

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/LETTERS PATENT APPEAL NO. 431 of 2020**  
**In**  
**R/SPECIAL CIVIL APPLICATION NO. 9118 of 2020**  
**With**  
**CIVIL APPLICATION (FOR STAY) NO. 1 of 2020**  
**In**  
**R/LETTERS PATENT APPEAL NO. 431 of 2020**

**FOR APPROVAL AND SIGNATURE:****HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**

**and**  
**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

**SONU CARGO MOVERS (I) PVT. LTD**  
**Versus**  
**WIND WORLD (INDIA) LIMITED THROUGH ITS RESOLUTION**  
**PROFESSIONAL SHAILEN SHAH**

**E-MAIL COPY**

Appearance:

MR ANSHIN DESAI, SENIOR ADVOCATE WITH MR JAIMIN R DAVE(7022) for the Appellant(s) No. 1

MR NAVIN PAHWA, SENIOR ADVOCATE for the Respondent No. 1

MR SANDEEP SINGHI ADVOCATE for the Respondents Nos. 2 TO 4

MR ALOK DHIR SENIOR ADVOCATE WITH MR DHRUVIL MERCHANT, ADVOCATE for the Respondent No.8

MR ALOK DHIR SENIOR ADVOCATE WITH MR PARTH SHAH, ADVOCATE for the Respondent No.9

MR MASOOM SHAH, ADVOCATE for the Respondent No.10

MR MAULIK NANAVATY ADVOCATE for the Respondent No.12

**CORAM:HONOURABLE THE CHIEF JUSTICE MR. VIKRAM NATH**  
and  
**HONOURABLE MR. JUSTICE J.B.PARDIWALA**

**Date : 21/08/2020**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1 This appeal under Clause 15 of the Letters Patent Act is at the instance of the original writ applicant of a writ application and is directed against the order passed by a learned Single Judge of this Court dated 1<sup>st</sup> August 2020 in the Special Civil Application No.9118 of 2020, by which the learned Single Judge rejected the writ application with costs of Rs.10,000/-.

2 The brief facts of this litigation may be stated thus:

2.1 The appellant herein (original writ applicant) preferred the Special Civil Application No.9118 of 2020 seeking the following reliefs:

*“(A) Be pleased to allow this petition.*

**E-MAIL COPY**

*(B) Be pleased to issue writ in the nature of mandamus or any other writ /order/direction to National Company Law Tribunal at Ahmedabad, to conduct the proceedings in all applications in CP(IB) no.14 of 2018 by physical hearing as and when the same is permitted by the National Company Law Tribunal, Delhi Principal Bench, State of Gujarat and other authorities in light of COVID-19 pandemic.*

*(C) Be pleased to issue writ in the nature of mandamus or any other writ /order /direction to quash and set aside the order dated 21.07.2020 passed by the National Company Law Appellate Tribunal at New Delhi in CA (AT) (I) No.576 of 2020.*

*(D) Be pleased to issue writ in the nature of mandamus or any other writ /order /direction to quash and set aside the order dated 27.07.2020 passed by the National Company Law Tribunal, Ahmedabad in CP(IB) No.14 of 2018 and connected matters.*

*(E) Pending admission, hearing and final disposal of this petition, be pleased to stay the proceedings in CP(IB) No.14 of 2018 and connected matters pending before National Company Law Tribunal, Ahmedabad.*

*(F) Pass such other order / directions as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

3 We do not propose to delve much into the facts of the litigation pending before the National Company Law Tribunal, Ahmedabad Bench, Court No.1 between the parties as this litigation has something to do with the mode and manner of the functioning of the NCLT at Ahmedabad.

4 *Prima facie*, it appears that the appellant herein came before the learned Single Judge redressing the grievance that the present platform of physical hearing as well as virtual hearing is completely unworkable, more particularly, the virtual hearing, as the same is unstable and full of technical snags. In other words, it is the case of the appellant herein that having regard to the complex nature of the litigation, which the Tribunal is handling, it is not feasible to conduct the matter by mode of virtual hearing. The physical mode of hearing would be more convenient and in the larger interest of all the parties concerned. However, it is also the case of the appellant that having regard to the current situation of COVID-19 pandemic, it is not advisable for the Tribunal to adopt the mode of physical hearing.

