

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) No.227 of 2019

[Arising out of Order dated 08.08.2019 passed by National Company Law Tribunal, Ahmedabad Bench in TP No. TP-122/397-398,58-59,235(2),237(b)NCLT.AHM/2016 CP No.27/397-398, 58,59,235(2),237(b)/CLB/MB/2016]

IN THE MATTER OF:

Before NCLT

Before NCLAT

1. Peoples International &
Services Private Limited,
Through its Director,
I H Siddiqui
Project Office,
People's Campus,
Karond – Bhanpur
Bye-Pass,
Village Raslakhedi,
Tehsil Huzur
Bhopal
MP 462010 IN

Respondent

Appellant No.1

2. Suresh Narayan
Vijay,
Bungalow No.4,
Vijaydwar,
Near Peoples Campus,
Bhanpur,
Bhopal-462037 (MP)

...

Appellant No.2

Versus

1. Alliance Industries
Limited,
Through Mr. Ashok
Kumar Khosla,
Director, Office at
Block Q 1-2,
Office No.2 & 3,
PO Box No.7768,
SAIF Zone,
Sharjah, UAE
Office for

Applicant

Respondent No.1

Correspondence
Regarding this Appeal:
Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

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| 2. Registrar,
National Company
Law Tribunal,
Anand House,
Ground Floor,
1 st and 2 nd Floor,
Sarkhej Gandhinagar
Highway Thaltej,
Ahmedabad
(Gujarat) 380035 | ... | Respondent No.2 |
| 3. Registrar
National Company
Law Tribunal,
Principal Bench,
Block No.3,
Ground, 6 th , 7 th &
8 th Floor,
GCO Complex,
Lodhi Road,
New Delhi – 110003 | ... | Respondent No.3 |

Company Appeal (AT) No.228 of 2019

[Arising out of Order dated 08.08.2019 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in TP No.125/397-398/NCLT/AHM/2016 CP No.34/397-398/CLB/MB/2016]

IN THE MATTER OF:

<u>IN THE MATTER OF:</u>	Before NCLT	Before NCLAT
1. PHG International Private Limited, Through its Director, I H Siddiqui People's Campus, Bhanpur Bhopal MP 462037 IN	Respondent	Appellant No.1

2. Suresh Narayan ... Appellant No.2
 Vijay,
 Bungalow No.4,
 Vijaydwar,
 Near Peoples Campus,
 Bhanpur,
 Bhopal-462037 (MP)

Versus

1. Mr. Ashok Kumar Applicant Respondent No.1
 Khosla,
 S/o Joginder Lal
 Khosla,
 44, Landing Court,
 Moorestown,
 New Jersey 08057
 U.S.A.

Office for
 Correspondence
 Regarding this Appeal:

Mr. A.K. Kharbanda
 A-68, Sector 17,
 NOIDA (UP) 201301

2. Registrar, ... Respondent No.2
 National Company
 Law Tribunal,
 Anand House,
 Ground Floor,
 1st and 2nd Floor,
 Sarkhej Gandhinagar
 Highway Thaltej,
 Ahmedabad
 (Gujarat) 380059
3. Registrar ... Respondent No.3
 National Company
 Law Tribunal,
 Principal Bench,
 Block No.3,
 Ground, 6th, 7th &
 8th Floor,

GCO Complex,
Lodhi Road,
New Delhi – 110003

Company Appeal (AT) No.229 of 2019

[Arising out of Order dated 08.08.2019 passed by National Company Law Tribunal, Ahmedabad Bench in TP No.120/397-398,58-59,235(2),237(b)NCLT/AHM/2016 CP No.24/397-398,58-59,235(2),237(b)/CLB/MB/2016]

IN THE MATTER OF:

Before NCLT

Before NCLAT

- | | | |
|--|-----------------|----------------|
| 1. Peoples General Hospital Pvt. Ltd.,
Through its Director,
I H Siddiqui
6, Malviya Nagar,
Bhopal- 462003(MP) | Respondent No.1 | Appellant No.1 |
| 2. Suresh Narayan
Vijay,
Bungalow No.4,
Vijaydwar,
Near Peoples Campus,
Bhanpur,
Bhopal-462037 (MP) | | Appellant No.2 |

