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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 29.09.2021
Date of Decision: 22.10.2021

\+ W.P.(C) 10645/2021 & CM APPL. 32831/2021 (stay)

SUNIL TANDON ..... Petitioner
Through Mr.Arvind K. Nigam, Sr. Adv. with Ms.Smita Kant, Adv.

Versus

UNION OF INDIA & ANR. ..... Respondents
Through Mr.Chetan Sharma, ASG with Mr.Anurag Ahluwlia, CGSC, Mr.R.V.Prabhat, Mr.Amit Gupta, Mr.Vinay Yadav, Mr.Akshay Gadeock & Mr.Sahaj Garg, Advs.
Mr.Abhinav Vashisht, Sr.Adv. with Mr.Shantanu Tyagi, Mr.Anoop Rawat, Mr.Saurav Panda, Mr.Zeeshan Khan, Advs for R-3.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. By way of the present petition filed under Article 226 of the Constitution of India, the Petitioner, an erstwhile independent Non-Executive Director in respondent no.3 company, assails order dated 08.07.2021 ("*Impugned Order"*) and letter dated 16.07.2021 *("Impugned Letter")* issued by respondent no.1 and all consequential actions emanating therefrom, which includes the filing of C.P. No. 295/MB/2021 before the Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench, and the

order passed by the said Bench on 31.08.2021 against the petitioner and other persons.

2. The brief facts leading to the filing of the present petition are that the respondent no.3 company, of which the petitioner is an erstwhile independent Non-Executive Director till 18.05.2018, is a part of a group of companies associated with the flagship company *i.e.* Videocon Industries Ltd. and was admitted under the IBC Framework and thereafter, made subject to the corporate insolvency resolution process (CIRP) before the NCLT, Mumbai Bench on 31.08.2018. The respondent no.3 company is, therefore, being represented in the present petition by the Resolution Professional ("RP") appointed by the NCLT, Mumbai Bench.

3. As 12 other companies of Videocon Industries Ltd. group were also undergoing CIRP, the NLCT, Mumbai vide its order dated 08.08.2019, consolidated the insolvency process of all the Videocon group companies, including the respondent no.3. On 08.06.2021, the resolution plan filed by Twin Star Technologies Ltd. for the consolidated CIRP of all the Videocon Group companies was approved by the NCLT, Mumbai Bench. Upon the said order being assailed by way of Company Appeal Nos. (AT) (Insolvency) 503 and 505 of 2021, the National Company Law Appellate Tribunal (NCLAT), on 19.07.2021, stayed the said order. Aggrieved thereby, Twin Star Technologies Limited approached the Supreme Court by way of Civil Appeal Nos. 4626 and 4593 of 2021, which came to be dismissed on 13.08.2021.

4. In the meanwhile, the respondent no.1, on the basis of the material placed before it by the Resolution Professional (RP), passed the Impugned Order on 08.07.2021 directing the Serious Fraud Investigation Office (SFIO)

to conduct an investigation into the affairs of Videocon Industries Ltd. and its group companies, including respondent no.3. Simultaneously, vide its Impugned Letter dated 16.07.2021, the respondent no.1 directed the Regional Director (WR), Ministry of Corporate Affairs, to file a petition under Sections 221, 241, 242, 246 r/w 339 of Companies Act, 2013 *(hereinafter referred to as "the Act")* before the NCLT, Mumbai Bench against Videocon Industries Ltd. and its group companies, seeking interim prayers for declaration and the freezing of the assets and properties, including that of "persons prima facie responsible".

5. In pursuance of the impugned order and letter, the respondent no.1 filed a company petition bearing C.P. No. 295/MB/2021before the NCLT, Mumbai which, on 31.08.2021, issued the following directions:

> *"I. That the Petitioner is permitted to serve the Respondents Through Joint Director working in office of post, publication in the newspapers, email, WhatsApp messaging, wherever required, in order to ensure due service of notice to all Respondents present in India and overseas;*
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> *II. That the Respondents (except companies) are immediately directed to disclose on affidavit their moveable and immovable properties/assets, including bank accounts, owned by them in India or anywhere in the world;*
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> *III.* ***That the Central Depository Services Ltd. (CDSL) and National Securities Depository Ltd. (NSDL) is directed that securities owned/ held by the Respondents (except companies) in any company/society be frozen, and be prohibited from being transferred or alienation and details thereof be shared with the Petitioner;*** (emphasis supplied)
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> *IV. That the Central Board of Direct Taxes (CBDT) is be directed to disclose information about all assets of the*