5 In such circumstances referred to above, the appellant came before the learned Single Judge and prayed that the proceedings in the CP (IB) No.14 of 2018 may be conducted by the Tribunal by adopting the mode of physical hearing as and when the physical hearing is permitted by the National Company Law Tribunal, Delhi, Principal Bench, State of Gujarat.

6 It also appears that the appellant herein prayed before the learned Single Judge to quash and set aside the order dated 21<sup>st</sup> July 2020 passed by the National Company Law Appellate Tribunal at New Delhi in the Company Appeal (AT) (Insolvency) No.576 of 2020. The order passed by the appellate Tribunal reads thus:

*“After bearing learned counsel for the parties, we find that on 16<sup>th</sup> March, 2020 the insolvency matter viz. LA. 476 of 2018 in CP (I.B.) No. 14/NCLT/AHM/2018 had been adjourned by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Court 1 to 21<sup>st</sup> April, 2020 in view of the advisory issued by the Central Government due to outbreak of COVID-19 which was declared pandemic leading to imposition of lockdown. It is stated at the Bar that the matter is now listed for 27<sup>th</sup> July, 2020 for bearing through virtual mode.*—

**E-MAIL COPY**

*2. In view of the events that have intervened bringing the Wheels of justice to a halt, we direct the Adjudicating Authority to hear the matter expeditiously alongwith all IAs according priority to the matter as the same pertains to insolvency resolution which process was commenced on 20<sup>th</sup> February, 2018.*

*3. We hope and expect that the Adjudicating Authority would hear the matter with utmost expedition and dispose of the same without any further loss of time. This direction for expeditious disposal shall be notwithstanding the mode of hearing which shall be decided by the Adjudicating Authority. The appeal is accordingly disposed of.”*

7 At the same time, the appellant herein also prayed before the learned Single Judge to quash and set aside the order dated 27<sup>th</sup> July 2020 passed by the NCLT at Ahmedabad in the CP(IB) No.14 of 2018, which reads thus:

*“ORDER*

*Learned Senior Counsel Mr. Navin Pahwa appeared for the RP.*

*Learned Senior Counsel Mr. Mihir Thakore appeared for the Successful Resolution Applicant.*

*Learned Senior Counsel Mr. Sourabh Soparkar appeared for Enorcon GmbH.*

*Hon’ble NCLAT directed this Authority to disposed-off this application as expeditiously as possible vide order dated 21.07.2020. Hence, matter stands adjourned for hearing on 03.08.2020”*

8 The learned Single Judge declined to entertain the writ application essentially on the ground that none of the fundamental rights or any legal rights of the appellant herein could be said to have been infringed by the NCLT in adopting a particular mode of hearing. In other words, according to the learned Single Judge, it is within the discretion of the Tribunal whether to conduct the proceedings by virtual mode or physical mode. The learned Single Judge also took notice of the representation made by the President of the Ahmedabad National Company Law Tribunal Practitioners Association to the NCLT as regards the hardships faced by the members of the Association with regard to the mode of hearing. The learned

Single Judge observed that it is for the concerned authority to look into such representation.

9 Ultimately, the learned Single Judge rejected the writ application by imposing costs of Rs.10,000/-.

10 Being dissatisfied with the impugned judgement and order passed by the learned Single Judge, the original writ applicant is here before this Court with the present appeal.

