis of the earlier Judgment of the Hon'ble Allahabad High Court, as reported in ***AIR 1973 Allahabad 547, Raj Ranjeet Singh and others Vs Bind Bahadur Singh.*** Relevant para 10 & 11 was relied upon by the Hon'ble High Court of Madras, which is extracted hereunder: -

> "*...10. From whatever aspect the matter is looked into, it must be held that the coparcenars, namely, plaintiffs Nos.2 to 4, were neither necessary nor proper parties to the suit. It was not necessary for plaintiff No.1 to implead them as co-plaintiffs. Plaintiff No.1 clearly impleaded plaintiffs Nos.2 to 4 to oust the Nyaya Panchayat of its jurisdiction. This could not be allowed. No party has the right to determine the forum nor can jurisdiction be conferred by consent on a court other than one prescribed under some enactment. In the circumstances the suit must be held to have been within the exclusive jurisdiction of the Nyaya Panchayat not cognizable by the Civil Court including the Court of Judge Small Causes. Ordinarily, such a plaint is returned for presentation to a competent court.*
>
> *11. The learned District Judge was moved by the fact that plaintiff No. 1 had unnecessarily impleaded the other coparceners to oust the jurisdiction of the Nyaya Panchayat. He treated this as a fraud played on the Court.* ***Whether the plaintiff was entitled to the benefit of Section 14 of the Limitation Act is not to be decided by the Court directing the return of the plaint. Such a question, if raised and permissible under the law, can be raised before the court before whom the plaint is represented. Courts of law do not attempt to fetter the discretion of other courts or tribunals. The District Judge was, therefore, not well advised to express the opinion that a fraud had been played on the courts. The proper thing would***

have been to leave the question open and to simply order that the plaint shall be returned for presentation to a competent court. ...""

51. In the said ratio, it had clearly laid down in the case of return of a plaint by a court for its presentation before the appropriate court, the benefit of Section 14 of the Limitation Act cannot be granted by the court returning the plaint to be presented before the proper court, it can be raised before whom the proceedings are directed to be presented, as the aspect of Section 14 of the Limitation Act, was not to be decided by the court which was not holding jurisdiction, and was directing the return of the proceedings to be decided by the appropriate court.

52. Almost a similar question arose for consideration before us in another case, as to, what would be the legal and judicial status of the Appellate Tribunals, those which had been created under the Companies Act. Our Judgments passed in the exercise of our Appellate Jurisdiction, we had opined that the Tribunal under Companies Act, they don't fall under the supervisory jurisdiction of the Hon'ble High Court, either under Article 227 of the Constitution of India, or even under Article 226 of the Constitution of India, in the exercise of extra ordinary jurisdiction, as the Hon'ble High Court does not exercise the Appellate Jurisdiction over the Judgments passed by the Appellate Tribunal, which are directly appealable before the Hon'ble Apex Court under Section 62 of the I & B Code. If that be the intent of the law, where the Judgments passed by the Appellate Tribunal, are not open to be judicially challenged, scrutinised or routed through the Hon'ble High Courts. The Hon'ble High Courts, particularly when it

does not exercise the supervisory jurisdiction, it cannot and rather should not have condoned the delay, and then direct the Appellate Tribunal to decide the Appeal on merits because thereafter there would be nothing left for the Appellate Tribunal to decide on the question of limitation once which is a question requiring merit consideration and is an important aspect to be decided, touching merits of appeal, when it has already been adjudicated and condoned by the Hon'ble High Court, which itself has already determined to be not an available forum or remedy under law to decide the controversy on merits. The said directions could have only been issued by the Hon'ble High Courts to the courts subordinate to it, and that too while exercising powers under Article 226 or Article 227 of the Constitution of India, only when the Hon'ble High Court has a supervisory jurisdiction over the Tribunals.

