NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) No. 146 of 2024
&
I.A. No. 2810 of 2026

IN THE MATTER OF:

Arun Gupta & Ors. **...Appellant(s)**

Versus

Yogendra Pal Jain & Ors. **...Respondent(s)**

Present:

For Appellant(s) : **Mr. Aryan Data and Mr. Saurabh Kalia, Advocates.**

Mr. Apoorv Agarwal and Ms. Preyoshi Bhattacharja, Advocates for Applicant.

For Respondent(s) : **Mr. Siddharth Jain, R3 in person.**

With
Comp. App. (AT) No. 155 of 2024
&
I.A. No. 2811 of 2026

IN THE MATTER OF:

Arun Gupta & Anr. **...Appellant(s)**

Versus

Yogendra Pal Jain & Ors. **...Respondent(s)**

Present:

For Appellant(s) : **Mr. Aryan Data and Mr. Saurabh Kalia, Advocates.**

Mr. Apoorv Agarwal and Ms. Preyoshi Bhattacharja, Advocates for Applicant.

For Respondent(s) : **Mr. Siddharth Jain, R3 in person.**

With
Comp. App. (AT) No. 164 of 2024
&
I.A. No. 2812 of 2026

IN THE MATTER OF:

Arun Gupta & Anr. **...Appellant(s)**

Versus

Yogendra Pal Jain & Ors. **...Respondent(s)**

Present:

For Appellant(s) : Mr. Aryan Data and Mr. Saurabh Kalia, Advocates.

Mr. Apoorv Agarwal and Ms. Preyoshi Bhattacharja, Advocates for Applicant.

For Respondent(s) : Mr. Siddharth Jain, R3 in person.

J U D G M E N T
(Hybrid Mode)

[Per: Justice Sharad Kumar Sharma, Member (Judicial)]

CA(AT) No. 146 of 2024:

Before us, under the Appellate scrutiny is the impugned judgment of 14.03.2024 which has been rendered by the Ld. NCLT, Court-2, Kolkata Bench, in the matter of South Eastern Carriers Pvt. Ltd., which was subject matter of consideration in the shape of Company Petition No. 42/KB/2016 being the proceedings drawn under Section 235, 397, 398, 399, 402, 406 and 407 of the Companies Act, 1956, **Yogendra Pal Jain & Ors. Vs. South Eastern Carriers Pvt. Ltd. & Ors.** In the proceedings those were held before the Ld. Tribunal on 14.03.2024, at that stage there were certain interlocutory applications those were also required be considered, which have been enumerated hereunder.

(a). I.A. No. 191/KB/2023: This application was preferred invoking Rule 11 of the NCLT, Rules, 2016, wherein in the said application that was filed by the Petitioner against the South Eastern Carriers Pvt. Ltd., wherein they had prayed for a direction as against Respondent No.5 to disclose on affidavit the list of moveable and fixed assets, as they were standing in the name of Respondent No.1 to the Company Petition. Further, a disclosure was also sought as regards the list of moveable's and fixed assets of Respondent No.1 Company, that were already sold, transferred, eliminated, mortgaged and assigned to any third party after 2016, along with the relevant related documents of conveyance including any agreement for sale too. Another connected relief, that was made subject matter of I.A. No. 191/KB/2023, was seeking for a direction to the agents, assignees and servants, associates of any person acting directly or indirectly on the instructions in the Company Petition, to adhere to the interim orders, those were passed in the proceedings on 22.02.2018 and 01.03.2018.

(b). The other application, that was being considered, was ***Company Application No. 1584/KB/2019,*** which was yet again an application preferred by the Petitioner to the Company Petition, as against the Respondent therein, seeking reinstatement of the Petitioner No.1/ Respondent No.9 to the Company Petition, as directors to Respondent No.1 Company. A direction was also sought, to be given to the Special Officers appointed by the Tribunal, to submit necessary forms with the Registrar of

Companies regarding induction of Petitioner No.1 and Petitioner/Respondent No.9 as directors of the said Company. Further to remove the additional directors appointed by Respondent No.5.

(c). There had been simultaneously contempt proceeding too, which was ***Contempt Application No. 487/KB/2017***, once again it was preferred by the Petitioner against Respondent No.5, Mr. Arun Gupta, and Respondent No.7 who were said to be instrumental in removing the Petitioner No.1 and the Respondent No.9, Mr. Siddharth Jain, w.e.f. 06.06.2019. It was alleged by the Respondent herein who was an applicant to the contempt proceedings, that the said act of their removal was in complete derogation to the orders passed by the Ld. Adjudicating Authority. Hence, the Petitioners to the Company Petition/the Respondent herein prayed for initiating the proceedings against the Respondent No.5 and 7 under the Contempt of Courts Act, 1971, to be read with Section 425 of the Companies Act, 2013, for their deliberate and intentional violation of the interim order of 03.05.2016 passed by the Ld. NCLT. Though not directly relevant, but in the contempt proceedings the Applicant/Respondent/Petitioner sought a direction to set aside the removal of Petitioner No.1 and 9 and to reinstate them as Managing Director and the Director respectively of the Respondent No.1 Company, and direction may be given to the Respondent No.1 to stay or remove the appointment of additional directors, namely Mr. Deepak Kumar Jain, Mr. Hemant Mudge

and Mr. Sanjay Kumar Agrawal and further they prayed that contempt petition may be considered as part of the main Company Petition No. 42/KB/2016.

