Mr. Vineet Khosla vs M/S Edelweiss Asset Reconstruction ... on 28 February, 2022

Author: Ashok Bhushan

Bench: Ashok Bhushan

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
I.A No. 190, 191,192 & 337 of 2022
IN
Comp. App. (AT) (Ins.) No. 1124-1125 of 2020

In the matter of:
Vineet Khosla ....Appellant
Vs.
Edelweiss Asset Reconstruction Company Ltd. & Ors. ...Respondents
For Appellant: Mr. Deepak Khosla, Advocate.
For Respondents: Mr. Neeraj Malhotra, Senior Advocate with Ms. Vidhisha Haritwal, Mr. Nimish Kumar, Mr. Ujjaval Kumar, Mr. RP Agarwal, Ms. Manisha Agarwal, Advocates for R1
Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Sahil Bhatia, Advocates for R2, 4 & 5.

Contempt Case (AT) No. 06 of 2022
IN
Comp. App. (AT) (Ins.) No. 1124-1125 of 2020

In the matter of:
Vineet Khosla ....Appellant
Vs.
Edelweiss Asset Reconstruction Company Ltd. & Ors. ...Respondents
For Appellant: Mr. Deepak Khosla, Advocate.
For Respondents: Mr. Neeraj Malhotra, Senior Advocate with Ms. Vidhisha Haritwal, Mr. Nimish Kumar, Mr. Ujjaval Kumar, Mr. RP Agarwal, Ms. Manisha Agarwal,

Advocates for R1
Mr. Abhishek Anand, Mr. Mohak Sharma, Mr. Sahil Bhatia, Advocates for R- 14 & 15.

JUDGMENT

(28th February, 2022) Ashok Bhushan, J.

The IAs aforesaid as well as Contempt Case filed by the Applicant arise out of the judgment of this Tribunal dated 07.01.2022 delivered in Company Appeal (AT) (Insolvency) Nos. 1124-1125 of 2020 by which judgment Appeals filed by the Applicant/ Appellant were dismissed. Before we proceed to notice the contents of the Applicants and the grounds raised therein as well as averments in the Contempt Case, it is necessary to notice the sequence of the events leading to the judgment dated 07.01.2022 of this Tribunal passed in Company Appeal (AT) (Insolvency) Nos. 1124-1125 of 2020.

(i) The Applicant- Vineet Khosla is the Suspended Director of the Corporate Debtor- 'M/s. Margra Industries Ltd.', a public company incorporated under the Companies Act, 1956. The Corporate Debtor availed loan facility from EXIM Bank in the year 1996. The Corporate Debtor committed default in repayment of the loan on 29.07.2000. The EXIM Bank, the lender filed O.A No. 177 of 2001 before the Debt Recovery Tribunal ("DRT" for short) for recovery of outstanding amount of Rs.5.11 Crores.

(ii) On 12.09.2011, the DRT in O.A No. 177 of 2001 issue certificate for recovery of sum of Rs. 6.58 Crores in favour of the EXIM Bank against the Corporate Debtor.

(iii) The EXIM Bank on 02.01.2014 assigned its debt due to the Corporate Debtor in favour of 'Edelweiss Assets Reconstruction'.

(iv) On 14.03.2014, letter was sent by 'Edelweiss Assets Reconstruction' (hereinafter referred to as "Respondent No.1) to the Corporate Debtor in response to e-mail dated 04.03.2013 requesting for extension of time with respect to consent terms filed in DRT. The Respondent No.1 granted its agreement to extend the time upto 25.09.2014 subject to payment of Rs. 50 Lakhs within one week.

(v) On request made on behalf of the Corporate Debtor, Respondent No.1 granted extensions of five occasions to the Corporate Debtor to make the repayment. Last extension was granted by the Respondent No.1 by letter dated 17.12.2015 which was valid upto 31.03.2016. Due to non-payment by the Corporate Debtor, the Respondent No.1 revoked the OTS by letter dated 05.04.2016.

(vi) Respondent No.1, the Financial Creditor filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code" for short) on 12.06.2018 claiming an amount of Rs. 44,20,38,989.20/. Date of default mentioned in the Application was 29.07.2000. In the Application filed under Section 7, Respondent No.1 has given all the details including the filing of OA No. 251 of 2001, the consent decree passed in O.A and the Recovery Certificate issued by the DRT and the extensions prayed on behalf of the Corporate Debtor for repayment and last extension being granted on 17.12.2015.

(vii) In the Application under Section 7, a Reply was filed by the Corporate Debtor. The Adjudicating Authority, after hearing the parties, by order dated 15.03.2019 admitted the CP(IB) No. 866/PB/2018.

(viii) Aggrieved by the order dated 15.03.2019, Vineet Khosla, the Suspended Director filed Company Appeal (AT) (Ins.) No. 441 of 2019 before this Tribunal. Company Appeal (AT) (Ins.) No. 441 of 2019 was heard by this Tribunal and was dismissed by order dated 06.09.2019 of this Tribunal.

(ix) In the Corporate Insolvency Resolution Process ("CIRP" for short) of the Corporate Debtor, no Resolution Plan came to be approved and Committee of Creditors ("CoC' for short) vide its Resolution dated 21.12.2019 with 92.29% votes resolved to authorize Resolution Professional to file an Application for liquidation before the Adjudicating Authority.

(x) An Application CA No. 121 of 2020 was filed by the Resolution Professional in the Company Petition praying for order of liquidation in January, 2020.

(xi) On 02.01.2020, the Suspended Director (Applicant herein) filed CA No. 307 of 2020 before the Adjudicating Authority praying for recall of the admission order dated 15.03.2019 on the grounds of fraud and lack of jurisdiction.

(xii) The Adjudicating Authority by order dated 15.10.2020 allowed the CA No. 121 of 2020 and ordered for liquidation of the Corporate Debtor.

(xiii) By order dated 10.11.2020, the Adjudicating Authority dismissed CA No. 307 of 2020 filed by the Suspended Director.