Respondents (except companies) in their knowledge or possession, for the purpose of freezing and restrain on alienation of such assets;

V. That the Indian Banks Association (IBA) is directed facilitate disclosure of the details of the bank accounts, lockers owned by the Respondents (except companies) and such bank accounts and lockers also be frozen with immediate effect;

VI. That the Petitioner is permitted to write to the State Government(s) and the Union Territories to identify and disclose all details of immovable properties owned/held by the Respondents (except companies);

VII. ***That all movable and immovable properties of Respondents (except companies) including bank accounts, lockers, demat accounts including jointly held properties be attached during the pendency of the company petition"***

(emphasis supplied)

6. Being aggrieved with this order passed by the NCLT, Mumbai whereby *inter alia* all his assets have been attached, the petitioner has approached this Court seeking quashing of order dated 08.07.2021 and letter dated 16.07.2021 issued by respondent no.1, and has also prayed that the proceedings initiated before the NCLT, Mumbai Bench, including order dated 31.08.2021, be declared as *non-est.*

7. The first and foremost contention of Mr. Arvind Nigam, learned senior counsel for the petitioner, is that the proceedings initiated by the respondent no.1 before the NCLT, Mumbai are a nullity as the Bench at Mumbai did not have any jurisdiction to entertain such a petition in view of the *proviso* to Section 241(2) of the Companies Act, 2013 which in unequivocal terms states that only the NCLT, Principal Bench at New Delhi has the exclusive jurisdiction to entertain a petition under Section 241(2)

filed by the Central Government. Consequently, any order passed by the NCLT, Mumbai is *non-est* and liable to be ignored by this Court; which has, therefore, rightly been approached by the petitioner to seek quashing of the order dated 08.07.2021 and letter dated 16.07.2021 issued by the respondent no. 1 at Delhi.

8. On the other hand, the very maintainability of the petition has been vehemently opposed by the respondents, who have contended that once the impugned letter and order have resulted in the passing of orders by NCLT, Mumbai Bench; the petitioner, if aggrieved, is required to challenge the order passed by the NCLT either by approaching the same NCLT bench or the NCLAT, *i.e.* the statutory appellate authority provided under Section 421 of the Act. The respondents have contended that irrespective of the merits of the petitioner's challenge to the impugned order and letter, once there is an efficacious statutory remedy available to the petitioner, he cannot be permitted to bypass the same by invoking the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India. Even a petition under Article 227 would not be maintainable as the petitioner is aggrieved by an order passed by the NCLT, Mumbai Bench over which this Court does not exercise any supervisory jurisdiction.

9. In the light of these rival stands taken by the parties, once it emerged that the issue which was required to be first adjudicated by this Court was whether in the light of the position that the petitioner had approached this Court after the passing of the order by NCLT, Mumbai Bench on 31.08.2021, the writ petition would be maintainable; learned counsel for the parties were heard at length on this aspect. Consequently, judgment was reserved to first determine the maintainability of the present petition as the

parties were *ad idem* that it is only if the writ petition were held to be maintainable, could this Court examine the merits of the impugned order and letter. Accordingly, this decision is confined only to the aspect of maintainability of the writ petition.

10. Mr. Nigam, learned senior counsel for the petitioner, in support of his plea that the proceedings initiated before the NCLT, Mumbai under Sections 241 and 242 of the Act are a nullity, states that from a plain reading of the *proviso* to Section 241(2), which came into effect from 15.08.2019, it is clear that the same is in the nature of an "ouster clause" as it categorically provides that only the Principal Bench of the NCLT at New Delhi would have the exclusive jurisdiction to entertain all petitions filed by the Central Government under Sections 241-242 of the Act. He submits that though prior to the amendment, Section 241(2) provided the Central Government with the right to file an application for oppression and mismanagement with the concerned NCLT if it was of the opinion that the affairs of the company have been conducted in a manner prejudicial to public interest; however, by way of a *proviso* added to Section 241(2), the Principal Bench of the NCLT has been vested with exclusive jurisdiction to entertain such applications filed by the Central Government.