(d). Another I.A. which was adjudicated by the impugned order of 14.03.2024 was ***Company Application No. 112/KB/2021***, once again it was preferred by the Respondent/Petitioner, as against Respondent No.10 therein the Company Petition, i.e., the Registrar of Companies, Kolkata, praying to rectify its records in respect of the Respondent No.1 Company, wherein it had wrongfully reflected the removal of the Petitioner No.1 and Respondent No.9 of the Company Petition. It was contended that they had been illegally removed w.e.f. June, 2017, and an ouster of the additional directors who were thus appointed was sought, as their induction was alleged to be in violation of the orders dated 03.05.2016 and 01.10.2019 passed by the Company Law Board and the Ld. NCLT. Accordingly, in the Company Application No. 112/KB/2021, the relief sought was a declaration against FORM DIR-12 dated 06.06.2017 filed by the Respondent No.5, Mr. Arun Gupta, on behalf of the Respondent No.1 Company, that be declared null and void, and Respondent No.10, i.e., the Registrar of the Companies, be directed to correct and to pass an order putting the name of Petitioner No.1 and Respondent No.9 in the Company Petition, as Managing Director and the Directors of the Company and obviously there was a consequential relief of declaration, as against the appointment of the additional directors

subsequent to the removal of the Petitioner No.1 and Respondent No.9. The Ld. NCLT, in its relief granted in the said application, held that all consequential actions of removal of Petitioner No.1 and Respondent No.9 of the Company Petition and induction of additional directors were owing to the declaration made in the meeting of 06.06.2017, that was held by the Respondent No.5 for the aforesaid purposes, that itself be declared as null and void and to pay the consequential salaries that would have been otherwise entitled to be paid to Petitioner No.1 and Respondent No.9 of the Company Petition.

(e). Lastly, another application that was considered by the Ld. NCLT on the date of the passing of the impugned order was ***I.A. (Companies Act No.18/KB/2022),*** once again it was application preferred by the Respondent/Petitioner, seeking an early hearing of the proceedings of the Company Petition instead of the scheduled date, that was 21.03.2022, and seeking expeditious disposal of the Company Petition in the light of the order dated 09.04.2021 of the Hon'ble Apex Court.

2. To summarise, the subject matter of consideration before the Ld. NCLT, which has been expressed upon in the impugned order of 14.03.2024, was nothing but consideration of various interlocutory applications at the interlocutory stage of proceedings, that was being sought to be pressed by the Respondent/Petitioner owing to the historical background of litigation inter se between the parties, who were the family

members engaged in the business. It's these applications, which have been decided against, which the Appellant/ Respondent in the Company Petition are before us.

Brief facts: -

3. The Respondent No.8 (hereinafter to be called as a Company) is said to have been incorporated in 1974, as a Private Limited Company having its registration as per the Companies Act, 1956, it was a family undertaking wherein the family members and other closely connected persons were engaged in the business of transportation and the Company was carrying an authorized share capital of Rs. 1, 50, 00,000/- divided into 15,00,000 Equity Shares of Rs. 10/- each. The total subscribed paid up share capital of the Companies was Rs. 98,93,730/- divided into 9,89,373 Equity Shares of Rs. 10/- each. It will be relevant to observe that the Respondent Nos. 1 and 2 together, owned 20% of the entire shareholding of the Company. As per the history of the Constitution of the Company, it was shown to have been incorporated by Late Mr. Ram Kumar Gupta, the late father of the Appellant No.1 and Proforma Respondent No.3, who was the promoter thereof, and he held 58,000 shares during his lifetime in the Company, and upon his demise in 2002, his shares were divided amongst his wife, Mrs. Uttama Gupta, who in turn, had gifted those shares, along with her shares amongst her two daughter-in-law by virtue of gift deed of 25.10.2007.

4. The Respondent No. 1, is the brother-in-law of the Appellant No. 1 and proforma Respondent No. 4. The Respondent No.1 is shown to hold 34,732 equity shares signifying to be 3.51% of the shareholding. Respondent No. 2 is the wife of Respondent No. 1 and she holds 1,63,142 equity shares, amounting to be 16.49% of the total issued and paid up share capital of the Company. The Respondent No. 3 is the son of Respondents No. 1 and 2 and was a Whole Time Director of the company and is not a shareholder therein, whereas, Respondent No. 1 was the Managing Director of the Company until their removal from the Directorship of the Company.

5. The business of the Company was being effectively carried and were and it was doing very well until 2004, when certain disputes started creeping up between the various groups of shareholders as regards to the issues to pertaining to the management and the modalities of functioning of the Company. Amongst various instances of oppression and mismanagement, for which the parties to the Appeal are and had been having rival contention and stand in the proceedings of the Company Petition No. 42/KB/2016. It is alleged by the Appellant that, as Respondent No.1 and 2 were conspiring, to somehow illegally remove the Appellant Nos.1 and 2 from the position of the directorship of the Company and consequently from the management thereof too. The Appellant No.1 and 2 are said to have filed a Company Petition bearing No. **C.P. No. 176 of 2015** under Sections 397, 398 and 402 of the Companies Act, 1956, before the

Hon'ble Company Law Board. It's that during the course of the said proceedings that was held before the Company Law Board on 19.11.2015, the parties are said to have unanimously expressed that would not be any change in the shareholding pattern and composition of the board of the Company. The Company Law Board took the view, though tentative in nature, that since the disputes is as amongst the family members, it ought to be attempted to be settled amicably.