Versus

- | | | |
|---|-----------|-----------------|
| 1. Alliance Industries Limited,
Through Mr. Ashok Kumar Khosla,
Director, Office at Block Q 1-2,
Office No.2 & 3,
PO Box No.7768,
SAIF Zone,
Sharjah, UAE | Applicant | Respondent No.1 |
|---|-----------|-----------------|

Office for
Correspondence
Regarding this Appeal:

Mr. A.K. Kharbanda
A-68, Sector 17,
NOIDA (UP) 201301

2. Registrar, ... Respondent No.2
National Company
Law Tribunal,
Anand House,
Ground Floor,
1st and 2nd Floor,
Sarkhej Gandhinagar
Highway Thaltej,
Ahmedabad
(Gujarat) 380059
3. Registrar ... Respondent No.3
National Company
Law Tribunal,
Principal Bench,
Block No.3,
Ground, 6th, 7th &
8th Floor,
GCO Complex,
Lodhi Road,
New Delhi – 110003

**For Appellants: Mr. Amalpushp Shroti and Mr. Ankit Dubey,
Advocates**

For Respondents: Mr. Anurag Sharma and Mr. Sunil Singh, Advocates

J U D G E M E N T

(17th March, 2020)

A.I.S. Cheema, J. :

1. These three Appeals are arising out of matters pending under the Companies Act at Ahmedabad initiated when the old Act of 1956 was in force and which Company Petitions are stated to be still pending. It appears that the Petitions were initially before CLB (Company Law Board) in Mumbai and after establishment of National Company Law Tribunal

(NCLT – in short) at Ahmedabad, they were transferred to Ahmedabad Bench.

2. The Appellants objected to the continuation of the proceedings before Ahmedabad Bench of NCLT in view of Notifications issued by the Central Government under Section 419(1) of the Companies Act, 2013 establishing Bench at Indore. The Appellants claimed before the NCLT that the matters cannot proceed at Ahmedabad but in spite of objections when the NCLT continued to proceed, the present Appeals have been filed. The three Appeals raise similar facts and grounds. We will refer to particulars from the Company Appeal (AT) No.227 of 2019 for convenience.

3. The question of law raised in these Appeals (as in Company Appeal (AT) No.227 of 2019) is:-

“Whether after notification, dated 08.03.2019, the NCLT, Ahmedabad has jurisdiction over TP-122/397-398,58-59,235(2),237(b)NCLT.AHM/2016(New) and other connected matters, which pertain to the State of Madhya Pradesh?”

4. The Appeals further claim whether it was correct on the part of NCLT, Ahmedabad to list the matters for final hearing and not advert to the above Notification dated 8th March, 2019. The Appeals seek stay to the further proceedings before NCLT Ahmedabad.

5. It would be appropriate to refer to the concerned Notification. The first Notification relevant is of 1st June, 2016. Relevant portion of the same

for the present matter may be reproduced:-

“NOTIFICATION

New Delhi, the 1st June, 2016

S.O. 1935(E).--In exercise of the powers conferred by sub-section (l) of section 419 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the following Benches of the National Company Law Tribunal mentioned in column (2) of the table below, located at the place mentioned in column (3) and to exercise the jurisdiction over the area mentioned in column (4), namely:--

TABLE

Serial Number	Title of the Bench	Location	Territorial Jurisdiction of the Bench
.....			
2.	National Company Law Tribunal, Ahmedabad Bench,	Ahmedabad	(1) State of Gujarat (2) State of Madhya Pradesh (3) Union territory of Dadra and Nagar Haveli (4) Union territory of Daman and Diu
.....			

”

6. Thus, by this Notification, the National Company Law Tribunal, Ahmedabad Bench, located at Ahmedabad had the territorial jurisdiction

of (1) State of Gujarat and (2) State of Madhya Pradesh, (3) Union Territory of Dadra and Nagar Haveli and (4) Union Territory of Daman and Diu.