11. He submits that keeping in view the exclusive jurisdiction conferred on the Principal Bench in terms of the *proviso* to Section 241(2), there can be no doubt that the jurisdiction of all benches of NCLT was excluded and therefore, the impugned letter issued by the respondent no.1 on 16.07.2021 authorizing the Regional Director (WR), Ministry of Corporate Affairs, to file a petition under Section 241(2) of the Act before the NCLT, Mumbai Bench not only depicted non-application of mind but was, even otherwise,

non-est and therefore, liable to be set aside. Consequently, the impugned order passed by NCLT, Mumbai Bench, which lacked the inherent jurisdiction to deal with such a petition, was a nullity.

12. To buttress his submission that the NCLT, Mumbai Bench could not entertain a petition under Section 241 of the Act preferred by the Central Government as it was hit by the ouster clause prescribed in the statute, he places reliance on the observations of the Supreme Court in Para 30 of its decision in ***Embassy Property Developments Pvt. Ltd. v State of Karnataka & Ors.,*** *(2020) 13 SCC 308*, wherein the Apex Court held that the NCLT, being a creation of a statute, can exercise only powers as vested upon it under the statute:

> *"**30.** The NCLT is not even a Civil Court, which has jurisdiction by virtue of Section 9 of the Code of Civil Procedure to try all suits of a civil nature excepting suits, of which their cognizance is either expressly or impliedly barred.* ***Therefore, NCLT can exercise only such powers within the contours of jurisdiction as prescribed by the statute, the law in respect of which, it is called upon to administer****"*
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> **(emphasis supplied)**

13. Mr. Nigam, thus, urges that once the proceedings under Section 241(2), initiated at the instance of respondent no.1, could be filed only before the Principal Bench, NCLT and not before the NCLT, Mumbai Bench; the NCLT, Mumbai Bench has, while passing the impugned order on 31.08.2021, exercised jurisdiction which is not at all vested in it. He contends that in the present case, once the NCLT had proceeded to entertain a petition which it had no jurisdiction to deal with, merely because the petitioner has an alternative remedy of approaching the NCLT or the

NCLAT, cannot be a bar from his invoking the writ jurisdiction of this Court. His plea, thus, being that when the present case was a clear case of absence of jurisdiction with the NCLT and not a case of mere error in exercise of jurisdiction, the writ petition would be maintainable and ought to be entertained by this Court. By placing reliance on the observations of the Apex Court in Paras 15-18 of ***Embassy Property*** (*supra*), he submits that the present case squarely falls within the well-recognised exception to the self-imposed restraint of the High Courts to entertain a writ petition once a statutory alternative remedy of appeal is available as there was lack of jurisdiction on the part of the NCLT, Mumbai Bench in entertaining the petition. The exercise of jurisdiction where none existed would certainly be amenable to the extraordinary jurisdiction of this Court under Article 226 of the Constitution and therefore, despite the availability of an appellate remedy, the impugned order and letter issued by the respondent no.1 at Delhi, from which proceedings before the NCLT, Mumbai Bench have emanated, are liable to be set aside by this Court.

14. In support of his plea that this Court, despite the existence of the statutory alternate remedy, ought to exercise its jurisdiction under Article 226 to entertain the present petition, Mr. Nigam relies on a decision of the High Court of Calcutta in ***Kolkata Municipal Corporation & Anr. vs. Union of India & Ors.,*** WPA No. 977/2020; as also a decision of the High Court of Jammu & Kashmir in ***SA Gold Ipsat Pvt. Ltd. v. The J&K Bank Ltd. & Ors.,*** W.P. (C) 361/2020.

15. Mr. Nigam also seeks to place reliance on a decision of a Coordinate Bench of this Court in ***Venus Recruiters Private Limited vs. Union of India & Ors.,*** W.P. (C) 8705/2019 wherein this Court, despite the objection of the

respondents therein that any order passed by the NCLT under Sections 60 and 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) was appealable before the NCLAT, entertained the writ petition after finding that the NCLT lacked jurisdiction to entertain an application beyond what was permitted under the IBC.