6. It is the case of the Appellant that consequence to the observation made by the Company Law Board in the proceedings of 19.11.2015, it is said that the Appellant Nos.1 and 2 and proforma Respondent Nos.4 to 6 of the Company Appeal have entered into some Memorandum of Understanding aiming to settle the disputes and differences pertaining to the subject of the management, finances and day to day functioning of the Company. It is the case of the parties in the Company Petition No. 176 of 2015, that because of the order passed on 19.11.2015, by the Company Law Board, a settlement has been arrived at hence the Company Petition No. 176 of 2015, was directed to be dismissed as withdrawn by the Appellants No.1 and 2 vide order dated 11.04.2016. Wherein, the Ld. Company Law Board had made the following orders:

> *"4. Having considered the Company Application and the: submissions/ arguments of the Petitioners/ Applicants Advocate, Advocate for the Respondent Nos. 1 to 3 and also ,the Advocate for the Respondent Nos. 4*

& 5/Non-Applicants Advocate, it is observed that the Petitioners (Applicants herein) Advocate filed the Company Petition being C.P. No.176/2015 under Section 397 /398 and 402 of the Companies Act, 1956 against the Respondent Nos. 1 to 5 on account of the alleged acts of oppression and mismanagement into the affairs of the R-1 company. As stated in the instant Company Application, the matter/dispute has been amicably settled out of court amongst the Petitioners and the Respondent Nos. 2 & 3 and the Advocate for Respondent Nos. 1 to 3 has agreed and supported the submissions of the Petitioners Advocate and also, the prayer made in the present Company Application for withdrawal of the main Company Petition. Here, it is relevant to note that the Advocate for Respondent Nos. 4 & 5 has filed the reply stating therein that the C.P. is not maintainable as the Petitioners have miserably failed to make out a case of oppression and mismanagement and thus, it clearly indicates that the Respondent Nos. 4 & 5 were not the supporting Respondents to the Petitioners in the aforesaid Company Petition. Therefore, there is no identity of interest between the Petitioners on the one hand and the Respondent Nos. 4 & 5 on the other hand. Even in the case of Rai Mathura Prasad Vs Hanuman Prasad Bhagat[1984]56 Comp. Cas.467(Pat.) the Hon'ble High Court of Patna has held that the party wishing to be transposed as a Petitioner, has to have the same interest.

4.1In view of the facts and legal position narrated supra, I am of the considered opinion that there is no identity of interest between the Petitioners on one side and the Respondent Nos. 4 and 5 on the other side, however, the Respondent Nos. 4 & 5 are free to file the independent and separate Petition in case they feel aggrieved due to the oppression and mismanagement into the affairs of the R-1 company. As such, the prayer made in the present Company Application, for transposition of Respondent Nos.4 & 5 as Petitioners, is hereby disallowed with the liberty to Respondent No. 4 & 5 to file their separate Petition in accordance with law. In view of this and also, the submissions made by the Petitioners Advocate with regard to the amicable settlement out of court, the Company Petition being C.P. No. 176/2015 is hereby disposed of as withdrawn."

7. One of the Group of Respondent Nos. 1, 2 and 3 to the Company Petition, i.e., YPJ Group, was not open to the settlement, as regards with respect to the settlement, in context of the management and the functioning of the Respondent Company. They objected to the settlement, in context to the consequences, flowing from the order of the withdrawal of the Company Petition No. 176 of 2015, by an order of 11.04.2016. So far as the Respondent Nos. 1, 2 and 3, as alleged by the Appellant, i.e., 'YPJ' Group, the dispute persisted, because of the fact that according to the Appellant the said group sought its transposition. In proceedings as Petitioners of the Company Petition No. 176 of 2015. It is alleged by the Appellant that the

attempt made by the YPJ Group, i.e., of the Respondent Nos. 1, 2 and 3 was turned down by the Company Law Board vide its order of 11.04.2016.

8. The extracted part of the order dated 11.04.2016, in fact had been the major bone of contention, in spite of the fact that superficially it seems that the parties had reflected that they had entered into a settlement, but in fact, that could not be fructified. It is the case of the Appellant that, because of the fact that the dispute, despite best efforts couldn't be settled and the rival Group of YPJ, on the contrary constituting of Respondent Nos. 1, 2 and 3, started to build up the rival Company by utilizing the goodwill and infrastructure of the Company of Respondent No.8 Company, for their business activities. They lodged a parallel Company in the name and style of M/s Alps Logistics. In which the Respondent No.1 and Respondent No.3, are shown themselves to be directly dealing with the same business as that of the Company and that too was by utilizing the reputation and goodwill, and was sighting the funds that was detriment in the interest of Respondent No.8 Company.