53. We had dealt with this aspect as to, up to what extent the Hon'ble High Court, could have exercised its powers of issuing directions regulating the judicial functioning of the Appellate Jurisdiction of the Tribunals created under the Companies Act, that issue was considered by us in the matters of ***M/s. Johnson Lifts Pvt. Ltd. Vs Tracks & Towers Infratech Pvt. Ltd.,*** as reported in ***2024 SCC OnLine NCLAT 2424*** and the relevant para is extracted hereunder: -

> *"Needless to mention, in the Judgment of Embassy Property Developments Pvt. Ltd. v. State of Karnataka, the issue of jurisdiction and the powers of the NCLT has been dealt with in very clear terms in Para - 30 of the Judgment which is extracted hereunder:—*
>
> ***"Jurisdiction and powers of NCLT***

30. NCLT and NCLAT are constituted, not under the IBC. 2016 but under Sections 408 and 410 of the Companies Act, 2013. Without specifically defining the powers and functions of the NCLT, Section 408 of the Companies Act, 2013 simply states that the Central Government shall constitute a National Company Law Tribunal, to exercise and discharge such powers and functions as are or may be, conferred on it by or under the Companies Act or any other law for the time being in force. Insofar as NCLAT is concerned, Section 410 of the Companies Act merely states that the Central Government shall constitute an Appellate Tribunal for hearing appeals against the Orders of the Tribunal. The matters that fall within the jurisdiction of the NCLT, under the Companies Act, 2013, lie scattered all over the Companies Act. Therefore, Sections 420 and 424 of the Companies Act, 2013 indicate in broad terms, merely the procedure to be followed by the NCLT and NCLAT before passing orders. However, there are no separate provisions in the Companies Act, exclusively dealing with the jurisdiction and powers of NCLT."

Thus, the aforesaid Judgment makes it quite clear that the Hon'ble High Courts should lay their hands off in those proceedings which are governed by a special statute like I & B Code, 2016, because the right of judicial review being made available before the Appellate Jurisdiction under the code itself, it should not be left open to be gone into under Article 226 & 227 of the Constitution of India, despite being a constitutional remedy for the infringement of a constitutional right or for the exercise of a supervisory jurisdiction. ***It follows that the matters emanating from I & B Code, do not apparently fall for consideration under either of the expressions given under Article 226 & 227 of the Constitution of India and hence this Tribunal would not hesitate to observe that the Hon'ble High Court of Telangana, should not have by the order condoned the delay and instead could have directed the matter to be decided on merits by the Tribunal.****"*

54. The Learned Counsel for the Appellant, has referred to in the Judgment of ***Kalpraj Dharamshi and Another Vs Kotak Investment Advisors Limited and***

Another, as reported in ***2021 (10) SCC 401,*** particularly he has referred to para 97 of the said Judgment, contending thereof that, if the said para 97 of the ***Kalpraj Dharamshi*** (supra) is taken into consideration, the only exception that has been carved out therein was that, the exercise of powers under Article 226 of the Constitution of India, could be only from the perspective that when the Hon'ble High Court finds from records that concludes the order to be in "violation of the Principles of Natural Justice", could proceed to pass an order in the interest of natural justice. But here, the said principles will not apply or be attracted even in the light of the observation that has already been made by the Hon'ble High Court that, the said ground of the violation of the Principles of Natural Justice, was not found to be available to the Appellant, when he put a challenge to the impugned order before the Hon'ble High Court in the Writ Petition. Para 97 of ***Kalpraj Dharamshi*** is extracted hereunder: -

> *"97. In the present case, the facts are totally contrary. KIAL had approached the High Court of Bombay making a specific grievance, that NCLT had adopted a procedure which was in breach of the principles of natural justice. It is specifically mentioned in the writ petition, that though an alternate remedy was available to it, it was approaching the High Court since the issue with regard to functioning of NCLT also fell for consideration. The proceedings before the High Court were hotly contested and by an elaborate judgment, the High Court dismissed [Kotak Investment Advisors Ltd. v. Krishna Chamadia, 2020 SCC OnLine Bom 197] the writ petition relegating the petitioner therein i.e. KIAL to an alternate remedy available in law. It is thus apparently clear, that KIAL was bona fide prosecuting a remedy*

before the High Court in good faith and with due diligence. In a given case, the High Court could have exercised jurisdiction under Article 226 of the Constitution inasmuch as, the grievance was regarding procedure followed by NCLT to be in breach of principles of natural justice. That would come within the limited area earmarked by this Court for exercise of extraordinary jurisdiction under Article 226 despite availability of an alternate remedy."