• **SUBMISSIONS ON BEHALF OF THE APPELLANT:**

11 Mr. Anshin Desai, the learned senior counsel appearing with Mr. Jaimin R. Dave, the learned advocate for the appellant vehemently submitted that the learned Single Judge committed a serious error in rejecting the writ application with costs. Mr. Desai would submit that the short point for consideration in the present appeal is whether the NCLT, Ahmedabad is justified in insisting for physical hearing during the COVID-19 pandemic, more particularly, in view of the notice dated 22<sup>nd</sup> March 2020 of the NCLT, the office memorandum dated 19<sup>th</sup> May 2020 and the Press Note released by the High Court dated 27<sup>th</sup> July 2020, whereby all the Courts of State of Gujarat were asked not to conduct physical hearing.

12 Mr. Desai would submit that the situation prevailing, as on date, in the NCLT at Ahmedabad is quite precarious for many lawyers. Mr. Desai pointed out that the Court No.2 has been very consisting with the mode of hearing. The Court No.2 has been

given virtual hearing consistently to all the learned advocates appearing before it. However, the Court No.1 has adopted a very inconsistent practice as regards the mode of hearing. It is pointed out to us that if a particular lawyer appears physically before the Tribunal, then the hearing is conducted in physical form though the lawyer for the other side may not be present as he would be expecting the Court No.1 to conduct virtual hearing. Mr. Desai would submit that if the Court No.1 of the Tribunal wants to go for physical hearing, then the consent of all the lawyers appearing in the particular litigation should be first obtained, and only thereafter, the physical hearing should be conducted. If any lawyer has any difficulty with regard to physical hearing, then the Court No.1 should adopt the mode of virtual hearing.

13 Mr. Desai would submit that there are many other issues, which the NCLT at Ahmedabad needs to take into consideration for proper and effective functioning, and all such issues have been highlighted in the representation dated 29<sup>th</sup> July 2020 made by the President of the Association. Mr. Desai would submit that till this date, no heed has been paid to such representation.

**E-MAIL COPY**

14 Mr. Desai also pointed out that even the present platform for virtual hearing is completely unworkable, unstable and full of technical snags. Not only the counsel appearing in the matter, but also the litigants have to face serious communication barriers and are unable to conduct the matter effectively.

15 Mr. Desai would submit that the learned Single Judge committed a serious error in taking the view that the High Court in its writ jurisdiction under Article 226 of the Constitution or under its supervisory jurisdiction under Article 227 of the Constitution has jurisdiction to interfere with the practice and procedure to be followed by the Tribunal. In this regard, Mr. Desai invited the attention of this Court to sub-Article (2) of Article 227 of the Constitution, which provides that every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction including power to make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts. In other words, according to Mr. Desai, the superintendence power of the High Court is both, administrative and judicial. In the aforesaid context, Mr. Desai seeks to place reliance on the following case law:

(1) *Union of India (UOI) vs. Debts Recovery Tribunal Bar Association* reported in (2013) 2 SCC 574 (para 9.5 and 10.2)

(2) *L. Chandra Kumar vs. Union of India (UOI)* reported in 91997) 3 SCC 261 (para 79)

(3) *Judge of the Division Bench of this Hon'ble Court in the case of Bank of Maharashtra vs. Siddhi Vinayak Logistic Limited, Special Civil Application No.16404 of 2015 and*

(4) *Judgement of Hon'ble High Court of Bombay in Kamal K. Singh vs. Union of India, Writ Petition No.3250 of 2019.*



16 Mr. Desai invited the attention of this Court to para 4.5 of the memorandum of the appeal, which reads thus:

*“It is submitted that part virtual hearing and part physical hearing creates serious difficulties enumerated as under:*

- *The counsel / practitioner who appears on virtual platform is unable to comprehend the submission of the counsel / practitioner appearing physically.*
- *Furthermore, fate of counsel / practitioner appearing virtually is in the hands of court master / operator who can logout or mute the counsel / practitioner appearing virtually at any point of time even while their matter is on.*
- *Furthermore, such a hearing wherein one party is not able to comprehend the submission of other side is completely unfair, arbitrary and violative of principles of natural justice. It is submitted that such hearing cannot stand the test of fairness as enshrined under Article 14 of the Constitution of India.*
- *On most occasion, there is disruption in voice or video. Hence, the counsel / practitioner appearing, virtually cannot get meaning and effective hearing. Whereas the counsel / practitioner appearing physically can literally hijack the proceedings before the ld. Tribunal.*
- *It is submitted that in the case of the appellant itself, their advocate on record was present physically. However, their arguing counsel could not login for virtual hearing since the maximum capacity of this platform is 20 to 25 participants. Therefore, the appellant herein did not get a fair chance of audience before the Ld. Tribunal through advocate of their choice.”*

