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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 03.07.2024

+ **W.P.(C) 8580/2024 & CM No.36569/2024**

GUJARAT OPERATIONAL
CREDITORS ASSOCIATION

.....Petitioner

Through: Mr Deepak Khosla, Advocate.

versus

NATIONAL COMPANY LAW TRIBUNAL,
NEW DELHI & ORS.

.....Respondents

Through: Mr Rakesh Kumar, CGSC with Mr
Rajesh Sharma, AR, NCLT.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE AMIT BANSAL

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. Several prayers are sought in the above-captioned writ petition. However, the main thrust of the writ petition is to seek issuance of directions to have the proceedings carried out before the National Company Law Tribunals [in short, "NCLT"], located in various parts of the country and the National Company Law Appellate Tribunal, [in short, "NCLAT"] recorded.
2. Mr Deepak Khosla, learned counsel, who appears on behalf of the petitioner, has submitted that this will lead to transparency and ensure robustness in the decision making process.



3. For convenience, the prayers sought in the writ petition are extracted hereafter:

- “i. Issue a writ of declaration, or such other suitable writ, order or direction, holding that Rule 45 (6) of the NCLT Rules (2016) is null and void ab initio as if non est, being hit by the ‘void-for-vagueness’ doctrine.*
- ii. In the alternative : Issue a writ of certiorari, or such other suitable writ, order or direction, quashing and striking down Rule 45 (6) of the NCLT Rules (2016), being contrary to ‘public policy’, and, therefore, being in violation of multiple Articles of the Constitution of India.*
- iii. Issue a writ of mandamus to Respondent No. 1 (NCLT) and to Respondent No. 2 (NCLAT), or such other writ, order or direction, whose effect would be to compel them to comply with the directions of the Hon’ble Supreme Court for commencing live-streaming of their proceedings within a time-bound period of, say, four weeks, or within such other short period of time this Hon’ble Court deems fit.*
- iv. Issue a writ of mandamus to Respondent No. 1 (NCLT) and to Respondent No. 2 (NCLAT), or such other writ, order or direction, whose effect would be to compel them to activate the recording feature in the WebEx software program used by them for conducting video-conferencing hearings, and to retain the recording (in the nature of evidence of what transpired during the hearing) for a period of 5 years, or for such other period this Hon’ble Court deems fit.*
- v. Issue a writ of mandamus to Respondent No. 1s (NCLT) and to Respondent No. 2 (NCLAT), or such other writ, order or direction, whose effect would be to compel them to provide a copy of the recording of the hearings to any interested party irrespective of locus standi, against furnishing of a suitable undertaking to not use the copy of the recording in any unauthorised manner, and on such other terms this Hon’ble Court may deem fit..*
- vi. Issue a writ of mandamus to Respondent No. 1 (NCLT) and to Respondent No. 2 (NCLAT), or such other writ, order or direction, whose effect would be to compel them to provide officially-certified transcripts of what is argued in the course of oral hearings to any interested party irrespective of locus standi, against payment of the appropriate fees, if deemed necessary, where the contents of the transcript be derived from the recording of the hearings.*
- vii. Issue a writ of mandamus, or such other appropriate order, writ or direction, directing Respondent No. 1 (NCLT) that any order reserved for*



judgement and dictated in chambers must bear the name of the author of the order.

viii. Issue a writ of Prohibition, or such other order, writ or direction, prohibiting any Ld. Member of Respondent No. 1 (NCLT) or Respondent No. 2 (NCLAT) who is not a retired judge of the High Court or of the Supreme Court from violating the provisions of Order XX [Rule 1(3)] of the CPC, and prohibit them from dictating any order or judgement in open Court to a shorthand writer unless he or she has been 'specially empowered by the jurisdictional State High Court to do so in this behalf'.

ix. Issue a writ of Prohibition, or such other order, writ or direction, prohibiting any Ld. Member (Technical) of Respondent No. 1 (NCLT) or of Respondent No. 2 (NCLAT) from being the author of any order or judgement, whether being a reserved order or judgement, or that dictated to a shorthand writer in open Court.

