

CASE DETAILS

ORBIT ELECTRICALS PRIVATE LIMITED

v.

DEEPAK KISHAN CHHABRIA & ORS.

(Contempt Petition (Civil) No 1195 of 2023)

In

(Civil Appeal No. 6108 of 2023)

OCTOBER 30, 2023

**[DR. DHANANJAYA Y CHANDRACHUD, CJI,
J. B. PARDIWALA AND MANOJ MISRA, JJ.]**

HEADNOTES

Issue for consideration: Order dtd.13.10.23 was passed by the Supreme Court directing NCLAT to pronounce judgment in the pending appeal only after the results of the Annual General Meeting of Finolex Cables Limited were declared. Despite the fact that NCLAT's attention was drawn to the order of the Supreme Court, it went on to deliver the judgment ignoring the direction therein. Said order, if was in willful defiance of the Supreme Court's order.

Contempt – Interim direction passed by the NCLAT at the stage of reserving orders, restoring the status quo ante as available prior to EOGM dtd.03.05.19 was vacated by Supreme Court – While vacating the order, it was noted that the Annual General Meeting (AGM) of Finolex Cables Limited was to take place on 29.09.23 and directed that any action taken on the appointment of the Executive Chairperson shall be subject to the outcome of the appeal pending before NCLAT – Proceedings mentioned in the Contempt Petition, apprising the Supreme Court that the declaration of the result of the AGM was deferred till the declaration of the judgment by NCLAT – Vide Order dtd.13.10.23, Scrutinizer was directed to declare the result of the AGM and NCLAT was directed to declare its judgment in the pending appeal after it was duly apprised of the fact that the result of the AGM was declared – Grievance of the Petitioners that the NCLAT was though apprised

of the said order, it proceeded to deliver the judgment ignoring the direction therein– Chairperson of the NCLAT directed to verify the position and submit report– Report submitted – Affidavits filed by the two members who constituted the Bench of the NCLAT and by the Scrutiniser:

Held: From the CCTV footage as well as from the transcript, it is evident beyond doubt that though the NCLAT was duly apprised of the fact that this Court had in the morning session on 13.10.23 passed an order to the effect that the judgment shall be pronounced only after the results by the Scrutiniser were declared, the Bench of the NCLAT declined to pay heed to the order of this Court – The Bench of the NCLAT acted in willful defiance of the order despite the fact that its attention was drawn to the order of this Court – Unconditional apology tendered by the Member (Technical) accepted – As regards the Member (Judicial), what was stated by him was contrary to the record – This was compounded by what had been stated in the affidavit filed – The conduct of the Member (Judicial) is censured – Further, on facts, there is no doubt that the the Scrutiniser acted in concert with ‘DKC’, the then acting Chairman-cum-Managing Director to delay the declaration of the result of the AGM, in breach of the directions issued by this Court – ‘DKC’ to pay Rs.1 crore and the Scrutiniser to pay Rs.10 lakhs to the Prime Minister’s Relief Fund – Directions issued in the earlier order of this Court setting aside the judgment delivered by the Bench of the NCLAT on 13.10.23, reiterated – Contempt proceedings disposed of. [Paras 19, 21-24, 26, 28, 31 and 33]

**OTHER CASE DETAILS INCLUDING IMPUGNED
ORDER AND APPEARANCES**

INHERENT JURISDICTION: Contempt Petition (Civil) No. 1195 of 2023 in Civil Appeal No. 6108 of 2023.

From the Judgment and Order dated 21.09.2023 of the National Company Law Appellate Tribunal, Principal Bench at New Delhi in Company Appeal (AT) No.64 of 2020.

Appearances:

Mukul Rohatgi, Ranjeet Kumar, Neeraj Kishan Kaul, Sr. Advs., Kunal Mehta, Shikhil Suri, Abhinav Agrawal, Advs. for the Petitioner.

Tushar Mehta, SG, Shyam Divan, Maninder Singh, Darius Khambata, Dr. A.M. Singhvi, Krishnendu Dutta, P.S. Patwalia, Prashanto Sen, Sr. Advs., Amit Jajoo, Malak Manish Bhatt, Ms. Vatsala Pant, Mandeep Singh, Somasekhar Sundaresan, Ravi Gadagkar, Nitin Saluja, Saahil Mongia, Ms. Ishita Soni, Ms. Simran Khurana, Ms. Pranya Madan, Ankur Saigal, E.C. Agrawala, Shashwat Singh, Ms. Geetika Sharma, Amit Pawan, Suchit Singh Rawat, Ms. Shivangi, Anand Nandan, Aakarsh, Hassan Zubair Waris, Kanu Agrawal, Madhav Sinhal, Bhuvan Kapoor, Deepak Khosla, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT**ORDER**

1 The order of this Court of 26 September 2023 sets out the background. Rather than replicate the background, we set it out below :

“1 The National Company Law Tribunal¹ dismissed the application filed by the first respondent for the grant of interim relief by an order dated 31 December 2019. The first respondent is in appeal before the National Company Law Appellate Tribunal². Admittedly, no interim relief operated in favour of the first respondent during the pendency of the appeal.