2. Aggrieved by the orders dated 10.11.2020 and 15.10.2020 passed by the Adjudicating Authority, Company Appeal (AT) (Ins.) No. 1124 & 1125 of 2020 was filed by the Applicant (Vineet Khosla) in this Tribunal. In Company Appeal (AT) (Ins.) Nos. 1124 & 1125 of 2020, notices were issued on 23.12.2020 by this Tribunal. Reply was filed by the Respondents to which Rejoinder-Affidavit was also filed by the Appellants. Company Appeal (AT) (Ins.) Nos. 1124 & 1125 of 2020 were finally heard and by judgment dated 07.01.2022 has been dismissed. After dismissal of the Company Appeal (AT) (Ins.) Nos. 1124 & 1125 of 2020, Appellant (Applicant) has also filed I.A Nos. 190, 191, 192 & 337 of 2022 in Company Appeal (AT) (Ins.) Nos. 1124 & 1125 of 2020. Contempt Case (AT) No. 06 of 2022 has also been filed by the Applicant on 07.02.2022.

3. By I.A No. 190 of 2022, the Applicant prays for correction and mistakes apparent on the face of the record by expunging of certain events alluded in the order dated 07.01.2022. By I.A No. 191 of 2022, the Applicant has prayed for maintaining status quo for four weeks. By I.A No. 192 of 2022, the Applicant prays for recall of the order dated 07.01.2022 alleging it to be obtained by practicing fraud upon this Tribunal by the Respondent No.1. By I.A No. 337 of 2022, the Applicant has prayed for a direction of status quo pending adjudication of I.A Nos. 190, 191 & 192 of 2022 on which notices were issued on 20.01.2022.

4. In Contempt Case (AT) No. 06 of 2022, the Applicant has prayed for initiation of proceedings under Section 340 CrPC r/w Sections 191, 191, 192, 196, 197, 198, 199, 200, 202, 204, 2015, 209 of the Indian Penal Code r/w Sections 120-B and 176 of IPC and other provisions of law against the 15 persons named as Prospective Accused Nos. 1-15, and also may examine the case against the 6 individuals named at Sl No. 16-21 of the Memo of Parties.

5. This Tribunal, by order dated 20.01.2022 in I.A Nos. 190, 191 & 192 of 2022 filed by the Applicants, passed an order for listing the IAs on 08.02.2022 and in the meantime, counsel for the Respondent was permitted to file the Reply of these Applications. Reply to the IAs have been filed by the Respondent No.1 to which Rejoinder-Affidavit has also been filed by the Applicant. Along with the IAs Contempt Case (AT) No. 06 of 2022 also came to be listed as a fresh matter.

6. We have heard Shri Deepak Khosla, Learned Counsel appearing for the Applicant in the above proceedings and Shri Neeraj Malhotra, Learned Senior Counsel for Respondent No.1.

7. Shri Deepak Khosla, Learned Counsel for the Applicant submits that the judgment dated 07.01.2022 passed by this Tribunal was obtained by Respondent No.1 by practicing fraud on this Tribunal. Referring to I.A No. 192 of 2022, Learned Counsel for the Applicant submits that Respondent No.1 committed fraud on three counts due to which fraud this Tribunal was misled in passing the judgment dated 07.01.2022 which judgment having been obtained by practicing fraud is liable to be recalled. It is submitted that any judgment and order obtained by practicing fraud on the Court can be recalled by any Court or Tribunal. It is well settled law laid down by the Hon'ble Supreme Court and reiterated in its several judgments. Elaborating his submissions, Learned Counsel for the Applicant referred to paras 13 and 24 of the judgment dated 07.01.2022. Learned Counsel for the Applicant submits that in the Application filed under Section 7 by the Respondent No.1, the date of default was being disclosed as 29.07.2000 and petition under Section 7 filed on 12.06.2018 was clearly barred by time and no documents were filed by the Respondent No.1 in support of extension of limitation under Section 18 of the Limitation Act. Referring to submissions of the Learned Counsel for Respondent No.1, as noticed in para 24 of the judgment, it is contended that Learned Counsel for Respondent No.1 submitted that the DRT has passed a decree on settlement of parties, thereafter, issued recovery certificate and thereafter time to time the Corporate Debtor has acknowledged the debt and in support, the Respondent No.1 has filed the documents to prove the acknowledgment. It is submitted by Counsel for the Applicant that although no documents were filed along with Section 7 Application regarding extension of limitation but Counsel for Respondent No.1 made a false submission and misled this Tribunal to assume that relevant documents for extension of time were filed in Section 7 Application. It is submitted that false statement was consciously and deliberately made by Counsel for Respondent No.1 to misled this Tribunal. Only Recovery Certificate dated 12.09.2011 was appended alongwith Section 7 Application and taking the said date, the limitation was to expire on 11.09.2014 and the Application filed on 12.06.2018 was after expiry of limitation. Learned Counsel for the Applicant further submitted that Respondent No.1 fraudulently led this Tribunal to believe that particulars of acknowledgments of debt that commenced a fresh period of limitation were contained in the Company Petition filed before the NCLT which is apparent from observations made in judgment dated 07.01.2022 in para 24. Following observations made in para 24 by the judgment has been

emphasized:

> "Para 24.....It is not shown by the Appellant that in reply to the Petition they have challenged the particulars mentioned in the Petition and documents filed alongwith Petition. However, the Respondent No.1 in his Written Submissions filed before this Appellate Tribunal has clarified the dates when the Corporate Debtor had acknowledged the debt, which are as under:-...."

8. It is submitted by Learned Counsel for the Applicant that no particulars as has been referred by judgment dated 07.01.2022 were furnished by Respondent No.1 along with the Company Petition whereas as per the table of dates reproduced by this Tribunal in para 24 of the judgment dated 07.01.2022, it is clear that they were not filed before the Tribunal and Respondent No.1 fraudulently represented that letters dated 17.12.2015 and 27.02.2016 were written by the Corporate Debtor whereas they were written by a shareholder. Respondent No.1 knew that it could not enter into correspondence with any and every person purporting to have some interest in the affairs of the Corporate Debtor, but only with a duly authorized Director of the Company.

