

A MR. SURENDER KUMAR GUPTA AND OTHERS

v.

J M HOUSING LIMITED AND OTHERS

(Civil Appeal No. 418 of 2021)

B FEBRUARY 26, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND
M.R. SHAH, JJ.]**

Order/Judgment:

- C *Ex-parte ad-interim order – By National Company Law Tribunal (NCLT) – In a petition u/s. 241 and 242 of Companies Act, 2013 – Appeal to National Company Law Appellate Tribunal (NCLAT) – Order of NCLT was set aside by NCLAT on the ground that it was passed in violation of principles of natural justice and the matter was remitted to NCLT for de novo consideration on merits*
- D *– Appeal to Supreme Court – Held: The essence of an ex-parte order is that it is passed without hearing the other side – The adjudicating authority, before issuing an ex-parte ad-interim order, must be satisfied of the irretrievable injury which may be caused to the applicant if a protective order is not passed – A prima facie case and balance of convenience must also be weighed in – NCLAT has not dealt with the fundamental issue whether the petitioners had established an urgent case for the grant of ex-parte relief – Consideration of the matter on merit by NCLT as per the direction of NCLAT, would preclude the petitioners from applying for grant of ad-interim relief during pendency of the proceedings before NCLT*
- E *– Therefore, the petitioners are granted liberty to apply afresh for interim relief on the basis of same application, on which NCLT had passed its order – Appeal disposed of.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 418 of 2021.

G From the Judgment and Order dated 18.12.2020 passed by the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) No. 182 of 2020.

Rakesh Kumar, Saurabh Mishra, Ms. Preeti Kashyap Advs. for Appellants.

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Shyam Divan, P. K. Mittal, Praveen Mittal, Rajesh Goyal, Advs. A
for Respondents.

The following Order of the Court was passed:

ORDER

1. The appellants filed a petition under Sections 241 and 242 of the Companies' Act 2013, complaining of oppression and mismanagement. An ex-parte order was passed by the National Company Law Tribunal on 5 October 2020. Instead of moving the NCLT for vacating the ad-interim order, the respondents moved the National Company Law Appellate Tribunal in appeal. The NCLAT by its impugned order dated 18 December 2020 set aside the order of the NCLT on the ground that it was passed in violation of the principles of natural justice. Having made this observation, the NCLAT has also made certain observations on merits and remitted the matter to the NCLT for *de novo* consideration on merits after providing an opportunity of being heard to the parties. B

2. We have heard Mr Rakesh Kumar, learned counsel appearing on behalf of the appellants and Mr Shyam Divan, learned senior counsel appearing for the first respondent with Mr P K Mittal. D

3. The appropriate course of action for the respondents, faced with an ex-parte order of the NCLT would have been to apply to the NCLT for vacating or modifying the ad-interim order. The NCLAT was not correct in coming to the conclusion that the order of the NCLT has to be set aside on the ground that it was passed without furnishing to the respondent an opportunity of being heard. The essence of an ex-parte order is that it is passed without hearing the other side, in a situation where the adjudicating authority is satisfied that a case involving a grave urgency is made out. The adjudicating authority, before issuing an ex-parte ad-interim order, must be satisfied of the irretrievable injury which may be caused to the applicant if a protective order is not passed. A *prima facie* case and the balance of convenience must also be weighed in. The NCLAT has not dealt with the fundamental issue of whether the respondents had established an urgent case for the grant of ex-parte relief. The principle which has been propounded by the NCLAT is rather novel to civil jurisprudence and betrays a lack of comprehension of basic legal principles. E F G

4. The NCLAT has remanded the proceedings back to the NCLT for fresh consideration on merits. The grievance of the appellants is that H

- A this would preclude them from applying for the grant of ad-interim relief during the pendency of the proceedings before the NCLT and the final hearing of the petition may take several years. The appellants should, in our view, be granted liberty to apply afresh before the NCLT for interim relief on the basis of the same application on which the NCLT passed its order.
 - B In order to enable the respondents to have an opportunity to controvert the application for interim relief, we direct that they may file their reply, if any, within a period of two weeks from today. The NCLT shall reconsider the application for interim relief in terms of the above directions after hearing the parties. We clarify that we have not expressed any opinion on the merits of the rival contentions which shall be addressed
 - C before the NCLT. The order of the NCLAT shall accordingly stand set aside and be substituted by the directions which have been issued in the above terms. The NCLT shall take a final decision on the application of interim relief within a period of four weeks from the date on which a certified copy of this order is placed on its record.
- D
- 5. The Civil Appeal is accordingly disposed of.
 - 6. Pending applications, if any, stand disposed of.

Kalpana K. Tripathy

Appeal disposed of.