17 Mr. Desai also invited the attention of this Court to para 16 of the memorandum of appeal, wherein the other difficulties faced by the lawyers has been enumerated. The same reads thus:

- *“The Ld. Lawyers appearing before the Hon’ble Tribunal are muted during the course of hearing and their fate of hearing hinges on mercy of Court Master / Operator.*
  - *The present platform Video can accommodate only 20 to 25 participants at a time and the matters such as this where 40 to 50 participants are required to be logged in cannot be heard through present platform.*
  - *That in case where all practitioners are not able to login, there are chance of overlapping arguments and repetition. Hence everyone needs to remain present and address the Court.*
  - *Practitioners appear, before the Ld. Tribunal from Delhi, Mumbai, and various other cities in the matter. In case where physical hearing is encouraged, it will be at the risk to right to life under the Constitution in the corona times.*
- 
- E-MAIL COPY
- *Papers involved in the matter exceeds 10000 in humble estimate of all the applications. There is voluminous record and the last time when hearing took place for nearly 7 to 8 days, the lawyers had to assist the Court Master to find the right documents, due to the bulky record.*
  - *Mails sent to the Ld. Tribunal are not printed and provided to the Hon’ble Bench at the time of hearing. It causes immense in convenience to Hon’ble Bench and practitioner while arguing.”*

18 Mr. Desai, in the last, invited the attention of this Court to the representation dated 29<sup>th</sup> July 2020 made to the NCLT by the President of the Association. The same reads thus:

*“To,  
National Company Law Tribunal, Ahmedabad*

*Subject : Representation of streamlining virtual hearing and discourage physical hearing before National Company Law Tribunal, Ahmedabad.*

*Respected Hon’ble Members,*

*It is noticed that since the commencement of virtual hearing by this Hon’ble Tribunal, most of the practitioners are facing technical problems and there have been repeated complaints from most of the practitioners.*

*Under the circumstances, the association had made an oral representation before the Hon’ble Members to switch the platform for virtual hearing. During this meeting, we were made to understand that this Hon’ble Tribunal is actively considering the said request of switching a platform.*

*However, till the Hon’ble Tribunal is able to switch the platform for virtual hearing, in order to ensure that the practitioner practicing before Hon’ble National Company Law Tribunal, Ahmedabad may not face any further problem a meeting of managing committee was held on 28.07.2020 through Zoom platform and it was decided to make following representations before the Hon’ble Tribunal:*

- 1. A request for change of platform for virtual hearing is emphatically reiterated as the present platform in respect of the virtual hearing is completely unworkable and unstable. There are time when the voice breaks down, connection is very poor and image disappears. More serious problems is that it is very difficult to gain “entry” in the virtual room. One has to try, sometimes, scores of times to gain entry to find, very soon that he is “thrown out”. It is impossible to conduct any hearing in a meaningful way on this platform. As a goodwill gesture and in*

*order to strengthen bar and bench relation, the association is willing to arrange a different platform for virtual hearing if so deemed appropriate by the Hon'ble Tribunal till such time the tribunal can come up with the alternate platform or, if desired permanently.*