9. It is submitted by Learned Counsel for the Applicant that the above mentioned acts of fraud, misrepresentation and deception consciously and deliberately practiced by Respondent No.1 upon this Tribunal goes to the very root of the matter and this Tribunal having misled on the representation of the Respondent No.1 that relevant documents regarding extension of limitation were filed in the Company Petition led to the judgment dismissing the Appeal on 07.01.2022 which deserves to be recalled since this Tribunal was completely deceived and misled. Learned Counsel for the Applicant states that submissions as made above of the Applicant are sufficient to initiate proceeding to punish the Respondents for committing Contempt of the Court as well as for initiating prosecution against the Respondent as prayed in the Contempt Application.

10. Shri Neeraj Malhotra, Learned Senior Counsel appearing for the Respondent No.1 refuting the submissions of the Counsel for the Applicant submits that the Applications filed by the Applicant are wholly misconceived and have been filed only to harass the Respondent and prolong the litigation. He further submits that in Section 7 Application filed by the Financial Creditor, there was detailed pleadings regarding the sequence of the events and details of extension granted by the Financial Creditor to Corporate Debtor have been mentioned which clearly proved that when ultimately OTS was cancelled on 05.04.2016 the Application under Section 7 was filed which clearly proves that Application was not barred by time. It is submitted that no objection was taken by the Corporate Debtor in his Reply to Section 7 Application regarding Application not being within limitation. Before the Adjudicating Authority, the Corporate Debtor never contended that Application was not within time. After admission of the Application, Appeal was filed challenging the order of admission dated 15.03.2019 in which Appeal also no ground was taken that Application under Section 7 was barred by time. The Appeal too was dismissed by this Tribunal, after hearing Counsel for the parties, elaborately on 06.09.2019. No further Appeal was filed by the Appellant challenging the order darted 06.09.2019 and it is only after the dismissal of the Appeal when the Resolution was passed by the Committee of Creditors for liquidating the Corporate Debtor. CA 307 of 2020 was filed by the Applicant seeking recall of the admission order dated 15.03.2019 on the ground of fraud.

Application CA 307 of 2020 was rejected by the Adjudicating Authority on 10.11.2020 holding that question of limitation is a mixed question of fact and law and this issue was never raised by the Applicant at the time of admission of petition and also in the Appeal. The Adjudicating Authority held that no ground has been made out to recall of admission order, hence Application CA No. 307 of 2020 was rightly rejected.

11. Learned Counsel for the Respondent submits that there being no Resolution Plan, the Adjudicating Authority has rightly taken a decision to liquidate the Corporate Debtor. Consequently, Application CA No. 121 of 2020 was filed by the Resolution Professional which stood allowed on 15.10.2020. It is submitted that in the Appeal filed against the orders dated 10.11.2020 and 15.10.2020 i.e. Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020, all submissions have been made by respective parties which may duly considered by this Tribunal vide its judgment dated 07.01.2022.

12. It is submitted that in the Application under Section 7 there was sufficient pleading by the Applicant (Respondent No.1) to prove that Application was not barred by time and there was extension of limitation by virtue of acknowledgments made on behalf of the Corporate Debtor. It is submitted that the letters written on behalf of the Corporate Debtor are evidence of acknowledgment of debt and letters seeking extension of time were brought on record along with the Reply filed by the Respondent No.1 in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020. It is submitted that Respondent No.1 never contended before this Tribunal in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020 that letters containing acknowledgment were filed along with the Section 7 Application. There is no question of any misleading by the Respondent No.1 and there is no question of fraud being played by the Respondent No.1 on this Tribunal. All pleadings and documents which were on record have been looked by this Tribunal for deciding the Appeal on 07.01.2022. Entire Application under Section 7 filed by the Respondent No.1 was brought on record in Appeal by Respondent No.1 itself with all its annexures which amply proves that what documents were brought on record along with the Section 7 Application and which letters and documents were brought on record along with the Reply filed by the Respondent No.1. It is submitted that due to the dismissal of the Appeal against the order dated 15.03.2019 by this Tribunal the principle of merger applies and the order of the NCLT dated 15.03.2019 no more existed to enable the Applicant to pray for recall of the said order. No false documents were filed by the Respondent No.1 either before the Adjudicating Authority or before this Tribunal. The question of misleading by Respondent No.1 does not arise since all documents were filed in the Reply before this Tribunal which have been noticed by this Tribunal in its judgment dated 07.01.2022 in para 24 of the judgment. Referring to the Contempt Application filed by the Applicant, Counsel for Respondent No.1 has raised serious objection regarding the acts of the Applicant impleading Respondent Nos. 16 to 21 who were the counsel appeared and assisted this Tribunal in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020. It is submitted that filing of Contempt Application and prayer of prosecuting the counsel is most objectionable and reckless act on the part of the Applicant.

13. Shri Deepak Khosla, Learned Counsel for the Applicant in his Rejoinder submitted that the submission of Respondent No.1 based on doctrine of merger are misconceived when order is obtained by fraud, it can be very well recalled by any Court even if the Appeal against the said order

has been dismissed. It is submitted that no doctrine says that order obtained by fraud merges in appellate order. The Order passed by the Adjudicating Authority was void order and nullity. Non-est order or an order which is nullity shall always be nullity. Respondent No.1 has filed the documents before this Tribunal in the Appeal which documents were not before the Adjudicating Authority. Respondent No.1 misled this Tribunal to believe that documents which have now been filed before the Appellate Tribunal along with the Reply of Respondent No.1 were before the Adjudicating Authority. Learned Counsel for the Applicant however submits that there is no denial to the letters which was written by the Respondent No.1 since they were letters written by Respondent No.1. He submits that the letters which is claimed to be the letter written on behalf of the Corporate Debtor seeking extension of time were not the letters written by the Corporate Debtor but were written only by a shareholder by which the Corporate Debtor is not bound. It is further submitted that he is not making his submissions on merits of the case as has been decided in the Appeal on 07.01.2022 and his arguments are only based on the fraud which is played on this Tribunal by the Respondent No.1 in obtaining order dated 07.01.2022. The order dated 07.01.2022 which has been obtained by practicing fraud on this Tribunal deserves to be recalled by this Tribunal. He further submits that the submission which has been raised in these Applications are submissions confining to the fraud played on this Tribunal and he is not making submission with regard to fraud which was practiced on the Adjudicating Authority while obtaining order of admission on 15.03.2019. Learned Counsel for the Applicant in support of his submission has relied on various judgments of the Hon'ble Supreme Court which we shall refer by considering the submission in detail.