2 The appeal has been heard and orders were reserved by the NCLAT on 21 September 2023. However, while reserving orders, the NCLAT has directed the parties “to maintain status quo as was available prior to EOGM dated 03.05.2019” till the judgement is delivered. No reasons have been indicated by the NCLAT even *prima facie* for issuing the interim order, particularly in the context of the fact that there was no interim relief operating since the dismissal of the application for interim relief on 31 December 2019. It is admitted that no relief was obtained by the first respondent in the proceedings before the Bombay High Court, as well.

1 “NCLT”

2 “NCLAT”

- 3 In the circumstances, we vacate the interim direction as noted above. The Annual General Meeting (AGM) of the company, Finolex Cables Limited is to take place on 29 September 2023. Any action which is taken on proposed resolution No 4 pertaining to the appointment of the Executive Chairperson shall be subject to the outcome of the appeal which is pending before the NCLAT.
- 4 Subject to the aforesaid modifications, the appeals are allowed and the impugned order is set aside to the aforesaid extent.
- 5 Pending applications, if any, stand disposed of.”

2 By the above order of this Court, the interim direction which was passed by the NCLAT on 21 September 2023 at the stage of reserving orders, restoring the status quo ante “as was available prior to EOGM dated 3 May 2019” was vacated bearing in mind that :

- (i) No reasons at all were indicated;
- (ii) No interim relief had operated since the dismissal of the application for interim relief on 31 December 2019; and
- (iii) No relief was obtained by the first respondent in proceedings before the Bombay High Court.

3 While vacating the interim order, this Court noted that the Annual General Meeting of Finolex Cables Limited was to take place on 29 September 2023 and specifically directed that “any action which is taken place on proposed resolution No 4 pertaining to the appointment of the Executive Chairperson shall be subject to the outcome of the appeal which is pending before the NCLAT.”

4 Subsequently on 13 October 2023, the proceedings were mentioned before this Court in the morning session in Contempt Petition No 1195 of 2023, when the Court was apprised of the fact that the declaration of the result of the AGM was being deferred till the declaration of the judgment by the NCLAT. Taking note of the submission, this court observed :

“We are *prima facie* of the view that the mandate of the order cannot be defeated by deferring the declaration of the result till a judgment is rendered by NCLAT.”

5 This Court specifically issued the following directions :

- “5 The scrutinizer shall, in compliance with the order of this Court proceed to declare the result of the Annual General Meeting which was held on 29 September 2023 forthwith;
- 6 The NCLAT shall proceed to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the Annual General Meeting has been declared.”

6 The above directions of this Court were in two parts. The first part which applied to the Scrutiniser contained a specific direction to the effect that in compliance with the previous order, the Scrutiniser shall proceed to declare the result of the AGM which was held on 29 September 2023. The second part, which was a direction to the NCLAT, was specifically to the effect that the NCLAT shall proceed to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the AGM has been declared.

7 In the afternoon session on 13 October 2023, a grievance was made before this Court on behalf of the petitioners that though the NCLAT was apprised of the order of this Court with a request that the judgment should not be delivered until the report of the Scrutiniser is made available, the Bench of the NCLAT had proceeded to deliver the order.

8 Consequently, this Court took note of the submission and required the Chairperson of the NCLAT to duly verify the position and report back to the Court. Paragraphs 3 to 9 of the order are set out below :

“3 Mr Neeraj Kishan Kaul and Dr Abhishek Manu Singhvi, senior counsel and Mr Shikhil Suri, counsel joined in stating that counsel, Mr Ankur Saigal (who is personally present before this Court) produced the order of this Court before the National Company Law Appellate Tribunal (NCLAT) at 2 pm with a request that the judgment should not be delivered until report of the scrutinizer is made available.

4 The Court has been apprised of the fact that the Bench of the NCLAT consisting of Mr Rakesh Kumar and Dr Alok Srivastava proceeded to deliver the order. If what is stated is

correct, this will clearly constitute the defiance of the order of this Court by the NCLAT.

- 5 At this stage we are not commenting on the merits of the submissions which have been made.
- 6 The Court is apprised that the scrutinizer report was uploaded at 2.40 pm.
- 7 We direct that an enquiry shall be conducted on the above allegations by the Chairperson of the NCLAT. A report shall be submitted before this Court by 5 pm on 16 October 2023 after specifically verifying the facts from the Judges who constituted the Bench of the NCLAT.
- 8 The Chairperson of the NCLAT shall specifically verify:
 - (i) That the order of this Court dated 13 October 2023 passed in the morning session was drawn to the attention of the two Judges;
 - (ii) If that is so, the circumstances in which the Judges proceeded to pronounce the judgment despite the clear mandate of the order of this Court which was passed in the morning session.
- 9 We are passing this order in extraordinary circumstances, upon an urgent mentioning being made in that regard.”
- 9 In compliance with the order of this Court, the Chairperson of the NCLAT submitted a report before this Court which was taken note of in the order of this Court dated 18 October 2023. The relevant part of the order of this court reads thus :