- 2. However, it is requested that till there is a change in platform and till the virtual hearing procedure is not streamlined. Hon'ble Tribunal may not pass any coercive order or record absence of counsel / parties. In case of absence of counsel / parties for virtual hearing, Hon'ble Tribunal may be pleased to adjourn the matter for further consideration by recording that the Authorised Representative (AR) has not been able to log in.*
- 3. Hon'ble Members may pass on appropriate instructions to their Court Masters/ Technicians / System Operators so as to ensure that concerned practitioner whose matter is taken up for hearing or whose matter is likely to be called out is unmuted promptly and they are not muted during the course of hearing. Secondly, Court Masters / Technicians / System Operators shall not be entitled to log off a particular practitioner without the consent of Hon'ble Members.*
- 4. The problem of too many ARs trying to enter the courtroom is because of the fact that the display board is not working and therefore the ARs are not aware as to which matter is being conducted by the court. It is therefore absolutely necessary to start the display board so that only those ARs whose matters are likely to be taken up soon would enter and others can rest assured that they would not be left behind when their matters are being called out.*
- 5. Hon'ble Tribunal may not permit physical hearing except where all the concerned practitioners to a particular matter voluntarily consent for the same. Virtual hearing has to be a norm and physical hearing an exception in rarest of rare case. In this connection we bring to the kind attention of the honourable members the circular dated 27<sup>th</sup> July issued by the honourable High Court which expressly prohibits conducting of any hearing by physical mode by any court in the state. It may be that the circular may apply only to the trial courts or the district courts. However the spirit of the circular is that considering the serious health hazards, for the time being, the courts should not hold any physical hearings at all.*
- 6. In case where any of the practitioner has reservation for physical appearance the matter shall be heard virtually, or it may be adjourned.*
- 7. There shall not be part physical and part virtual hearing unless a proper system is installed wherein a practitioner appearing virtually can see and hear the practitioner appearing physically so as to comprehend submission of*

*otherside. Until a system is established there's bound to be a serious prejudice to the persons who argue by virtual platform because firstly they will not be able to hear the arguments which are being made on a physical basis and secondly they would not be in a position to answer the issues that are being raised against them;*

8. *Lastly, the matter may not be reserved for order and vice-versa by calling upon practitioners to give written submission and without conducting virtual hearing unless all the practitioners are agreeable for waiving their right of hearing and are willing to conclude the matter by way of written submission.*

*(A copy of resolution passed by managing committee pursuant to meeting dated 28.07.2020 is annexed along with the letter as Annexure-1)*

*The managing committee of the association humbly requests the Hon'ble Tribunal to consider this representation positively and oblige. Thanking you in anticipation.*

*Yours sincerely,*

*Shri Mihir Thakore  
President*

*Ahmedabad National Company  
Law Practitioners Association"*

19 In such circumstances referred to above, Mr. Desai, the learned senior counsel appearing for the appellant prays that there being merit in his appeal, the same may be allowed and the impugned order passed by the learned Single Judge may be set aside. He further prays that the Special Civil Application No.9118 of 2020 may be allowed and the reliefs prayed therein may be granted.

- **SUBMISSIONS ON BEHALF OF THE RESPONDENT NO.1:**

20 Mr. Navin K. Pahwa, the learned senior counsel appearing for the respondent No.1 has vehemently opposed this appeal. Mr. Pahwa would submit that no error, not to speak of any error of law could be said to have been committed by the learned Single Judge in passing the impugned order. Mr. Pahwa would submit that the only object with which the writ application came to be filed by the appellant herein is to thwart and delay the proceedings before the NCLT. Mr. Pahwa would submit that the stakes involved in the litigation before the Tribunal so far as his client is concerned are very high and his client would like to put an end to the litigation before the Tribunal. On the other hand, according to Mr. Pahwa, the appellant herein is unnecessarily creating hindrances, as a result the proceedings are being delayed. According to Mr. Pahwa, there is no inconsistency of any manner with regard to the conduct of the proceedings before the NCLT. Mr. Pahwa would submit that if there is any difficulty with regard to the physical mode of hearing, then he has no difficulty to conduct the matter before the Tribunal even by adopting the mode of virtual hearing. However, according to Mr. Pahwa, this Court should ask Mr. Desai, the learned senior counsel appearing for the appellant to extend his full cooperation in the matter and not to delay the proceedings in some manner or the other. Mr. Pahwa, in the last, assures this Court that he has no aversion towards virtual hearing and is ready and willing to conduct the matter adopting the mode of virtual hearing.