14. We have considered the submissions of Learned Counsel for the Applicant and Learned Senior Counsel for the Respondent and perused the record.

15. The main question which arise for consideration in these Applications is, whether this Appellate Tribunal was misled and deceived by fraud practiced by Respondent No.1 which lead dismissal of the Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020 vide its judgment dated 07.01.2022.

16. The judgment dated 07.01.2022 of this Tribunal in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020 is sought to be recalled on the ground of fraud claim to have been practiced by Respondent No.1. Insolvency and Bankruptcy Code, 2016 does not define fraud. 'Fraud' is defined in Section 17 of the Indian Contract Act, 1872 in following words:-

"17. "Fraud" defined.--"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent1 , with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:--

> (1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true; (2) the active concealment of a fact by one having knowledge or belief of the fact;
>
> (3) a promise made without any intention of performing it;
>
> (4) any other act fitted to deceive;

(5) any such act or omission as the law specially declares to be fraudulent.

Explanation.--Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak , or unless his silence is, in itself, equivalent to speech."

17. The definition of 'fraud' as contained in Section 17 of the Indian Contract Act, 1872 becomes relevant for determining a question of fraud claim to be practiced in proceedings under the IBC. Section 3(37) of the IBC expressly provided that words and expressions used but not defined in the Code but defined in the Indian Contract Act, 1872 and other Acts as referred therein, shall have the meanings respectively assigned to them in those Acts.

18. The Appellant alleges that fraud was played on the court i.e. this Tribunal by the Respondent No.1. Elaborate submission of Counsel for the Applicant which according to Applicant constitute fraud has been noticed above. Before proceeding further to consider as to whether any fraud was played by the Respondent No.1 on this Appellate Tribunal, we may first notice the contentions of the Applicant that when an order is obtained from a Court or Tribunal practicing fraud, the Tribunal has inherent jurisdiction to recall the said judgment or decree and declare the said judgment as non-est and nullity.

19. The judgment of the Hon'ble Supreme Court in "United India Insurance Co. Ltd. vs. Rajendra Singh & Ors.- AIR 2000 SC 1165" has been relied by the Counsel for the Applicant. In para 17, following was laid down:-

> "17. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No Court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

20. In "S.P. Chengalvaraya Naidu vs. Jagannath- (1994) 1 SCC 1", the Hon'ble Supreme Court had held that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. In para 1 of the judgment, following has been laid down:-

> "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

21. Another judgment of the Hon'ble Supreme Court we need to notice is "A.V. Papayya Sastry v. Government of A.P.- AIR 2007 SC 1546" where again the Hon'ble Supreme Court held that

judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. In para 22 of the judgment, following has been laid down:-

"22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings."

22. The Hon'ble Supreme Court in above case has also defined the expression 'fraud'. The Hon'ble Supreme Court held that the fraud is an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In para 26, following has been laid down:-

> "26. Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

23. In "Indian Bank vs. Satyam Fibres (India) Pvt. Ltd.- MANU/SC/0657/1996", the Hon'ble Supreme Court held that judiciary has inherent powers specially under Section 151 of CPC to recall its judgment for orders if it is obtained by fraud. The Hon'ble Supreme Court further held that above principle will apply not only to courts or law but also to statutory tribunals. In para 32 of the judgment, following has been laid down:-

> "32. The above principle will apply not only to court of law but also to statutory tribunals which, like the Commission, are conferred power to record evidence by applying certain provisions of the Code of Civil Procedure including the power to enforce attendance of the witnesses and are also given the power to receive evidence on affidavits. The Commission under the Consumer Protection Act, 1986 decides the dispute by following the procedure indicated in Section 22 read with Section 13(iv) and (v) of the Act."

24. There is an elaborate consideration of expression 'fraud' in (2010) 8 SCC 383- "Meghmala and Others vs. G. Narasimha Reddy and Others". The Hon'ble Supreme Court held that fraud and deception are synonymous. In para 34, following was held:-

> "34. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable

> principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. Fraud is proved when it is shown that a false representation has been made (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it be true or false. Suppression of a material document would also amount to a fraud on the court"

25. The ratio of judgments of the Hon'ble Supreme Court as noted above is that fraud is an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. The ingredients which need to be proved to find out as to whether fraud has been committed are (i) an act of deliberate deception, (ii) with the design of securing some unfair or undeserved benefit & (iii) by taking undue advantage of another.

26. The submission of the Counsel for the Applicant that Court has jurisdiction to recall a judgment or decree which has been obtained by practicing fraud on the Court is correct and supported by several authorities of the Hon'ble Supreme Court as noticed above.

27. In the judgment dated 07.01.2022 passed in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020, the above proposition has already been accepted and reiterated in para 26 of the judgment where this Tribunal held:-

> "26. Hon'ble Supreme Court in the aforesaid Judgments has settled the principle that every Court/Tribunal has power to recall the order obtained by practicing fraud. The Appellant has miserably failed to prove that the Respondent No. 1 has obtained the order dated 15.03.2019 by practicing fraud. Therefore, Ld. Adjudicating Authority has rightly held that they no jurisdiction to recall the admission order dated 15.03.2019."

28. The Hon'ble Supreme Court in the aforesaid judgments has settled the principle that every court/ tribunal has power to recall the order obtained by practicing fraud.

29. We need to consider the submission of the Counsel for the Applicant that judgment dated 07.01.2022 was obtained by Respondent No.1 by practicing fraud on this Appellate Tribunal. What are the grounds to allege fraud by Respondent No.1 on this Tribunal has been stated in I.A No. 192 of 2022 as noted above. The great emphasis has been laid down by the Learned Counsel for the Applicant on submission of Respondent No.1 as recorded in para 13 of the judgment dated 07.01.2022. In this context, we may refer to para 13 of the judgment, which is to the following effect:-

> "13. Per contra, Ld. Sr. Counsel for the Respondent No. 1 vehemently opposed the in its petition under Section 7 of IBC has mentioned true facts that DRT has passed a decree on settlement of parties and thereafter, issued recovery certificate and thereafter, time to time the Corporate Debtor has acknowledged the debt and in support the Respondent No. 1 has filed the documents. Therefore, it is incorrect to say that the Respondent No. 1 has played any fraud and obtained the admission order

dated 15.03.2019. Therefore, Ld. Adjudicating Authority cannot recall its own order.