16. He further submits that even otherwise, the impugned order and the letter were vitiated by non-application of mind as the petition before the NCLT was filed without appreciating the fact that a prerequisite for filing of the same was formation of an opinion by the Central Government that the affairs of the company "are being" conducted in a manner prejudicial to public interest. Admittedly, the operation and functioning of the respondent no.3 company was, at the time of issuance of both the impugned order and the letter, being managed by the RP of the said company and not the petitioner, as the CIRP in respect of the said respondent had commenced way back on 31.08.2018. Moreover, the petitioner had already resigned as a Director of respondent no.3 on 18.05.2018, *i.e.,* well before the initiation of CIRP of the respondent no.3 on 31.08.2018. Thus, there existed no reason for the respondent no.1 to have formed an opinion that respondent no.3's affairs "are being" conducted in a manner prejudicial to public interest as the management of the respondent no. 3 was already in the hands of the RP.

17. In support of his contention that the use of the term "are being" in Section 241(2) of Companies Act is in contradistinction to the phrase "have been or are being" used in Section 241(1)(a) of Companies Act, he relies on the decision of a Co-ordinate Bench in ***B.D. Pawar v. Union of India, through Ministry of Corporate Affairs & Anr.,*** W.P.(Crl.) 1285/2020, wherein the Court held as under:

> "***7.*** *Since the functioning of NSEL remains suspended since the past over six years, there is no reason for the Central Government to have formed an opinion that its affairs are being conducted in a manner prejudicial to public interest*.
>
> ***10.*** *Since the affairs of operation of NSEL have been suspended for almost over six years, prima facie, it would be difficult to accept that a petition under Section 241 (2) of the Companies Act, 2013 would be maintainable."*

18. Mr. Nigam thus contends that not only do the impugned order and letter suffer from non-application of mind, but the same have been passed by also ignoring the relevant material - including the audit report prepared by N.V. Dand & Associates, Chartered Accountants, appointed by the RP, which did not point out any irregularities in the transaction audit conducted during the CIRP of the respondent no.3 and group companies, namely "avoidance transactions" as claimed by the respondent no.1, while issuing the impugned order and letter.

19. He further submits that in any event, once the RP, who is sufficiently empowered under the mandate of the IBC to take sufficient steps against such "avoidance transactions" and is presently seized of the affairs of the respondent no.3 company, has not raised any grievance and has, in fact, actively supported the resolution plan approved by the committee of creditors (CoC), the impugned order and letter were without jurisdiction. Moreover, even though both the impugned letter and the order have been purportedly passed to safeguard public interest, all the companies are already undergoing CIR Process and therefore, the public interest is already being taken care of.

20. Per contra, the learned ASG appearing on behalf of respondent nos.1 & 2 firstly submits that the petitioner is, by misinterpreting the provisions of Section 241 of the Act, wrongly trying to project that the NCLT, Mumbai Bench did not have the jurisdiction to entertain the petition. The reliance on the *proviso* to Section 241(2) by the petitioner to contend that the petition could be entertained only by the Principal Bench of the NCLT is wholly misplaced as admittedly, till date, no rules laying down the class of companies *qua* whom an application can be filed by the Central Government before Principal Bench of the NCLT have been prescribed. Once the precondition for applicability of the *proviso* does not exist as admittedly, the Central Government has, till date, not prescribed any rules regarding the companies *qua* which such a petition is required to be filed before Principal Bench, the respondent no.1 could not have filed such petition before the Principal Bench of the NCLT. By placing reliance on ***63 Moons Technologies Ltd. v. Union of India,*** *2017 SCC OnLine NCLAT 36*, he submits that the respondents had therefore, correctly approached the Mumbai Bench, within the territorial jurisdiction of whom the registered office of the offending company is located.

21. He further submits that the instant case is not a case where proceedings under Section 241 of the Act have been initiated before a forum not having jurisdiction over the said subject matter as it is an admitted position that petitions under Section 241 of the Act, by any person other than the Central Government are, even as per the petitioner, still required to be filed before the respective bench of the Tribunal having territorial jurisdiction over the offending company. He, therefore, contends that even as per the petitioner, the proceedings were required to be filed only before

the NCLT and therefore, the filing of the petition before the Mumbai Bench instead of the Principal Bench can, at best, be said to be a wrongful exercise of available jurisdiction and not of any inherent lack of jurisdiction. Thus, neither the order passed by the Mumbai Bench of the NCLT is a nullity, nor the impugned letter issued by the respondent no.1 seeking initiation of proceedings before the NCLT, Mumbai Bench is non-est.