“7 Pursuant to the order of this Court, Justice Ashok Bhushan, the learned Chairperson of the NCLAT has upon due verification from the Judges submitted a report to this Court. The report alludes to two separate statements which have been made before the Chairperson. The statement by Mr Rakesh Kumar, Member (Judicial) is recorded in paragraph 3 of the report in the following terms:

“Justice Rakesh Kumar, Member (Judicial) has given a response vide his letter dated 16.10.2023 which was received by me during lunch hours of 16.10.2023. In the response, the Member (Judicial) has stated “I may inform that on Friday in the Supplementary Cause List dated 13.10.2023 at 2 PM Company Appeal (AT) No 64/2020 (Deepak Chhabaria and Another) was listed under the caption “For Judgment” for its pronouncement. The said supplementary cause list was uploaded and published on one day earlier i.e. Thursday, 12.10.2023. My Lord is aware that normal procedure which is being followed in Bench of this Tribunal is that mentioning is entertained after the pronouncement of Judgment(s)/Order(s). I am not holding a constitutional post and as such I am required to follow the procedure. Accordingly as per procedure established here Judgment was pronounced on Friday i.e.13.10.2023.”

- 8 The statement by Dr Alok Srivastava, Member (Technical) to the Chairperson is in the following terms:

“On 13.10.2023, when the Presiding Judge and I entered the Court Room No II in the post-lunch session, it was jam-packed with lawyers and there was unusually high noise in the court room.

A total 26 cases in the Supplementary Cause List and 18 cases in the Daily Cause List were listed under the categories “For Judgment/For Admission (Fresh Cases)/For Admission (After Notice)/For Orders/for Hearing” which had to be taken up in the post-lunch session.

The practice adopted in NCLAT is to have “mentionings” after pronouncement of judgment(s) listed in the cause list.

As the proceedings for the post-lunch session commenced, and the “For Judgment” case CA(AT) No.64 of 2020 was called out (as is the practice to take up “For Judgment” cases in the beginning), some lawyers started to intervene on which the

Presiding Judge commented that whatever you want to file, please bring it on record.

Thereafter, the pronouncement of the said judgment was completed.

It may be pointed out that no lawyer conveyed the judgment orally to me during the lunch hour when I was available in my office chamber, nor copy of the said order was provided to the Court Master. If this would have been done, the unfortunate situation may not have arisen.

I respectfully submit that I hold the Hon'ble Supreme Court in highest regard and esteem and there has been no intention to disobey the order of the Hon'ble Supreme Court.

I deeply regret that such a situation arose in the matter and offer sincere apology for the same.”

- 9 The Member (Technical) has adverted to the events which transpired before the NCLAT in the appeal on 13 October 2023. Paragraph 5 of the report reads as follows:

“I have taken the response given by the Judicial Member as well as the Technical Member. Company Appeal (AT) No.64 of 2020 was listed for pronouncement in Court No.II before the Bench constituted of Judicial Member and Technical Member. After the Court assembled, Learned Counsel for the parties who were present in the Court sought to intervene to make a request to the Bench, however, the Bench proceeded to pronounce the judgment not permitting the mentioning by the Learned Counsels. Copy of the order dated 13.10.2023 was not given either to the Court Officer or to the Bench. The Bench did not accept the request made on behalf of the Counsel and proceeded to pronounce the judgment. The judgment was pronounced in ignorance of the order of the Hon'ble Supreme Court dated 13.10.2023.”

- 10 The report of the Chairperson has also adverted to an order dated 16 October 2023 passed by the Bench of the NCLAT subsequently, in the following terms:

“16.10.2023: In aforesaid appeal on 13.10.2023, Judgment was pronounced. In the evening, the Registry brought to the notice an e-mail dated 13.10.2023 issued at 05.35 PM addressed to Registrar NCLAT enclosing therewith an order dated 13.10.2023, passed by Hon’ble Supreme Court in Contempt Petition (C) No.1195/2023 in C.A. No.6108/2023. After the order was produced we perused the same and we noticed that Hon’ble Supreme Court in its order in paragraph 1 sub- paragraph 6 had directed that Judgment in pending appeal shall be delivered by the NCLAT after it is duly apprised of the fact that the result of Annual General Meeting has been declared.

In view of the order of Hon’ble Supreme Court it is imperative for us to pass an order for Suspending the Judgment of this court dated 13.10.2023 till this appellate Tribunal is duly apprised of the fact that the result of the Annual General Meeting has been declared or subject to order/direction passed by the Hon’ble Supreme Court.”

- 11 There are two affidavits before the Court at the present stage:
 - (i) A “limited affidavit” which has been filed on behalf of the first respondent; and
 - (ii) An affidavit in rejoinder on behalf of the petitioner.
- 12 We have heard Mr Mukul Rohatgi, Dr Abhishek Manu Singhvi, Mr Ranjeet Kumar, senior counsel on behalf of the petitioner and Mr Shyam Divan and Mr Ramji Srinivasan, senior counsel on behalf of the contesting respondents. Mr Darius Khambata, senior counsel has appeared on behalf of the scrutinizer.
- 13 Mr Mukul Rohatgi, senior counsel appearing on behalf of the petitioner reiterates, as was submitted before this Court when it passed its order dated 13 October 2023 in the second session that Mr Ankur Saigal, counsel appearing on behalf of the petitioner had produced the order of this Court before the NCLAT at 2 pm with a request that the judgment should not be delivered until the report of the scrutinizer is made available. This was specifically recorded in paragraph 3 of the order dated 13 October 2023.