21 In such circumstances referred to above, Mr. Pahwa, the learned senior counsel appearing for the respondent No.1 prays

that the impugned order passed by the learned Single Judge may not be disturbed and the appeal may be dismissed.

22 We also heard Mr. Sandip Singhi, the learned counsel appearing for the respondents Nos.2 to 4, Mr. Alok Dhir, the learned senior counsel appearing with Shri Dhruvil Merchant, the learned advocate for the respondent No.8, Mr. Alok Dhir, the learned senior counsel appearing with Mr. Parth Shah for the respondent No.9, Mr. Masoom K. Shah, the learned counsel appearing for the respondent No.10 and Mr. Maulik Nanavaty, the learned counsel appearing for the respondent No.12. Mr. Dhir, Mr. Masoom Shah and Mr. Maulik Nanavaty, in one voice, submitted that the practice adopted by the Court No.1 in the NCLT, as on date, is very inconsistent and creating lot of difficulties for the lawyers. All the learned counsel would submit that having regard to the current situation of COVID-19 pandemic, it is not advisable to go for physical hearing and the Court No.1 of the Tribunal should adopt the mode of virtual hearing. All the learned counsel assure this Court that they would cooperate and not delay the proceedings. All the learned counsel pray before this Court that appropriate directions may be issued to the NCLT at Ahmedabad with regard to the functioning of the Court so as to bring uniformity in the conduct of such proceedings.

23 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the learned

Single Judge committed any error in rejecting the writ application.

24 The Supreme Court in **Union of India vs. Debts Recovery Tribunal Bar Association** reported in **(2013) 2 SCC 574** observed thus:

*“9.5. Implement the “e-DRT Project” to automate and improve DRT services by building IT systems as expeditiously as possible.*

....

*10.2. Further, we believe that the High Courts are empowered to exercise their jurisdiction of superintendence under Article 227 of the Constitution of India in order to oversee the functioning of DRTs and DRATs. Section 18 of the Rddbfj Act leaves no scope for doubt in this behalf. It reads thus:*

*“18.Bar of jurisdiction.—On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction, powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) in relation to the matters specified in Section 17.”*

*Article 227 of the Constitution stipulates that every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. This power of superintendence also extends to the administrative functioning of these courts and **tribunals (Shalini Shyam Shetty v. Rajendra Shankar Patil [(2010) 8 SCC 329 : (2010) 3 SCC (Civ) 338]** ). Hence, in light of the above, we expect that all the High Courts shall keep a close watch on the functioning of DRTs and DRATs, which fall within their respective jurisdictions. The High Courts shall ensure a smooth, efficient and transparent working of the said Tribunals. We are confident that through the timely and appropriate superintendence of the High Courts, the Tribunals shall adhere to*



*the rigour of appropriate standards indispensable to the fair and efficient administration of justice.”*

25 The Supreme Court in **L. Chandra Kumar vs. Union of India** reported in **(1997) 3 SCC 261** observed thus:

*“79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.”*

26 We are of the view that it would have been appropriate in the larger interest of justice for the learned Single Judge to dispose of the petition by issuing appropriate directions in exercise of power under Article 227 of the Constitution rather than outright rejecting the writ application and that too with costs of Rs.10,000/-. The materials on record do indicate that there is a acute problem faced by many lawyers in the NCLT at Ahmedabad as regards the mode and manner of the functioning of the Courts. It goes without saying that the procedure that may be followed must be consistent, and at the same time, should be reasonable so as not to put anyone in difficulty. If the Court No.2 of the NCLT at Ahmedabad has been very consistent with the mode of hearing, then we see no good reason why the Court No.1 should give any reason for the lawyers to redress so many grievances. In any form of administration, some difficulties are bound to be experienced, but, some rational approach should be adopted, by which, the difficulties are eased and no scope is left for anyone to complain.