Particularly, when the order dated 15.03.2019 is affirmed by this Appellate Tribunal vide order dated 06.09.2019. Thus, the order dated 15.03.2019 is merged with the Judgment of this Appellate Tribunal and now that order is not in existence. For this merger principle he placed reliance on the Judgments of Hon'ble Supreme Court in the case of Gojer Bros. Pvt. Ltd. Vs. Ratan Lal Singh Civil Appeal No. 128 of 1972, dated 01.05.1972 Para 9 and 11, Kunhayammed and Ors. Vs. State of Kerla and Ors. C.A. No. 12309 of 1996 Para 42 and 44(1) and Apya Captial Services Pvt. Ltd. Vs. Guardian Homes Pvt. Ltd. I.A. No. 2068 of 2021 in CA (AT) (Ins) No. 412 of 2020, dated 09.12.2021 Para 1, 10 to 13, 15."

30. What is sought to be contended by Learned Counsel for the Applicant is the submission that Corporate Debtor has acknowledged the debt and in support the Respondent No.1 has filed the documents was false statement since no documents were filed by the Respondent No.1 along with Section 7 Application and the statement of Counsel for the Respondent No.1 that documents were filed in support of the acknowledgment of debt is false and misleading.

31. In the above reference, we may first notice Section 7 Application filed by the Financial Creditor and what was the pleading in Section 7 Application and what documents were filed in support thereof in Section 7 Application.

32. In Part- IV of the Application under Section 7, Applicant (Respondent No.1) has stated that "days of default has been calculated from: (July 29, 2000) and in Part-V in Column 2- "Particulars of an order of a Court, Tribunal or Arbitral Penal adjudicating on the default, if any". The details of O.A No. 177/2001 filed by the EXIM Bank before the DRT has been mentioned. Copy of the Recovery Certificate No. 67/2011 passed in O.A No. 177/2001 was filed as Annexure A-11 of the Application. It is useful to notice the entire particulars in Column 2:-

2. PARTICULARS OF AN The Exim Bank had filed O.A No. ORDER OF A COURT, 177/2001 before Hon'ble Debt TRIBUNAL OR ARBITRAL Recovery Tribunal Delhi-II under PENAL ADJUDICATING ON the principles of Order 23 Rule 3 THE DEFAULT, IF ANY CPC read with Section 22 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 read with Rule 18 of the Rules framed thereunder.

The Exim Bank had filed O.A. No. 251/2003 before Hon'ble Debt Recovery Tribunal Mumbai-II.

A copy of order dated 28.06.2004 passed by the Hon'ble Debt Recovery Tribunal Mumbai-II with regards to the payment to be made to the Applicant by the Corporate Debtor and Recovery Certificate no.

67/2011 passed in O.A 177/2001, is herein annexed and marked as Annexure A-11 As per settlement terms filed in O.A No. 177/2001 in DRT- II, Delhi which was between EXIM Bank (Assignor of

EARC) and Corporate Debtor, the OTS amount was Rs.

6,58,06,800/- and 10% of the said amount i.e. Rs. 65,88,680/- has been paid by Corporate Debtor and balance amount of Rs.5,92,26,120/- was payable on or before September, 12, 2012. A consent decree was passed on the above terms in O.A No. 177/2001.

The said consent terms included the dues of the present RC also.

The aforesaid OTS failed for want of repayment by the Corporate Debtor. On 2nd January 2014, vide an Assignment Agreement, all the loans granted to the Corporate Debtor by Exim Bank (Assignor) alongwith the underlying rights, title and interests were assigned in favour of the Applicant. On the request of the Corporate Debtor time and again, extension of the payment of the balance amount has been granted on 5 occasions by the Applicant. The last extension was granted by the Applicant (EARC) vide letter dated 17.12.2015 which was valid upto 31.03.2016. ultimately, the Applicant (EARC) revoked the OTS vide letter dated 05.04.2016.

33. In Section 7 Application, apart from providing information in the relevant columns as required in prescribed format in Form-1, there were total 28th Annexure filed along with Application by the Respondent No.1. In 2nd Column of Part-V, as extracted above, it was pleaded that an amount of Rs.5,92,26,120/- was payable on or before September, 12, 2012. It was further pleaded that on request of the Corporate Debtor time and again, extension of the payment of the balance amount has been granted on 5 occasions by the Applicant (Respondent No.1). The last extension was granted by the Applicant (Respondent No.1) vide letter dated 17.12.2015 which was valid upto 31.03.2016. It was further pleaded that the Applicant (Respondent No.1) revoked the OTS vide letter dated 05.04.2016 and thereafter, the Application under Section 7 was filed in the year 2018. It is also on the record that Reply was filed by the Corporate Debtor in Section 7 Application wherein no issue regarding Application under Section 7 being barred by limitation was raised.

34. We need to now revert to the submissions of the Counsel for the Applicant that Respondent No.1 misrepresented before this Tribunal that documents pertaining extension of limitation were filed by the Respondent to these Applications (i.e. Applicant in Section 7 Application) along with Section 7 Application which misled this Tribunal to believe that all those documents were filed before the Adjudicating Authority. In Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020 a detail Reply Affidavit was filed by the Respondent No.1 and in the Reply which was filed before this Tribunal copies of the letters of the Corporate Debtor and copies of the letters of the answering Respondent i.e. Financial Creditor were annexed.

35. We may now notice the pleadings of the Respondent No.1- Financial Creditor with regard to letters written on behalf of the Corporate Debtor and the Reply given by the Financial Creditor regarding granting extension of time for payment of OTS amount which have been collectively filed as Annexures R- 3 and R-4. In para 20 of the Reply, detailed pleadings and reference of the various letters has been made. It is useful to extract para 20 of the Reply which is to the following effect:-

> "20. I say that the brief facts in the present case is enumerated below:-

(i) That Exim Bank was the original lender to the Corporate Debtor and it had assigned the debt of the Corporate Debtor to the answering Respondent vide deed of assignment dated 02.01.2014.