- 14 Mr Ramji Srinivasan, senior counsel appearing on behalf of the appellant before the NCLAT has fairly stated before this Court that the order of this Court which was passed on 13 October 2023 was duly communicated to the contesting parties. Moreover, Mr Ramji Srinivasan also stated that at about 2.15 pm when the Bench of the NCLAT assembled, he personally sought to tender a copy of the order passed by this Court on 13 October 2023 in the morning session to the Bench of the NCLAT and apprised the Bench of the fact that this Court had specifically directed that the judgment of the NCLAT shall be delivered only after the Court was apprised of the results of the AGM. However, as things stand, the Bench of the NCLAT proceeded to declare the judgment. Mr Ramji Srinivasan further states that he apprised the Bench that the representative of the petitioner herein had already voted against the resolution at the AGM.
- 15 Apart from the statements which have been made by the senior counsel before this Court, the affidavit which has been filed by the first respondent contains the following averments:

“On 13.10.2023, the Contempt Petition was preliminary heard by this Hon’ble Court around 12.20 pm. On 13.10.2023, passed its first order on that date, which became available at around 1.55 pm (“First Order”). This Hon’ble Court directed Respondent No.2 to declare the result of the AGM which was held on 29.09.2023 forthwith. This Hon’ble Court directed that the Learned NCLAT shall proceed to declare its judgment in the pending appeal after it is duly apprised of the fact that the result of the AGM has been declared.

The directions as dictated in open court by this Hon’ble Court in the First Order were communicated to Respondent No.1 through his Advocates at around 12.30 pm. Respondent No.1 immediately called the Company Secretary of FCL, to convey the directions to Respondent No.2.”

- 16 The affidavit further states that on 13 October 2023, the report of the scrutinizer was prepared and was sought to be uploaded on

the website of the Stock Exchanges in compliance of the order of this Court, but as the official servers of BSE Limited and National Stock Exchange of India Limited took time to respond, the report was uploaded at 2.41 pm and 2.44 pm respectively. The first respondent has disclosed what transpired before the NCLAT after the order of this Court dated 13 October in the following terms:

“At around 02.15 pm, when the NCLAT Appeal was called out ‘for judgment’, the Ld. Senior Counsel representing me informed the Learned NCLAT about the First Order and the directions contained therein. It was also informed to NCLAT that petitioner had voted against resolution No.4. It was also informed that the Consolidated Scrutinizer’s Report was being uploaded. The Learned NCLAT proceeded to pronounce the operative part of the Judgment dated 13.10.2023 (“NCLAT Judgment”), which occurred at around 2:15 pm. The NCLAT Judgment was only made available on the official website of the Learned NCLAT, at 4.30 pm and it was only after that time that it was even made public.” (emphasis supplied)

- 17 We will first deal with the report which has been submitted before this Court by the Chairperson of the NCLAT. The Presiding Judge, Mr Rakesh Kumar, Member (Judicial) states that the appeal was listed for pronouncement of judgment in the supplementary cause list which was uploaded on 12 October 2023. He states that the normal procedure which is followed in the tribunal is that mentioning is entertained after the pronouncement of judgments/orders and since he is “not holding a constitutional post” as such he is “required to follow the procedure”. The Member (Judicial) has therefore stated that “as per the procedure established here” the judgment was pronounced on 13 October 2023.
- 18 The Member (Technical) on the other hand states that when the proceedings were called out in the post-lunch session in the case which was listed for judgment, “some lawyers started to intervene on which the Presiding Judge commented that whatever you want

to file, please bring it on record”, after which, the pronouncement of the judgment was made. The Member (Technical) has tendered an unconditional apology to this Court. These facts are conspicuously absent in the statement of the Member (Judicial).

- 19 Neither the statement of the Member (Judicial) nor the statement which has been tendered by the Member (Technical) refer to the fact that the order dated 13 October 2023 passed by this Court in the morning session was communicated to the Bench of the NCLAT together with the directions which were contained therein. In paragraph 3 of the order dated 13 October 2023 passed in the afternoon session, the statement of senior counsel appearing on behalf of the petitioner that the Bench of the NCLAT was apprised of the order of this Court in the afternoon session was recorded. This is also the clear case of the first respondent on affidavit since he has stated that around 2.15 pm when the NCLAT appeal was called out for judgment, the senior counsel representing him informed the Bench of the NCLAT of the order which was passed by this Court earlier and the directions which were contained therein. Neither the statement of the Member (Judicial) nor the statement of the Member (Technical) reveals this to the Chairperson of the NCLAT. In fact, the statement of the Member (Judicial) would seem to indicate that no mentioning is permitted at all before the declaration of judgment as a consequence of which the judgment was delivered without hearing any counsel on the order passed by this Court. Likewise, the statement of the Member (Technical) indicates that while some lawyers had attempted to intervene, the Presiding Officer had not permitted such an intervention and had proceeded to pass the judgment. The matter does not rest there.
- 20 On 16 October 2023, the Bench of the NCLAT passed an order recording that the Registry of the Tribunal had brought to its notice an email dated 13 October 2023 issued at 5.35 pm enclosing a copy of the order dated 13 October 2023 passed by this Court. The NCLAT has stated that after the order was produced, it had perused it and noticed that this Court had issued directions to the