7. The next Notification is of 8th March, 2019 which reads as under:-

**“Ministry of Corporate Affairs
Notification**

New Delhi, the 8th March, 2019

S.O.1216(E).—In exercise of the powers conferred by sub-section (I) of section 419 of the Companies Act, 2013 (18 of 2013), the Central Government hereby constitutes the National Company Law Tribunal, Indore Bench at Indore and Amaravati Bench at Amravati, and for the said purpose hereby makes the following further amendments in the notification of the Government of India, Ministry of Corporate Affairs number S.O. 1935 (E), dated the 1st June, 2016, namely:--

2. In the said notification, in the Table,-

(i) against serial number 2, in column number (4), the entries “(2) State of Madhya Pradesh” shall be omitted:

(ii) against serial number 8, in column number (4), the entries “(1) State of Andhra Pradesh” shall be omitted:

(iii) after serial number 13 and the entries relating thereto, the following shall be inserted, namely:-

“14	National Company Law Tribunal, Indore Bench	Indore	(1) State of Madhya Pradesh
15	National Company Law Tribunal, Amravati Bench	Amravati	(2) State of Andhra Pradesh”

3. This notification shall come into force on the date of its publication.

[F.No. A-45011/44/2018-Ad.IV]

ANURAG AGARWAL, Jt. Secy

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 1935(E), dated the 1st day of June, 2016 and subsequently amended vide number S.O. 345(E), dated the 3rd February, 2017, number S.O. 3145 (E), dated the 28th June, 2018, number S.O. 3430 (E), dated the 12th July, 2018 and number S.O. 3683 (E), dated the 27th July, 2018.”

This was published in The Gazette of India dated Friday, March 8, in Extraordinary, Part II, Section 3, Sub-section (ii).

8. The present Appeals have been filed referring to this Notification dated 8th March, 2019 to claim that from 8th March, 2019 onwards the Bench at Ahmedabad had no jurisdiction to exercise with regard to matters arising from the State of Madhya Pradesh.

9. When these Appeals were filed, Notices were issued to not only Registrar, NCLT, Ahmedabad Bench but also to Registrar, NCLT, Principal Bench, New Delhi asking them to file Affidavits. It was recorded in proceeding dated 20.08.2019 to issue Notice to Respondents as to why the concerned cases pending before NCLT, Ahmedabad Bench, Ahmedabad be not transferred to Indore Bench, Madhya Pradesh pursuant to the above Notification dated 8th March, 2019. The Order dated 20.08.2019 further

directed the Ahmedabad Bench not to hear the case on merits and to adjourn the same to subsequent dates till final Orders are passed in these Appeals.

10. On adjourned date of 11th December, 2019, Counsel for parties were asked to file Affidavit informing whether separate NCLT Bench has been constituted in Madhya Pradesh and/or one or more Members have been posted/appointed for hearing such cases of Madhya Pradesh. At that time, Mr. Parvez Naikwadi, Assistant Director of Ministry of Corporate Affairs was present in Court and wanted to inform developments. He was asked to file Affidavit giving the developments and to state as to which Bench can hear the matter related to Madhya Pradesh.

11. On 8th January, 2020, when the matter had come up, this Tribunal recorded the following proceedings:-

“08.01.2020: We have discussed the matter with Mr. Shanjay Shorey, Director (Prosecution), Ministry of Corporate Affairs. We adjourn the matter and expect that the Central Government/ Ministry of Corporate Affairs will come out with appropriate Notification / GSR about jurisdiction of Madhya Pradesh matters by one or other Bench till Member is posted in the Indore Bench, which is empowered to hear the cases of Madhya Pradesh jurisdiction.”

12. Now, it appears that the Ministry of Corporate Affairs has issued Notification on 31st January, 2020. The Notification is dated 31st January,

2020 published in the Gazette of India Extraordinary Part II, Section 3, Sub-section (ii). The same reads as under:-

**“Ministry of Corporate Affairs
Notification**

New Delhi, the 31st January, 2020

S.O.484(E),--In exercise of the powers conferred by sub-section (1) of section 419 of the Companies Act, 2013 (18 of 2013), and in pursuance of Order of Hon'ble National Company Law Appellate Tribunal (NCLAT) dated 8th January, 2020 in Company Appeal No.227 of 2019 with Company Appeal No.228 and 229 of 2019, the Central Government hereby notifies that jurisdiction of State of Madhya Pradesh will be exercised by Ahmedabad Bench of National Company Law Tribunal (NCLT) till the operationalization of Indore Bench of NCLT, which will be notified by the Central Government by a subsequent notification.

[F. No.A-45011/44/2018-Ad.IV]

GYANESHWAR KUMAR SINGH, Jt. Secy.”