9. The Respondent Nos. 1 and 2 filed a Company Petition No. 42/KB/2016 on 29.04.2016, invoking the provisions contained under Sections 235, 397, 398, 399, 402, 406 and 407 of the Companies Act, 2013 alleging an act of oppression and mismanagement at the hands of the Appellants and proforma Respondents Nos. 3 to 5 if the said Company

Petition. In short vide the said Company Petition preferred by the Respondents, they had primarily prayed for the principal reliefs:

(i). Framing for the scheme for management and administration of the Company.

(ii). To show the Petitioner Group and the Group of the Respondents of the Company Petition No. 42 of 2016 as to be equal partners.

(iii). A declaration that Respondent Nos.2 to 7 to the Company Petition not to be entrusted with any management of the Company because of the dishonest disposition.

(iv). An order in the shape of mandatory injunction of the Respondent Nos. 2 and 5 to disclose on the records documents and books of account of the Company.

(v). Injunction in the shape of the direction to Respondent Nos. 2 to 7, restrain from altering the shareholding pattern and the share capital structure of the Company and the board of the Directors and such other reliefs, which were innumerable in number,(but because of the fact that at this stage, we are dealing with controversies arising out of the impugned order, which has eminated from an interlocutory proceedings, we may not be required to dwell with the principal relief) owing to the fact that the Company Petition, is still the subject matter of consideration before the Ld. Tribunal to be decided on merits.

10. The case of the Respondent Nos. 1 and 2 had been that when they had preferred the Company Petition, the Ld. Company Law Board, after considering the veracity of their contentions had granted an interim order of status quo as on 03.05.2016 of the following nature:

> *"2. Considering the submissions of the Petitioners Advocate and the Respondents Advocate, I am of the considered opinion that prima facie there are instances of oppression and mismanagement on the part of the Respondents and hence, the Petitioners deserve to get protection by way of interim relief. Therefore, for the end of justice, the Respondent No.1 company is hereby directed to maintain the status quo as to the shareholding and the Extra Ordinary General Meeting in terms of Section 100(1) of the Companies Act, 2013, if held after the meeting of the Board of Directors on 04/05/2016, the resolution relating to removal of Mr. Y.P. Jain (P.1) as Managing Director and Mr. Siddharth Jain (R-9) as director of the company, if passed, will not be given effect to, till the disposal of the Company Petition."*

11. What we could derive, from the observation of interim order of 03.05.2016, was that any decision that was to be taken as the consequence of the Extra Ordinary General Meeting, if held after the meeting of Board of Directors on 04.05.2016, and any resolution passed therein if it pertains to the removal of the Petitioners in the Company Petition of the Respondent Nos. 1 and 3 as Managing Director of the Company was directed not to be given effect to. However, the Company proceeded to pass its resolution it its

'EGM' on 06.06.2016 for removal of Respondent Nos. 1 and 3, i.e., the Petitioners of the Company Petition and according to the Appellant, the said order of 03.05.2016 was completely adhered to and as a consequence of the decision taken in the 'EGM' of 06.06.2016, the Respondent Nos. 1 and 3, i.e., the Petitioners of the Company Petition were permitted to be continued. The order to carve out an exception and to override the effect of the order dated 03.05.2016 passed by the Ld. Company Law Board, which directed the parties to maintain status quo and not to give effect to the 'EGM' of 06.06.2016.

12. A peculiar case, altogether has been carved out by the Appellant, it's that which would be having a direct overriding effect of the order of 03.05.2016, whereby to carve out an exception the Appellant contended that there has been a unanimous vote by all the shareholders, who were alleged to be present in the 'EGM' assenting for removal of Respondent Nos. 1 and 3, i.e., the Petitioners of the Company Petition. But as portrayed in the pleading by the Appellant, that in fact no action of removal of the Petitioners therein/ and Respondent Nos. 1 and 3 to the Company Appeal were taken, nor it was given effect to. The case of the Appellant is that, thereafter the Petitioners of the Company Petition/ the Respondent Nos. 1 and 3 herein didn't participate in the board's meeting, despite the fact that the notice was duly served and it was deliberately not attended by the Petitioners of the Company Petition/Respondent Nos. 1 to 3 herein, and they didn't participate in the

proceedings of the Board, those were held on 14.07.2016, 26.10.2016, 19.01.2017 and 05.04.2017. Hence, it is the case of the Appellant that since the act of the Respondent Nos. 1 and 3, had been in detriment to the provisions contained under Section 167(1)(b) of the Companies Act, 2013, they, by their own conduct, ceased to be the directors of the Company because of their own inaction.