27 The reasoning assigned by the learned Single Judge in the impugned order that there is no contemporaneous record to indicate that part physical and part virtual hearing is going on before the Tribunal, *prima facie*, appears to be contrary in wake of the following:

[a] The order dated 17<sup>th</sup> August 2020 passed in the proceedings before the NCLT indicating that part physical and part video conferencing is going on.

[b] The aforesaid is supported by para 7 of the representation dated 29<sup>th</sup> July 2020 addressed by Mr. Mihir Thakore, President, Ahmedabad National Company Law Tribunal Practitioners Association to the Tribunal.

28 We are of the firm view that if the Tribunal wants to go for physical hearing of any particular matter, it may go for it, but, at the same time, it must seek the consent of all the learned counsel appearing in the litigation and only thereafter, it may proceed. However, it should not happen that one set of lawyers would appear before the Tribunal physically and the Tribunal would take up the matter, hear those lawyers and decide the matter without the consent of the other set of lawyers appearing for the different parties. Such practice is bound to create hue and cry.

29 We would still like to sound a note of caution as regards adopting the mode of physical hearing as on date. We have no idea about the premises of the NCLT. What we have been able to gather from the submission of the learned counsel appearing in this matter is that it is dangerous to conduct physical hearing of the matters. It is, in such circumstances, that we draw the attention of the NCLT to the following:

[a] The circular issued by the President NCLT dated 19<sup>th</sup> May 2020.

[b] The Press released of the High Court dated 27<sup>th</sup> July 2020 restraining all Courts across the State from conducting physical hearing.

30 We do not propose to enter into any further controversy. We dispose of this appeal with the following directions to the NCLT at Ahmedabad in exercise of our superintending power under Article 227 of the Constitution of India:

[1] We direct the National Company Law Tribunal at Ahmedabad to take up the representation dated 29<sup>th</sup> July 2020 for consideration made by the Association with regard to streamlining virtual hearing before the Tribunal. We direct the Tribunal to give a personal hearing to Shri Mihir Thakore, the learned senior counsel, who, at present, is the President of the Ahmedabad National Company Law Practitioners Association and discuss various issues raised in the representation and try to resolve the controversy. In

other words, we request the NCLT, Ahmedabad to frame standard operating procedure (SOP) in consultation with the Bar for virtual functioning of the Tribunal in tune with the circulars issued by this Court time to time preferably within one week from the date of receipt of the order. Let this exercise be undertaken and completed within a period of one week from the date of receipt of the writ of this order.

[2] We make it clear that if any matter is to be heard by adopting the mode of physical hearing, then the consent of all the learned counsel appearing in the litigation should be first obtained. If any counsel has any objection in this regard, then it should not be happen that one set of lawyers are heard physically and the other set of lawyers are heard through virtual mode. In such circumstances, the entire hearing should be virtual.

[3] We direct the appellant herein to extend full cooperation in the proceedings before the NCLT and not create any hindrances of any nature so as to delay the proceedings. In this regard, an assurance has been given by Mr. Desai, the learned senior counsel that the appellant will not create any hindrances and will cooperate in all respects for smooth, effective and expeditious disposal of the proceedings.

31 We hope and trust that the entire controversy is resolved by the NCLT and none of the parties has to come back to this

Court. It is very unfortunate that a litigation of the present nature has travelled all the way upto the High Court.

32 In view of the aforesaid discussion, the judgement and order passed by the learned Single Judge is hereby set aside and the Special Civil Application No.9118 of 2020 is allowed to the aforesaid extent.

33 With the above, this appeal stands disposed of. With the final disposal of the main appeal, the connected civil application also stands disposed of.

34 We direct the Registry to forward one copy of this order to the Registrar of the NCLT, Ahmedabad at the earliest.

(VIKRAM NATH, CJ)

(J. B. PARDIWALA, J)

CHANDRESH

E-MAIL COPY