(ii) That the Corporate Debtor failed to make the payment of the decretal amount as per the consent terms as referred to in para 19 hereinabove. The Corporate Debtor repeatedly requested the answering respondent for extension of time limit for payment of the OTS amount telephonically as well as by written communications.

Copies of letters dated 01.11.2014 & 17.03.2015 written by the Corporate Debtor to the answering respondent seeking extension of the time for payment of the OTS amount are filed herewith as ANNEXURE R-3 (colly).

(iii) That the answering respondent on the request of the Corporate Debtor had granted many extensions for payment of the OTS amount. The last extension had been granted by the answering respondent vide its letter dated 15.05.2015 which was valid upto 31.12.2015.

Copies of the letters of the answering respondent dated 14.03.2014 (granting extension upto 25.09.2014), 23.09.2014 (granting extension upto 15.03.2015) and dated 15.05.2015 (granting extension upto 31.12.2015) are filed herewith as ANNEXURE R-4 (colly).

(iv) That the Corporate Debtor by its letter dated 01.12.2015, had requested for a re-negotiated settlement at Rs. 4.50 crore. The said request was turned down by the answering respondent by its letter dated 10.12.2015.

A copy of the Corporate Debtor's letter dated 01.12.2015 is filed herewith as ANNEXURE R-5.

A copy of the answering respondent's letter dated 10.12.2015 is filed herewith as ANNEXURE R-6.

(v) That the Corporate Debtor by its letter dated 17.12.2015, again requested the answering respondent for a re-negotiated settlement at Rs. 5.15 crore. The said request was accepted by the answering respondent by its letter dated 17.12.2015. As per the re-negotiated settlement, upfront amount of Rs. 50.00 lacs was payable on or before 31.12.2015 and the balance of Rs. 4.65 crore was to be paid on or before 31.03.2016.

Copy of the Corporate Debtor's letter dated 17.12.2015 is filed herewith as ANNEXURE R-7.

Copy of the answering respondent's letter dated 17.12.2015 is filed herewith as ANNEXURE R-8.

(vi) That the Corporate Debtor ailed to make the payment of Rs. 50.00 lacs under the re-negotiated settlement before 31.12.2015. However, the Corporate Debtor by its letter dated 27.02.2016 assured the answering respondent that it shall pay the re-negotiated amount of Rs. 5.15 crore by 31.03.2016 along with interest on Rs. 50.00 lacs for the default period i.e. an amount of about Rs.

2.00 lacs. However, the Corporate Debtor failed to make any payment whatsoever after its said letter dated 27.02.2016 to the answering respondent. Copy of the Corporate Debtor's letter dated 27.02.2016 is filed herewith as ANNEXURE R-9.

(vii) That from the aforesaid factual details, it is crystal clear that the Corporate Debtor had consistently defaulted in payment of their liability even entering into OTS with the answering respondent and even after grant of several extensions by the answering respondent. In view of the same the answering respondent by its letter dated 05.04.2016, was constrained to revoke the OTS.

Copy of the answering respondent's letter dated 05.04.2016 is filed herewith as ANNEXURE R-

10."

36. Annexure R-3 (colly) referred to copies of letters dated 01.11.2014 and 17.03.2015 written by the Corporate Debtor to the answering respondent seeking extension of the time for payment of the OTS amount filed along with the Reply. Similarly, letters of answering respondent i.e. Financial Creditor dated 14.03.2014, 23.09.2014 and 15.05.2015 were filed along with the Reply as Annexure R-4 (colly). In the Reply, neither there was any statement nor any kind of representation by Respondent No.1 that those letters which have been filed along with the Reply were before the Adjudicating Authority along with the Section 7 Application. In judgment dated 07.01.2022, this Tribunal itself has noted the details of different letters given by the Financial Creditor and letters on behalf of Corporate Debtor in tabular form in para 24. In para 24 of the judgment dated 07.01.2022 although this Tribunal observed that "the Respondent No.1 in his Written Submissions filed before this Appellate Tribunal has clarified the dates when the Corporate Debtor had acknowledged the debt, which are as under":-

23.09.2014	EARC by its letter dated 23.09.2014 extended the time for payment of OTS amount upto 15.03.2015 in response to email dated 18.09.2014 of the CD.	Reply-Annex R-4/Pg. 40
01.11.2014 & 17.03.2015	Letters dated 01.11.2014 & 17.03.2015 written by the Corporate Debtor to EARC seeking further extension of time for payment of the amount and offered payment of Rs. 50 lacs.	Reply- Annex R-3/Pg. 37-38
15.05.2015	EARC letter dated 15.05.2015 granting	Reply- Annex R-

	extension upto 31.12.2015.	4/Pg. 41
15.05.2015	CD made the payment of the sum of Rs. 50.00 Lacs to EARC	-Do-
01.12.2015	Letter of the CD dated 01.12.2015 requesting for a re-negotiated settlement at Rs. 4.50 Crore	Reply- Annex R-5/Pg. 42-43
10.12.2015	Reply of EARC to the above letter dated 01.12.2015 turning down the above request.	Reply- Annex R-6/Pg. 44
17.12.2015	Letter of the CD requesting EARC for a re-negotiated settlement of Rs. 5.15 Crore	Reply- Annex R-7/Pg. 45 - 46
17.12.2015	Letter by EARC accepting the above settlement As per the re-negotiated settlement, upfront amount of Rs. 50.00 lacs was payable on or before 31.12.2015 and the balance of Rs. 4.65 crore was to be paid on or before 31.03.2016 CD failed to honour the above settlement	Reply- Annex R-8/Pg. 47
27.02.2016	Letter of the CD assuring EARC that it shall pay the re-negotiated amount of Rs. 5.15 crore by 31.03.2016 alongwith interest on Rs. 50.00 lacs for the default period i.e. an amount of about Rs. 2.00 lacs. CD failed to honour the above settlement	Reply-Annex R-9/Pg. 48 -49
05.04.2016	Letter by EARC revoking the above OTS dated 27.02.2016	Reply- Annex R-10/Pg. 50
12.06.2018	Section 7 Application filed by EARC	Appeal- Annex-