13. Remarkably, and in process unknown to the eyes of law, the interlocutory order of status quo dated 03.05.2016 was subjected to challenge by the Appellant No. 2 and 3 by filing of proceedings before the Hon'ble Calcutta High Court, which were numbered as ***ACO No.108 of 2016 With APOT No.270 of 2016 and ACO No.111 of 2016, SOUTH EASTERN CARRIERS PVT. LTD. AND ARUN GUPTA & ANR. VS YOGENDRA PAL JAIN & ORS.*** The Ld. Single Judge of the Hon'ble Calcutta High Court, vide its order dated 17.08.2016, had issued the following directions:

> *"Having regard to the fact that the interim order was passed on 3rd May, 2016 and had continued for so long, the appeal is disposed of by observing that the National Company Law Tribunal may decide the interim relief finally as expeditiously as possible and preferably within a period of sixty days from the date of communication of this order since this Court felt that the order should have indicated in brief the reasons for passing the interim order of this nature which would likely to affect the interest of the respondents in CLB proceeding."*

14. There had been an interlocutory application preferred by the Petitioners of the Company Petition, being C.A. No. 453 of 2016, wherein the Ld. Tribunal by an order of 18.08.2016 while permitting the access to the Petitioners i.e., the Respondent No. 1 and 3 herein, to have an access to the swipe card in order to have access to the premises to the Company and the email these were retained by the Petitioners, the Respondents herein, were directed to be used only for an official purposes and were directed to be paid salary too.

15. The Ld. Tribunal issued the following directions, which are extracted hereunder:

> *"(1) As Access Swipe Card have been issued for other personal of the Company similar cards may be issued for enabling the petitioner no.1 and respondent no.9 to enter the office for discharging their duties.*
>
> *(2) Similarly, official e-mail i.ds. of the petitioner no. 1 and respondent no. 9 may be activated for the official use of the petitioner no. 1 and respondent no. 9.*
>
> *(3) it was stated that no salary has been paid to the petitioner no. 1.as well as to respondent no. 9. If the other directors of the Company are getting salary as Directors of the Company, similar payments may be made to petitioner no. 1 and respondent no. 9 as per the laid down terms of the Company."*

16. To carve out an exception to have an overriding effect to the interim orders of 03.05.2016 and 18.08.2016, the Appellants came up with the case in the instant Company Appeal that the Petitioners of the Company Petition

and Respondent Nos. 1 and 3 in the Appeal, had deliberately not participated in the Board's meetings of 14.07.2016, 26.10.2016, 19.01.2017 and 05.04.2017 and their absence from attending the Board's meeting for past 12 months, had activated the necessity of following from DIR-12 with the Registrar of Companies for the removal from the Board w.e.f. 06.06.2017 by invoking the provisions contained under Section 167(1)(b), of the Companies Act, 2013, which is extracted hereunder:

> "*he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;*"

17. The question that would incidentally arise for consideration would be that, as to whether, at all when there operated interim orders of 03.05.2016 and 18.08.2016, whether, the theory of absence as developed by the Appellants was malicious, so as to carve out an exception for having an overriding effect of the interim orders by invoking an automatic implication flowing from the provisions contained under Section 167(1)(b) of the Companies Act, 2013, so to ensure and ouster of the Respondents in the instant Company Appeal/Petitioners, of the Company Petition. Consequently, there was a refusal to accept the access card and to restore the position of the Respondents, as to be the directors and also the restraint from remittance of the salary also. It's under these peculiar circumstances, and for the facts narrated above, the Respondents were said to have filed the aforesaid interlocutory applications, the details, which have already been

narrated above (for the purposes of brevity, these interlocutory applications which have been mentioned and decided by the impugned order are not being detailed herein.)

18. It's because of the stalemate that prevailed because of the conspired move on the part of the Appellant to attract Section 167(1)(b) intended and attempted to override the effect to the orders dated 03.05.2016 and 18.08.2016. The action was maliciously taken by the Appellants, which necessitated the Respondents to file the application, which has been decided by the Ld. Tribunal by the impugned order. In context thereto, the Ld. Tribunal took up the matter on merits and had decided the same by the impugned order. What is important is that some of the vital proceedings, those have been taken up subsequently had not been deliberately referred to by the Appellants in its pleading this would amount to be concealment by them in the Company Appeal, which would be relevance for the purpose of deciding the present Company Appeal. On this ground itself the appellants would not be entitled to even hearing, due to intentional concealment.

19. In response to the contention raised by the Appellant, owing to the situation faced by the Respondents because of the invocation of provision contained under Section 167(1)(b) having an effect of removal of Respondent Nos.1 to 3 from the directorship, the Respondents file an application being ***I.A. No. 165 of 2018*** on 05.02.2018, before the Ld. Tribunal, praying to reinstate the Respondents/Petitioners to the Company Petition, as the

Managing Director of Respondent No.1 Company and directions be also given to the Respondent No.1, i.e., the Appellant herein, to stay the appointment of the outsider Additional Directors. In this application, which was preferred by Respondents, it also reflected that there had been a corresponding criminal proceeding drawn by the Respondent No. 1 to 3, by registering a FIR No. 0531 dated 21.06.2017 registered at P.S. Civil Lines, Gurgaon Police Station, under Section 120B to be read with 447 of the IPC, in which the Appellants were shown to have been granted bail from the Court of the Additional Session Judge, Gurgaon, and a criminal trial is pending consideration.