22. Without prejudice to his submissions that the order passed by the NCLT cannot be said to be without jurisdiction, the learned ASG contends that even otherwise, once specialized bodies like the NCLT and NCLAT have been created to adjudicate upon the disputes arising under the Companies Act, this Court ought not to exercise its discretion and instead, the petitioner ought to avail of the readily available alternative statutory remedy provided for in the Companies Act, which is a complete Act in itself and does not envisage any room for challenging the orders of the NCLT, other than in a manner prescribed by the Act itself. He contends that once an efficacious alternative remedy is available and a statutory forum has been created for the redressal of the grievances sought by the petitioner, this Court ought not to entertain the present petition and that too against an order passed by the Mumbai Bench of the NCLT, over which it does not even exercise supervisory jurisdiction under Article 227 of the Constitution. By placing reliance on a decision of a Co-ordinate Bench in ***Shriraj Investment and Finance Limited & Ors. vs. Union of India,*** *W.P.(Crl.) 1823/2020,* he urges that once the Mumbai Bench of the NCLT is seized with the petition, all contentions including the power of the respondent no.1 to initiate such proceedings must be raised before the said forum and be determined in those proceedings.

23. He submits that even otherwise, there is no justification for the petitioner to invoke the jurisdiction of this Court under Article 226 by bypassing the remedy available to him under the Companies Act, *i.e.*, to raise an objection without regard to maintainability before the NCLT itself and if aggrieved by the decision, pursue the appellate remedy before the NCLAT under Section 421 of the Act. For this purpose, he places reliance on Para 9 of ***Church of South India Trust Association v. John Dorai,*** *2018 SCC Online Mad 12756* which records the observations of the Apex Court in ***Surya Dev Rai v. Ram Chander Rai,*** *(2003) 6 SCC 675.*

24. Furthermore, the Mumbai Bench of the NCLT has not acted in contravention to the provisions of the Companies Act or in defiance of the fundamental principles of judicial procedure or in violation of the principles of natural justice warranting this Court to exercise its jurisdiction under Article 226 of the Constitution.

25. He, thus, contends that once the rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, the petitioner ought to be relegated to avail appellate remedy before the NCLAT, as provided for under Section 421 of the Act, more especially when two of the similarly placed respondents in the petition before the NCLT, Mumbai, have already preferred appeals being Company Appeal (AT) Nos. 110 & 111 of 2021, against the order dated 31.08.2021 sought to be challenged by the petitioner in the present petition.

26. Mr.Abhinav Vashisht, learned senior counsel for respondent no.3, while adopting the submissions made by the learned ASG, submits that the present petition is not maintainable as no case has been made out by the petitioner warranting exercise of its extraordinary jurisdiction instead of

being relegated to avail the alternative statutory remedy available under the Companies Act.

27. At this stage, the learned ASG, without prejudice to his submissions that the writ petition is not maintainable, submits on instructions that if the petitioner moves an application seeking withdrawal of amounts from his accounts to meet his immediate needs, the respondent will consider the same favourably and permit the petitioner to withdraw the requisite amounts.

28. Having considered the submissions of the parties, I may at the outset note that they are *ad idem* that the existence of an alternative statutory remedy would not be an absolute bar for an aggrieved party to invoke writ jurisdiction of the High Court under Articles 226 & 227 of the Constitution of India. The petitioner has vehemently urged that in a case like this, where his plea is that the order passed by the Tribunal is wholly without jurisdiction and therefore a nullity, the Court ought not to relegate him to the alternative statutory remedy under the Companies Act. The respondent, on the other hand, has firstly urged that the petitioner's plea that the proceedings before the NCLT, Mumbai Bench, are without jurisdiction is contrary to the scheme of Section 241 of the Act and secondly, even if the petitioner's plea that the same are without jurisdiction were to be accepted, the petitioner ought to be relegated to the readily available statutory remedy under the Companies Act.