effect that judgment in the pending appeal shall be delivered by NCLAT after it is duly apprised of the fact that the result of the AGM is being declared. The NCLAT has proceeded to pass an order for suspending the judgment which it pronounced on 13 October 2023.

- 21 We are constrained to observe that the order dated 16 October 2023 purports to create an impression that the Bench of the NCLAT was apprised of the order passed by this Court for the first time when the email was received at 5.35 pm on 13 October 2023. This *prima facie* is a falsehood since it has emerged before this Court, both on the statements of the counsel as well as on affidavit that the Bench of the NCLAT was duly apprised of the order passed by this Court on 13 October 2023 in the morning session when the appeal was taken up at around 2.15 pm for pronouncement of judgment.
- 22 We are, therefore, *prima facie*, of the view that the Members of the NCLAT have (i) failed to disclose facts to the Chairperson of the NCLAT who was under a duty to carry out an enquiry in pursuance of the judicial order passed by this Court; and (ii) incorrectly sought to create a record in the order dated 16 October 2023 that the order of this Court was drawn to the notice of the Bench only at 5.35 pm on 13 October 2023.
- 23 We will deal with the consequential steps which should be taken by this Court and the action which has to be adopted in pursuance of what has transpired in these proceedings.
- 24 The manner in which the NCLAT has proceeded to deliver judgment in defiance of the directions of the Court is unbecoming of a judicial tribunal. NCLAT is subject to the jurisdiction of this Court. It was duty bound to comply with the order of this Court. It was apprised of the fact that this Court had passed an order in the morning session on 13 October 2023 to the effect that it shall proceed to declare judgment after being apprised of the results of the AGM. The statements made by the Member (Judicial) before the Chairperson of NCLAT seem to indicate that he did not permit mentioning in accordance with the practice of his Bench to the

effect that mentioning is taken up after judgments are delivered. The Member (Technical) indicates that while some lawyers had sought to intervene, the Presiding Judge had not heard them. Both these statements are belied by the fact that it is common ground between the parties, who are seriously contesting a dispute before NCLAT, that the Bench was dully apprised of the order of this Court when it assembled at around 2.15 pm before the judgment was pronounced. Moreover, the passing of the further order on 16 October 2023 compounds the situation. If indeed the judgment had been declared after the NCLAT was duly apprised of the result of the AGM, there was no occasion for it to suspend the operation of its judgment. The Members forming part of the Bench have not purported to say so.

- 25 In this view of the matter, insofar as the *lis* is concerned, we are of the view that it is necessary for this Court to ensure that the dignity of the Court is maintained. A party cannot be allowed by recourse to devious means to obviate compliance with a solemn order passed by this Court.
- 26 We accordingly, in exercise of the jurisdiction under Article 142 of the Constitution, direct that the judgment of the NCLAT dated 13 October 2023 shall stand set aside without this Court expressing any opinion on the merits. We consequently direct that the appeal shall be heard afresh by a Bench presided over by the Chairperson of NCLAT. We clarify that we have not entered any finding on the merits of the rival contentions of the parties in the pending appeal. This Court has been constrained to pass this order in extraordinary circumstances which we have referred to above.
- 27 We are *prima facie* of the view that Shri Rakesh Kumar, Member (Judicial) and Dr Alok Srivastava, Member (Technical) of the NCLAT are liable to be proceeded against in the exercise of the contempt jurisdiction of this Court. We accordingly issue a notice to show cause to Mr Rakesh Kumar, Member (Judicial) and Dr Alok Srivastava, Member (Technical) of the NCLAT to show cause as to why they should not be committed under the

Contempt of Courts Act 1971 for having willfully defied the directions of this Court. They shall remain personally present before this Court on 30 October 2023 at 10.30 am, by which date, they shall submit their replies to the notice.

- 28 The scrutinizer shall file their explanation in response to the notice which has been issued by this Court on or before the next date of listing and shall remain personally present before this Court on that day.”

10 In pursuance of the above order, affidavits have been filed before this Court by the two members who constituted the Bench of the NCLAT and by the Scrutiniser. We shall deal with each of these affidavits in a subsequent part of this order.

11 Mr Mukul Rohatgi, Dr AM Singhvi, Mr Neeraj Kishan Kaul and Mr Ranjit Kumar, senior counsel appear on behalf of the appellant. Mr Tushar Mehta, Solicitor General of India appears on behalf of the NCLAT and the Member (Technical). Mr PS Patwalia, senior counsel appears on behalf of the Member (Judicial). Mr Darius Khambata, senior counsel appears on behalf of the Scrutiniser.