20. This application, being ***I.A. No. 165 of 2018*** came up for the consideration before the Ld. Tribunal on 22.02.2018 and the Ld. Tribunal granted an interim order on 22.02.2018. The Ld. NCLT directed the parties to maintain status quo as regards to the fixed assets of the Company. It would be relevant to take note of, that in the parallel proceedings, where the Appellant had sought an anticipatory bail, before the Hon'ble High Court, the Hon'ble High Court, had observed in its order dated 10.09.2019, that the Appellants were bound to have complied with the interim orders of 03.05.2016 and 18.08.2016 and the action ought not to have been taken by the Appellant by creating grounds and circumstances under Section 167 of the Companies Act. Owing to the fact that the said conspired action taken by the Appellant under Section 167 of the Companies Act, was observed to be saved by the provision contained under Section 196 of the Companies Act.

21. Ultimately, under these factual and conspired circumstances the Ld. Tribunal by an order of 01.10.2019, had appointed one Mr. D.C. Agrawal, as Special Officer to supervise the business of the company and to implement the resolutions those are being passed by the Company and further that the orders dated 03.05.2016 and 18.08.2016, are ensured to be made effective. The extract of order dated 01.10.2019 given hereunder: -

> *"**46.** In view of the above facts, we are of the considered, view that it requires appointment of a Special Officer not only to investigate and ascertain the factual position but also to supervise the conduct of business by the persons having control of the operations of the respondent.no.1 company. Accordingly, we appoint Shri D.C. Agrawal, Advocate, (Mob. 09811586609, Email: dcagrawal49@gmail.com), who was Commissioner of Income Tax (Retd.) and ex-Accountant Member of Income Tax, Appellate Tribunal and presently engaged in private practice as Income Tax Advocate. By virtue of his extensive experience of. over 3 decades and proven integrity, ability, he is fit to act as Special Officer of the respondent no.1 company. The Special Officer shall discharge the following: functions: -*
>
> *(i) Special Officer, shall preside and hold the meetings, of the Board of Directors of the respondent no.1 company, periodically as per the provisions of law and will ensure Implementation of the resolutions passed in such meetings. The first Board Meeting shall be conducted within 15 days from the date of. his assuming the charge of a Special Officer;*
>
> *(ii) Special Officer shall also ensure that such resolutions are not prejudicial to the interest of the respondent no.1 company and do not give rise to further. litigations among the parties, for this purpose, minutes of such meetings shall be maintained and would be signed by*

all the participants mandatorily so that frivolous litigation is avoided. In case any party does not sign the minutes of meeting, then, the Special Officer shall be forwarding such minutes to them and will preserve the proof of delivery so that such party cannot claim otherwise subsequently;

(iii) Special Officer shall submit his report on all the claims and current state of affairs of the respondent no.1 company within 60 days from the date of assumption of charge 'as, Special Officer Registry, is hereby directed to provide copies of the petition along with pleadings of all parties to the Special Officer so that he can acquaint himself with the disputes and the reliefs sought by respective parties. Copy of the interim orders dated 3/5/2016 and 18.8.2016 shall also be provided:

(iv) The Special Officer shall get one-time compensation of Rs. 3 Lakhs to prepare the report on the affairs of the company and to suggest the future action plan. Report in this regard shall be furnished to this Tribunal in sealed cover immediately after completion of such exercise. The Special Officer shall further be paid Rs. 1 Lakh for each meeting of Board of Directors of the respondent no.1 company and report of the same will also be furnished to the Tribunal immediately on the conclusion of such meeting;

(v) Petitioners as well as all respondents are directed to fully co-operate and give necessary support to Special Officer, failing which, they shall be liable for appropriate action as per the provisions of law;

(vi) The Special Officer shall also be reimbursed expenses incurred in discharge of his duties but such expenses shall not be more than Rs.25,000/- per month.
(vii) The appointment of Special Officer shall remain in force till further orders.

> ***47.*** *The interim orders of the Company Law Board dated 03.05.2016 and this Tribunal's dated 18.08.2016 shall remain in force till further orders."*

It is because of the order passed by the Tribunal on 01.10.2019 the necessity arose for the Respondent, to file ***C.A. No. 1584/KB/2019***, seeking the reinstatement and removal of the Additional Directors thus appointed by the Appellant No.1.

22. As against the part of order of 01.10.2019 appointing Mr. D.C. Agrawal, Special Officer and the direction to ensure the implementation of the resolution and to ensure the enforcement of interim orders of 03.05.2016 and 18.08.2016, the Appellant Nos. 1 and 2 have filed **C.A.(AT) No. 329 of 2019**, questioning the appointment of the Special Officer. This Company Appeal had already been dismissed by this Tribunal vide its Judgment dated 20.01.2021.

23. The decision of this Tribunal on 20.01.2021, as rendered in the Appeal **C.A.(AT) No. 329 of 2019**, preferred by the Appellants, was challenged by the Appellants before the Hon'ble Apex Court in **Civil Appeal *No. 1024 of 2021, Arun Gupta & Ors. Vs. South Eastern Carriers Pvt. Ltd.*,** the Civil Appeal was dismissed by the Hon'ble Apex Court, with an observation that the Appellants herein and in the Civil Appeal, to take an appropriate recourse under Section 422 of the Companies Act, for ensuring an expeditious disposal. Further, it was observed that in an alternative a

mediation to be resorted to. The relevant observation made by the Hon'ble Apex Court in its order of 09.04.2021, is as under:

> *"In the alternative, it has been submitted that having regard to the fact that the shareholding is held within the members of a family and is closely held, it would be appropriate if mediation is resorted to so that any one or more of the groups of shareholders can buy out the shareholding of others."*

24. The Company Petition preferred by the Respondent being C.P. No. 42 of 2016 was dismissed holding it as to be not maintainable. Ultimately owing to C.P. No. 42 of 2016 preferred by the Respondent Nos. 1 to 3, was dismissed by this Tribunal on 01.04.2022, holding it not to be maintainable and also on the ground that because of the age they would not be entitled to continue as a Managing Director or the Director in the light of provisions contained under Section 196(3) of the Companies Act, 2013. Accordingly, by the order of 01.04.2022 C.A. No. 1584/KB/2019 and C.A. No. 112/KB/2019 were also dismissed.