29. It is, thus, clear that the only issue which this Court needs to determine is as to whether in the light of the petitioner's plea that the proceedings before the NCLT, Mumbai Bench are without jurisdiction having been filed before a Bench whose jurisdiction has been specifically ousted by the *proviso* to Section 241(2), the writ petition ought to be

entertained or the petitioner ought to be relegated to the NCLT/ NCLAT. This aspect has to be considered in the light of the admitted position that some of the affected parties have already approached the NCLAT by way of statutory appeals against the order dated 31.08.2021 passed by the NCLT, Mumbai Bench, which appeals are stated to be pending consideration.

30. In support of his plea that when the proceedings before a Tribunal are a nullity or are vitiated on account of having been passed without jurisdiction, a writ petition under Article 226 would be maintainable despite the availability of a statutory appellate remedy, Mr. Nigam has placed heavy reliance on the decision of the Apex Court in ***Embassy Property*** *(supra)* to draw this Court's attention to the distinction between an error of jurisdiction vis-à-vis absence of jurisdiction. Reference may be made to Paras 15, 17, 18 which read as under:

> ***15.*** *...**An "error of jurisdiction" was always distinguished from "in excess of jurisdiction",** until the advent of the decision rendered by the House of Lords, by a majority of 3:2 in Anisminic Ltd. v. Foreign Compensation Commission [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] . After acknowledging that a confusion had been created by the observations made in R. v. Governor of Brixton Prison, ex p Armah [R. v. Governor of Brixton Prison, ex p Armah, 1968 AC 192 : (1966) 3 WLR 828 (HL)] to the effect that if a Tribunal has jurisdiction to go right, it has jurisdiction to go wrong, it was held in Anisminic [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)]* ***that the real question was not whether an authority made a wrong decision but whether they enquired into and decided a matter which they had no right to consider.*** **(emphasis supplied)**
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> ***16. x x x***

17. *But Racal, In re [Racal Communications Ltd., In re, 1981 AC 374 : (1980) 3 WLR 181 (HL)] made a distinction between courts of law on the one hand and administrative tribunal/administrative authority on the other and held that insofar as (inferior) courts of law are concerned, the subtle distinction between errors of law that went to jurisdiction and errors of law that did not, would still survive, if the decisions of such courts are declared by the statute to be final and conclusive. Thus one distinction was gone with Anisminic [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] , but another was born with Racal, In re [Racal Communications Ltd., In re, 1981 AC 374 : (1980) 3 WLR 181 (HL)] . This could be seen from the after-effects of Anisminic [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] . [Anisminic, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL) had its own quota of problems. Prof. Wade, as pointed out in R. v. Lord President of the Privy Council, ex p Page, 1993 AC 682 : (1992) 3 WLR 1112 (HL), seems to have opined that the true effect of Anisminic was still in doubt. People like Sir John Laws, quoted by Prof. Paul Craig, and which was extracted in the decision in R. (Privacy International) v. Investigatory Powers Tribunal, 2019 UKSC 22 : (2019) 2 WLR 1219, seems to have opined that once the distinction between jurisdictional and non-jurisdictional errors was discarded, there was no longer any need for the ultra vires principle and that ultra vires is, in truth, a fig leaf which has enabled the courts to intervene in decisions without an assertion of judicial power which too nakedly confronts the established authority of the Executive or other public bodies. According to Sir John Laws, Anisminic, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL) has produced the historical irony that with all its emphasis on nullity, it nevertheless erected the legal milestone which pointed towards a public law jurisprudence in which the concept of voidness and the ultra vires doctrine have become redundant. In R. (Privacy International), 2019 UKSC 22 : (2019) 2 WLR 1219 the UK*

Supreme Court also quoted the editors of De Smith's Judicial Review to the effect:"84. ... 'The distinction between jurisdictional and non-jurisdictional error is ultimately based upon foundations of sand. Much of the superstructure has already crumbled. What remains is likely quickly to fall away as the courts rightly insist that all administrative action should be simply, lawful, whether or not jurisdictionally lawful.'" (WLR p. 1251, para 84)]