37. The 3rd Column of the above table as contained in para 24 of the judgment mentioned the details of the letter which has been filed before the Tribunal. When we look into the table contained in para 24 of the judgment and pleadings in para 20 of the Reply of Respondent No.1, it is clear that all the letters which have been referred to in table in para 24 of the judgment have been filed by the Respondent No.1 along with the Reply pleaded in para 20 and annexed as Annexures R-3 to R8 collectively. It is clear that there was no representation on the part of the Respondent No.1 that the letters aforesaid which have been brought along with the Reply containing acknowledgment of debt by the Corporate Debtor and seeking extension of time for making payment were filed before the Adjudicating Authority along with Section 7

Application. The Respondent No.1 has neither pleaded nor represented that the letters which are referred to in Annexures R-3 to R8 collectively were filed before the Adjudicating Authority. Rather those documents for the first time were brought on the record in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020, to explain and clarify the pleading which is made by the Financial Creditor before the Adjudicating Authority. As noted above, in Part-V of the Application under Section 7, Column 2, pleading and foundation was already laid down by the Financial Creditor regarding the extension of time sought on behalf of Corporate Debtor for making the repayment. Last letter was issued by the Respondent No.1- Financial Creditor on 17.12.2015 by which extension was granted by the Financial Creditor to Corporate Debtor for payment upto 31.03.2016. The letter dated 17.12.2015 was not filed along with Section 7 Application but was brought on record along with the Reply in Appeal.

38. We may make it clear that we are not adverting to the question on merits as to whether the Application under Section 7 filed by the Respondent No.1 was whether barred by time or was within the limitation prescribed. The Application having been admitted by the Adjudicating Authority which Application was objected by the Corporate Debtor by filing Reply and no plea regarding limitation was admittedly raised. Application was admitted by the Adjudicating Authority against which the Appeal was filed by the Suspended Director of the Corporate Debtor which too was dismissed by this Tribunal on 06.09.2019. The question of admission of the Application become final and affirmed by this Tribunal. It is not for us to advert on the question of limitation which was never pressed by the Appellant before the Adjudicating Authority in Section 7 Application. The facts and pleadings in Section 7 Application as well as in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020 are being noticed in detail to examine the contention of the Applicant that fraud was played by Respondent No.1 on this Tribunal while obtaining the order dated 07.01.2022 dismissing the Appeal.

39. From the pleadings in para 20 of the Reply filed by the Respondent No.1 in Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020, it is evidently clear that there is no representation by Respondent No.1 that letters referred to Annexures R-3, R4, R5 to R8 (Colly) were filed before the Adjudicating Authority and those letters were brought on record along with the Reply filed in the Appeal. The submission of Respondent No.1 as noted in para 13 of the judgment dated 07.01.2022 cannot be read to mean that Respondent No.1 misrepresented before this Tribunal that particulars mentioned in the Section 7 Application and documents were filed along with the Section 7 Application.

The statement of Counsel for Respondent No.1 as noted in para 13 cannot be read to mean that Respondent No.1 contended before this Tribunal in hearing of the Appeal that documents containing acknowledgment by Corporate Debtor has been filed along with Section 7 Application. The observation "the Respondent No.1 has filed the documents" can also not to be said false since admittedly correspondence of the Corporate Debtor as well as the Financial Creditor have been

brought on the record in the Reply filed by the Respondent No.1 in the Appeal. Similarly, the observation of this Tribunal in para 24 of the judgment dated 07.01.2022 where this Tribunal observed that "and thereafter time to time the Corporate Debtor has acknowledged the debt and the Respondent No. 1 has filed the documents to construe the acknowledgement" cannot be read to mean that Respondent No.1 submitted that documents were filed along with Section 7 Application. Neither the Tribunal has noted the submission of the Respondent No.1 to the effect that Respondent No.1 pleaded that all documents pertaining to acknowledgment have been filed along with Section 7 Application nor in fact Respondent No.1 even pleaded or submitted before this Tribunal at the time of hearing of this Appeal that documents of acknowledgment of debt by the Corporate Debtor have been filed along with Section 7 Application. We, thus, are satisfied that neither the Respondent No.1 practiced any fraud or misled this Tribunal with regard to pleadings and submissions as noted in paras 13 and 24 of the judgment dated 07.01.2022 nor there was any false statement made by the Respondent No.1 before this Tribunal at the time of hearing of the Appeal that documents of acknowledgment by Corporate Debtor were filed before the Adjudicating Authority although in the Section 7 Application, pleadings regarding acknowledgment and extension of time by Financial Creditor for payment have been clearly made as noted above.

40. Learned Counsel for the Respondent No.1 has submitted before us that since pleading under Section 7 Application regarding extension of time granted by Financial Creditor were never disputed by the Corporate Debtor in Reply filed before the Adjudicating Authority, no occasion arose to file relevant correspondence before the Adjudicating Authority and in these Applications Applicant i.e. Suspended Director of the Corporate Debtor sought to contend that fraud and misrepresentation was done by the Respondent No.1. All correspondence had been brought on the record in Appeal to clarify the position and to bring relevant correspondences in record which evidence the acknowledgment of debt by the Corporate Debtor time and again to satisfy this Tribunal at the time of hearing of the Appeal that neither any fraud practiced by Respondent No.1 regarding limitation of Section 7 Application nor there was any misrepresentation on the part of the Respondent No.1.

41. We, thus, are fully satisfied that there was neither any fraud practiced by Respondent No.1 nor any misrepresentations made by Respondent No.1 before this Tribunal and the judgment dated 07.01.2022 passed by this Tribunal cannot be held to be obtained by fraud. We, thus, do not find any substance in the submissions of counsel for the Applicant of allegation of fraud or misrepresentation.