25. Against the dismissal of the Company Petition by the Ld. NCLT on 01.04.2022, holding the petition to be not maintainable, the Respondents preferred a Company Appeal being ***CA(AT) No. 98 of 2022***.This Tribunal by an order of 15.05.2023 quashed the order of 01.04.2022 and remitted the matter back, maintain the status quo, order of 03.05.2016 clarifying the order of 01.10.2019 appointing Mr. D.C. Agrawal, as a special officer, as well as this Tribunal, in its Judgment of 15.05.2023 directed that the

Respondent No. 1 and 3, would be allowed to perform the duties as a Managing Director and the Director. This Appellate Tribunal vide its Judgment dated ***15.05.2023 as rendered in CA(AT) No. 98 of 2022*** passed the following directions hereunder:

> **"***31. In the result, we set aside the Impugned Order dated 1.4.2022 in its entirety, including the order relating to CA No. 1584/KB/2019. In the interest of justice and in view of multiple 1129 allegations of oppression and mismanagement raised by the Appellants in CP 42/KB/2016, we remand the matter to NCLT, Kolkata so that CP 42/KB/2016 may be looked at afresh, along with the other CAs and IAs filed under CP 42/KB/2016 as well as the Contempt Application No. 487/KB/2016 and adjudication be provided on the issues raised, after due consideration and opportunity of hearing provided to all the parties.*
>
> *32. We also direct that 'status quo' order dated 3.5.2016, the clarificatory order dated 18.8.2016 and NCLT's order dated 1.10.2019 shall continue to be in effect, while the NCLT is considering CP 42/KB/2016 and all the various applications preferred under the original Company Petition No. 42/KB/2016.***"**

26. This Appellate Tribunal's Judgment of 15.05.2023, was taken to the Hon'ble Apex Court by the Appellant in ***Civil Appeal No. 5132 of 2023***, the Hon'ble Apex Court dismissed the same vide its Judgment of 06.09.2023. Thereafter, the proceedings of Company Petition No. 42 of 2016 was revived, on I.A. No. 18/KB/2022, preferred by the Respondents in pursuance to the Judgment of this Tribunal has passed on 15.05.2023, and as confirmed by the Judgment of the Hon'ble Apex Court dated 06.09.2023. It is thereafter

that all the interlocutory applications those were preferred before the Ld. Tribunal were adjudicated upon by the impugned order of 14.03.2024.

27. The Ld. Tribunal, while hearing upon the rival contention in the proceedings on I.A. No. 18/KB/2022 preferred by the Respondent in pursuance to the order of this Tribunal of 15.05.2023, and the Hon'ble Apex Court dated 06.09.2023, while reiterating the finding recorded in the Judgment by this Tribunal on 15.05.2023 passed by in CA (AT) No. 98 of 2022, has proceeded to decide the I.A.s with the following observations hereunder:

> *"30. Finally, we note the Impugned Order dismisses CP 42/KB/2016 as being not maintainable and the connected IAs has also been dismissed. We note that the prayers made in CP 42/2016, the original company petition, raised multiple issues of oppression and mismanagement in the affairs of R-1 Company, which were not even considered in the Impugned Order. The appointment of Special Officer and any report that he may have submitted, could have thrown light on the possible mismanagement of R-1 Company and aided the NCLT in adjudication of issues raised, but the NCLT inexplicably even forgot to look at its own order dated 1.10.2019, which was regarding the appointment of Special Officer and obtaining report on the affairs of R-1 company. We thus find that CP No. 42/KB/2016 has been dismissed summarily in the Impugned Order without appropriately looking at the issues raised and the relevant prayers made therein. We are, therefore, constrained to hold that order regarding dismissal of CP No. 42/KB/2016 suffers from a very basic and fatal error and therefore, this part of Impugned Order is also liable to be set aside.*

> *31. In the result, we set aside the Impugned Order dated 1.4.2022 in its entirety, including the order relating to CA No. 1584/KB/2019. In the interest of justice and in view of multiple 1129 allegations of oppression and mismanagement raised by the Appellants in CP 42/KB/2016, we remand the matter to NCLT, Kolkata so that CP 42/KB/2016 may be looked at afresh, along with the other CAs and IAs filed under CP 42/KB/2016 as well as the Contempt Application No. 487/KB/2016 and adjudication be provided on the issues raised, after due consideration and opportunity of hearing provided to all the parties.*

28. In fact, the nature of the order impugned of 14.03.2024, is nothing but a compliance of the Judgements rendered by this Tribunal on 15.05.2023 in CA(AT) No. 98 of 2022 preferred by the Appellant, as affirmed by the Hon'ble Apex Court on 06.09.2023 and ultimately the Ld. Tribunal disposed of the interlocutory applications in the light of the observation made in para 30 and 31 as extracted above, which sounds that it had logically followed, because of the Judgement of this Tribunal of 15.05.2023, which has already decided all the matters on merits, which was later affirmed by the Hon'ble Apex Court too.

