NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) No. 372 of 2026

IN THE MATTER OF:

Nex Fitzap Pvt. Ltd. & Ors. **...Appellant(s)**

Versus

Nivedita Tiwari **...Respondent(s)**

Present:

For Appellant(s) : Mr. Sanjiv Sen, Sr. Advocate with Mr. Deepak, Mr. Prahalad Balaji, Mr. Sumit and Ms. Jharna Singh, Advocates.

For Respondent(s) : Mr. Gaurav Mitra, Sr. Advocate with Mr. Siddhant Jaiswal, Advocates.

O R D E R
(Hybrid Mode)

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

The Appellant has been an opposite party to the proceedings of the Company Petition No. 213/KB/2024, that was preferred by the Respondent/Petitioner herein, by invoking the provisions contained under Sections 241(1), 242(4) & 244(1) of the Companies Act, 2013. The consequential effect of the impugned order had been that the Ld. Tribunal while rendering the Judgment of 03.09.2026, had allowed the Company Petition and issued directions particularly that as contained in Para-24 of the said Judgement.

2. The Ld. Counsel for the Appellant had vehemently argued the stay application on the ground that the findings recorded in the Judgment would be bad for the reason: -

(i). For the purpose of issuing directions as contained in Para-24, the Tribunal had to mandatorily record the finding on oppression and acts of

mismanagement and until and unless there is any conclusive determination made on it by the Tribunal, the Tribunal couldn't have issued any directions as contained in the impugned order. So far as, it pertains to the aspects related to removal of the Petitioner/Respondent herein and such other ancillary relief qua the payment, qua the necessity of the appointment of the forensic audit or any other matter which would be touching upon the Patent issue. The contention of the Appellant is that in the absence of there being any finding on the aspects of oppression and mismanagement, which was a condition precedent, no such directions could have been issued.

(ii). He submits that the issue of Patent rights, which had been considered in the findings recorded in Para-13 and 14 of the Judgment, that couldn't have been an issued, which could have been at all ventured by the Ld. Tribunal in the exercise of the proceedings under Section 241 & 242 of the Companies Act, 2013. Hence, the findings recorded therein with regards to any issues pertaining to the Patent would be in violation of Section 15 of the Patents Act. As the field of patent is exclusively governed by Patents Act.

(iii). The Ld. Counsel for the Appellant has argued, that the Petitioner/ Respondent, would not be entitled for grant of any relief, owing to the fact, that as per the documents which were on record, particularly the one which has been referred to by the Appellant by placing the summary of the case before us, it has been projected by the appellant as if the Respondent had resigned and as such, until and unless the issue of her continuance itself is determined by the Ld. Tribunal by recording specific finding, the relief as directed would be bad in the eyes of law.

(iv). In elaboration of the argument by the Ld. Counsel for the Appellant, it is submitted that the observation that has been made by the Ld. Tribunal in Para-24(b) fixing joint liability of the Respondent and the Petitioner to pay the amount of unpaid remuneration allegedly withheld from July, 2024, is absolutely a perverse finding because payment of remuneration could not be made, by fastening of joint liability.

(v). Lastly, it was argued by the Ld. Counsel for the Appellant, that the directions of appointment of forensic audit as contained in Para-24(c) was uncalled for, for the reason being that the forensic audit could only be directed when the Tribunal records its satisfaction calling for a necessity for forensic audit, it cannot be cursorily directed without there being any conclusive finding recorded by the Tribunal in that regard.

3. The argument extended by the Ld. Counsel for the Appellant has been argued to the contrary by the Ld. Counsel for the Respondent, contending thereof from various documents, that, as a matter of fact, the documents on record show that the resignation was never acted upon and according to the argument of the Ld. Counsel for the Respondent, he contends that in view of the findings recorded in Para 18 and 19 of the impugned Judgment, that has to be taken as the finding recorded by the Ld. Tribunal for the purpose of establishment of an act of oppression and mismanagement and thus it cannot be said that the Judgment suffers from perversity or it could be said that there was no finding has been recorded by the Ld. Tribunal in order to enable the Respondent to argue to substantiate the relief granted by the Ld. NCLT.

4. While directing the Respondents to file the counter within a period of three weeks, we feel that, that part of the order as contained in Para-24(b)(c) and (f), so far as it relates to fixation of an immediate liability of paying the unpaid remuneration and the directions pertaining to the conduct of the forensic audit, that deserves to be kept in abeyance until the dispute is decided by this Tribunal on its own merit.

5. Hence, there would be a stay order of the impugned order only as regards to the clause 24(b) and (c).

6. So far **I.A. No. 7205 of 2026** filed by the Appellant for placing additional documents on record is taken on record. It will be open for the Respondents to file their objections to it too.

7. List this Company Appeal after filing of the counter affidavit in the 3rd week of November, 2026. Accordingly, the stay application being I.A. No. 7203 of 2026 would stand disposed of.

8. List on **26.11.2026**.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Indevar Pandey]
Member (Technical)

New Delhi.
30 Oct, 2026.
Abhishek Pandey