55. The Hon'ble Apex Court in the matter of ***Embassy Property Developments Private Limited Vs State of Karnataka, (2020) 13 SCC 308,*** had also dealt with the issue as to whether the Hon'ble High Court ought to interfere under Article 226 or under Article 227 of the Constitution of India, with an order that has been passed by the Learned NCLT in proceedings under the I & B Code ignoring the availability of statutory remedy of an appeal to the NCLAT, and if so under what circumstances. The said Judgment in its para 46 has considered the issue and observed that the only distinction, which was carved, was that, when the proceeding itself, as drawn before NCLT, was not maintainable before the Learned NCLT, it is only in those exceptional circumstances that the writ jurisdiction would be maintainable. Relevant para 46 is extracted hereunder: -

"46. On merits, Shri Kaul would submit, that the entire process adopted by RP and CoC was contrary to the statutory provisions, fair play and transparency. He submitted, that perusal of the definition of "applicant" in the Process Memorandum in Clause 1.0 would show, that for being a resolution applicant, one has to be an applicant who has applied within the prescribed period either under EOI or Form 'G'. It is submitted, that since Kalpraj had neither responded within the period

prescribed under EOI or any of the Form 'G', it could not have been considered to be a resolution applicant. He submitted, that the entire participation of Kalpraj is illegal. He submitted, that after the plan was submitted by KIAL there was a detailed discussion with RP with regard to the plan submitted by it, wherein entire plan was disclosed, after which Kalpraj was permitted to step in. He submitted, that perusal of the resolution plan of Kalpraj would reveal, that it is identical with the plans submitted by KIAL, with a little variation to the extent, that in the plan of KIAL the provision made for minority shareholder is Rs 1 crore whereas, in the plan of Kalpraj it is Rs 50 crores. He submitted, that the entire conduct of RP as well as CoC would reveal, that they had acted in a manner that smacks of favouritism to Kalpraj and were determined to anyhow approve the plan of Kalpraj. It is submitted, that all these aspects have been rightly considered by Nclat and therefore, the appeals deserve to be dismissed."

56. It is no one's case that has ever raised with regards to the maintainability of proceedings before NCLT. But if the order of the Learned NCLT, which has been put to challenge in the writ jurisdiction, that was arising from the proceedings before the NCLT, even if the question of maintainability was not the question raised, that whether the NCLT had its jurisdiction to deal with the issue! In that eventuality, too any orders, which has been passed by the Learned NCLT in a proceeding, which were otherwise maintainable or even not maintainable before it, that would be only amenable to an Appellate Jurisdiction under the appellate provisions of the Companies Act, i.e., before the NCLAT and not by way of a filing of a Writ Petition.

57. If we scrutinise the Judgment of ***Kalpraj Dharamshi*** in its para 57 & 59, the Hon'ble Apex Court, which is extracted hereunder: -

> *"57. Therefore, the crucial question, that arises for consideration, is as to whether the provisions of Section 14 of the Limitation Act or the principles laid down therein would be available to KIAL for exclusion of the period during which it was prosecuting the writ petition before the Division Bench of the Bombay High Court.*
>
> *59. The conditions that are required to be fulfilled for invoking the provisions of Section 14 of the Limitation Act have been succinctly spelt out in various judgments of this Court including the one in Consolidated Engg. Enterprises v. Irrigation Deptt. [Consolidated Engg. Enterprises v. Irrigation Deptt., (2008) 7 SCC 169] , which read thus : (SCC p. 181, para 21)*
>
> > *"21. Section 14 of the Limitation Act deals with exclusion of time of proceeding bona fide in a court without jurisdiction. On analysis of the said section, it becomes evident that the following conditions must be satisfied before Section 14 can be pressed into service:*
> >
> > *(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;*
> >
> > *(2) The prior proceeding had been prosecuted with due diligence and in good faith;*
> >
> > *(3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;*
> >
> > *(4) The earlier proceeding and the latter proceeding must relate to the same matter in issue; and*
> >
> > *(5) Both the proceedings are in a court."*