18. *Interestingly just four days before the House of Lords delivered the judgment in Anisminic [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] (on 17-12-1968), an identical view was taken by a three-member Bench of this Court (delivered on 13-12-1968) in Official Trustee v. Sachindra Nath Chatterjee [Official Trustee v. Sachindra Nath Chatterjee, (1969) 3 SCR 92 : AIR 1969 SC 823] approving the view taken by the Full Bench of the Calcutta High Court in Hriday Nath Roy v. Ram Chandra BarnaSarma [Hriday Nath Roy v. Ram Chandra BarnaSarma, 1920 SCC OnLine Cal 85 : ILR (1921) 48 Cal 138] . It was held therein that : (Sachindra Nath Chatterjee case [Official Trustee v. Sachindra Nath Chatterjee, (1969) 3 SCR 92 : AIR 1969 SC 823] , AIR p. 828, para 15)*

"15. … before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought, but must also have the authority to pass the orders sought for".

(emphasis supplied)

This Court also pointed out that it is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit, but its jurisdiction must include (1) the power to hear and decide the questions at issue, and (2) the power to grant the relief asked for*. This decision in Official Trustee [Official Trustee v. Sachindra Nath Chatterjee, (1969) 3 SCR 92 : AIR 1969 SC 823] was followed in a recent decision*

> *in Iffco Ltd. v. Bhadra Products [Iffco Ltd. v. Bhadra Products, (2018) 2 SCC 534 : (2018) 2 SCC (Civ) 208] , quite independent of Anisminic [Anisminic Ltd. v. Foreign Compensation Commission, (1969) 2 AC 147 : (1969) 2 WLR 163 (HL)] and its followers."* **(emphasis supplied)**

31. Reference may also be made to a decision dated 29.01.2021 in ***Kolkata Municipal Corporation*** *(supra)*, wherein the High Court of Calcutta observed as under:

> ***"38.*** *As such, a combined reading of the aforesaid propositions, as laid down in the various judgments, boil down to the ratio that* ***although a wrongful exercise of available jurisdiction would not be sufficient to invoke the High Court's jurisdiction under Article 226 of the Constitution, the ground of absence of jurisdiction could trigger such invocation. Hence, in view of the nature of challenge involved in the present writ petition, the same is maintainable in law."***
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> **(emphasis supplied)**

32. The dictum of these judgments only reiterates the well-settled proposition that the mere existence of an alternate remedy does not by itself bar the High Court from exercising its writ jurisdiction. The power of judicial review with which the High Court is vested under Article 226 of the Constitution cannot be taken away merely because an alternative statutory remedy of appeal is available. However, it cannot be denied that the power of the High Court to entertain a writ petition under Article 226 even when an alternative statutory remedy is available, is ultimately only discretionary and therefore, it is for the High Court to consider whether, in the facts of the case, a party must be relegated to the available statutory remedy. There can be no dispute with the proposition urged by the petitioner that one of the

factors which the High Court will consider while exercising its discretion to entertain a writ petition would be whether the order passed by the Tribunal was without jurisdiction or was merely a case of an error of jurisdiction.

33. In the present case, the only basis for the petitioner to approach this Court is that under the *proviso* to Section 241(2), it is only the Principal Bench of NCLT at Delhi which could entertain the petition preferred by the Central Government and therefore, the very filing of the petition before the NCLT, Mumbai Bench and the passing of any order by the said Bench being *coram non judice*, was a nullity. The petitioner has, however, not denied the fact that two company appeals - being Company Appeal (AT) Nos. 110 & 111 of 2021 assailing the very same impugned order passed by the NCLT, Mumbai Bench, filed by aggrieved parties forming part of the same group are already pending adjudication before the NCLAT.