29. On, 06.09.2023, in fact, the impugned Judgement of 14.03.2024, is nothing but rather a reiteration of the finding as recorded by this Tribunal, as observed in its order of 15.05.2023 affirmed by Hon'ble Apex Court, hence the observation made in para 30 and 31 of the impugned order, cannot be said to be in contradiction to law or facts or even in violation of any of the Judgments rendered in any of the disputes, which had been perused

between the parties, rather it was nothing but reflection rather a replica of determination already made by this Tribunal owing to is subsequent affirmation by the Hon'ble Apex Court as such. Logically, the order of 15.05.2023 was bound to be followed and that is what has been done by the Ld. Tribunal, while passing the impugned order contained in para 30 and 31 as extracted above and as a consequence of all the interlocutory applications, those have been disposed of and the Ld. Tribunal by the impugned order, directing the Company Petition itself to be listed for its hearing, upon receipt of the report by the special officers who had been appointed by the order of the Ld. Tribunal dated 01.10.2019.

30. Having heard the Ld. Counsels for the parties and Respondent in Person, so far as, the order of 14.03.2024 is concerned, if it is scrutinized in context of the argument extended by the Ld. Counsel for the Appellant, as well as Ld. Counsel for the Respondent and respondent in Person. The order of 14.03.2024 is nothing but a reflection of the order dated 15.05.2023 that has been passed by this Appellate Tribunal, as affirmed by the Hon'ble Apex Court, in that eventuality the text of the order of 14.03.2024 cannot be said to be independent, in its nature but rather a reiteration of the affirmation of the Judgment of 15.05.2023, as confirmed by the Hon'ble Apex Court on 06.09.2023. By the impugned order nothing new has been supplied by the Ld. Tribunal, which could at all calls for us to exercise our Appellate Jurisdiction, as against the order impugned of 14.03.2024 for the reason

given that has already been observed by us, that the order of 14.03.2024 was nothing but reiteration for compliance of the order passed earlier by this Appellate Tribunal on 15.05.2023. In case if we at all venture to interfere in this Appeal on merits it would amount to sitting over an order of 15.05.2023, which has been affirmed by the Hon'ble Apex Court on 06.09.2023, the Appeal preferred by the Appellant, which cannot be permitted. Because whatsoever which cannot be done in the eyes of law directly cannot be permitted to be carried indirectly in order to sub serve the effect of the order of 15.05.2023.

31. Ld. Counsel for the Appellant had submitted that the impugned order has recorded the findings, which effects the merits of the matter and in relation thereto he has referred to the extract drawn by the Tribunal in its para-10 of the order, which in fact extracts the findings recorded in the order dated 15.05.2023, which has been confirmed by the Hon'ble Apex Court. In that view of the matter merely the extraction of the order dated 15.05.2023 in the impugned order cannot be treated as to be a contribution made by this Tribunal on merits of the matter, or that the Tribunal was venturing into the merits or recording the findings, which may at all effect the merits of the Company Petition while passing the impugned order of 14.03.2024. The arguments raised to the contrary by the Appellant is not acceptable by us, as the impugned order does not supply any new fact or finding on any issue which would at all be effecting the rights of the parties. Rather, it only

maintains the observation of 15.05.2023 and it does not contain any independent consideration in itself. Thus, since the contention raised by the Ld. Counsel for the Appellant do not at all reflect and are not substantiated by any material placed before us, we do not feel it is a fit case to be interfered and thus, the Company Appeal No. 146 of 2024 would stand **dismissed**, and all interlocutory applications would stand closed.

CA(AT) No. 155 of 2024:

32. The connected Company Appeal No. 155 of 2024 challenges to the impugned order of 10.04.2024 that was passed in C.P. No. 42/KB/2016. Owing to the fact that the impugned order of 10.04.2024 is consequential to the directions of the Judgment of 15.05.2023 affirmed by the Hon'ble Apex Court as well as because of the impugned order of 14.03.2024 already affirmed by us in the Judgment referred in Company Appeal No. 146 of 2024, the directions given in for compliance are consequential, which is not required any interference by us in exercise of our Appellate Jurisdiction, the Company Appeal lacks merit in the same is **dismissed**.

CA(AT) No. 164 of 2024:

33. The connected Company Appeal No. 164 of 2024 has been preferred against the order of 10.04.2024 passed in C.P. No. 42/KB/2016. This order too, in the light of the decision rendered by us in the proceedings CA(AT) No.

146 of 2024 and CA(AT) No. 155 of 2024, this Company Appeal to would stand **dismissed** on the same ground as detailed primarily in the CA(AT) No. 146 of 2024.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
October 13, 2026.
Abhishek Pandey