

03.10.2024  
Sl. No.1(DL)  
srm

**W.P.A. No. 4927 of 2023**

**NCLT Advocates Bar Association, Kolkata & Ors.**

**Versus**

**Union of India & Ors.**

Mr. Ratnanko Banerjee, Id. Sr. Advocate

Mr. Joy Saha, Id. Sr. Advocate

Ms. Manju Bhuteria,

Mr. D.N. Sharma,

Mr. Sidharta Saharma,

Ms. Urmila Chakraborty,

Ms. Narmata Basu,

Ms. Rashmi Bothra,

Mr. Madhu Jana,

Mr. Kanishk Kejriwal,

Ms. Joveria Sabbah,

Ms. Tanvi Luhariwala,

Ms. Anushka Dhar

...for the Petitioners.

Mr. Dhiraj Trivedi, Id. DSG

Mr. Avinash Kankani

...for the Respondents.

Affidavit-in-opposition filed by the respondents and reply thereto filed by the petitioners are taken on record.

Having perused the order of the learned predecessor Judge dated May 17, 2023, this Court finds that Her Lordship was not inclined to stay the decision of the Ministry of Corporate Affairs to shift the NCLT, Kolkata to the new premise at Rajarhat. Her Lordship had made it clear that the perceived inconvenience of the learned Advocates who would

have to undertake a travel to Rajarhat in order to attend their matters, could not be a ground to interfere with a decision of the ministry to shift the NCLT. Under such circumstances, an interim order was passed to allow the learned Advocates to appear virtually.

It appears from the affidavit-in-opposition that Rule 8 of the NCLT Rules has been relied upon to urge that the learned Tribunal had complete autonomy to decide on its place of sitting. The present NCLT Bench which is working out of 5, Esplanade Row (East), Kolkata, adjacent to Town Hall, is housed in an old heritage building, with insufficient space and inadequate infrastructure.

The Central Public Works Department undertook the construction of the new building and the total project cost was Rs.132.65 crores. The present NCLT functions with two Benches, but additional Benches cannot be accommodated. The authority is of the opinion that the other departments/offices of the Ministry of Corporate Affairs in Kolkata, the Serious Fraud Investigating Office (SFIO), etc. should all be housed in one campus, for convenience. Although there are six numbers of sanctioned posts for Members of the NCLT, the Tribunal has been forced to work with only two Benches due to the space crunch and lack of

infrastructure. The spaces for storage of records, cause papers and for other supporting infrastructure is scanty.

It was a policy decision of the Central Government to shift the present NCLT, Kolkata Regional Bench to a new building, which has all the supporting infrastructure to house the Tribunal and its supporting offices and departments.

At this juncture, interference with such policy decision would not be prudent. Moreover, NCLT is situated in a heritage building and the laws prevent any kind of infrastructural changes to such building. Construction, reconstruction, addition, alteration is not permissible.

Mr. Saha, learned Senior Advocate appearing for the petitioners submits that the plea of sanctioned strength of six members was contrary to the actual state of affairs. Even four members have not been functioning continuously for the last four years. Mr. Saha's reliance in the matter of *Swiss Ribbons Private Limited & Anr. vs. Union of India & Ors.* reported in (2019) 4 SCC 17 also, does not persuade this Court to hold that the decision of the Ministry of Corporate Affairs is contrary to law.

In the decision of *Swiss Ribbons (supra)*, the question before the Hon'ble Apex Court was not whether the Ministry of Corporate Affairs could issue notifications with regard to

any of the matters covered either by Insolvency and Bankruptcy Code or by the Companies Act. Although the Hon'ble Apex Court was of the view that the decision of the Hon'ble Apex Court in the Madras High Court Bar Association's case should be followed by the government, Paragraph 34 of the decision of Swiss Ribbons (supra) which has been relied upon by Mr. Saha, deals with the facilities to be given to the Tribunal, by the Ministry of Law and Justice. The Ministry of Corporate Affairs had notified the constitution of the NCLT and NCLAT with effect from June 1, 2016. Pursuant to such notification eleven NCLT benches had been constituted, including the one at Kolkata. The Ministry also notified certain provisions of the Companies Act, which enabled the NCLT to discharge certain functions. The Manual of the Ministry of Corporate Affairs, which is available in <http://www.mca.gov.in>, states as follows:-

The objectives of the Ministry

- “1. To simplify and rationalise the Companies Act, 2013 and other allied laws in order to achieve the objectives of 'ease of doing business' without diluting corporate governance standard.
2. To speed up the process of identifying non-compliance of the Companies Act, 2013 and other laws and prosecution for non-compliance.
3. To speed up serious fraud investigation.
4. To promote LLP and one-person company among small and mid-sized enterprises and start-ups.
5. To promote fair competition.

6. Effective implementation of Insolvency and Bankruptcy Code, 2016 by making IBBI fully functional
7. To strengthen e-Governance in order to improve transparency and efficiency in service delivery.
8. Disseminate corporate data to public, including researchers and analysts.
9. To strengthen regulatory institution and institutions of good governance (NCLT/NCLAT, CCI, IEPFA, IBBI, SFIO, IICA).
10. Encourage business firms to adopt good governance and responsible business practices.”

The Ministry is primarily concerned with the administration of the Companies Act 2013, the Act of 2015, the Insolvency and Bankruptcy Code and other allied Acts. The ninth clause quoted hereinabove is relevant.

Under such circumstances, it would not be proper for this Court to stay the notification by which the proposal to shift the NCLT, Kolkata to the new building at Rajarhat has been made. It is also true that the entire building is complete and on the first occasion itself, no interim protection was given to the petitioners. The order of Her Lordship clearly records that the petitioners, are learned Advocates, purportedly aggrieved because their profession would suffer. This inconvenience of the lawyers cannot be a ground to interfere with a policy decision. The public does not appear to have been either inconvenienced or aggrieved by such decision. Rather, in my, *prima facie*, view adequate

infrastructure with modern facilities and a congenial working condition, is beneficial for all.

Let this matter appear for further hearing on **November 22, 2024 at 10.30 am.**

It is made clear that the learned Advocates should not be inconvenienced, if they wish to appear in their matters virtually and all technical support should be provided to them by the facility available at the Rajarhat building.

On the returnable date, the Central Government will come back with a report as to whether, upon construction of the new building, there would be a proposal for setting up an appellate bench.

**(Shampa Sarkar, J.)**