12 An affidavit has been filed by the Member (Technical) unconditionally tendering an apology before this Court. The Member (Technical) has, inter alia, stated that control over the procedure during the course of the proceedings before the Bench, particularly the procedure of mentioning, is with the Member (Judicial) on account of his judicial training and experience in the functioning of the courts. The Member (Technical) has stated that on 13 October 2023, when the Presiding Judge and he entered the courtroom in the post-lunch session, the courtroom was overcrowded with an unusually large number of advocates. Once the mentioning process was over, the Member (Judicial) asked him to pronounce the judgment which he thereafter proceeded to pronounce. It has been stated that none of the advocates from any of the parties made any effort to bring on record and place before the Bench on 13 October 2023 the actual order which was passed by this Court in the pre-lunch session and that it was much after the pronouncement of the judgment in the post-lunch session at around 6.27 p.m. that the NCLAT Registry received an email containing a copy of the order after the proceedings for the Tribunal had been concluded for

the day. The Member (Technical) has referred to the CCTV footage of the proceedings of the NCLAT and to a pen drive which has been received.

13 The Member (Judicial), on the other hand, has filed an affidavit in which the following averments appear in Paragraph 10 :

“10 ... The bench presided by the deponent and the Technical Member Shri Alok Shrivastava assembled a few minutes after 2 PM, at about 2.05 PM, on 13.10.2023, when some counsel tried to mention the matter. However, neither any order of this Hon’ble Court was filed with the Registry or Court Maste3r nor was any order even handed over to the bench by the parties before assembling of the bench. Rule 38 of NCLAT Rules, 2016 authorises the parties or their authorised representatives to furnish any document to the Court Master which he wishes to place on record for reference by the Bench, before the commencement of the proceedings for the day. However, no such attempt was even made by the counsel of either of the parties.”

14 Paragraphs 13 and 14 of the affidavit of the Member (Judicial) are set out below :

“13 That it is further submitted that the procedure followed in the NCLAT, like in this Hon’ble Court and many other courts is that when a matter is listed for pronouncement of judgment, mentioning by counsel for any case is permitted only after pronouncement of judgment and not before that. Following that practice, the deponent did not entertain any attempt at mentioning by the counsel and thereafter the Technical Member proceeded to pronounce the judgment authored by him.

14 That it is reiterated that the copy of the order dated 13.10.2023 passed by this Hon’ble Court was not on record before the bench presided by the deponent on 13.10.2023. Had the said order been brought on record as per procedure before the bench presided by the deponent, there is no doubt that the bench would not have pronounced its judgment.”

15 The Member (Judicial) states that a copy of the order dated 13 October 2023 was brought before him for the first time after 5:35 PM on 13 October 2023 when it was received by the Registrar of the NCLAT by email.

16 During the course of the hearing, the Solicitor General has produced a copy of the authenticated CCTV footage of the actual hearing which took place before the NCLAT on 13 October 2023 in the course of the afternoon session. The CCTV footage has been played twice in the Court for being seen and heard by all present in the open Court. A transcript of the proceedings has also been tendered by the Solicitor General. During the course of the hearing, since the CCTV recording was replayed twice, we have had the occasion to tally the transcript which has been tendered with the video recording of the proceedings. The transcript which has been tendered by the Solicitor General is set out below in its entirety :

**“Transcript of conversation and exchanges in Court Room-II,
NCLAT in post-lunch session on 13.10.2023**

Note:

- (1) Clock of CCTV is about 27 minutes ahead of the actual time.
Times given below are actual times.
- (2) There were approximately 85-90 persons inside the Court Room-II at the beginning of post lunch session at 02:07 PM (actual time) on 13.10.2023.
- (3) Mr Ramji Srinivasan, Sr. Advocate entered the Court Room at 13:51 hrs and Mr. Krishnendu Dutta, Sr. Advocate entered at 13:53 hrs.
- (4) The proceedings in Court-II began at 14:06:50 hrs with the entry of bench members in the court room and concluded in the matter at 14:30 hrs.

Mr Ramji Srinivasan	May I mention, with your Lordships permission, before Your Lordship proceeds to pronounce the judgment My Lords in the Orbit matter, I must apprise your Lordships of a further development that has happened. My Lords the matter was heard by the Supreme Court My Lords in a contempt petition filed by the other side. Your Lordships recollect Your Lordships had reserved the order.
Justice Rakesh Kumar	Not clear
Mr. Ramji Srinivasan	My Lords I am bound by the order, the order of the Supreme Court My Lords. All that it says is this just so that Your Lordships My Lords. This has nothing to do with Your Lordships pronouncing the order. But this was what was directed that we must apprise your Lordships before Your Lordships pronounce the order today that the Supreme Court had passed an order saying that any declaration My Lords the action taken will be subject to outcome of the appeal. So My Lords the voting had taken place. The scrutinizer had withheld the result of resolution board subject to outcome whatever. We had taken some opinion of some judges. Therefore, he took the advice and said that I will withhold. The other side went up in contempt and moved an application before the Hon'ble Supreme Court saying that the scrutinizer should not have withheld result subject to outcome, whatever be the result, whether Mr. Chabaria was to continue or not, that should be declared but Your Lordships should not pronounce. The Hon'ble Supreme Court today now said that Your Lordships can pronounce the judgment and I must apprise Your Lordships before Your Lordships pronounce. That's all.