13. The Respondents in these Appeals have filed IAs under Rule 11 of NCLAT Rules, 2016 seeking vacating of the stay Orders dated 20.08.2019 in view of issue of such Gazette Notification by the Central Government. For convenience, we are referring to the IA No.631 of 2020 filed by the Respondent in Company Appeal (AT) No.227 of 2019. The Respondents have referred to the said Order dated 20.08.2019 which was passed by this Tribunal staying the proceedings before the Bench at Ahmedabad and now refer to this Notification dated 31st January, 2020 to claim that appropriate directions/Orders to vacate the stay may be passed and further Orders deemed fit may be passed.

14. The Counsel for Appellant has filed Replies to said Applications filed in the three Appeals (see Diary No.19400 in I.A. No.631 of 2020 in Company Appeal (AT) No.227 of 2019) and it is claimed that the Order dated 20.08.2019 passed by this Tribunal was challenged by the Respondents before the Hon'ble Supreme Court which was disposed by Hon'ble Supreme Court vide Order dated 15th November, 2019 and thus, there was doctrine of merger and thus, this Tribunal cannot now vacate or modify the said Order. It is also claimed that the I.A. No.631 of 2020 was mentioned on 6th February, 2020 and matter was directed to be listed on 12th February, 2020. As the Counsel for Appellant could not appear on that day, he had sent e-mail and Proxy Counsel requested and consequently, the Appeal came to be listed on 19th February, 2020. It is claimed that the grievance of oppression and mismanagement pending in these cases relates to the period of 2001 – 2006 and the Application under Section 397 of the Companies Act, 1956 was filed on 8th January, 2015 and there is no urgency in the matter which is pending before NCLT, Ahmedabad. The Reply filed by the Appellants Claims that the Notification dated 31st January, 2020 has been challenged in Writ Petition which has been heard and reserved for Orders. The learned Counsel for the Appellant argued that as such, the present Appeals should be kept pending.

15. The Reply filed claims that against our Order dated 8th January, 2020 (referred supra) Civil Appeal has been filed before Hon'ble Supreme

Court and is pending with Diary Number and is likely to be listed in near future. As such also, it is stated the Appeals be kept pending.

16. At the time of arguments, it was learnt that the Appellant - PHG International Private Limited challenged the Notification dated 31st January, 2020 before the High Court of Madhya Pradesh in Writ Petition 4479 – 2020 and the Bench of Hon'ble Chief Justice of the High Court has already heard the parties regarding the merits of this Notification dated 31st January, 2020 and considering the developments (as noted above) did not find any merit in Writ Petition and the same was accordingly dismissed on 24th February, 2020. The learned Counsel for Appellant has argued that the Appellants were in the process of considering filing of Appeal to Hon'ble Supreme Court and thus, also to keep the present Appeals pending.

17. After taking stay to proceedings, various reasons are being given to keep Appeals pending. We find that these Appeals were filed on the basis that by Notification dated 8th March, 2019, the Ahmedabad Bench lost jurisdiction over matters relating to State of Madhya Pradesh. By Notification dated 31st January, 2020 which has now been issued by the Ministry of Corporate Affairs, the foundation for maintaining these Appeals has been lost. Although the learned Counsel for Appellant is trying to argue regarding the validity and legality of the Notification dated 31st January, 2020, we find that already High Court of Madhya Pradesh was moved by

the Appellant - PHG International Private Limited in Writ Petition No.4479 – 2020 which has considered this very Notification dated 31st January, 2020 and dismissed the same. Appellants can pursue remedies as available in law. However, it appears to us that with Notification dated 31.01.2020 issued by Central Government, we have no reason to keep these Appeals pending and stay operating. That will affect other proceedings also before Bench at Ahmedabad which is not in public interest. We hold that all these three Appeals have become infructuous considering the further developments.

18. The learned Counsel for the Appellant also painstakingly argued before us to demonstrate that the Notification dated 31st January, 2020 is not legal. We need not enter into that aspect as the issue Appellants have raised in Writ Petition and Hon'ble High Court of Madhya Pradesh has considered and disposed it.

19. Considering the Notification dated 1st June, 2016 read with the Notification dated 8th March, 2019, read with the present Notification dated 31st January, 2020, it is apparent that jurisdiction of State of Madhya Pradesh will be exercised by Ahmedabad Bench of NCLT till the operationalization of Indore Bench of NCLT which will be notified by the Central Government by a subsequent notification. We find no reasons to keep these Appeals pending now.

20. These Appeals are disposed off as now they have become infructuous. No costs.

[Justice A.I.S. Cheema]
Member (Judicial)

(Justice A.B. Singh)
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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