34. There is also no denial that the Companies Act is a complete code in itself, as also that the NCLT and NCLAT are specialized Tribunals created by the statute for dealing with issues arising under the Companies Act. The petitioner's primary plea before this Court is that in view of the *proviso* to Section 241(2) of the Companies Act, the NCLT, Mumbai did not have the jurisdiction to entertain the petition and therefore, the proceedings before it and all orders passed by the said Bench are a nullity. The respondents have vehemently denied this position and have contended that only the Mumbai Bench had the necessary jurisdiction. The conflicting stands taken by the parties will depend only on the interpretation of the *proviso* to Section 241(2) and thus, it is evident that the petitioner is ultimately seeking to urge that a provision of the Companies Act is required to be read in a particular manner. This aspect, in my view, can be and ought to be considered by the

forums of NCLT/ NCLAT created under the Companies Act for dealing with issues arising under the said Act. Even otherwise, the petitioner has given absolutely no justification as to why he cannot approach these specialized forums created for dealing with the issues arising under the Companies Act. In this regard, reference may also be to the decision of the High Court of Madras in ***Church of South India Association*** (*supra*) relied upon by the respondent wherein, the Madras High Court, while dealing with a challenge to an order passed by the NCLT, Chennai had, after noticing that an efficacious alternate remedy was available to the petitioner therein by approaching the NCLT and NCLAT created under the Companies Act, declined to entertain the writ petition.

35. I have also considered the decision of the Coordinate Bench in ***Venus Recruiters*** (*supra*) and find that the same does not, in any manner, forward the case of the petitioner. In the said case, the Court was not dealing with a position like the present case where some of the aggrieved parties have already approached the concerned Appellate Tribunal assailing the same impugned order. More so, in the said case, the Court was dealing with the question as to whether the NCLT would have the jurisdiction to deal with questions that have arisen after the resolution plan already stood approved by the Tribunal. This is not the position in the present case, where the petitioner's plea is that the very filing of the petition by the respondent no.1 was without application of mind and contrary to the provisions of the Companies Act (as amended on 15.08.2019) and therefore, the Mumbai Bench of the NCLT did not have any jurisdiction to entertain the petition. These aspects can certainly be appropriately examined by the NCLT and the NCLAT. It can also not be said that the remedy before these Tribunals is

not efficacious. In fact, the NCLAT is already actively considering the validity of the impugned orders and letter and therefore, there is no reason as to why the petitioner ought also not to approach the same forum. I am, therefore, of the considered view that the petitioner has not been able to make out any case compelling this Court to exercise its extraordinary writ jurisdiction, when adequate statutory remedies are available to him.

36. Though Mr. Nigam has vehemently relied upon the *proviso* to Section 241(2) of the Act to contend that the petition before the Mumbai Bench of NCLT was without jurisdiction as the jurisdiction of the said Bench was clearly ousted by the said *proviso*, I am of the view that once I do not deem it appropriate to exercise my extraordinary writ jurisdiction to entertain the present petition, any interpretation of this provision one way or the other, is likely to prejudice the case of the parties before the appropriate forum to which, in my view, they should be relegated to. I am, therefore, refraining from expressing any opinion as to whether in the light of the newly added *proviso* to Section 241(2), the respondent no.1 could have approached the NCLT, Mumbai Bench. For the same reasons, I do not deem it appropriate to examine the petitioner's plea that the issuance of the impugned order and letter by the respondent no.1 are, even otherwise, vitiated by non-application of mind or that the condition precedent for invocation of Section 241(2) of the Act, which requires the Central Government to come to an opinion that the affairs of the company "are being conducted in a manner prejudicial to public interest" was not satisfied.

37. Before I conclude, I may observe that the petitioner has, by relying on the decisions in ***Navinchandra N. Majithia vs. State of Maharashtra and Ors.*** (2000) 7 SCC 740 and ***M/s Sterling Agro Industries Ltd. vs. Union of***

India & Ors. ILR (2011) VI Delhi 729, urged that this Court has territorial jurisdiction to deal with the matter as the impugned order dated 08.07.2021 and letter dated 16.07.2021 were issued by the respondent no.1 at Delhi. However, in view of my conclusion that the present petition is not maintainable on account of the alternative statutory remedies available to the petitioner and not for want of territorial jurisdiction, I do not deem it necessary to delve into this aspect.

38. For the aforesaid reasons, the writ petition, along with the pending application, is dismissed. Needless to observe that this Court has not gone into the merits of the petitioner's challenge to the impugned orders and letter and therefore, the petitioner will be at liberty to raise all grounds raised in the present petition either before the NCLT or NCLAT, which he may choose to approach.

(REKHA PALLI)
JUDGE

OCTOBER 22, 2021
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