x. Issue a writ of mandamus, or such other order, writ or direction, prohibiting any Ld. Member (Technical) of Respondent No. 1 (NCLT) or of Respondent No. 2 (NCLAT) from being the author of any order or judgement, whether being a reserved order or judgement, or that dictated to a shorthand writer in open Court.

xi. Issue a writ of mandamus to Respondent No. 1 (NCLT) and to Respondent No. 2 (NCLAT), or such other writ, order or direction, whose effect would be to compel them to observe the rigours of Order XX of the CPC in its letter and spirit, and to ensure that all orders are either dictated in open Court to a shorthand writer in the presence of the parties, or held in open Court to formally stand reserved, to the exclusion of some concept of an illegal category of 'daily orders' which are either dictated in open Court, nor are stated in open Court to stand reserved for judgement (and eventually signed in the presence of the parties), but are dictated in chambers behind the backs of the parties, as well as signed in chambers behind the backs of the parties.

xii. Issue a writ of mandamus to Respondent No. 1 (NCLT) and to Respondent No. 2 (NCLAT), or such other writ, order or direction, whose effect would be to compel them to ensure that all orders that stand reserved for judgement, and when eventually pronounced in open Court, are signed in the presence of the parties immediately thereafter, by reading out the operative portion in the presence of the parties, the reading-out including announcing of the decision, as well as brief reasons for the decision.

xiii. And pass such other order or further order or orders as this Hon'ble Court may deem fit and proper under the circumstances of the case."



4. Mr Khosla concedes that a representation dated 28.04.2024 has been made to the Hon'ble President, NCLT. We are informed by Mr Khosla that the representation is pending consideration.

5. Given the fact that any decision with regard to the issue raised in the writ petition will have an impact on all NCLT benches spread across the country as well as the Appellate Forum, i.e., National Company Law Tribunal [NCLAT] in our view, the best way forward would be that the instant writ petition is treated as a representation to be dealt with by the Hon'ble Chairperson, NCLAT.

6. We say so as it is our sense that before direction(s) as sought are issued, the matter would *inter alia* require inputs from Presidents of various NCLT benches to ascertain as to whether they have the necessary wherewithal for generation of transcripts and creation of storage and preservation facility.

6.1 Amongst other things, deliberations will have to be carried out concerning deployment of trained manpower and technical equipments. The location of servers will also have to be looked into while taking a decision in the matter.

6.2 Insofar as specific cases are concerned, in our view, directions can be issued, if found necessary, in a given case by the concerned bench of the NCLT.

6.3 As far as proceedings conducted *via* Video Conferencing (VC) are concerned, various High Courts, including Delhi High Court, have already framed rules, based on the model rules framed by the inter-court subcommittee constituted by the Hon'ble Chief Justice of India and Chairperson of the



Supreme Court, e-Committee. Insofar as Tribunals in Delhi are concerned, the VC rules framed by this Court are applicable to them

7. We are told that the petitioner association is involved in proceedings presently pending before the Mumbai bench (formerly before the Ahmedabad bench) of the NCLT.

8. Besides the aforementioned issue concerning recordal of proceedings that take place before the NCLT benches and the NCLAT, we may note that prayer clauses (vii) to (xiii) relate, *inter alia*, to the manner in which judgments should be reserved, authored and dictated. In our view, these prayers go much beyond the core issue raised in the writ petition. Therefore, in our opinion, they do not merit any consideration. The prayers mentioned in clauses (vii) to (xiii) are, hence, rejected.

9. The learned counsel appearing on behalf of the respondents has raised a preliminary objection with regard to the maintainability of the writ petition, *inter alia*, on the ground concerning lack of territorial jurisdiction as well as the absence of necessary authority to file the writ action.

10. We need not delve into this aspect of the matter, at this juncture, in view of what is indicated above, which is, that the writ petition will be treated as a representation.

11. The petitioner is given liberty to place the writ petition before the Hon'ble Chairperson, NCLAT.

11.1 The Hon'ble Chairperson is requested to examine the viability of the directions sought in the writ petition concerning recordal of proceedings before NCLT benches and NCLAT which are articulated in the prayer clauses



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extracted hereinabove.

12. The writ petition is disposed of in the aforesaid terms.
13. The pending application shall stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

JULY 3, 2024 / tr