58. The Hon'ble Apex Court has considered as to under what circumstances the provisions of Section 14 of the Limitation Act could be extended to be applied, where a proceeding before a writ court was being pursued. To attract Section 14 of the Limitation Act, there has had to be an establishment of fact that the Appellant was acting in due diligence and good faith. In the instant case, there was a lack of due diligence because the Appellant was not shown to have acted in diligence. If the Judgment of ***Kalpraj Dharamshi*** is taken in its entirety, it has settled down, the provisions contained under Section 14 of the Limitation Act will not be applicable as of right, it's rather subject to only its principle being sought to be made applicable, subject to satisfying the conditions of **due diligence, good faith and bonafide**. All these elements were not available under the given set of circumstances and chronological proceedings, which has been taken by the Appellant, and thus the Appeal would be barred by limitation.

59. Owing to the aforesaid reasons, we conclude as under: -

(i) That, the provisions of Section 14 of the Limitation Act, though would be attracted to be applied over the proceedings of the I & B Code but the same could be only to be applied subject to satisfying the conditions contained under the provisions of Section 14 of the Limitation Act in itself after having resorted to the proceedings with bonafide, good faith and due diligence which was not established in the instant Company Appeal.

(ii) We feel that, the aspect of condonation of delay, falls to be an aspect which entails consideration of the merits of the Appeal too and if the aspect of

condonation of delay falls to be the merit consideration of the Appeal, that could not have been condoned or could have been considered to be condoned by extension of benefit under Section 14 of the Limitation Act on the directions of the Hon'ble High Court, which had held that the proceedings before it were barred by statutory alternative remedy.

(iii) We conclude that, once the Hon'ble High Court has observed that the proceedings before it are not maintainable due to the availability of the statutory remedy, at that moment itself, the Hon'ble High Court ceases its power to pass any orders dealing with the aspect of delay, which engages consideration of the merits of the Appeal.

(iv) Since in the instant case, the Appellant had been consistently engaging himself in multifarious proceedings before the Hon'ble High Court itself, when the Writ Petition was already determined to be not maintainable. The conduct of the Appellant cannot be said to be bonafide and in good faith to attract Section 14 of the Limitation Act.

(v) We hold that as soon as the Hon'ble High Court has held that the writ proceedings were not maintainable before it, the Hon'ble High Court would immediately cease its jurisdiction either in the exercise of extraordinary jurisdiction under Article 226 of the Constitution of India or under its supervisory jurisdiction under Article 227 of the Constitution of India (though not available) to condone the delay or to direct to consider the aspect of Condonation of Delay, which would always be an issue related to the merits of the Appeal.

(vi) Hence, while considering the aforesaid fact, we hold that the Company Appeal was barred by limitation and the same is accordingly dismissed. All pending interlocutory applications, if any, would stand closed.

60. For the reasons aforesaid, having held that when the superior court which decides the matter, holding it to be not maintainable before it. It cannot venture into to dispose of the Condone Delay Application itself by attracting provisions contained under Section 14 of the Limitation Act, 1963, or its implication, and thus the principal delay stands in preferring the Company Appeal. Even if it was required to be condoned by attracting Section 14 of the Limitation Act, 1963, it was to be done by this Appellate Tribunal and not by the Hon'ble High Court, which has held that the proceedings of the writ petition were not maintainable. In that eventuality, the Condone Delay Application being **IA No.1812/2025** would stand rejected, and as a consequence thereto, the **Comp App (AT) (CH) No.162/2025** would too stand dismissed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

30/04/2026
VG/MS/AK