Hon'ble Justice Rakesh Kumar	Nothing is before us on record...(not clear) allow us to pronounce judgment.
Mr. Ramji Srinivasan	Apprise Your Lordship. I will just read, nothing else. May I just show the order passed by the Hon'ble Supreme Court.
Hon'ble Justice Rakesh Kumar	Just a minute. There is no point... (not clear)
Mr. Krishnendu Dutta	No no no... (cross talk, not clear)... Hon'ble Supreme Court says order may be pronounced only after results are declared, that's the order of Hon'ble Supreme Court.
Hon'ble Justice Rakesh Kumar	Neither any order has been officially communicated to us.
Mr. Krishnendu Dutta	(interjecting) It was passed this morning.
Hon'ble Justice Rakesh Kumar	(continuing) nor it has been passed, nor it has been mentioned before us. We have reserved the judgment, we are pronouncing it.. you can go to the Supreme Court.
Mr. Ramji Srinivasan	(Cross talk, not clear) my friend is misstating the order. It only says that Lordships have to be apprised of the order... that's all.
Hon'ble Justice Rakesh Kumar	We are not taking cognizance of anything. The case is listed under the caption 'for orders' we are pronouncing it... If you think that we are passing order in violation of the Supreme Court order, you go and complain (not clear).... Allow us to pass the order.
Mr. Krishnendu Dutta	No its not that. Hon'ble Supreme Court has passed an order this morning, it is my duty to place it before you (he does not tender copy of the order)
Justice Rakesh Kumar	Whatever you want to bring on record, do so through affidavit.

Court Master	Calls out Item 1, For Judgment – Company Appeal (AT) No. 64 of 2020.
Dr Alok Srivastava	(pronounces the judgment in CA (AT) 64 of 2020)
Senior Lawyers Mr	So deeply obliged....”

17 The above transcript of the proceedings together with the video recording which has been produced before the Court leaves no manner of doubt that :

- (i) The Bench of the NCLAT was duly apprised of the fact that an order had been passed by this Court in the morning session on 13 October 2023;
- (ii) The Scrutiniser had withheld the result of the AGM; and
- (iii) The purport of the order of this Court dated 13 October 2023 was that the NCLAT shall pronounce judgment in the pending appeal after the results of the AGM were declared.

18 The transcript indicates that both Mr Krishnendu Dutta (senior counsel) and Mr Ramji Srinivasan (senior counsel) appearing on behalf of the contesting parties had apprised the Bench of the NCLAT of the order of this Court. The CCTV footage makes it abundantly clear that both the counsel had a copy of the order of this Court and made an effort to read out the order. The Member (Judicial), however, stated that no copy of the order “has been officially communicated to us”. The Member (Judicial) also observed that since the NCLAT had reserved judgment, it was proceeding to pronounce the judgment and the appellants (represented by their counsel Mr Krishnendu Dutta) “can go to the Supreme Court”. The Member (Judicial) stated that “if you think that we are passing order in violation of the Supreme Court order, you go and complain”. The parties were directed to place on affidavit anything that they wish to bring on the record.

19 From the CCTV footage as well as from the transcript, it is evident beyond a shadow of doubt that though the NCLAT was duly apprised of the fact that this Court had in the morning session on 13 October 2023 passed an order to the effect that the judgment shall be pronounced only after the

results by the Scrutiniser are declared, the Bench of the NCLAT declined to pay heed to the order of this Court. The Member (Judicial) has referred in his affidavit to the Rules governing procedure in the NCLAT, more particularly, Rules 38, 101 and 102 which read as follows :

“38. Statutes or citations for reference.- The parties or authorised representatives shall, before the commencement of the proceedings for the day, furnish to the Court Master a list of law journals, reports, statutes and other citations, which may be needed for reference or photo copy of full text thereof.

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101. Placing of Supreme Court orders before Appellate Tribunal.-

Whenever an interim or final order passed by the Supreme Court of India in an appeal or other proceeding preferred against a decision of the Appellate Tribunal is received, the same shall forthwith be placed before the Chairperson or Members for information and kept in the relevant case file and immediate attention of the Registrar shall be drawn to the directions requiring compliance.

102. Registrar to ensure compliance of Supreme Court orders.-

It shall be the duty of the Registrar to take expeditious steps to comply with the directions of the Supreme Court.”

20 The order of this Court was brought to the attention of the Bench of the NCLAT. The correct course of action, if the Bench was of the view that the order should be produced in accordance with Rules, was to defer the pronouncement of the judgment so as to enable the parties to comply with the procedure. The order of this Court was uploaded at 1.55 PM on 13 October 2023. The gist of the order was intimated to the Court. It is evident from the CCTV footage that even copies of the order were with the respective counsel. Hence, it is only to be expected from a judicial body that the order should have been allowed to be tendered or, in the alternative, if the Bench felt that it should be produced in a proper format on affidavit, sufficient time ought to be given to do so. The transcript, however, reveals that Bench went on to deliver the judgment ignoring the substantive direction which had been issued by this Court earlier on 13 October 2023.