42. We may further notice the submission of Learned Counsel for the Applicant that letters which were written by the Financial Creditor to the Corporate Debtor were not by any authorized person. It is submitted that letters which were sent by Financial Creditor where addressed to one of the Directors Shri Deepak Khosla and request which was received on behalf of the Corporate Debtor were not by authorized person. The letters dated 01.11.2014 and 17.03.2015 which have been brought on record as Annexure R-3 (Colly) to the Reply of Respondent No.1 in the Appeal were written on behalf of 'Margra Industries Ltd.'- Corporate Debtor. Letters dated 14.03.2014, 23.09.2014 and 15.05.2015 which were addressed to Director of the Corporate Debtor. Another letter Annexure R-5 which was to the Reply is letter dated 01.12.2015 sent on behalf of the Corporate Debtor. In letter dated 01.12.2015, it was said that payment shall be completed at the earliest and

Financial Creditor need not wait till 31.05.2016. The said letter was written on letter pad of the Corporate Debtor and signed by one of the Directors.

43. The correspondences between the Financial Creditor and the Corporate Debtor at the relevant time was exchanged and we have no reason to accept the submission of Counsel for the Applicant that letters which were written on behalf of the Corporate Debtor were not by the authorized person since the letters written by Financial Creditor were given effect to. For example- in response to letter dated 14.03.2014 written by Financial Creditor to the Corporate Debtor on One Time Settlement- extension of time was granted to Financial Creditor till 25.09.2014 subject to payment of Rs. 50 Lakhs within one week. The letter was acknowledged on 18.03.2014 by the Corporate Debtor and pay order of Rs. 50 Lakhs was handed over on 18.03.2014 that too was addressed to Shri Deepak Khosla as Director. We, thus, do not find any substance in the submission of the counsel for the Applicant that there was any fraud played by Respondent No.1 in sending the letters granting extension of time for payment of settlement amount to unauthorized person. This Tribunal delivered its judgment dated 07.01.2022 after elaborately hearing the counsel for the parties. The parties were permitted to file Written Submissions which are on the record. It is also relevant to note that the Application filed under Section 7 was already admitted by the Adjudicating Authority vide its order dated 15.03.2019 against which Appeal was filed by Suspended Director which too was dismissed on 06.09.2019. Company Appeal (AT) (Ins.) Nos. 1124-1125 of 2020 was filed against the orders dated 08.11.2020 and 15.10.2020 by which Adjudicating Authority has directed for liquidation and rejected the Application of the Suspended Directors for recalling the order dated 15.03.2019. The orders were already passed in favour of the Respondent No.1 admitting CIRP and the Appeal was filed by Suspended Director challenging the aforesaid two orders. The Appeal filed by the Suspended Directors were dismissed. This Appellate Tribunal has framed only two questions for consideration which are noted in para 20 of the judgment to the following effect:-

> "2. Issue for consideration before us in these Appeals are that:
>
> (i) Whether the Adjudicating Authority is competent to recall the order of initiation of CIRP?
>
> (ii) Whether the liquidation order suffers from material irregularity?"

44. Question No. (i) was considered by this Tribunal from paras 22 to 30 and in para 31 Question No.(i) was answered in following words:

> "31. With the aforesaid discussion, we are of the view that in the facts of present case the Adjudicating Authority is not competent to recall the order of initiation of CIRP."

45. This Appellate Tribunal held that Adjudicating Authority was not competent to recall its order dated 15.03.2019 thus has affirmed the order dated 08.11.2020 passed by the Adjudicating Authority rejecting CA 307/2020 filed by the Suspended Directors. Thus, it cannot be said that order of this Tribunal dated 07.01.2022 was obtained by Respondent No.1 by playing any fraud. The grounds raised by Counsel for the Applicant to recall the order dated 07.01.2022 and declare the

order as nullity are unfounded. Application I.A 192 of 2022 thus deserves to be dismissed and is hereby dismissed.

46. In I.A No. 190 of 2022, Applicant has prayed for expunging of certain events alluded in the order dated 07.01.2022, we do not find any error is committed by this Tribunal in its judgment dated 07.01.2022 in Company Appeal (AT) (Insolvency) Nos. 1124-1125 of 2020 regarding facts and events. Thus, I.A 190 of 2022 is also dismissed.

47. In I.A Nos. 191 and 337 of 2022, Applicant prayed for an order of status quo, we do not found any merit in I.A Nos. 191 and 337 of 2022. Application I.A Nos. 191 and 337 of 2022 deserves to be dismissed and are hereby dismissed.

48. Now, we come to Contempt Application (AT) No. 06 of 2022. Learned Counsel for the Applicant has submitted that submission in Contempt are those which he has already made in advancing his submission in I.A No. 192 of 2022. We do not find any ground to initiate any contempt proceeding as prayed in Contempt Application (AT) No. 06 of 2022. Contempt Application (AT) No. 06 of 2022 also deserves to be dismissed. But before we close the Contempt Application (AT) No. 06 of 2022, it is relevant to notice that in the Contempt Application (AT) No. 06 of 2022, Applicant has, apart from impleading different officers of Respondent No.1 from Serial Nos. 2 to 15 even impleaded Respondent Nos. 16 to 21 who were Advocates of Respondent No.1 in the Appeal before this Tribunal. Before Serial Nos. 16 to 21, following has been mentioned by the Applicant:-

> "POSSIBLE ADDITIONAL RESPONDENTS/ NON-APPLICANTS (THE ADVOCATES WHO ACTED IN THE MATTER) WHO MAY BE DESIRED TO BE ADDED BY THIS HON'BLE TRIBUNAL (SUO MOTU)"

49. When the Applicant in his above statement states that these are the Respondents who may be desired to be added by the Tribunal (suo motu), there was no occasion to implead them in the Application and further the impleadment of Advocates who appeared for Respondent No.1 in the Appeal is reckless and inappropriate act on behalf of the Applicant. We, thus, order that the names of Respondent Nos. 16 to 21 be deleted from array of parties in the Contempt Application (AT) No. 06 of 2022.

50. With the above direction of deletion of Respondent Nos. 16 to 21, the Contempt Application (AT) No. 06 of 2022 is dismissed.

In result, the I.A Nos. 190, 191, 192 and 337 of 2022 are dismissed as well as Contempt Application (AT) No. 06 of 2022.

[Justice Ashok Bhushan] Chairperson [Dr. Ashok Kumar Mishra] Member (Technical) New Delhi Anjali