21 We have, therefore, no manner of doubt that the Bench of the NCLAT has acted in willful defiance of the order despite the fact that its attention was drawn to the order of this Court.

22 The Member (Technical) has tendered an unconditional apology stating that control over the procedure of the Court, particularly on matters which are mentioned rests with the Member (Judicial) who has training and experience in judicial matters.

23 Bearing in mind the unconditional apology which has been tendered before this Court we do not wish to take this matter to a further stage having held that there was a breach of the order of this Court. We are of the considered view that the matter should be allowed to rest there by accepting the apology of the Member (Technical).

24 As regards the Member (Judicial) we have already noted in the previous order of this Court that what has been stated is contrary to the record. We find that this has been compounded by what has been stated in the affidavit filed tendered before this Court in pursuance of the previous order. Paragraph 10 of the affidavit of the Member (Judicial) takes note of the fact that when some counsel tried to mention the matter, neither any order of the Supreme Court was filed with the Registry or with the Court Master nor was any order handed over to the Bench by the parties before assembling of the Bench. The affidavit further states that following the practice of the NCLAT, the deponent did not entertain any attempt at mentioning by the counsel and that the order of this Court dated 13 October 2023 was not on the record before the Bench presided by the deponent on 13 October 2023. What the affidavit does not state is that a conscious effort was made by the Bench to prevent the order of this Court being placed on the record despite the fact that the court was apprised of the passing of the order by this Court in the morning session. We censure the conduct of the Member (Judicial). We would rest the matter at that level.

25 As regards, the Scrutiniser, it is evident that in the order of this Court dated 26 September 2023, there was a clear direction that the interim order passed by the NCLAT on 21 September 2023 would stand vacated. There was a further direction that any action that would be taken in pursuance of the result of the AGM would be subject to the pending appeal. The Scrutiniser was duty bound to implement the order of this Court. Instead,

what emerges from the record was that after the order dated 26 September 2023, the AGM took place on 29 September, 2023. The Court is apprised of the fact that a limited window was made available on 29 September 2023 for those who wished to vote to do so. At 5.55 PM on 29 September 2023, an email was addressed by the Scrutiniser to the Company Secretary of Finolex Cables Limited seeking a legal opinion about the manner in which the votes which were cast at the AGM would have to be treated. By then, voting had concluded on 28 September 2023. The Scrutiniser states that a legal opinion was obtained by the company on the basis of which he took steps to withhold the result of the AGM.

26 The beneficiary of this action was Mr Deepak Kishan Chhabria, who was then acting as Chairman-cum-Managing Director. Mr Deepak Kishan Chhabria has been represented by Mr Shyam Divan and Mr Maninder Singh, senior counsel. The Scrutiniser, Mr VM Birajdar has been represented in these proceedings by Mr Darius Khambata, senior counsel. We have no manner of doubt that the Scrutiniser has acted in concert with Deepak Kishan Chhabria to delay the declaration of the result of the AGM, effectively in breach of the directions that were issued by this Court on 26 September 2023.

27 We are of the view that such action by commercial interests must be dealt with firmly so as to serve a clear reminder that the process of this Court cannot be allowed to be misused for partisan purposes in commercial disputes involving warring factions.

28 We accordingly order and direct that Mr Deepak Kishan Chhabria shall pay a sum quantified at Rs One crore to the Prime Minister's Relief Fund within a period of four weeks from the date of the order. Mr VM Birajdar shall pay a sum quantified at Rs Ten lakhs to the Prime Minister's Relief Fund within a period of four weeks.

29 Before concluding, we record the statement of Mr PS Patwalia, senior counsel appearing on behalf of the Member (Judicial) that the Member (Judicial) has tendered his resignation from office by a letter addressed to the Chairperson of the NCLAT and to the Secretary, Ministry of Corporate Affairs today.

30 The Scrutiniser has tendered an unconditional apology through Mr Khambata. Mr Deepak Kishan Chhabria has also tendered an unconditional apology through Mr Shyam Divan, senior counsel.

31 Since the proceedings are being closed, we reiterate the directions which were issued in the earlier order of this Court setting aside the judgment which was delivered by the Bench of the NCLAT on 13 October 2023. The proceedings in the appeal shall now be listed before a Bench presided over by the Chairperson of the NCLAT for hearing and final disposal of the appeal. We have not made any observations on the merits of the rival contentions.

32 The issues which are sought to be raised by Mr Deepak Khosla, counsel appearing on behalf of the intervenor, have nothing to do with the main proceedings before this Court. Hence it is not necessary to entertain the Interlocutory Application. The IA is accordingly dismissed.

33 The Contempt Proceedings are accordingly disposed of in terms of the above directions.

34 Pending applications, if any, stand disposed of.

Headnotes prepared by:
Divya Pandey

Contempt Proceedings disposed of.